



<u>Decision Ref:</u>	2020-0331
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Tracker Mortgage
<u>Conduct(s) complained of:</u>	Failure to offer appropriate compensation or redress CBI Examination
<u>Outcome:</u>	Upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

This complaint relates to a mortgage loan account held by the Complainant with the Provider and an overcharge of interest in the amount of €12,901.49 on that mortgage loan account. The mortgage loan is secured on the Complainant's principal private residence.

The mortgage loan account ending **7535** was drawn down on **22 March 2005** in the amount of €97,000 over a term of 25 years for the purposes of refinancing an existing mortgage on the property and to buy out the Complainant's former spouse.

A complaint was received by this office which detailed that the conduct complained of was that the Provider failed to offer the Complainant a tracker interest rate on mortgage loan account ending **7535** and "*2 other re-mortgages*". In circumstances where the "*2 other re-mortgages*" are joint accounts held by the Complainant and her former spouse, this office notified the Complainant by way of letter dated **20 August 2018** that this office cannot investigate a matter in relation to those two joint mortgage loan accounts where only one account holder, the Complainant, has signed the complaint form. The Complainant has accepted the jurisdiction of this office. Accordingly, this complaint relates to mortgage loan account ending **7535** only.

The Complainant's mortgage loan account ending **7535** was considered by the Provider as part of the Tracker Mortgage Examination (the "Examination"). The Provider identified that a failure had occurred on the Complainant's mortgage loan account and was deemed to be impacted under that Examination.

The Provider wrote to the Complainant by way of letter dated **12 December 2017** advising her of the failure with respect to mortgage loan account ending **7535**. The Provider detailed how it "*got things wrong*" as follows;

"In our review, we found that when you moved from a tracker rate to the staff non-standard variable rate and then a fixed rate, we failed to provide you with sufficient clarity as to what would happen at the end of that fixed rate and the language used by us in communications to you may have been confusing and/or misleading."

With respect to the effect of the failure on mortgage loan account ending **7535** the Provider outlined as follows;

"As a result of our failure, we can confirm that you were charged an incorrect interest rate between 08 Jan 2009 and 28 Nov 2017."

The Complainant's mortgage loan account was restored to a tracker interest rate of ECB + 0.85% on **29 November 2017**.

The Provider made an offer of redress and compensation to the Complainant on **12 December 2017**. In summary the total redress and compensation offered by the Provider in respect of the mortgage loan account amounted to **€15,901.22** which comprised of;

1. Redress in the sum of €13,546.56 covering;
 - (a) Total interest overpaid: €12,901.49; and
 - (b) Interest to reflect the time value of money: €645.07.
2. Compensation in the sum of €1,354.66 for the failure on the mortgage loan account.
3. Payment towards the cost of independent professional advice in the sum of €1,000.00.

The Complainant was not satisfied with the amount of redress and compensation offered.

In **January 2017**, the Complainant appealed the redress and compensation offered in respect of the mortgage loan account to the Independent Appeals Panel, established as part of the Examination. The basis of the Complainant's appeal was the *"period during which the Bank considers your account to have been affected"* and *"the revised interest rate applied to the mortgage account that was affected"*.

On **15 February 2018** the Appeals Panel decided to uphold the Complainant's appeal and awarded additional compensation in the sum of **€2,500.00** to the Complainant. The key factors identified by the Independent Appeals Panel in determining the decision were as follows;

- *"In relation to the period of impact, based on the documentation provided by the [Provider], the Panel is satisfied that the correct redress period commences on the 8 January 2009, being the date on which the fixed rate availed of by the Customer in January 2007 expired. Please see MFA dated 8 January 2007 attached.*
- *In respect of the compensation, the Panel acknowledges the impact of the overpayment on the Customer in her particular circumstances."*

As the Complainant has been through the Provider's internal appeals process and the offer accepted as part of the Independent Appeals Panel process was not in full and final settlement, this office was in a position to progress the investigation and adjudication of the complaint.

The conduct complained of with respect to mortgage loan account ending **7535** is;

- (a) That the Provider has not offered the Complainant adequate compensation for its failure on her mortgage loan account.
- (b) That the Provider did not act appropriately towards the Complainant in **June 2016**, when an interest only period for the mortgage loan account was requested.

The Complainant's Case

The Complainant submits that she drew down mortgage loan account ending **7535** with the Provider in **2004** for the purposes of buying out her former spouse on a prior existing mortgage loan on the private dwelling house.

The Complainant is a former staff member of the Provider. The Complainant questions why she was never offered a tracker mortgage in respect of her mortgage loan from

inception in **2004**. The Complainant submits that *“the only offer [she] received was a staff mortgage which was refused by the Revenue Commission”*.

The Complainant explains that in **June 2016** she requested the Provider to *“consider another term of interest only”* on her mortgage loan account with a view to her *“selling [her] house, clearing the mortgage and purchasing a smaller property and be mortgage free”*. The Complainant states that she was permitted an interest only period previously and so this was a request for a second interest only period for six months. The Complainant submitted her request to the Provider by way of letter dated **15 June 2016** wherein she noted that she was on long-term invalidity benefit and unable to return to work in the foreseeable future due to her *“battle with [illness]”* and subsequent surgery and treatment. In the same letter, the Complainant noted that a representative of the Provider *“threatened”* that if her youngest son, who was living with her at the time and contributing to the household, moved out then she would *“have to sell as [she] could not maintain the mortgage on €193.50 weekly invalidity benefit”*. The Complainant outlines that she had been in contact with third party support services with a view to applying for insolvency but as she had *“no funds to offer in settlement”* she was unfortunately *“not able to apply for this”*.

The Complainant submits that she struggled to pay the weekly mortgage repayments and often went *“without food to make sure the money”* was in her account. The Complainant maintains that had she been a tracker interest rate *“this would have never occurred”*.

The Complainant submits that the Provider showed a lack of empathy and understanding when she was recovering from surgery and treatment from her serious illness. The Complainant states that the Provider was only interested in whether she could continue to pay her mortgage or alternatively sell her property. The Complainant states that she does not have a history of missed or late payments.

The Complainant is seeking additional compensation from the Provider. The Complainant submits that the compensation offered by the Provider under the Examination is not adequate compensation as it *“does not go near the sleepless nights, constant worry, depression and pure terror”* she experienced every day. The Complainant maintains that the Provider should have calculated the compensation payment from the inception of the mortgage in **2004** as opposed to **2009**.

The Provider’s Case

The Provider submits that the Complainant drew down mortgage loan account ending **7535** on **22 March 2005** for a term of 25 years under mortgage loan offer letter dated **19 October 2004** which provided for a tracker variable rate of ECB + 1.1%.

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The purpose of the mortgage loan was to *“refinance the then existing mortgage on the property and to buy out the Complainant’s former spouse”*.

The Provider details the mortgage loan account remained on this interest rate until **13 December 2005** when the interest rate was reduced to ECB + 0.85%. The Provider submits that it unilaterally reduced the staff tracker variable margin to 0.85% and it issued a letter to the Complainant regarding this.

The Provider submits that the tracker interest rate of ECB + 0.85% remained on the mortgage loan account until **22 August 2006** as the Complainant elected to apply a *“Staff Non Standard Variable Rate”* by way of MFA (**“Mortgage Form Authorisation”**) signed on **21 August 2006**. The Provider states that the Staff Non Standard Variable Rate was a non-tracker variable rate. The Provider contends that the MFA signed by the Complainant on **21 August 2006** *“definitively ended the former tracker rate and means that the Complainant has no claim in contract to a tracker rate”*.

The Provider submits that the Complainant signed a MFA on **2 January 2007**, applying a 2 year fixed interest rate of 3.95% to her mortgage loan account as of **8 January 2007**. The Provider submits that prior to the expiry of the fixed interest rate period in **December 2008**, it wrote to the Complainant setting out by way of letter dated **9 December 2008** what rates were available to her at that time and enclosing a MFA to enable the Complainant to make her choice. The Provider outlines that it offered her a choice of a non-tracker variable rate and a 2 year fixed staff option. The Provider submits that the MFA did not include a tracker interest rate option as;

- a. the Complainant was on a non-tracker variable rate (that is she was not a tracker customer) when she applied the fixed rate which was ending in **January 2009**; and
- b. the Provider had withdrawn tracker rates generally in **late 2008** and the Complainant was on a non-tracker variable rate when she applied the fixed rate which was ending in **January 2009**.

The Provider submits that the choices offered in the MFA accorded with General Condition 7 (b) as contained in the Loan Offer letter dated **19 October 2004**, which sets out the treatment of the interest rate on the expiry of a fixed rate period.

The Provider details that the Complainant opted for a staff non-tracker variable rate at the end of the 2 year fixed interest rate period by signing the MFA on **16 December 2008**.

The Provider outlines that it included the Complainant's mortgage loan account in the Central Bank directed Tracker Mortgage Examination in **December 2017** because it was formerly on a tracker interest rate. It accepts that when the Complainant's mortgage loan account moved from a tracker rate to the staff non-standard variable rate and then a fixed rate, the Provider failed to provide the Complainant with sufficient clarity as to what would happen at the end of the fixed rate period in **January 2009**.

The Provider submits that it has not paid redress and compensation because it *"breached its contract with the Complainant"*. The Provider submits that it *"has not breached any contract"* with the Complainant. The Provider explains that the Complainant signed a MFA in **2006** to move to a staff non-standard variable rate and in doing so *"relinquished her entitlement to the tracker rate of interest which had previously applied to the account from the original terms. That is because the new rate chosen was different, non-tracker variable rate without temporal limit."* The Provider maintains that the Complainant requested the MFA that she signed on **21 August 2006** *"in response to the Provider's [...] Notice dated 18 August 2006 to staff describing the Staff Non-Standard Variable Rate. The notice states clearly and repeatedly that the Staff Non-Standard Variable Rate is not a tracker rate"*. The Provider is of the view that the Complainant made her own decision to convert the loan to a more favourable rate of 3.5% (from 3.85%) when she signed the MFA in **August 2006**.

The Provider contends that *"no positive misrepresentation was made to the Complainant concerning the future availability of a tracker rate at any point when the Complainant moved to the 2 year fixed rate in January 2007"*. The Provider outlines that the failure on its part was that *"the documentation used to fix the interest rate was not sufficiently clear on what would happen at the end of the fixed rate period"* and the Provider submits that this is a *"significantly less serious shortcoming than a breach of contract or a positive misrepresentation, at a point before the Complainant fixed the rate, that a tracker rate would be made available at the end of the fixed rate period"*.

In response to the Complainant's assertion that the Provider did not take into account the stress caused to her at her *"lowest time"* or the fact that she was *"so worried about losing [her] home when [she] should have been recovering from surgery and [treatment]"*, the Provider submits that it *"understands the Complainant has suffered from a serious illness and a period of financial difficulty and empathises entirely with her."* The Provider does not accept that the Complainant can *"fairly or properly link the question of stress to the Tracker Rate issue"*.

It submits that *"the evidence confirms that the Complainant's financial circumstances changed dramatically when she decided to avail of voluntary redundancy in and around 2013."*

The Provider offered the Complainant a 6 month interest only repayment period in or around **January 2015** to allow her the opportunity to gain employment and the Complainant accepted this arrangement by signing a MFA on **1 February 2015**. The Provider explains that in **January 2015** it assessed the Complainant's circumstances in accordance with the **Code of Conduct on Mortgage Arrears** (the "**CCMA**"). It submits that at that stage the Complainant's redundancy funds had been used and the Complainant had requested a split mortgage. The Provider was not satisfied to provide a split mortgage *"because that would have been a long term solution that relied on rental income from her son."* The Provider states that it offered the Complainant *"6 months interest only to allow her the opportunity to gain employment"* which the Complainant accepted by signing a MFA on **1 February 2015**.

The Provider notes that the Complainant made contact on **27 July 2015** to advise that *"she had been diagnosed with a serious illness and was seeking further forbearance"* and a split mortgage however her financial circumstances had not changed since **January 2015**. On **17 August 2015**, the Provider submits that it was satisfied to offer a further 6 month interest only repayment period but noted that there was no information to suggest that a return to capital and interest was possible as the assessment recorded *"unusually low expenditure and an inability to rely on rental income from her son in the future"*. The Provider submits that it was unable to meet the Complainant's request for a split mortgage in **January 2015** and **August 2015** because of *"the lack of overall income and the reliance on income from her son which was confirmed as not long term"*. The Provider asserts that this was *"not only a reasonable decision for the Provider to make"* but it also reflected its obligations under **provision 39** of the **CCMA** in that the Provider was not in the position to offer an alternative repayment arrangement that was not *"viable"*. The Provider submits that this was communicated to the Complainant.

The Provider explains that the Complainant requested a further interest only period by way of letter dated **15 June 2016** pending the sale of her property in order to purchase a smaller property as she *"could not maintain the mortgage"* by herself on the basis of her weekly social welfare benefit. The Provider acceded to this request for interest only pending sale through the issuance of an **Agreement to Amend Letter of Loan Offer/Alternative Repayment Arrangement** on **7 July 2016**. The Provider submits that the Complainant never returned the Alternative Repayment Arrangement and that the Complaint has made full loan repayments of capital and interest since **26 February 2016**. The Provider notes that the Complainant has not made contact since seeking further forbearance.

The Provider *“refutes”* the Complainant’s assertion that the offer of an interest only period following her diagnosis was contingent upon her selling the property. The Provider explains that when the Complainant requested an interest only period in **August 2015**, this was facilitated without any condition. The Provider states that in **June 2016** it accommodated a further request by the Complainant for an interest only period with a view to the sale of the property. The Provider explains that it issued the necessary documentation to the Complainant in order to implement an amendment to the mortgage but this was not returned as accepted by the Complainant. The Provider asserts that under **provision 47** of the **CCMA** it was *“obliged to issue the correspondence confirming the offer had not been accepted and to inform the Complainant that her case was now outside of MARP, amongst other things”*. The Provider submits that its letter to the Complainant dated **26 August 2016** complies with each of the mandatory requirements of **provision 47** and *“it is unreasonable and unjust (in the Provider’s view) to portray this as not appropriate”*.

In addition, the Provider rejects the Complainant’s assertion that the Provider advised that her property *“was liable to re-possession if [her] mortgage was late.”* The Provider submits that the Complainant was not in arrears at the time the letter dated **26 August 2016** issued and would not have been subject to repossession for a late payment. The Provider submits that the letter only mentions the possibility of legal actions *“if you are in arrears”* in accordance with the requirement of **provision 47(d)** of the **CCMA**. The Provider states that the Complainant maintained payments throughout **2016** and to date and therefore the Provider would have no grounds to take an action for repossession.

The Provider also categorically denies the Complainant’s allegation that she was threatened by a staff member. The Provider submits that *“the evidence demonstrates that the Complainant was financially reliant on rental income from her son in order to meet any level of repayment.”* The Provider notes that a telephone call on **19 August 2015** between the Provider and the Complainant, wherein the Provider notified the outcome of the assessment of the Complainant’s SFS, appears to be *“the source of what the Complainant (unjustly in the Provider’s view) characterises as a threat”*. The Provider states that it would have been *“remiss of the Provider not to point out the alternatives open to the Complainant”* such as the sale of the property or a trade down. The Provider submits that the option to trade down to resolve arrears *“can be entirely reasonable and proportionate”* in the right circumstances and is recognised at **provision 45(a)** of the **CCMA** and **section 104(3)(b)** of the **Personal Insolvency Act**.

The Provider states that the Complainant’s mortgage loan account was *“restored”* to a tracker interest rate of ECB + 0.85% on **29 November 2017**. The Provider asserts that it *“is satisfied that the appropriate ECB rate was correctly applied for the correct period within the redress and compensation calculation.”*

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The Provider asserts that the redress payment with respect to the account was calculated to compensate the Complainant for the overpayments in the relevant period when she was paying a higher rate than the tracker rate therefore that payment accurately and adequately compensates the Complainant for the absence of her tracker interest rate during the relevant period. The Provider states that it has included a sum for the *“time value of money, in effect interest”* and this is *“the only feasible and accurate way of compensating for the loss of use of money due to overcharging”* and is of the view that therefore this is adequate compensation.

The Provider submits that the Independent Appeals Panel awarded the Complainant an additional compensation of €2,500 which was paid to the Complainant on **09 March 2018**. The Provider acknowledges that it is bound by that award and cannot rightly comment on whether it was merited because of the Panel’s independence. However it was not paid in full and final settlement of the dispute. The Provider is of the view that *“the Complainant has not made out a reasonable claim for additional compensation beyond what the Provider and the Appeals Panel have already provided for.”* The Provider states that it is satisfied that the redress and compensation paid to the Complainant to date is *“fair, reasonable and adequate”*.

The Provider further submits that the Complainant’s claim for compensation because of stress is not in the nature of a *“loss, expense or inconvenience”* mentioned in **Section 60(4)(d)** of the **Financial Services and Pensions Ombudsman Act 2017**. The Provider further submits that the FSPO does not have the power to make an award for stress, on the basis that it is not a *“loss or expense”* and it does not believe that the Complainant has demonstrated any inconvenience.

The Provider states it is of the view that for a claim of stress to succeed, even in a court action for tort, there must be personal (psychiatric) injury. It refers to *Larkin v Dublin City Council* [2007] IEHC 416. It submits that the FSPO does not have the power to make an award for personal injury and refers to *Carr v Financial Services Ombudsman* [2013] IEHC 182. The Provider further submits that *“a court will not make an award for stress arising from a breach of contract or professional negligence (with certain exceptions such as holidays or leisure or arrangements that had peace of mind as a particular aim)”*. In this regard it refers to *Murray v Budds* [2017] IESC 4 and to *Addis v Gramophone Co. Ltd* [1909] AC 488.

The Complaint for Adjudication

The complaints for adjudication are as follows;

- (a) That the Provider has not offered adequate compensation to the Complainant by consequence of the Provider's failure in relation to the mortgage loan account; and
- (b) That the Provider did not act appropriately towards the Complainant in **June 2016**, when she requested an interest only period for the mortgage loan account.

Decision

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainant was given the opportunity to see the Provider's response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

In arriving at my Legally Binding Decision I have carefully considered the evidence and submissions put forward by the parties to the complaint.

Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties on **14 September 2020**, outlining the preliminary determination of this office in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

In the absence of additional submissions from the parties, within the period permitted, I set out below my final determination.

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At the outset, I note that the Provider has made lengthy and detailed submissions about its view that there was no breach of contract and no misrepresentation in the sale of a fixed rate. I will not be making any determination as to the nature of the Provider's failure as I do not think that this is necessary in the circumstances of this matter. This matter has already been considered and conceded by the Provider and I find it most unnecessary that the Provider has decided to put forward arguments as to the Complainant's entitlement to a tracker interest rate on her mortgage. The Complainant's mortgage loan account has already been restored to a tracker interest rate of ECB + 0.85% as of **29 November 2017** so the only issue for decision is whether the Provider has offered adequate compensation to the Complainant by consequence of the Provider's failure in relation to her mortgage loan account. This failure has been admitted by the Provider in its letter to the Complainant dated **12 December 2017**.

The Provider has detailed that the redress and compensation offered and paid to the Complainant is in line with the Provider's Redress and Compensation Framework which is based on the Central Bank's Principles for Redress. The redress payment of €13,546.56 reflects the amount of interest overpaid on the mortgage loan account and includes a payment of €645.07 to reflect the time value of money. The Provider also paid the Complainant compensation of €1,354.66, further compensation of €2,500 and €1,000 for the purposes of seeking legal advice. The Provider submits that the Complainant has not made out a reasonable claim for additional compensation beyond what the Provider and the Appeals Panel have already provided for and was paid by the Provider to the Complainant.

I will now consider if this compensation is sufficient given the individual circumstances of the Complainant.

The Complainant's mortgage loan account was drawn down on **22 March 2005** in the amount of €97,000 for a term of 25 years, on a tracker interest rate of ECB + 1.1%.

I understand from the Provider's submissions that the mortgage loan account remained at a rate of ECB + 1.1% until **13 December 2005** when the tracker rate was reduced to a rate of ECB + 0.85%. The Provider has submitted that the reason for this reduction was because it unilaterally reduced the staff tracker margin to ECB + 0.85% by sending the Complainant a **Product Switch Letter** to this effect. I have not been provided with a copy of the **Product Switch Letter** however this reduction in the staff tracker variable rate margin does not appear to be in dispute between the parties and in any event was of benefit to the Complainant.

On **21 August 2006** the Complainant signed a **MFA** to amend her mortgage loan account from a staff tracker variable rate of ECB + 0.85% to a staff non-standard variable rate.

On **2 January 2007**, the Complainant signed a **MFA** to apply a staff 2 year fixed rate of 3.95% to her mortgage loan account. The staff 2 year fixed rate of 3.95% was fixed to the mortgage loan account until **4 February 2009**.

On **16 December 2008**, prior to the expiry of the 2 year fixed rate, the Complainant signed a further **MFA** to amend her mortgage loan to a staff variable rate of 4.5 %. The MFA offered the Complainant a staff non-tracker variable rate and a 2 year fixed staff option. The MFA did not include the option of a tracker rate. The Complainant selected the rate described as "*STAFF H/L LTV VARIABLE (PDH)*". The variable interest rate was applied to the Complainant's mortgage loan account as of **8 January 2009**.

It was at this time that the failure that was subsequently identified, some nine years later, in **December 2017** as part of the Examination occurred on the Complainant's mortgage loan account, in that, the Provider failed to inform the Complainant with sufficient clarity as to what would happen at the end of the fixed rate.

In **January 2009**, the mortgage loan moved to a variable interest rate of 3.75%. The Complainant is of the view that the correct redress period commences in **2004** as opposed to **2009**. I do not accept this to be the case, the evidence as outlined above, shows that the Complainant's mortgage loan was on a tracker interest rate of ECB + 1.1% from the time the mortgage loan was drawn down in **March 2005**. This was the tracker interest rate that the Complainant agreed to on foot of her Letter of Offer. The Provider subsequently gave the Complainant a reduction in the tracker interest rate to ECB + 0.85%, when it was under no obligation to do so. The evidence shows that the Complainant of her own volition moved off that tracker interest rate in favour of other more favourable product options at the time. The issue arose in this complaint because the Complainant was not given appropriate information as to what would happen at the end of the fixed rate period. There is no contractual or other obligation on the Provider to apply the tracker interest rate of ECB + 0.85% to the Complainant's mortgage loan account from the time it was drawn down.

In the period from **January 2009** to **February 2015**, a variable interest rate applied to the mortgage loan. Within this time period the variable rate fluctuated between 2.25% and 3.90%. Between **January 2009** and **February 2015**, the overall tracker rate (ECB + margin) that would have applied to the Complainant's mortgage loan ranged between 2.85% and 0.90%.

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The difference in the interest rate actually charged to the mortgage loan and the interest rate that should have been charged is demonstrated in column 2 of the table below.

The difference in monthly repayments made and the monthly repayments that would have been required to have been made if the tracker interest rate (ECB + 0.85%) had been applied to the mortgage loan account between **January 2009** and **February 2015**, is represented in the below table;

Date Range (inclusive)	Difference in Interest rate charged vs the tracker interest rate	Actual Monthly Repayments	Monthly repayments if the mortgage was on the Tracker Rate	Overpayment per month
Jan 2009	0.90%	€498.03	€479.90	€18.13
Feb 2009	0.40%	€475.00	€458.33	€16.67
Mar 2009	0.40%	€453.94	€436.40	€17.54
Apr 2009	0.40%	€442.95	€425.90	€17.05
May 2009 - Mar 2010	0.40%	€432.60	€415.77	€16.83
Apr 2010- Jul 2010	0.90%	€452.90	€415.77	€37.13
Aug 2010- Mar 2011	1.15%	€462.86	€415.77	€47.09
Apr 2010 - Jun 2011	0.90%	€462.86	€425.08	€37.78
Jul 2011 - Sep 2011	0.65%	€462.86	€434.44	€28.42
Oct 2011	1.15%	€482.80	€434.44	€48.36
Nov 2011	1.40%	€482.80	€425.14	€57.66
Dec 2011- Jan 2012	1.65%	€482.80	€416.19	€66.61
Feb 2012- Jun 2012	1.55%	€479.03	€416.19	€62.84
Jul 2012 - Oct 2012	1.80%	€479.03	€407.43	€71.60
Nov 2012 - Apr 2013	2.30%	€497.28	€407.43	€89.85

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May 2013- Oct 2013	2.55%	€497.28	€399.19	€98.09
Nov 2013 - Jan 2014	2.80%	€497.28	€391.41	€105.87
Feb 2014	2.80%	€228.70	€180.06	€48.64
Mar 2014- Apr 2014	2.80%	€457.40	€360.12	€97.28
May 2014	2.80%	€571.75	€450.15	€121.60
Jun 2014	2.80%	€457.40	€359.08	€98.32
Jul 2014	2.90%	€457.40	€358.04	€98.96
Aug 2014	2.90%	€571.75	€447.55	€124.20
Sep 2014	3.00%	€457.40	€356.68	€100.72
Oct 2014	3.00%	€571.75	€444.15	€127.60
Nov 2014	3.00%	€457.40	€380.84	€76.56
Dec 2014	3.00%	€457.40	€355.32	€102.08
Jan 2015	3.00%	€572.65	€469.67	€102.98

The Complainant was an employee of the Provider until she decided to avail of voluntary redundancy. The Complainant indicated during a telephone with the Provider on **5 August 2015** that she left her employment due to voluntary redundancy in **2012**. The evidence shows that the monthly overpayments on the mortgage loan were increasing up to the time she took redundancy and had reached between €62.84 and €89.85 per month for the 12 months leading to **December 2012**. From **January 2013** to **January 2015**, after the Complainant took voluntary redundancy, the overpayments on the mortgage loan reached between €48.64 and €121.60 per month.

I have reviewed the **statements of account** submitted by the Provider in evidence in respect of the Complainant's mortgage loan account. I note that as of **February 2014**, the Complainant began making weekly direct debit payments to her mortgage loan account as opposed to one monthly instalment which she had done since the inception of the loan. The mortgage statements show that on **11 November 2014** and **5 January 2015** the first direct debits that were presented were returned unpaid and had to be called upon for payment again by the Provider some days later. I note however that the payments were successfully made later on in the months of **November 2014** and **January 2015** by the Complainant therefore the Complainant did not fall into arrears. The Provider's notes from its internal system dated **13 November 2014** which have been submitted in evidence show that the Complainant contacted the Provider on **13 November 2014** to advise that she had made a manual payment in the amount of €114.35 in the Provider's branch and this is reflected in the statement of account.

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The Provider's internal notes dated **6 January 2015** show that the Provider tried to contact the Complainant on that date and left a message requesting that she call the Provider.

The Complainant called the Provider later that day. During that telephone call, it appears from the Provider's internal notes that the Provider advised the Complainant of a missed payment of €114.35 on **5 January 2015**. The Provider's internal note on **6 January 2015** details as follows;

"IBC from EN , CCMA [account number] Total arrs 114.35, adv[ised] cust[omer] of missed payment, cust[omer] adv[ised] that was speaking to someone in Branch to look into getting [interest only forbearance] in place, cust[omer] adv[ised] has not heard anything back since, Cust[omer] adv[ised] currently unempl[o]yed and only earns 118.00p/w and mort[gage] repayments are 114.35 of this cust[omer] adv[ised] also has son who has to support, adv[ised] cust[omer] of sfs otp which cust[omer] adv[ised] was happy to complete same, when looking up sfs OTP app line dropped. call ended."

The above suggests that the Complainant sought a forbearance measure from the Provider given her level of income was €118.00 per week and her weekly mortgage repayment was €114.35. The Provider's internal notes show that the Complainant contacted the Provider on **7 January 2015**. During the telephone call on that date, the Complainant informed the Provider that she was unemployed and looking for work and "*cannot afford repayments*". These appear to be the first times since the inception of the loan wherein the Complainant highlighted difficulties in her capacity to make repayments with the Provider. On foot of this telephone call, I understand that the Provider issued a **standard financial statement** ("SFS") to the Complainant on **7 January 2015** and had subsequent telephone calls with the Complainant in **January 2015** to assist her with the completion of the SFS and to advise her on the requisite supporting documentation to be submitted.

A completed SFS together with the supporting documentation was received by the Provider on **19 January 2015**.

I have reviewed the SFS that was completed and signed by the Complainant on **15 January 2015**. The SFS recorded the "*Reason(s) for arrears*" as "*Income- unemployed*". The **Financial Statement Summary**, recorded the following;

<i>"Total Monthly Income</i>	<i>€1,164.66</i>
<i>Less Total Monthly Expenditure</i>	<i>€624.82</i>

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Sub Total	€539.84
<i>Less Mortgage Repayments Due</i>	<i>€501.43</i>
<i>Less Other Monthly Debt Due</i>	<i>€179.00</i>
Total Surplus/Deficit	-€140.59”

The **Branch SFS Checklist** in the Summary of Discussion with customer(s) section, details as follows;

“Background: [Complainant], aged [redacted] years, was previously employed by [Provider] for [redacted] years, took voluntary redundancy 2 years ago and has not been successful in gaining employment. She is divorced. She has no dependants however, her son lives with her.

Income: [Complainant] is in receipt of job seekers allowance of €188.00 pw. €814.66 pm. €500 per month, but this has been reduced to €350 per month as she has changed employment. (Redundancy package has been used-cleared short term debts & utilities)

Expenditure: Monthly expenditure is well below [Provider] guidelines. [Complainant] advised she does not have a car, had prepaid power meter installed [...] she has discount for phone, internet & TV package. She has also arranged for prepaid gas meter to be installed this month.

[Complainant] has a [redacted] condition and also [redacted] condition, requires medication for both.

Short Term Debt: Credit Union loan can be cleared from shares, which equal loan balance.

[...]

Path to long-term sustainability: Based on current financial information provided mortgage is deemed affordable. However, as discussed with [Complainant], her son is [redacted] years old and may move out of home some time in near future, this would reduce income by €350 per month, which would leave a surplus of €190 per month, not sufficient to meet Interest Only.

[Complainant] is actively seeking employment, she has submitted two applications to local credit unions recently [...] Also, she is putting an ad in local paper offering

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[redacted] services, while she knows that income will not be guaranteed, she is confident she will get some work.

Customer requesting maximum split mortgage.”

The SFS submitted by the Complainant in **January 2015** referred to a number of short term debts to include a credit union personal loan for the amount of €1,100 and a credit card balance (with another lender) of €4,232.00. The Provider’s internal assessment notes dated **22 January 2015** indicate that the credit union personal loan was “*taken out for Christmas expenses*”. It appears that during the assessment of the SFS, the Complainant informed the Provider that she was “*making monthly repayments of E49.00 however this is not evident from [credit union] statement provided*”. In relation to the Complainant’s credit card debt, the SFS submitted by the Complainant suggests that she had been making repayments of €130 per month.

However, the vouching bank statements provided by the Complainant show that a lodgement of €200 was made on **30 October 2014**, a lodgement of €150 was made on **17 November 2014**, a lodgement of €200 was made on **28 November 2014** and a lodgement of €150 was made on **12 January 2015** in respect of the Complainant’s credit card debt. The Provider’s internal assessment notes dated **22 January 2015** also detail that “*Customer to be advised that Mortgage is to be prioritised over STD*”. The Provider appears to take issue with the fact that the Complainant in some way appeared to be prioritising her short term debt over her long term mortgage repayments by making payments to reduce her credit card balance. However it should be noted that the Complainant was still meeting her mortgage repayments and her mortgage loan account was not in arrears at that stage.

Following an assessment of the SFS and supporting documentation, the Provider issued a letter dated **27 January 2015** to the Complainant together with a **MFA** offering an **alternative repayment arrangement (“ARA”)** based on the Complainant’s circumstances. The ARA offered by the Provider allowed the Complainant to pay instalments of interest only on her “*mortgage loan for a period of 6 months (the “Agreed Period”)*”. The letter dated **27 January 2015** details the following in relation to the ARA:

“Based on your current rate of interest we estimate your new repayment amount to be €51.09 per week during the Agreed Period. The actual amount of the repayment instalments may differ (e.g. to reflect changes in interest rates).

This alternative repayment arrangement is for the Agreed Period and is offered on the basis that at the end of the Agreed Period you expect your repayment capacity to increase and you will be able to repay full capital and interest repayments,

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estimated to be €512.99 per month. This is based on the current interest rate of your mortgage loan and the estimated balance and term remaining at the end of the Agreed Period [...]

The alternative repayment arrangement period will commence from 06/02/2015 for a period of 6 months.”

The Complainant accepted and signed the MFA on **1 February 2015** and by doing so, interest only repayments of €51.05 per week at a staff variable interest rate of 3.90% applied to the Complainant’s mortgage loan account until **26 July 2015**. In addition, the Complainant agreed to the following;

“When the Agreed Period ends I will have to repay the Loan over the rest of the period of the Loan.

The amount of the Loan then to be repaid will include all of the capital which I did not pay during the Agreed Period (and which I would have been obliged to pay if this Form did not come into force).”

The **mortgage loan statements** show that throughout the interest only period (**February 2015 to July 2015**), the Complainant made monthly payments between €204.20 and €267.50 to her mortgage loan account. The difference in the interest only monthly repayments made and the interest only monthly repayments that would have been required to have been made if the tracker interest rate had been applied to the mortgage loan account between **February 2015** and **July 2015** is represented in the below table;

Date Range (inclusive)	Difference in Interest rate charged vs the tracker interest rate	Actual Monthly Repayments	Monthly repayments if the mortgage was on the Tracker Rate	Overpayment per month
Feb 2015	3%	€267.50	€122.79	€144.71
Mar 2015	3%	€204.20	€56.55	€147.65
Apr 2015	3%	€204.20	€56.55	€147.65
May 2015	3%	€255.25	€56.55	€198.70
Jun 2015	3%	€204.20	€45.24	€158.96
Jul 2015	3%	€255.25	€56.55	€198.70

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The above table demonstrates that despite the Complainant having availed of a short term forbearance measure by making interest only repayments for 6 months, she was in fact being overcharged by between €144.71 and €198.70 per month during the 6 month forbearance period.

Upon the expiry of the 6 month interest only repayment period, the Provider issued a letter to the Complainant dated **27 July 2015** noting that her account "*has now been switched to a Repayment mortgage*". The letter also noted that the amount of the Complainant's revised payment was "*€117.58 falling due on 7/08/2015*".

I note from the Provider's internal system that a telephone call took place between the Complainant and the Provider on **5 August 2015**. I have considered both the transcript of the telephone call and listened to the telephone call recording between the Complainant and the Provider.

I note that during the telephone call, the Complainant advised the Provider that she had been diagnosed with a serious illness in **March 2015** and had surgery and was had just finished treatment the week previous. The Complainant noted during the telephone call that she had a follow up appointment with her consultant in **September 2015**. The Provider explained during the telephone call that the purpose of the 6 month interest only period was to allow her return to work. The Complainant noted that she got a part-time job cleaning three days a week which commenced in **January 2015** however since her diagnosis in **March 2015** she has been unable to work. The Provider requested details of the Complainant's current financial situation at the time and it appears that the Complainants' situation had not changed significantly since the submission of the SFS in **January 2015**. The Complainant pointed out during the telephone call that she was in receipt of invalidity benefit payment of €193 per week and her son increased his payment of rent from €350 per month to €500 per month however the Complainant acknowledged that this was not guaranteed going forward as he could potentially move out. The Complainant noted that she would like to get a split mortgage. The Provider explained what a split mortgage would entail and explained that there would be "*a lump sum amount of approximately €41,000 remaining at the end of the term that would need to be cleared in one lump sum by some means*". The Provider expressed concern that if the Complainant is solely in receipt of social welfare payments then a split payment of €337 per month (if a split mortgage was to be considered) would not be affordable. The Complainant indicated during the telephone call that she may be able to cash in a pension from the Provider and was arranging to meet with a pension advisor to discuss this possibility.

During the telephone call, the Complainant sought a further six month interest only repayment period to allow her to fully recover and return to work. The Provider indicated

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that it is important that the Complainant be conscious that *“there will be a limit to the amount of short term interest only or short term restructure that the Bank is in a position to do because the purpose of a short term restructure is to allow the customer time to get back into a position to either afford a full mortgage repayment or go back to where they were or to get a customer to a stage where they could afford a split and in your case unfortunately the term has been extended to as far as it can possibly go it can't go any further”*. The Complainant agreed that the agent could resubmit the SFS from **January 2015** for further consideration and provide details in relation to her current financial circumstances to the Provider's credit department so that her request for a further interest only repayment period could be assessed as soon as possible.

It appears from the Provider's internal notes that its credit department subsequently carried out an assessment of the Complainant's case based on the updated information provided during the telephone call on **5 August 2015** and the SFS submitted in **January 2015**. The Provider's internal notes from **19 August 2015** detail as follows;

“Noting customer circumstances and minimal short term [forbearance] to date, 6 months interest only has been agreed. Note ongoing affordability here is dependent on contribution from son to the household. This [forbearance] is given to facilitate return to health and employment. Customer needs to be aware that if there is no [long-term] affordability step up evident that she may have to consider disposing of property [...]”

A further telephone call took place between the Provider and the Complainant on **19 August 2015**. I have considered the recording and transcript of the call has been submitted in evidence. During the telephone call, the Provider informed the Complainant that the Provider was in a position to offer her a continuation of the 6 month interest only repayment period commencing **28 August 2015**. The Provider informed the Complainant of her right to seek independent legal advice and to appeal the decision. The Complainant indicated that she was *“happy”* with the Provider's offer as it would get her *“over Christmas which was the main thing”*. The Provider informed the Complainant that the underwriter who assessed her account indicated that the affordability of the mortgage was dependent on the contributions of the Complainant's son and there was no viable long term solution at that point in time. The Complainant agreed with the Provider. The Provider indicated that while the Complainant's mortgage account was not in arrears, there would need to be an improvement in the Complainant's situation and if not, the Complainant might have to consider selling the property or *“trading down to something smaller”*. The Provider described this as the *“worst case scenario”*. The Provider told the Complainant that *“hopefully if you are back to work and your circumstances have improved and if you were able to either return to full repayment or if the bank were able to put*

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something long term in place....then it won't become an issue". The Complainant noted that "you wouldn't know what would happen in six months anyway".

The **mortgage loan statements** submitted in evidence show that the Complainant made a full capital and interest payment of €470.32 in **August 2015** pending the assessment of her SFS for a further period of forbearance. The difference in repayments made and repayments that would have been required to have been made if the tracker interest rate had been applied to the mortgage loan account in **August 2015** is represented in the below table;

Date Range (inclusive)	Difference in Interest rate charged vs the tracker interest rate	Actual Monthly Repayments	Monthly repayments if the mortgage was on the Tracker Rate	Overpayment per month
Aug 2015	3%	€470.32	€285.92	€184.40

The Provider issued a letter to the Complainant on **27 August 2015** offering an **ARA** in the form of interest only weekly payments of €50.91 commencing **28 August 2015**. The Complainant duly signed and accepted a **MFA** on **03 September 2015** to apply a further 6 month interest only payment period to her mortgage loan account. A letter dated **9 September 2015** subsequently issued to the Complainant detailing as follows;

"With reference to your recent request, I confirm that the amendments to the above account have been processed and the revised details relating to your account are outlined below.

*Mortgage Product Type: STAFF VARIABLE RATE PDH
Mortgage Type: Interest Only
Interest Rate: 3.900%
Repayment Frequency: Weekly
Maturity Date: 31/03/2030
Next Repayment Date: 25/09/2015
Mortgage Repayment: €50.80
Interest Only End Date: 16/01/2016"*

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The Complainant made bi-weekly capital and interest payments of €117.58 on **4 and 11 September 2015** and from **18 September 2015** resumed making interest only weekly payments of €50.80 for 6 months in accordance with the new ARA.

The difference in the interest only monthly repayments made and the interest only monthly repayments that would have been required to have been made if the tracker interest rate had been applied to the mortgage loan account between **September 2015** and **February 2016** is represented in the below table;

Date Range (inclusive)	Difference in Interest rate charged vs the tracker interest rate	Actual Monthly Repayments	Monthly repayments if the mortgage was on the Tracker Rate	Overpayment per month
From 18 Sep 2015	3%	€50.80	€11.27	€39.53
Oct 2015	3%	€254.00	€56.35	€197.65
Nov 2015	3%	€203.20	€45.08	€158.12
Dec 2015	3%	€203.20	€45.08	€158.12
Jan 2016	3%	€254.00	€56.35	€197.65
Up to 25 Feb 2016	3%	€152.40	€33.81	€118.59

The above table demonstrates that despite the Complainant having availed of a short term forbearance measure by making interest only repayments for 6 months, she was in fact overcharged up to €197.65 per month during the 6 month forbearance period. It is my view that these overcharge amounts are significant given the Complainant's circumstances.

The Provider's internal notes show that the Provider contacted the Complainant by telephone on **5 January 2016**. The notes indicate that the Complainant informed the Provider that she would be in a position to return to full capital and interest payments at the end of the forbearance period in **February 2016**. The Provider's internal notes on foot of the telephone call detail as follows;

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"F PHONE CALL SUNDRY 1 SPOKE TO [COMPLAINANT] 2 DATE 5/1/16 3 REASON-ROLLER A/C 4 DETAILS- [COMPLAINANT] ADVISES CAN STEP UP TO C+I AT END OF FB PERIOD 5 PERM RE NXT CALL N/A".

The Provider issued a letter dated **16 February 2016** to the Complainant confirming the Complainant's mortgage loan account had *"been switched to a Repayment mortgage"* and the *"revised payment is €119.97 falling due on 26/02/2016"*.

The letter invited the Complainant to make contact with the Provider if she perceived any difficulties returning to full capital and interest repayments. The mortgage loan account reverted to full capital and interest payments on **26 February 2016**.

I note that the Complainant sent a letter dated **15 June 2016** to the Provider which detailed as follows;

"Due to my battle with [illness], subsequent surgery, [redacted] treatment and [redacted] therapy. I am on long term invalidity benefit and unable to return to work in the foreseeable future.

I have been in contact with [third party support agencies] with a view to applying for insolvency, but as I have no funds to offer in settlement unfortunately I am not apply to apply for this.

I would be grateful if you would consider another term of interest only on my mortgage with a view to me selling my house, clearing the mortgage purchasing a smaller property and be mortgage free, my youngest son is still living with me but is considering renting with friends in the near future, and one of your staff threatened me that if he moved out I would have to sell as I could not maintain the mortgage on 193.50e weekly invalidity benefit.

As I have no funds I was advised to offer Assisted Sale as other banks do, I cannot afford a deposit on a property if I see one I like.

I hope you will agree under the circumstances, I am on a 5 year recovery plan and I hope your staff refrain from threatening me with losing my home, I am an ex member of staff and I do not need that stress and aggravation"

When requesting a further forbearance arrangement in her letter of **15 June 2016**, the Complainant states that one of the Provider's staff *"threatened"* that if her son moved out of the mortgaged property she would have to sell the property as she would not be in a position to maintain the mortgage on her social welfare payments. It appears to me that

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the Provider's telephone call to the Complainant on **19 August 2015**, as referred to above, is the source of what the Complainant characterises as a threat. As previously mentioned, the Provider has furnished this office with an audio recording of the telephone call on **19 August 2015**. I have considered the content of this call carefully. It is my view that it is entirely unreasonable on the part of the Complainant to suggest that the Provider "threatened" her in any way during the telephone call.

Chapter 1 of the **Code of Conduct on Mortgage Arrears (CCMA) 2013** provides that all cases where a lender is dealing with borrowers in mortgage arrears or in pre-arrears "must be handled sympathetically and positively by the lender, with the objective at all times of assisting the borrower to meet his/her mortgage obligations". The **CCMA** also acknowledges that "it is in the interests of both the lender and the borrower to address financial difficulties as speedily and as effectively as circumstances allow".

Following the telephone call on **19 August 2015**, the Provider facilitated a further 6 month interest only repayment period to allow her time to make a full recovery and seek employment. The Provider then explained to the Complainant that in circumstances where the affordability of the mortgage was dependent on the contributions of her son, who the Complainant had indicated was considering moving out, the Complainant had not identified a viable long term solution at that point in time. The Provider went on to mention alternative options that the Complainant may have to consider in the near future such as selling the mortgaged property or trading down. The Provider in its submission states that it would have been "remiss of the Provider not to point out the alternative open to the Complainant". Having considered the evidence and while I can fully understand the sensitivity and difficulty that this prospect and this conversation had for the Complainant, I do not accept that this was a threat on the part of the Provider, but rather a discussion of the Complainant's options in the circumstances. In particular, I do not believe the Provider's agent could be described as threatening.

I note from the Provider's internal notes that it contacted the Complainant on **24 June 2016** in response to her letter of **15 June 2016**. The Provider's internal notes detail as follows;

"OBC to [Complainant] mob [contact number]. s/w [Complainant] CB as agreed from prev call in relation to corr recd. Adv cust will need SFS completed for any FB. Cust ok with same. Adv cust I am available now to complete as wait time for apt would be approx. 2 weeks. cust was free to complete now so completed same OTP with [Complainant]. New SFS as last SFS submitted was reuse. Cust consented to recording sensitive info and ICB check. Cust consented to digi comms and SMS for SFS. Adv will text on password once sent. Adv re digi sig process cust understood. Adv cust to call in and ask for me if any queries. Discussed DD suspension cust adv

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to leave as is for now. Cust looking for IO and assisted vol sale as looking to clear mtg and downsize. Neighbour sold identical property to hers for e260k recently. Adv cust of possibility of being declined as unsustainable. [...]"

The above demonstrates that the Provider accommodated the Complainant by completing a SFS over the telephone. The Complainant noted during the telephone call that she was looking for a further interest only repayment period and assisted voluntary sale as she was looking to clear the mortgage and downsize.

The Provider clearly informed the Complainant of the possibility that that the interest only repayment period may be declined as unsustainable.

Following an assessment of the SFS, the Provider issued an **ARA** dated **07 July 2016** to the Complainant. The ARA details as follows;

"1.1 The Borrower and Lender agree that:

1.1.1. The Borrower will pay Interest Only for 6 months (the "Interest Only Period"). The Lender estimates that the repayments of interest only will be €49.97 each week during the Interest Only Period. The actual amount of the repayment instalments may differ (for example, if the interest rate changes).

1.1.2. After the preceding Interest Only Period, the Borrower will be obliged to repay the loan on a capital and interest repayment basis over the rest of the period of the Loan so that the Loan is repaid by 31/03/2030 (the "Maturity Date"). The Loan balance is estimated to be €67,212.80 and will include all of the principal (capital), interest and other sums which the Borrower did not pay (and which the Borrower would have been obliged to pay if this Form did not come into force). The Lender estimates that the new repayment amount will be €124.63 each week [...]"

1.4 Effective Date

1.4.1. The Lender agrees that if the Borrower signs and returns this Form within the Acceptance Period and complies with all conditions in this Form, the Lender will apply the ARA to the Loan with effect from the 11/07/2016."

The **Special Conditions** attaching to the ARA detail as follows;

"2. SPECIAL CONDITIONS

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The Loan is subject to the following special conditions (the “Special Conditions”) which must be complied with in full to the Lender’s satisfaction before the specified dates, unless stated to the contrary.

2.1 Borrower agrees to sell property

By signing this Form the Borrower acknowledges that it will be necessary for the Borrower to sell the property(ies) [address of mortgaged property] and to apply the proceeds towards repayment of the Loan; and that the alternative repayment arrangement does not remove that necessity.

The Borrower agrees to sell the property(ies) specified above on the terms and at a time satisfactory to the Lender in its absolute discretion but(in any event) before the end of the alternative repayment arrangement.”

The **General Conditions** attaching to the ARA detail as follows;

“[...]

10. ABOUT THE BORROWER’S ACCEPTANCE OF THIS FORM

10.1 The Borrower has five weeks from the date of this Form shown on page 1 (the “Acceptance Period”) to consider it and to return it to the Lender properly completed. If the Borrower does not accept this Form within the Acceptance Period, the Lender may take this as meaning that the Borrower has declined the offer [...]”

The Provider states in its **Final Response Letter** dated **23 March 2017** that on assessing the Complainant’s SFS *“the Bank could not identify an affordable longterm sustainable arrangement that would enable [the Complainant] to redeem the mortgage in full”*.

With regard to the above, the contemporaneous evidence shows that the Complainant herself in her letter to the Provider dated **15 June 2016** requested the Provider to *“consider another term of interest only on my mortgage with a view to me selling my house, clearing the mortgage purchasing a smaller property and be mortgage free”*. I am not surprised that the Complainant did not sign the **ARA** dated **07 July 2016**, in circumstances where it required the Complainant to give a written commitment to sell her home within the six month period. In circumstances of this matter and in particular in circumstances where the Complainant had not actually entered into any arrears on the mortgage loan at that time, and was making every effort not to be in arrears, I am of the view that the offer of the interest only period for 6 months on condition that the

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Complainant sold her home within that 6 month time period was entirely unsympathetic and unreasonable of the Provider.

The Complainant had maintained the mortgage repayments on her mortgage loan for over ten years of the 25 year term in the most difficult of circumstances. She had availed of two 6 month interest only periods throughout **2015** and within the previous 6 month period had returned to capital and interest only payments. The Complainant at the time was in recovery from a serious illness. To me, it was entirely unreasonable of the Provider to move to seek the commitment of a voluntary sale of the Complainant's home within a six month period at this point in time.

In circumstances where the Complainant did not sign and accept the ARA within the 5 week acceptance period, the Provider issued a letter to the Complainant dated **26 August 2016** which details as follows;

"Mortgage account number: [ending 7535]

Arrears: €0.00

Address of Property: [address of mortgaged property]

You are not willing to enter an alternative repayment arrangement

Dear [Complainant]

We recently offered you an alternative repayment arrangement (ARA) for your mortgage and sent documents you need to sign to accept that offer.

As you have either:

- told us that you do not want to take up this offer, and the date for accepting it has passed;*
- not signed and returned the documents we sent you, and the date for accepting the offer has passed; or*
- not met any special conditions of the offer;*

we assume that you are not willing to enter into the ARA.

If you do not agree to the ARA we offered you, you have 25 days from the date of this letter to make an appeal to our Mortgage Appeals Board. They will independently review your case.

[...]

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Until now we have followed the Mortgage Arrears Resolution Process (MARP). As you are not willing to enter into the ARA we offered you, your mortgage is now being dealt with outside the MARP and you no longer have the protection the MARP provides. This means that if you are in arrears (behind with your mortgage repayments) we can start legal action to repossess your property. We can start those proceedings:

- *three months from the date of this letter; or*
- *eight months from the date the arrears arose; whichever is later.*

If you are in arrears and want to avoid legal action, there may be other options open to you. These and other important information are set out under 'Important Information about mortgage arrears' in the appendix on the next page. These options would be better for you and us than legal action.

If you are in arrears, the amount of those arrears is shown on page 1 of this letter. If you choose one of the other options described in the appendix, and we agree to it, you will have to pay off those arrears as part of the option. For example, you would have to pay off the arrears from the proceeds of selling the property or, if necessary, from other funds [...]"

In her letter of complaint to the Provider dated **27 February 2017**, the Complainant states the following with regard to receipt of the Provider's letter dated **26 August 2016**;

"[...] I did ring the mortgage dept to request an interest only mortgage only for a few months to give me some breathing space while I recovered from my surgery and the trauma of my diagnosis, all they could offer was that if I sold my home within 6 months they would offer interest only, I refused as I have put my house on the market but did not want calls from [Provider] asking if I have sold already, I then received a letter telling me I was not willing to enter an alternative repayment arrangement and was liable for re-possession if my mortgage was late, I contacted you ?????? where was I not willing, please explain to me, had I been on the tracker this would have never occurred, as an ex [Provider] member of staff I would like to be treated with the respect I deserve".

The Complainant appears to take issue with the language used in the Provider's letter dated **26 August 2016** which issued as a result of the Complainant having not accepted the ARA of **7 July 2016**.

Provision 47 of the **CCMA 2013** provides as follows;

*“47. If a **borrower** is not willing to enter into an alternative repayment arrangement offered by the lender, the lender must inform the **borrower** on paper or another durable medium of the following:*

*a) other options available to the **borrower**, such as **voluntary surrender, trading down, mortgage to rent or voluntary sale**, and the implications of these for the **borrower** and the **borrower’s** mortgage loan account, including;*

- (i) an estimate of the associated costs or charges where known and, where these are not known, a list of the associated costs or charges;*
- (ii) the requirement to repay outstanding **arrears**,*
- (iii) the anticipated impact on the borrower’s credit rating, and*
- (iv) the importance of seeking independent advice in relation to these options;*

*b) the **borrower’s** right to appeal the lender’s decision on the alternative repayment arrangement to the Appeals Board;*

*c) that the **borrower** is now outside the **MARP** and that the protections of the **MARP** no longer apply;*

*d) that legal proceedings may commence three months from the date the letter is issued or eight months from the date the **arrears** arose, whichever date is later, and that, irrespective of how the property is repossessed and disposed of, the **borrower** will remain liable for the outstanding debt, including any accrued interest, charges, legal, selling and other related costs, if this is the case;*

*e) that the **borrower** should notify the lender if his/her circumstances improve;*

f) the importance of seeking independent legal and/or financial advice;

*g) the **borrower’s** right to consult with a **Personal Insolvency Practitioner**;*

*h) the address of any website operated by the Insolvency Service of Ireland which provides information to **borrowers** on the processes under the Personal Insolvency Act 2012; and*

*i) that a copy of the most recent **standard financial statement** completed by the **borrower** is available on request.”*

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I accept that **Provision 47** of the **CCMA 2013** provides for a letter of this nature to issue where a customer is unwilling to enter into an ARA.

In the circumstances of this particular matter and where the Complainant was not in arrears, I accept that the letters of **07 July 2016** and **26 August 2016** were difficult for the Complainant to receive and I can understand how the Complainant formed the view, on foot of this that the Provider was only interested in whether she could continue to pay her mortgage or alternatively sell her property. In the circumstances of this complaint, the approach taken by the Provider was in my view a very heavy handed one.

I note the Provider received no further contact from the Complainant or the third party representatives on her behalf over the course of **2016**. In fact, the Complainant resumed making full loan repayments of capital and interest from **26 February 2016** and no further forbearance was requested by the Complainant.

The difference in the repayments made and the repayments that would have been required to have been made if the tracker interest rate (ECB + 0.85%) had been applied to the mortgage loan account between **26 February 2016** and **28 November 2017**, at which point the Provider reapplied the tracker rate to the Complainant's mortgage loan account, is represented in the below table;

Date Range (inclusive)	Difference in interest rate charged vs the tracker interest rate	Total repayments	Total repayments if the mortgage was on the tracker rate	Total overpayment
26 Feb 2016	3%	€119.97	€94.23	€25.74
27 Feb 2016-18 Mar 2016	3%	€479.88	€376.92	€102.96
19 Mar 2016-1 Jul 2016	3.05%	€1,799.55	€1,411.05	€388.50
2 Jul 2016 - 28 Nov 2017	3.05%	€8,819.13	€6,867.11	€1,952.02

It is clear from the above table that the average monthly overpayment across the 21 months from **February 2016** to **November 2017** was €117.58.

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The evidence submitted by the Provider shows that the Complainant's solicitor requested to take up the title deeds to the mortgaged property on accountable trust receipt by way of letter dated **28 February 2017**.

The Complainant states in her letter of **27 February 2017** that she had put the mortgaged property on the market for sale at that point in time however the Provider submits that "*no sale was completed as it has not been asked to release its mortgage*". I note from the mortgage loan account statements furnished to this office by the Provider in **April 2020** that the mortgage loan account had been redeemed at that stage.

I note that the overcharge on the Complainant's mortgage loan account occurred over approximately an eight year period (**January 2009 – November 2017**).

On the basis of the evidence submitted, the Complainant's difficulties in relation to making repayments to her mortgage loan account commenced in **January 2015** as a consequence of her financial circumstances having changed due to her unemployment following her decision to avail of voluntary redundancy at the end of **2012**. By **January 2015**, the Complainant had yet to gain employment and she herself noted to the Provider at the time that monies received on foot of her redundancy had been depleted. While the Complainant was not in arrears at that stage, and for the avoidance of doubt I note that the Complainant was never in arrears, the Complainant had found herself in a position in **January 2015** where she was unable to maintain her monthly repayments. The evidence in the form of the **SFS** completed by the Complainant in **January 2015** shows that the Complainant's monthly income was €1,164.66 (part of which was made up of contributions from the Complainant's son) and her total monthly expenditure was €624.82 excluding her mortgage repayment (€501.43) and other monthly debt due (€179.00) leaving a surplus of just €140.59 per month. There is no doubt that the Complainant's decreased level of income had a direct impact on the funds that the Complainant had available to her to service her mortgage loan during the period between **January 2013** to **January 2015**. It is my view that in the Complainant's circumstances this was further exasperated by the overpayments the Complainant was required to make on her mortgage loan by the Provider which had reached between €48.64 and €121.60 per month during this period. It is notable that the Provider's assessment of the Complainant's January 2015 SFS records that the Complainant's "*monthly expenditure is well below [Provider] guidelines.*"

The Complainant commenced employment on a part-time basis in **January 2015** however the Complainant was unfortunately forced to give up this employment on foot of her diagnosis in **March 2015**. The Provider facilitated two 6 month interest only repayment periods in **2015**. The evidence shows that the alternative arrangements, that is the interest

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only repayment periods, that were implemented in **February 2015** and **September 2015** by the Provider at the request of the Complainant, were necessary short term forbearance measures.

It is not possible to determine with any degree of certainty whether they would have been required had the Complainant's mortgage loan been on the tracker interest rate that it should have been from **January 2009**. However I think it's important to observe that the evidence supports the Complainant's position that she did prioritise her mortgage loan payments at all times during the impacted period.

It is clear that the Complainant was dealing with a very serious illness from **2015** which left her unable to take up employment. The Complainant was in receipt of welfare payments of €118.00 per week. From that time, in **2015** the Complainant was overpaying between €100 and €200 per month. In the circumstances of the Complainant's situation and given the Complainant's limited income at the time, I accept that an overpayment every month caused a significant level of stress and inconvenience to the Complainant who was in an already difficult personal situation. It cannot but be the case that the unavailability of the sums of money overcharged on a monthly basis caused additional hardship and inconvenience to the Complainant. I have no doubt that the Complainant suffered considerable inconvenience as a result of the Provider's overcharging over this 8 year period and in particular from **2015** onwards.

The suggestion by the Provider that the Complainant has not demonstrated any inconvenience is in my view extremely unpalatable. I am at a complete loss to know how the Provider has arrived at this view in the particular circumstances of this complaint. To me, there cannot be any greater demonstration of inconvenience than the fact that the Complainant was being overcharged on her mortgage loan on a monthly basis by a sum that was greater than her weekly income of €118 for nearly 3 years. The inconvenience to the Complainant is clearly demonstrated in the contemporaneous evidence in this matter. The statement by the Provider that the Complainant has not demonstrated any inconvenience shows a complete lack of understanding by the Provider of the consequences of its actions.

I note the Provider has stated that I do not "*have the power to award compensation for stress*". The Provider is correct. Therefore, I will not comment on the inevitable stress that the Provider clearly created for the Complainant. The Provider has shown a complete lack of empathy or understanding for the impact of its conduct on the Complainant.

It is clear that the Complainant and her son made many sacrifices in order to pay the mortgage on retaining their home in the most difficult of circumstances. The Provider has demonstrated a complete lack of empathy during its entire dealings with the Complainant

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from the date of its conduct in overcharging the Complainant to its defence of her complaint during the investigation by this office.

Despite acknowledging its failings and restoring the Complainant's correct and reduced interest rate, the Provider continued to argue in its submissions that the Complainant was, in some way, not actually entitled to a tracker rate of interest.

Having been presented with the evidence during the investigation of the impact of its conduct in overcharging the Complainant at a most difficult time for her, the Provider stated that it does not believe the Complainant has demonstrated any inconvenience.

I cannot understand how any reasonable person can examine the evidence in this complaint and come to the conclusion that the Complainant has suffered no inconvenience as a result of the Provider's conduct in overcharging her on her mortgage.

The Provider has paid compensation of €3,854.66 (inclusive of €2,500 as directed by the Independent Appeals Panel) to the Complainant, together with redress of €13,546.56 and an independent professional advice payment of €1,000. Taking into consideration all of the evidence before me I do not accept that the compensation of €3,854.66 paid by the Provider is at all reasonable or sufficient to compensate the Complainant for the inconvenience suffered by her.

Therefore, I uphold this complaint and direct that pursuant to **Section 60(4)** of the **Financial Services and Pensions Ombudsman Act 2017**, the Provider pay a sum of €20,000 compensation to the Complainant in respect of the inconvenience that the Complainant has suffered. For the avoidance of doubt, the total sum of compensation of €20,000 is inclusive of the €3,854.66 compensation already paid to the Complainant for the Provider's failure.

Conclusion

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is upheld on the grounds prescribed in **Section 60(2) (b) and (g)**.

I direct, pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, that the Respondent Provider make a compensatory payment to the Complainant in the sum of €20,000 (inclusive of the €3,854.66 compensation already paid to the Complainant by the Provider), to an account of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainant to the Provider.

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I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in **Section 22** of the **Courts Act 1981**, if the amount is not paid to the said account, within that period.

The Provider is also required to comply with **Section 60(8)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.



GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

6 October 2020

Pursuant to **Section 62** of the **Financial Services and Pensions Ombudsman Act 2017**, the Financial Services and Pensions Ombudsman will publish legally binding decisions in relation to complaints concerning financial service providers in such a manner that—

- (a) ensures that—
 - (i) a complainant shall not be identified by name, address or otherwise,
 - (ii) a provider shall not be identified by name or address,and
- (b) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.