



<u>Decision Ref:</u>	2020-0366
<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>	Partially 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 €18,817.89 on that mortgage loan account.

The Loan Offer signed on **22 October 2004** detailed that the loan amount was €200,000 and the term of the loan was 30 years. The mortgage loan account was secured on the Complainant's private dwelling house.

The Complainant sold the property which was the subject of the mortgage loan account in **September 2015** and the mortgage loan account was redeemed in full on **4 September 2015**.

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

The Provider in its letter to the Complainant dated **15 December 2017** detailed the circumstances that caused this failure to happen 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 the mortgage loan account the Provider outlined as follows;

“How this failure affected you

As a result of our failure, we can confirm that you were charged an incorrect interest rate between 09 Jan 2009 and 04 Sep 2015.”

The Provider made an offer of redress and compensation to the Complainant by letter dated **15 December 2017**. The offer of €21,984.66 made by the Provider to the Complainant comprised the following;

1. Redress of €19,758.78 covering;
 - Total interest overpaid (€18,817.89)
 - Interest to reflect the time value of money (€940.89)
2. Compensation of €1,975.88 for the failure on the mortgage loan account.
3. Independent Professional Advice payment of €250.00

The Complainant submitted an appeal to the Independent Appeals Panel in **December 2017**. On **15 February 2018** the Appeals Panel decided to uphold the Complainant’s appeal and awarded additional compensation of €2,000 to the Complainant. In determining the appeal the Panel outlined as follows:

- *“The Panel is not satisfied that the impact of the overpayment was a determining factor in the Customer’s decision to sell the [Property].*
- *The Panel is of the view that the Customer might well have had the opportunity to avail of a Tracker Mover Product in connection with the Mortgage on [Address] and is entitled to some compensation for the differential in the interest rate which might have been applied, had that occurred.”*

As the Complainant had completed the Provider’s internal appeals process, and the award that was accepted by the Complainant as part of that appeal’s process was not in full and

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final settlement, this office was in a position to progress the investigation and adjudication of the complaint.

The conduct complained of that I am now adjudicating on and that is subject of this Decision, is as follows;

- (a) 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) The Provider failed to act on an a **Notification of Change of Details** submitted by the Complainant on **11 March 2013**, and by consequence the Final Response Letter dated **26 June 2015**, was sent to an incorrect address.

The Complainant's Case

The Complainant submits that the offer of redress and compensation made by the Provider as part of the Examination does not take account of the financial loss the Complainant suffered as a result of the conduct of the Provider.

The Complainant submits he had made *"numerous queries regarding [his] entitlement to have this mortgage reinstated on the tracker rate"* in **2009** and **2010**.

The Complainant further details that in **March 2013** he submitted a **Notification of Change of Details** to the Provider to confirm a change of address, which included two of his mortgage loan accounts. He submits that this *"doesn't seem to have been actioned and while I have been receiving correspondence after this date in relation to these mortgage to my previous address, such as interest certificates, all this correspondence was in envelopes marked private so was forwarded to me unopened"*.

The Complainant submits a Final Response letter issued by the Provider dated **26 June 2015** was not sent in an envelope marked private and did not arrive within 15 working days. The Complainant goes to detail that on receipt of the letter it *"...was clear that the envelope had been opened and resealed."* He further outlines that there is no timeframe under the **Consumer Protection Code 2012** in which a complaint can be made to this office, yet queries why *"is it written in the Final Response Letter dated 26 June 2015 that I only had 15 working days to do so?"*

The Complainant outlines that in **2015**, he decided to move house and applied to the Provider for a *"Mover Retainer Mortgage"*. The Complainant submits that in his application form for the Mover Retainer Mortgage, he made it clear that his intention was to retain the mortgaged property until the property market had increased in the local area. In

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addition, he *“had invested a lot of money into the house”* and was concerned he *“... would lose a considerable amount of equity we have put into the house when purchased in 2005.”*

The Complainant outlines that he had purchased the property for €280,000 in **2005**, and it was valued at €195,000 in **2015**. The Complainant details that he was advised by an auctioneer that he should hold off selling the property for another two to three years as the housing estate was being finished and house prices in the area were starting to increase. The Complainant submits that the Mover Retainer Mortgage was approved on **16 March 2015**.

The Complainant details that on receipt of the *“Offer letter”*, he reviewed the repayments on his existing mortgage, the mortgage loan the subject of this complaint, which were €928.39 per month, and the monthly repayments on the Mover Retainer Mortgage which were going to be €1,025.04. The Complainant submits that rent in the area of the mortgaged property was *“in the region of €850”*. The Complainant submits that *“the mortgage advisor I dealt with explicitly states in my original application that I intended on keeping my house until market values increased.”*

The Complainant outlines that on review, it was decided that the repayments on both mortgages would place him under financial pressure. The Complainant submits that he was *“concerned if the house in [NAMED PLACE] wasn’t rented for any period of time, then this could affect financial stability.”* The rental income for the Property was calculated to be approximately €850 which would not have been enough to maintain financial stability.

The Complainant submits that if the mortgage loan account had been on the correct tracker interest rate, then his monthly repayments would have been €400 less *“...and this would have been a major factor in our decision as to whether we would have sold property or not.”* He submits that he firmly believes that he would not have sold his property if his mortgage loan account had been on the correct tracker interest rate at the time.

The Complainant outlines that he accepts the Provider’s submission that the difference in his monthly repayments had the tracker rate been applied would have been €253.53, but contends that when he was considering his options he was looking at a Buy to Let mortgage repayment rate which would have been €1,000 plus, which would have been €326.00 more than the reduced mortgage repayment.

The Complainant submits that the Provider issued him with documentation confirming that the property would move to the Buy to Let rate which at the time was 5.65% variable and 6.2% fixed.

The Complainant submits that he doesn't *"fully agree with calculations provided by Bank, as they haven't allowed for the element of the loan that would have been on BTL rates"*.

The Complainant outlines that although he had *"approval for my new mortgage and to retain existing mortgage"*, on a review of his repayments he decided to not go down this route. The Complainant details that these repayments were a significant factor in his decision to sell the mortgaged property.

The Complainant submits that the application form for the Mover Retainer Mortgage contains a *"ticked box"* which stated that the Property was to be sold prior to drawdown. The Complainant outlines that he does not accept that he ticked this box and submits that this error was discussed at a meeting with one of the Mortgage Advisors. The Complainant queries why there were also notes beside this inputted by the Mortgage Advisor regarding the rental income of the Property, if the Property was to be sold. The Complainant also disputes the content of an internal mail held by the Provider which states that the sale of his Property was required in order to complete the purchase of the New Property. The Complainant outlines that this was not the case and as stated in his original application form, his partner was due to receive an inheritance and these funds would have been available in time to close the sale.

The Complainant details that the Property was *"put on the market"* on **31 March 2015**, which was after he received his first Offer Letter and reviewed both mortgage repayments. The Complainant outlines that this was done to *"test the market and to give [him] options" as he had concerns over having two large repayments"*.

The Complainant submits that he decided to place the Property for sale in **June 2015** and outlines that he again queried the *"Tracker Rate issue"* with the Provider. The Complainant refutes the contents of the Provider's internal email sent on **02 June 2015** and submits that it does not reflect his recollection of his conversation with the Mortgage Advisor. The Complainant contends that he *"... would have had a conversation with the Mortgage Advisor, [NAME], around the 2nd June stating that I was probably going to sell house and we had an offer of €190,000, but decision to accept wasn't made until 12th June."* The Complainant details that he did not go sale agreed until **12 June 2015**, and does not *"... know how the Bank can advise differently."*

The Complainant further submits in a worst case scenario, that even if he had decided to sell the Property at that time he would have been allowed to avail of the Provider's Mover Retainer Mortgage which allows mover customers with an existing tracker mortgage to avail of a new tracker interest rate for the first 5 years of the new mortgage.

The Complainant submits that he calculated that he would be paying €147 less a month had the tracker interest rate applied to his new mortgage for the first five years and this amounts to €8,820.

The Complainant states that his *“previous house has increase in value by €50,000 since I sold house”*.

The Complainant outlines that regarding the six investment properties referred in the Providers submissions, three of the properties mentioned belong to his husband and his husband's ex-wife, with two of the three having rental incomes which support both of them as at the time they were not taking a salary from their business . The Complainant details that the three properties in his name, include the Property, a property which is a holiday home and not rented out but has no mortgage and the Complainant's partner's non-dependent child lives in the third property rent free. The Complainant submits that this third property is subject to a mortgage which was affected by the *“tracker issue”*. The Complainant states *“I don't agree with Bank that I could have depended on these assets to support my mortgage in [LOCATION], nor do I think it would be a prudent thing to do.”*

The Complainant notes that the Home Mover Product complaint was sent to the Provider's Tracker Programme for further consideration *“which is welcomed”*. He further submits that *“if this is the case why wasn't this not done when my complaint was being looked at in the first place or when my appeal was or when my appeal was reviewed by the independent Secretariat and why wasn't this referenced in the Final Response Letter dated 9th May 2018, which states that their investigation into my complaint has now concluded.”* The Complainant further submits that since he submitted his complaint *“the Mover Tracker Product has changed and is now available for the length of the original loan, which further impacts me financially.”*

The Complainant submits that *“bringing this complaint to the Financial Services and Pensions Ombudsman has been an extremely difficult decision for [him] as a loyal, hardworking staff member of [the Provider] for the past 23 years”*. The Complainant submits that he has been given no other option as his husband is also an affected party in this case.

The Complainant is seeking the following from the Provider;

- (a)** That he be compensated for the loss of equity in his Property, which currently stands at over €50,000, in addition to the level of redress that has already been offered by the Provider, and

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- (b) An explanation as to why the Provider failed to action the **Notification of Change of details** submitted by the Complainant to the Provider on **11 March 2013** and by consequence the final response letter dated **26 June 2015** was sent to an incorrect address without being marked as “private”.

The Provider’s Case

The Provider submits that the Complainant drew down a mortgage of €200,000 on **12 May 2005** for a term of 30 years pursuant to the **Mortgage Loan Offer Letter** dated **22 October 2004**. The Provider submits that Offer Letter provided for a rate of interest that follows the ECB Repo Rate.

The Provider submits that the Complainant made a number of changes to the interest rate applicable to the mortgage loan as follows;

- On **13 January 2006** the Complainant signed a Mortgage Form of Authorisation to apply a Staff Tracker interest rate of ECB + 0.85% to the mortgage loan account.
- On **18 August 2006** the Complainant signed a Mortgage Form of Authorisation to apply a Staff Non-Standard Variable Rate to the mortgage loan account
- On **3 January 2007** the Complainant signed a Mortgage Form or Authorisation to apply a Staff 2 year fixed rate of 3.95% to the mortgage loan account.
- On **9 January 2009** the Complainant’s mortgage loan account reverted to a Standard Variable Rate

The Provider submits that the mortgage loan account was redeemed in full in **September 2015**. The Provider submits the that Complainant and a third party then drew down mortgage loan account ending **3447** in the sum of €176,000 on **11 September 2015** pursuant to Mortgage Loan Offer Letter dated **29 July 2015** to purchase another property.

The Provider outlines that the Complainant’s mortgage loan was included in the Central Bank directed Tracker Mortgage Examination. The Provider submits that as a result of the Examination the Complainant’s mortgage loan account was identified as being impacted.

It details that it “*found when the Complainant moved from a tracker rate to the Staff Non-Standard Variable Rate and then to the Staff 2 year fixed rate, that it failed to provide the Complainant with sufficient clarity as to what would happen at the end of that fixed rate*”. The Provider submits that as a result of its failure, the Complainant was charged an incorrect interest rate between **9 January 2009** and **4 September 2015**.

The Provider outlines that it wrote to the Complainant on **15 December 2017** advising him of the Provider's failure and outlined that details of the redress and compensation offered to the Complainant. The Provider submits that the Complainant was offered redress and compensation of €21,984.66. The Provider submits that *"the Complainant was not satisfied with the redress and compensation offered by the Provider, and the Complainant submitted an appeal to the independent Secretariat/ Appeals Panel"*. It details the following the Independent Appeals Panel review, *"[the Provider will make an additional payment total of €2,000"*. The Provider details that the *"crux of the complaint"* is that the Complainant is not satisfied with the redress and compensation offering offered by the Provider.

The Provider states that the Complainant and a third party submitted a joint Application for a Mover Retainer Mortgage on **10 March 2015** for the sum of €180,000 to purchase a new property. The Provider details that Application Form stated that the Complainant and the third party held six investment properties between them. The Provider contends that the Application Form stated that the Property would be sold prior to drawdown. It submits the Application was approved on **16 March 2015**.

The Provider outlines that on the assessment of the Application, it calculated that the Complainant and a third party had *"... a Net Disposable Income ("NDI") against the Banks minimum NDI requirement of €3,000."* The Provider outlines that subsequent to the issuing of the Loan Offer Letter, the Complainants informed the Provider that a reduced mortgage of €176,000 was now required. The Provider details that it issued the **Loan Offer Letter** on **16 March 2015**. The Provider outlines that the third party advised that *"he was having difficulty"* complying with a **pre-condition** set out in the **Loan Offer Letter** dated **16 March 2015**. The Provider submits that it assessed the proposed amendments to the Application and determined *"...that the NDI on the Complainant's sole income. This showed that the NDI was now €2,891 as against the Banks minimum NDI requirement of €2,600."*

The Provider details it issued a new Offer Letter on **07 April 2015** to reflect the reduced amount of credit advanced and to remove the above referenced pre-condition. The Provider submits that the Complainant subsequently *"advised the Bank that he had gone sale agreed" on the property* which would give the Complainant an equity of approximately €37,000.

The Provider further states that the *"Complainant also requested a 5 year fixed interest rate of 3.8%"*. The Provider submits the Complainant's assertion that he decided to sell the Property in **June 2015** is incorrect as he had made the decision to sell prior to this point.

The Provider outlines on **05 June 2015** the Provider issued a new Offer Letter to reflect the 5 year fixed rate of interest requested by the Complainant. It submits a further Offer Letter issued on **29 July 2015** to reflect a reduction in the fixed interest rate to 3.7%.

The Provider submits that the Offer letter for mortgage loan account ending **3447** was signed and accepted by the Complainant and the third party was drawn down on **11 September 2015**.

The Provider submits that the Complainant's assertion that he "*made it clear to the mortgage advisor what my intentions were in relation to the property on which the mortgage in question was on*" conflict with internal notes which stated that there was "*no long term plan to hold as investment property*" and is also in contradiction with the mortgage application form signed by the Complainant and third party on **10 March 2015** wherein they ticked that the property would be "*sold prior to drawdown*".

The Provider also outlines that had a tracker interest rate applied to the mortgage loan account, the repayments would have been €674.86 compared to the repayment of €928.39 which was being applied to the account, a difference of €253.53 per month.

The Provider outlines that it wholly refutes the Complainant's submission that his decision to sell the Property was based solely on the mortgage repayments of the mortgage loan account. The Provider submits that the repayment capacity did not take into account the net disposable income ("NDI") of the third party as he was not in a position to provide the audited/certified accounts for his company. The Provider outlines that the mortgage loan account was approved solely on the Complainant's NDI, and it was satisfied that the repayments could have been met without the Complainant selling the Property. The Provider submits it is satisfied that the Complainant and the third party had sufficient income and assets (6 investment properties) to afford the repayments on the new mortgage loan account.

The Provider submits that the Independent Appeals Panel supported the decision of the Provider and held that they were not satisfied that the impact of the overpayment was a determining factor in the Complainant's decision to sell the Property.

The Provider submits that the offer of redress in the amount of €19,758.78 made to the Complainant took into account the adjustment of the mortgage loan balance as if the issue giving rise to redress had not occurred and appropriate tracker interest rates had been applied to the account from the appropriate time, plus a refund of overpayments and also an interest payment to reflect time value of money.

The Provider submits that an amount of €1,975.88 was a reasonable and fair level of compensation taking into account the Complainant's circumstances and that an additional amount of €250 was also provided to enable the Complainants to avail of independent advice if they so wished.

The Provider submits that the calculation of the compensation took into account payments for detriment, including but not limited to inconvenience, harm, loss as a result of not having funds available to the Complainant when they should, personal suffering and hardship caused by overcharging of interest.

The Provider accepts its failure in respect of the Complainant's mortgage loan account and submits that the failure has been redressed as part of the redress and compensation scheme framework. The Provider submits the *"it is complying in full with the Framework for Conducting the Tracker Mortgage Examination and has demonstrated that it is ensuring that customers' interests are protected, that customers are being treated fairly and that it has considered customers' reasonable expectations with regard to their entitlement to a Tracker Interest rate, in the context of the information provided and the disclosures made by the Bank to customers."*

The Provider submits that the matter relating to the availability of the Home Mover Product in **2015** has been sent to the Provider's Tracker Programme for further consideration. The Provider submits that had mortgage loan account ending **1872** been on a tracker interest rate then the Complainant would have been able to avail of the Provider's Tracker for Movers rate on mortgage loan account ending **3447**. The Provider submits it wrote to the Complainant and third party in **April 2019** to confirm that if the Complainant's mortgage loan account had been on a tracker rate he would have been able to avail of the Provider's Tracker for Movers rate on his present mortgage loan account. The Provider offered the Complainant the opportunity to take up a tracker interest rate of ECB + 1.85% on a portion of his new mortgage loan account ending **3447**. The Complainant and third party accepted and signed the Mortgage Form of Authorisation on **12 June 2019** to apply the tracker interest rate of ECB + 1.85% to a portion of the Complainant's new mortgage loan account ending **3447**.

The Provider has acknowledged that the Complainant did submit a **Notification of Change of Details** which was received by the Bank on **12 March 2013**. It submits that the Notification of Change of Details *"referenced 3 current accounts, 2 mortgage accounts and 1 credit card account."* The Provider submits it *"can confirm that the Complainant's correspondence address was updated in relation to one of the referenced current accounts [A/C Number S/C Number] on 12 March 2013."* It further states *"By way of oversight, the Bank acknowledged that it did not update the Complainant's address on the remaining five accounts"*.

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The Provider submits that its *“systems do not allow for it to save correspondence address to be titled as “Private and Confidential”*. It further submits that *“the Complainant did not state in his Notification of Change of Details Form that such correspondence was to be addressed as “Private and Confidential”*. The Provider apologises for this error and has confirmed that the Complainant’s address has since been updated to reflect the correct address.

The Provider outlines that there is no timeframe under the **Consumer Protection Code 2012** in which the Complainant can submit a complaint to the Financial Services and Pensions Ombudsman Office and has apologised for any confusion caused as a result of the Providers reference to *“15 working days”* in the Final Response Letter dated **26 June 2016**.

The Provider submits that the offer of redress and compensation is in line with the redress and compensation scheme framework that was ratified by the Central Bank of Ireland.

The Complaint for Adjudication

The complaint for adjudication is;

- (a) 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) The Provider failed to act on an a **Notification of Change of Details** submitted by the Complainant on **11 March 2013**, and by consequence the final response letter dated 26 June 2015, was sent to an incorrect address.

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

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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 28 September 2020, outlining my preliminary determination 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.

The Provider has detailed that the redress and compensation offered 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 €21,984.66 reflects the amount of interest overpaid on the mortgage loan account and includes a payment of €940.89 to reflect the time value of money. The Provider submits it offered the Complainant compensation of €1,975.88 and €250 for the purposes of seeking legal advice. The Provider submits that the Appeals Panel awarded the Complainant an additional payment of €2,000.

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

An **Offer Letter** dated **22 October 2004** issued to the Complainant which detailed as follows;

<i>1. Amount of Credit Advanced</i>	<i>€200,000</i>
<i>2. Period of Agreement</i>	<i>30 Years</i>
<i>3. Number of</i>	
<i>Repayment</i>	<i>Instalment</i>
<i><u>Instalment</u></i>	<i><u>Type</u></i>
<i>360</i>	<i>Variable at 3.100%</i>

Part 4, the **Special Conditions** of the **Loan Offer Letter**, detail as follows;

“(v) The interest rate applicable to the Loan is a variable interest rate and may vary upwards or downwards. The interest rate shall be no more than 1.10% above the

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European Central Bank Main Refinancing Operations Minimum Bid Rate (“Repo Rate”) for the term of the Loan. Variation in interest rates shall be implemented by the lender not later than close of business on the 5th working day following a change in the Repo rate by the European Central Bank. Notification shall be given to the Borrower of any variation in interest rate in accordance with General Condition 6(b) of this Offer letter. In the event that, or at any time, the Repo rate is certified by the Lender to be unavailable for any reason the interest rate applicable to the Loan shall be the prevailing Home Loan Variable Rate.”

The Complainant signed the **Acceptance and Consent on 4 November 2004** on the following terms;

“I confirm that I have read and fully understand the Consumer Credit Act notices, set out above, and the terms and conditions contained in this Offer Letter and I confirm that I accept this Offer Letter on such terms and conditions.”

The Complainant’s mortgage loan account was drawn down in **May 2005**.

The tracker interest rate applied to the account until **January 2006**, when the Complainant requested to apply the Staff Tracker ECB + 0.85% Rate to the mortgage loan account by way of **Mortgage Form of Authorisation (“MFA”)** signed and accepted by him on **13 January 2006**.

The Staff Tracker ECB + 0.85% Rate applied to the account until **August 2006**, when the Complainant requested to apply the Staff Non-Variable Rate to the mortgage loan account by way of **Mortgage Form of Authorisation (“MFA”)** signed and accepted by him on **18 August 2006**.

The Staff Non-Variable Rate applied to the account until **January 2007**, when the Complainant requested to apply the Staff 2 Year Fixed Rate of 3.95% to the mortgage loan account by way of **Mortgage Form of Authorisation (“MFA”)** signed and accepted by him on **05 January 2007**.

On the expiry of the fixed rate period, the Provider’s standard variable rate was applied to the Complainant’s mortgage loan account on **09 January 2009**. It was at this time that the failure that was subsequently identified in **December 2017** as part of the Tracker Mortgage Examination occurred on the Complainant’s mortgage loan account.

The variable interest rate that applied to the mortgage loan between **January 2009** and **September 2015** commenced at 3.75% and varied over the period between 2.25% and 3.90%. Between **January 2009** and **September 2015**, the overall tracker rate (ECB + 0.85%

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margin) commenced at 2.85% and reduced to 0.90% over the time period. The difference in the interest rate actually charged to the mortgage loan and the interest rate that would 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 account between **January 2009** and **September 2015**, is also represented in the table below;

Date Range (inclusive)	Difference in Interest rate charged vs the Tracker interest rate	Actual monthly repayments	Monthly repayments if the mortgage was on a Tracker Rate	Overpayment per month
Jan 2009	0.90%	€926.41	€838.04	€88.37
Feb 2009	0.40%	€875.26	€838.04	€36.22
Mar 2009	0.40%	€828.26	€790.01	€38.25
Apr 2009	0.40%	€804.08	€766.92	€37.16
May 2009 – March 2010	0.40%	€781.18	€744.61	€36.57
April 2010 – July 2010	0.90%	€826.45	€744.61	€81.84
Aug 2010 – Sept 2011	Between 1.15% and 0.65%	€848.93	Between €744.61 and €786.59	Between €62.34 and €104.32
Oct 2011- Jan 2012	Between 1.15% and 1.65%	€894.34	Between €745.32 and €796.59	Between €107.75 and €149.02
Feb 2012- Oct 2012	Between 1.55% and 1.80%	€885.65	Between €725.51 and €745.32	Between €140.33 and €160.14
Nov 2012 –Apr 2013	2.30%	€928.39	€725.51	€202.88
May 2013 – Oct 2013	2.55%	€928.39	€706.56	€221.83
Nov 2013 – May 2014	2.80%	€928.39	€688.71	€239.68

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Jun 2014 – Aug 2014	2.90%	€928.39	€681.69	€246.70
Sep 2014 – Feb 2015	3.00%	€928.39	€674.86	€253.53
Mar 2015 – Sep 2015	3.00%	€928.39	€674.86	€253.53

The Complainant submits that he held mortgage loan account ending **1872** and the mortgage loan was found to be impacted despite him *“making numerous queries regarding my entitlement to have this mortgage reinstated on the tracker rate, in 2009, 2010 and finally in 2015, when the Bank sent a final response letter... confirming that I wasn’t entitled to be on tracker.”*

The Complainant contends that in or around **March 2015** he made the decision to purchase a new property with a third party and also keep the property which was secured on the mortgage loan that is the subject of this complaint (the “Property”).

The Provider has submitted into evidence a **Mortgage Application Form** signed by the Complainant and a third party on **10 March 2015**. **Page 8** of the **Mortgage Application Form** details as follows:

If you own, have sold, or are disposing of a property, please advise us of the following in relation to each property and any mortgages held:

	Property 1	Property 2	Property 3
If this is a joint application, state if property applies to relates to 1st or 2nd applicant or both	1st <input checked="" type="checkbox"/> 2nd <input type="checkbox"/> Both <input type="checkbox"/>	1st <input checked="" type="checkbox"/> 2nd <input type="checkbox"/> Both <input type="checkbox"/>	1st <input checked="" type="checkbox"/> 2nd <input type="checkbox"/> Both <input type="checkbox"/>
If another party has an interest in, or is a joint owner of the property (please tick)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Property Category (please tick) PDH - Principal Dwelling House BTL - Buy to Let Investment HH - Holiday home	PDH <input checked="" type="checkbox"/> BTL <input type="checkbox"/> HH <input type="checkbox"/>	PDH <input type="checkbox"/> BTL <input checked="" type="checkbox"/> HH <input type="checkbox"/>	PDH <input type="checkbox"/> BTL <input type="checkbox"/> HH <input checked="" type="checkbox"/>
Property type La. Detached, Semi-detached, Terraced, Bungalow detached, Bungalow semi detached, Cottage, Apartment, Maisonette, Townhouse	BUNGALOW	SEMI-ATTACHED APARTMENT	
Estimated value	€ 180000	€ 90000	€ 53000
Year acquired	2005	2002	2014
Original purchase price	€ 280000	€ 132,000	€ 38000
Monthly rent / income (if applicable)	€	€ 340	€ N/A
Mortgage requested on this property	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Property address	[REDACTED]	[REDACTED]	[REDACTED]
Number of bedrooms	03	03	01
Will be sold prior to drawdown	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Agreed sale price (if applicable)	€ 180000	€	€

Handwritten notes on Property 1:
 €850 pmth possible rental income
 POSSIBLE RENTAL INCOME

“Property 1” in the above is the Property. It is clear from the above that in answer to the question “Will be sold before drawdown” “Yes” has been selected, and below that in response to “Agreed sale price (if applicable)”, €180,000 has been inputted. Beside this a handwritten note reads “€850 pmth possible rental income”.

The Complainant submits that he does not accept that he ticked this box and has queried why there were also handwritten notes regarding the rental income of the Property, if the Property was to be sold.

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In this regard I note that not only was the box “yes” ticked, but an agreed sale amount of €180,000 was also inputted.

The Provider has also submitted an internal document dated **12 March 2015** which details the following on **page 2**:

Property Type	Estimated Value / Sale Price	Year Purchased	Original Purchase Price	Rental Income	Isolated Area
Investment	180,000	2005	280,000	850	No
Is the mortgage requested on this property ?			No		
Is property to be sold prior to draw down ?			No		
Is there a mortgage on the property ?			Yes		
Institution where mortgage is held ?					

The above internal note indicates that the Provider was of the understanding in **March 2015** that the Property was not to be sold prior to the drawdown of the Complainant’s new mortgage.

However, further on in the document, at page 6, there are notes which are in conflict with the above:

“[Property]- not apps intention to retain same- will be sold once property market has increased slightly in local area- no long term plan to hold as investment property. Rental income of €850 p/mth as per local valuer – allowed in calculations at this level.

Current valuation @ approx E190k with [Provider] mortgage of E150k. Very high rental demand in area as very exclusive estate. Also very high demand for property purchases in estate as very rare that a property in [Place] comes to the market”

....

“Current pdh in [Place] - mortgage repays @E928 – to become btl property once new property purchased- future rental income of E850 p/mth possible for same.”

This internal document submitted by the Provider is very unclear as to whether the Property was being sold or retained and in facts, appears to indicate that both courses of action are to happen.

An **Offer Letter** dated **16 March 2015** issued to the Complainant which detailed as follows;

“1.Amount of Credit Advanced ~~€180,000~~ €176,000

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2. Period of Agreement		22 Years	
3. Number of amount of Repayment Instalment		4. Amount of each	10. Effect on instalment of 1% increase
<u>Instalment</u>	<u>Type</u>	<u>Instalment</u>	<u>in first</u>
<u>year in interest rate**</u>			
24	Fixed at 4.000%	€1,025.04	Fixed
Rate			
240	Variable at 4.500%	€1,069.85"	

Part 3, the Special Conditions of the Loan Offer Letter, detail as follows;

“(b) The following Conditions Precedent apply to [Redacted]:

- (i) Original audited or certified accounts for the previous two years to confirm your capacity to derive a personal income of at least EUR 22,271 after all business expenses and excluding rental income. In addition management figures to be provided for the current financial year supported by the last six months bank statements to confirm your current turnover level. All documentation must to be the satisfaction of the Lender.*

(c) The following Conditions Precedent apply to the Loan:

- (i) Independent confirmation of attainable rental income of EUR 10,200 per annum from your property at: [The Property]. The following are acceptable as confirmation: 1) Written confirmation from a member of the Lender’s Valuer’s Panel. 2) An up- to-date copy of the lease for the property.”*

Whilst it may be the case that the Complainant had not finalised his decision as to whether to sell the Property at the time of the application. The contemporaneous evidence shows that both the possible sale of the Property and the possible retention of the Property for rental purposes were options under consideration at the time. In any event it appears from the Special Conditions of the Loan Offer Letter dated **16 March 2015** that the application proceeded on the basis that the Property be kept as a source of rental income, as opposed to being sold. This Loan Offer was not signed and accepted by the Complainant.

The Complainant has submitted into evidence an **email** from an auctioneer dated **19 July 2018** which details:

"I confirm that we began marketing the above named on your behalf on 31/03/015 and agreed the sale with the purchasers on 12/06/2015."

It appears from the above that the Complainant placed the Property on the market on **31 March 2015**.

It appears that due to difficulty with the third party being able to comply with condition precedent (b) a further assessment of the mortgage application took place a new Offer Letter issued on **07 April 2015**. The **Offer Letter** dated **07 April 2015** detailed as follows;

<i>"1. Amount of Credit Advanced</i>	<i>€176,000</i>		
<i>2. Period of Agreement</i>	<i>22 Years</i>		
<i>3. Number of amount of Repayment Instalment</i>		<i>4. Amount of each</i>	<i>10. Effect on instalment of 1% increase</i>
<i>Instalment</i>	<i>Type</i>	<i>Instalment</i>	<i>in first</i>
<i>year in interest rate**</i>			
<i>24</i>	<i>Fixed at 4.000%"</i>	<i>€1,000.26</i>	<i>Fixed</i>
<i>Rate</i>			
<i>240</i>	<i>Variable at 4.500%"</i>	<i>€1,046.07"</i>	

Part 3, the Special Conditions of the Loan Offer Letter, detail as follows;

"(c) The following Conditions Precedent apply to the Loan:

- (i) Independent confirmation of attainable rental income of EUR 10,200 per annum from your property at: [The Property]. The following are acceptable as confirmation: 1) Written confirmation from a member of the Lender's Valuer's Panel. 2) An up- to-date copy of the lease for the property."*

This was signed and accepted by the Complainant and third party on **28 April 2015**, but does not appear to have been drawn down.

The Complainant submits that he met the Provider's mortgage advisor on **02 June 2015** and he indicated that he was *"probably"* going to sell the property at this meeting. I note that this office requested evidence from the Provider to be furnished with respect to the

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meeting that took place in June 2015. It is disappointing to note that the Provider has outlined "it does not hold minutes of such meeting with the Complainant".

A further **Offer Letter** dated **05 June 2015** issued to the Complainant which detailed as follows;

"1. Amount of Credit Advanced	€176,000		
2. Period of Agreement	22 Years		
3. Number of amount of Repayment Instalment		4. Amount of each	10. Effect on instalment of 1% increase
<u>Instalment</u>	<u>Type</u>	<u>Instalment</u>	<u>in first</u>
<u>year in interest rate**</u>			
Rate			
24	Fixed at 3.800%"	€983.59	Fixed
204	Variable at 4.200%"	€1,013.61"	

Part 4, the **Special Conditions** of the **Loan Offer Letter**, detail as follows;

"(a) The following Conditions Precedent apply to the Loan:

(ii) Borrower's solicitor to: a) confirm in writing that they have carriage of sale and hold a signed Contract for Sale of the Borrower's property at: [the Property] ; and b) Undertake in writing to the Lender that that sale will close and the mortgage on that same property will be redeemed no later than 7 days after the drawdown of this Loan.

...

(vi) This offer replaces our offer of 07/04/2015."

This was signed and accepted by the Complainant and third party on **11 June 2015**. The Property went sale agreed on **12 June 2015**.

I note that the Complainant has submitted that the reason he decided to sell the property was when he reviewed the prospective mortgage repayments he discovered that the repayments would put him under significant financial pressure and the decision to sell the Property was made on **12 June 2015**. The parties appear to be in dispute as to when this decision was made, however it does not appear to me to be material to this complaint whether the decision was made in March or June. The fact remains that the decision was

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made to sell the Property and the **Offer Letter** dated **05 June 2015**, which was signed by the Complainant proceeded on this basis.

The Complainant is of the view that had the correct interest rate applied to his mortgage loan account, his mortgage repayments in respect of the property would have been from €300 to €400 less, which would have allowed him to retain the property as the rental income would have covered the mortgage repayments and any additional charges.

I note the Provider refutes this statement and submits that had a tracker interest rate applied to the mortgage loan account the repayments would have been €674.86 in comparison to €928.39 which is a difference of €253.53. The Provider submits that if the proposed monthly rental payment was €850 the difference between the Complainant's Mortgage Repayments at the time of €928.39 and the proposed monthly rental payment of €850 was €78.39.

The Complainant further states that his *"previous house has increase in value by €50,000 since I sold house"*. The Complainant has submitted into evidence an email from an auctioneer's office dated **20 December 2017** which details:

"Further to your telephone call, I confirm that the current value of your former property [the Property], which we sold for you in 2015 would be €240,000".

I accept that the level of mortgage repayments as against the potential rent receivable would have been a factor in the Complainant's decision to sell the mortgaged Property at the time and the overcharge on the Complainant's mortgage loan account had an impact on this comparison for the Complainant. However I am of the view that it is not the only relevant factor that could be taken into account by the Complainant in making the decision to sell the Property at the time and take out the new mortgage on the property being purchased. Furthermore, any fluctuation in the value of the property is not something that can be accurately predicted such that the Complainant could have known at the time of the sale in **2015** that the property would increase in value by €50,000 in later years.

However, I accept that throughout the six and a half year period, the Complainant was denied the opportunity of making informed decisions about his finances as he did not know the true position with respect to the repayments that were actually due and owing on the mortgage loan account. In this regard, I find it extraordinary that the Provider has stated that it does not believe that the Complainant has demonstrated any inconvenience.

I note that the Provider gave the Complainant and his partner the option to move a portion of €136,286.20 of the Complainant's new mortgage loan account ending **3447** onto a tracker mover rate of ECB + 1.85% from **June 2019** until **23 May 2035**. This was

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stated by the Provider to be following a further examination of the Complainant's mortgage loan account ending **1872**. In this regard, I would expect that the Provider would have fully and thoroughly engaged with the Complainant's mortgage and the facts and details pertinent to the loan as part of the Examination and the subsequent appeal and prior to the Complainant having made his complaint to this office.

It is most disappointing that the Provider does not appear to have done so with the result that the tracker interest rate was not applied to the Complainant's mortgage loan account ending **3447** until **June 2019**, some 18 months after the error on the Complainant's mortgage account ending **1872** was initially redressed by the Provider in **December 2017**. I find it to be most unreasonable that the Provider did not consider the ongoing impact and consequences of its failure with respect to mortgage account ending **1872** on the Complainant's new mortgage loan account ending **3447** at an earlier stage in the process.

It does not appear that the Provider considered this until after the Schedule of Questions and Evidence Required issued by this office in **April 2018**. The Complainant has since **June 2019** been given the tracker mover product with a tracker interest rate of ECB + 1.85% on his new mortgage loan. The Complainants accepted this offer by signing the Mortgage Form of Authorisation on **12 June 2019**. The Complainant submits that the entitlement to a tracker interest rate on the home mover product has since been changed to an entitlement for the term of the new loan. This product was not however available at the time the Complainant redeemed his loan in **2015** and the Complainant does not have an entitlement to this product option.

I will now consider the conduct complained of that the Provider failed to action the **Notification of Change Details** submitted by the Complainant to the Provider on **11 March 2013** and by consequence a Final Response Letter dated **26 June 2015**, was sent to an incorrect address.

The Provider has submitted into evidence a **Notification of Change Details** document signed by the Complainant on **13 March 2013** which details as follows;

"I would like to receive confirmation by Text ✓(Y/ N) or Email (Y/N) when this request has been actioned.

Please update your record with/my new account details for each of the products listed below.

...

/Cont'd...

IMPORTANT- Please list all your [Provider] account and policy numbers below to ensure that your personal details are updated throughout the [Provider] Group.

...

[Provider] Mortgages:

Sort Code	Account Number:
[Number]	[mortgage loan account ending 1872]
[Number]	[mortgage loan account ending 9294]"

The Provider has indicated that on foot of the above request it updated the Complainants details in respect of one account held by the Complainant but contends that by “... way of oversight, the Bank acknowledges that it did not update the Complainant’s address on the remaining five accounts”.

I note that the Complainant has outlined that although from **March 2013**, correspondence in respect of three of his accounts held with the Provider was still being issued to an incorrect address, the correspondence was marked private and so the Complainant details it was forwarded to him unopened. This address was the branch at which the Complainant had previously worked. I note that the Provider’s **Final Response Letter** dated **26 June 2015** also issued to the incorrect address, a branch of the Provider, and was not marked Private or Confidential.

I note the Provider has submitted that its “systems do not allow for it to save correspondence address to be titled as “Private and Confidential and further submits that “the Complainant did not state in his Notification of Change of Details Form that such correspondence was to be addressed as “Private and Confidential”.

I note that the Complainant was aware of the fact that his address had not been updated correctly from **March 2013** and did not raise the issue with the Provider until he received the Final Response Letter dated **26 June 2015**. The Provider should have actioned the instructions to update the address when the Complainant instructed it to do so in **March 2013** and in those circumstances the Final Response Letter would not have issued to the branch that the Complainant previously worked in. I note that the updated address for correspondence is the address of the branch where the Complainant then worked. I think it is important to note that there are increased risks from the Complainant’s perspective in having correspondence issue to a work address as opposed to a private address. This is a risk that the Complainant himself took on when he elected for the branch addresses to be

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his address for correspondence. I accept that the Provider has rectified the situation by updating the Complainant's details as per the **Notification of Change Details** document signed by the Complainant on **13 March 2013** on **26 August 2015**. However I am of the view that the delay in doing so was unreasonable.

I also note that the Final Response Letter dated **26 June 2015** details as follows:

"If you are not satisfied with our final response, please note that you have 15 working days from receipt of this letter to refer the issue to the Financial Services Ombudsman for a formal investigation and ruling. You can contact the Ombudsman at...."

The Provider in response to the complaint to this office outlines that there is no timeframe under the **Consumer Protection Code 2012** in which the Complainant can submit a complaint to the Financial Services and Pensions Ombudsman Office and has apologised for any confusion caused as a result of the Provider's reference to "15 working days" in the Final Response Letter dated **26 June 2015**. The **Consumer Protection Code 2012** does not have any bearing on the time limits for a consumer to make a complaint to the office of the Financial Services Ombudsman as it was then or this office. The statutory time limits for making a complaint to the Financial Services Ombudsman were set out in the **Central Bank and Financial Services Authority of Ireland Act 2004** and the time-limits for making a complaint to this office is currently governed by **Section 51 (2)** of the **Financial Services and Pensions Ombudsman Act 2017**. I am most disappointed that the Provider would give the Complainant incorrect information as to his right of appeal to the then Financial Services Ombudsman.

Having considered the evidence and the circumstances of this complaint, I am of the view that the level of compensation of €3,975.88 is reasonable for the Provider's failure in overcharging the Complainant on his mortgage loan account ending **1872**. However I am of the view that the Provider acted unreasonably by failing to consider the ongoing impact and consequences of its failure with respect to mortgage account ending **1872** on the Complainant's new mortgage loan account ending **3447** at an earlier stage. The evidence shows that the Provider did not consider this until after the investigation of the Complainant's complaint to this office had commenced, some 16 months after the Provider initially admitted its error and redressed mortgage account ending **1872**.

I partially uphold this complaint for the Provider's failures to update the Complainant's address on foot of his instruction, for furnishing the Complainant with incorrect information on his right of appeal to the Financial Services Ombudsman and for the delay in considering the impact of the Provider's failure on mortgage account ending **3447**. I

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direct that pursuant to **Section 60(4)** of the **Financial Services and Pensions Ombudsman Act 2017**, the Provider pay a sum of €3,000 compensation to the Complainant.

Conclusion

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

Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to make a compensatory payment to the Complainant in the sum of €3,000, 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.

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**

20 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—

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(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.

