



<b><u>Decision Ref:</u></b>	2021-0259
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Tracker Mortgage
<b><u>Conduct(s) complained of:</u></b>	Failure to offer appropriate compensation or redress CBI Examination
<b><u>Outcome:</u></b>	Substantially upheld

**LEGALLY BINDING DECISION  
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

This complaint relates to a mortgage loan account held by the Complainants with the Provider. The mortgage loan was secured on the Complainants' principal private residence.

The loan amount was €207,000 and the term of the loan was 35 years. The mortgage loan offer was signed by the Complainants on **12 May 2005**.

The Complainants' mortgage loan account that is the subject of this complaint 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 that account was deemed to be impacted as part of the Examination.

The Provider wrote to the Complainants on **12 December 2017** advising them of the failure on the mortgage loan account. It detailed how it "*got things wrong*" as follows;

*"In our review, we found that when you moved to a fixed rate from a tracker rate we failed to provide you with sufficient clarity as to what would happen at the end of that fixed rate. Because of this, you may have an expectation that a tracker rate would be available to you at the end of the fixed period."*

*The language used by us in your documentation may have been confusing as to whether it was a variable interest rate which varied upwards or downwards tracking the ECB Rate or a variable interest rate which varied upwards or downwards at our discretion.”*

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 02 August 2011 and 23 Nov 2017.”*

The Provider made an offer of redress and compensation to the Complainants in its letter dated **12 December 2017**. The offer of €36,746.94 was made by the Provider to the Complainants and comprised the following;

1. Redress of €33,179.04 covering;
  - Total interest overpaid
  - Interest to reflect the time value of money
2. Compensation of €3,317.90 for the Provider’s failure
3. Independent Professional Advice payment of €250.00

The Provider restored a tracker rate of ECB + 1.3% to the Complainants’ mortgage loan account on **24 November 2017**.

The Provider advised the Complainants by letter dated **31 January 2018** that it had increased the offer of independent professional advice from €250.00 to €750.00.

The Complainants signed the **Payment Instruction Form** on **29 May 2018** and the amount of €36,746.94 was paid into the Complainants’ nominated bank account.

In **August 2018**, the Complainants appealed the redress and compensation offering to the Independent Appeals Panel. In **September 2018** the Appeals Panel decided to uphold the Complainants’ appeal and awarded additional compensation of €5,000.

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In determining the appeal, the Panel outlined that:

- *“The Panel had regard to the significant level of overpayment and its impact on the Customers’ specific financial, personal and family circumstances, as supported by detailed evidence in the Customer’s appeal.*
- *Notwithstanding the overpayment the Customers managed to avoid going into arrears with significant financial support from a family member.”*

The Complainants signed the **Payment Instruction Form** on **10 September 2018** and the amount of €5,000 was paid into the Complainants’ nominated bank account.

As the Complainants completed the Provider’s internal appeals process, and the additional compensation 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 that is being adjudicated on by this office is that the Provider has not offered adequate redress and compensation to the Complainants by consequence of the Provider’s failure in relation to their mortgage loan account.

### **The Complainants’ Case**

The Complainants submit that the compensation awarded to them in respect of the Provider’s failure is *“insignificant”* given the impact that the overcharging on their mortgage loan account has had on them.

The Complainants submit that during the period of the overcharge they *“were required to gain subvention from [the Second Complainant’s] mother in the amount of 18,500euros in order to pay the mortgage and keep repayments up to date.”*

The Complainants submit that the Second Complainant’s mother has since passed away *“and didn’t have any insurance on herself probably because she was helping us out so much”*. The Complainants detail that *“As [the Second Complainant’s mother] didn’t have any insurance [they] feel [they] should have been able to cover her entire funeral bill for what she had done for us and as for [the Second Complainant’s] dad he has had to get a whole loan out to cover it which is not easy or fair as he is a pensioner.”*

The Complainants detail that *"The fact [they] never go[t] to repay [the Second Complainant's mother] breaks my heart and haunts me and I am finding same very difficult to cope with. I have been increased in my medication by my psychiatrist just only recently I feel so bad I could not repay her and let her know how much she had done for us."*

The Complainants further submit that *"The impact on our lives have changed so much because we struggled to pay our mortgage and couldn't afford to have a second baby then".* They further state that *"now at this time if [the Second Complainant] was to get pregnant and be sick its possible [the Complainants would] have to hire help as [the Second Complainant's mother] is no longer with me and don't have any other support around me ... I'm also getting older this has impacted on my stress and anxiety for so long".*

The Complainants detail that the Second Complainant *"had a very difficult pregnancy with their first and only child"* and a result she was *"advised by her doctor to go privately for any future maternity care"*. The Complainants submit that they have *"put off having [another] child due to a lack of funds to go private and also the fact that [the First Complainant] would have been required to take a sabbatical from his job in order to take care of [the Second Complainant]. What can compensate [the Complainants] for this. Certainly not 5,000euros"*.

The Complainants state that it *"is impossible to place an amount on this loss"*. They submit that if *"the error was not made on the interest rate it would have afforded them the required funds to endeavour the planned pregnancy."*

The Complainants further submit that they *"were unable to spend money on decorating their house as is evidenced by the Auctioneer's report"*. They state that this report *"outlines a value of 195k as opposed to 225k if various works were completed"*. They submit that *"this effectively had a lifestyle effect on them in addition to a negative impact on the value of their house."*

The Complainants assert that the compensation *"doesn't nearly compensate [the Complainants] for the hardship they incurred as a result of the Banks very serious mistake."* They *"feel that a more substantial offer should be forthcoming from the Bank in order that they be justifiably compensated for the extreme circumstances that were foisted upon them due to the error incurred by the Bank."*

### **The Provider's Case**

The Provider details that a Mortgage Loan Offer Letter dated **10 March 2005** was signed and accepted by the Complainants on **12 May 2005** which provided for a loan amount of €207,000, on a tracker interest rate of ECB + 1.3% over a term of 35 years. It outlines that the Complainants drew down the mortgage amount in three stages on **29 July 2005** (€138,750), **12 August 2005** (€48,750) and **23 March 2006** (€19,500).

The Provider outlines the following interest rate changes on the Complainants' mortgage loan account:

- The Complainants signed and accepted a **Mortgage Form of Authorisation (MFA)** on **21 July 2006** to apply a five-year fixed interest rate of 4.89% to the mortgage loan.
- The Complainants signed and accepted a **Mortgage Form of Authorisation (MFA)** on **25 July 2011** to apply a two-year fixed interest rate of 4.95% to the mortgage loan.
- The Complainants signed and accepted a **Mortgage Form of Authorisation (MFA)** on **10 July 2013** to apply a two-year fixed interest rate of 4.60% to the mortgage loan.
- The Complainants signed and accepted a **Mortgage Form of Authorisation (MFA)** on **14 July 2015** to apply a three-year fixed interest rate of 3.8% to the mortgage loan.

The Provider outlines that it included the Complainants' mortgage loan account in the Examination because the account originated on a tracker interest rate. The Provider submits that when the mortgage loan account moved from a tracker rate to a fixed rate, the Provider failed to provide *"sufficient clarity as to what would happen at the end of the fixed rate"* and the language used by the Provider may have been *"confusing"*.

The Provider details that it restored the Complainants' mortgage loan account to a tracker interest rate of ECB + 1.30% on **24 November 2017**.

The Provider submits that the Complainants were refunded a *"lump sum payment"* equivalent to the interest overcharge which amounted to the difference between the monthly amounts that the Complainants were charged and the monthly amounts they should have been charged *"had the relevant issue identified not occurred"*.

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It states that this included a payment to reflect the time value of money *“to reflect additional financial loss suffered ... for not having access to the money that was used to pay interest at the incorrect rate”*. The Provider submits that the Appeals Panel awarded an additional sum of €5,000 in compensation which *“reflects the nature and severity of the impact with reference to a number of factors as a direct result of the Providers failure and this complaint has advanced no new grounds which undermine the determination of the Independent Appeals Panel.”*

The Provider submits that the Complainants’ claims for additional compensation are not supported by the evidence and are *“neither fair nor reasonable, taking into account that the Complainants appealed the matter to the Appeals Panel, who further awarded €5,000”*.

The Provider submits that the level of redress which has been remitted to the Complainants, is *“in excess”* of the amount of €18,500 that Complainants stated they had to borrow from the Second Complainant’s mother to meet their mortgage loan obligations. The Provider submits that the Complainants had *“therefore been given a sum of money and the means to make this repayment. The sums duly paid by the Provider and already received by the Complainants thus adequately compensate the Complainants for this event.”*

The Provider further submits that the Complainants have not *“evidenced anything to suggest the borrowed sums were subject to a rate of interest, but, even if they were, the Provider would point to the interest it has paid to reflect time value of money. This interest would permit the Complainants to repay any sum borrowed at a reasonable rate of interest, should one be applicable.”*

The Provider states that *“at no point to date during the life of the mortgage loan account have the Complainants indicated to the Provider that they are/were in financial difficulty of any sort.”* It states that there is *“no contemporaneous evidence to support the Complainants contention that they were worried about their mortgage”* and that they *“have maintained all repayments with no arrears”*. It further submits that there is no record of any communication indicating that the Complainants were concerned about arrears or anticipated arrears or any record of a request for forbearance. The Provider states that it *“cannot accept the request for additional compensation noting that the mortgage loan account remained in line and there are no recorded requests for forbearance on the mortgage loan account during this time.”*

The Provider submits that under the Examination there were two approaches to providing redress:

1. *“to pay the redress (along with compensation) to the customer, to an account of their choosing e.g. to a current account or directly to the impacted mortgage loan account, or*
2. *by splitting the payment so that a certain amount of the redress is applied automatically to reduce the loan balance (to the level it would have been at had the issue not happened) and paying the rest to the customer directly.”*

The Provider outlines that it has chosen to make payments using the first approach above and *“the Complainants chose not to pay the redress directly into the mortgage loan account.”*

It further submits that the Complainants *“have suffered no loss as the mortgage loan account has been restored to the same position it would have been had the tracker issue not occurred. In particular there is no loss within the meaning of S60 (4) (d) of the FSPO Act.”*

Regarding the Complainants’ submission that they could not afford to have another child in circumstances where they were unable to afford private medical care and the First Complainant could not afford to take time off work, the Provider submits that *“the Complainants seek to establish a causative link between the question of their entitlement to a tracker rate of interest and the loss complained of”*. It submits however that *“it cannot be fairly and reasonably said that the Complainants’ decision arose from the conduct complained of”* and that *“this consequence is too remote from the question of an entitlement to a tracker rate and interest and cannot be justifiable said to result from it.”*

Regarding the Complainants’ submission that they could not afford to carry out works and repairs to their home because of the overpayments on the mortgage account, the Provider states that *“the redress and compensation paid has restored their funds to their correct level”* and that the Complainants *“now have the means necessary to carry out these works and there is no impediment to their doing so.”*

The Provider outlines that the mortgage loan account has a maturity date of **01 August 2040** with current monthly repayments of €708.11. It detailed that the mortgage balance *“stands at €155,525.63 as of 20 August 2019.”*

The Provider states that it *“acknowledges that as a result of the overcharging on the Complainants mortgage loan account, the Complainants will have suffered additional hardship which they would not otherwise have suffered. The Provider apologises for any additional hardship which the Complainants suffered during this period as a result of the overcharging.”*

### **The Complaint for Adjudication**

The complaint for adjudication is that the Provider has failed to offer adequate redress and compensation to the Complainants for the failures identified on their 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 Complainants were 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 2 July 2021, 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 interest rate shall be no more than 1.3% above the 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 5<sup>th</sup> 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 shall be the prevailing Homeloan variable rate. (b) For the first 12 months from the date of draw down of the loan the interest rate as outlined in (a) above shall be discounted by 0.8% and shall be no more than 0.5% above the Repo rate and shall be subject to the terms and conditions outlined in (a) above. At the end of the said 12 month discount period the interest rate applicable to the loan shall revert to the rate as outlined in (a) above i.e. not more than 1.3% above the Repo rate. The discount set out in this special condition is the discount which would apply if the loan were drawn down today.*

*There is no guarantee that this discount will be available when the loan is in fact drawn down. The actual discount that will apply shall be the discount then offered by the Lender at the date of drawdown."*

At the bottom of **page 2** it states as follows;

***"This is an important legal document. You are strongly recommended to seek independent legal advice before signing it. This Offer Letter is regulated by the Consumer Credit Act, 1995 and your attention is drawn to the Notices set out on the last page of this Offer Letter."***

The Complainants signed the **Acceptance and Consents** section of the **Loan Offer** on **12 May 2005** 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."*

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It is clear to me that the Loan Offer Letter envisaged an initial discounted tracker variable interest rate of ECB + 0.5% for the first 12 months, with a tracker variable interest rate of ECB + 1.30% to apply for the remaining term of the loan. The Complainants accepted the Letter of Offer, having confirmed that they had read and fully understood the Loan Offer.

The evidence shows that on **21 July 2006** the Complainants signed and accepted a **Mortgage Form of Authorisation ("MFA")** to apply a 5-year fixed interest rate of 4.89% to their mortgage account.

On the expiry of the 5-year fixed interest rate period, the Complainants signed and accepted an MFA on **25 July 2011** to apply a 2-year fixed rate of 4.95% to the mortgage loan account. The mortgage loan statement shows that this rate was applied on **2 August 2011**.

It was at this time that the failure that was subsequently identified and accepted by the Provider in **December 2017** as part of the Examination occurred on the Complainants' mortgage loan account, in that, the Provider failed to furnish the Complainants with sufficient clarity, when they moved to the fixed rates, as to what would happen at the end of the fixed rate periods. The Provider accepts that the language used may have been confusing as to whether a tracker interest rate or a variable interest rate would apply at the end of the fixed interest rate periods.

The fixed interest rate that applied to the Complainants' mortgage loan account between **August 2011** and **August 2013** was 4.95%. Between **August 2011** and **August 2013**, the overall tracker interest rate (ECB + 1.30%) that would have applied to the Complainants' mortgage loan account fluctuated between 1.80% and 2.80%. 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 + 1.3%) had been applied to the mortgage account between **August 2011** and **August 2013**, 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 the Tracker Rate	Overpayment per month
Sep 2011 – Nov 2011	2.15%	€1,028.14	€798.14	€230.00
Dec 2011	2.40%	€1,028.14	€774.01	€254.13
Dec 2011 – Jul 2012	2.65%	€1,028.14	€750.14	€278.00
Aug 2012 – May 2013	2.9%	€1,028.14	€726.73	€301.41
Jun 2013 – Aug 2013	3.15%	€1,028.14	€704.41	€323.73

The Complainants opted to apply a two-year fixed interest rate of 4.69% to their mortgage loan account by way of **Mortgage Form Authorisation** signed and accepted by them on **10 July 2013**. The **mortgage loan statements** show that the fixed rate of 4.69% was applied to the mortgage loan account on **02 September 2013**.

The fixed interest rate applied to the Complainants' mortgage loan from **September 2013** until **August 2015**. During that period the overall tracker interest rate (ECB + 1.30%) commenced at 1.80% and gradually reduced to 1.35%. The difference in the interest rate actually charged to the mortgage loan account 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 + 1.30%) had been applied to the mortgage account between **September 2013** and **August 2015**, is also represented in the table below:

<b>Date Range (inclusive)</b>	<b>Difference in Interest rate charged vs the tracker interest rate</b>	<b>Actual monthly repayments</b>	<b>Monthly repayments if the mortgage was on the tracker rate</b>	<b>Overpayment per month</b>
Sep 2013 – Nov 2013	2.89%	€1,000.38	€704.41	€295.97
Dec 2013 – Jun 2014	3.14%	€1,000.38	€683.14	€317.24
Jun 2014 – Sep 2014	3.24%	€1,000.38	€674.74	€325.64
Sep 2014 – Aug 2015	3.34%	€1,000.38	€664.78	€335.60

The Complainants opted to apply a three-year fixed interest rate of 3.80% to their mortgage loan account by way of **Mortgage Form of Authorisation** signed and accepted by them on **14 July 2015**.

The **mortgage loan statements** show that the fixed rate of 3.80% was applied to the mortgage loan account on **01 September 2015** until **November 2017**, when the Provider restored the tracker rate of ECB + 1.30% to the mortgage loan account.

Between **September 2015** and **November 2017**, the overall tracker interest rate (ECB + 1.3%) commenced at 1.35% and reduced to 1.3%. The difference in the interest rate actually charged to the mortgage loan account 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 + 1.30%) had been applied to the mortgage account between **September 2015** and **November 2017**, 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 the tracker rate	Overpayment per month
Sep 2015 – Mar 2016	2.45%	€913.20	€664.78	€248.42
Mar 2016 – Nov 2017	2.5%	€913.20	€662.97	€250.23

The overcharge on the Complainants' mortgage loan account occurred over approximately a six-year period (**August 2011 – November 2017**).

I note that an undated statement from the Second Complainant's mother has been provided in evidence and details as follows;

*"I [Second Complainant's mother] have given money to [the Complainants] over the past number of years in order to help them with their mortgage repayments so they wouldn't fall into arrears. I helped them out the best I could financially as they struggled very hard very every month with repayments and bills. I want no stake or claim on their home. The total I would have given them over the years amounts to €18,500."*

The Complainants have also provided in evidence a valuation report completed in respect of the security property, which is dated **18 April 2018**. This document details as follows:

*"...we have inspected the above-mentioned property with the object of estimating the value of the property as at 12<sup>th</sup> of April 2018.*

...

#### **OPINION**

*We recently sold in this estate for €215,000 and currently have a similar property on the market for €245,000 in [location]. The properties are similar in style and structure however the finishing is much higher in others.*

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*At present this property would be valued at €195,000 (One hundred and ninety five thousand Euros)*

*In our opinion if the following were done it would increase the value significantly*

- *Fit Stove in place of electric fire*
- *Front door needs replacing*
- *Fitted wardrobes in bedrooms*
- *Place storage under stairs*
- *Property painted throughout*

*If above were done I would have no hesitation in valuing his property at €225,000 (Two hundred and twenty five thousand euros)."*

The Complainants have submitted that the compensation offered is inadequate on the basis that they had to borrow a sum of €18,500 from the Second Complainant's mother in order to maintain the mortgage repayments. They further submit that they were unable to renovate their property which has negatively impacted its value.

It appears to me that the claims that have been made by the Complainants with respect to the loss of the use of money to meet their monthly mortgage repayments and/or fund renovations to their property, cannot be capable of being made at the same time. Either it is the case that if the Complainants had the money available to them they would have used it to carry out renovations on the property, or they would have paid it towards the mortgage.

A letter from the Second Complainant's doctor dated **09 April 2018** has been provided in evidence which details:

*"[Second Named Complainant] is a patient of this practice.*

*She had lots of difficulties antenatally and postnatally in her first pregnancy, requiring admissions and surgical intervention. I have advised her to go privately for further pregnancies. I have informed her this will at least cost 3,000 – 4,000 euro."*

The Complainants have submitted that they were unable to afford private care in the event that the Second Complainant had another pregnancy in circumstances where the First Complainant could not afford to take leave from work to care for her.

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It does not appear to me from the documentation that has been furnished in evidence, that the Complainants ever raised any concerns with the Provider in respect of any cash flow difficulties or concerns they may have had in meeting the mortgage repayments during the period of the overcharge.

However, that is not to say that the Complainants did not experience cash flow problems during this six-year period. Furthermore, there was no obligation on the Complainants to discuss their financial difficulty with the Provider. The fact that they did not is no indication that they were not suffering financial difficulty.

I note from the evidence submitted by the Complainants that during the period between **1 January 2012** and **31 December 2017** the First Complainant was in receipt of social welfare which totalled €61,421.70, or an average of €10,236.95 per annum. The Complainants have also submitted evidence of the Second Complainant's gross annual income between **2011** and **2017** which fluctuated between €35,933.00 and €48,744.01 per annum.

Throughout the six-year period, the Complainants were denied the opportunity of making informed decisions about their finances as they did not know the true position with respect to the repayments that were actually due and owing on the mortgage loan. The evidence shows that the overcharging in the period from **August 2011** to **August 2013** was between €230.00 and €323.73 monthly, rising between **September 2013** and **August 2015** to between €295.97 and €335.60 monthly, and then decreasing to between €248.42 and €250.23 monthly between **September 2015** and **November 2017**. These are significant sums to overpay on a monthly basis. In the circumstances of the Complainants' situation, I have no doubt that the Complainants suffered inconvenience as a result of the Provider's overcharging. It cannot but be the case that the unavailability of the sums of money overcharged on a monthly basis caused considerable additional hardship and inconvenience to the Complainants.

I am of the view that the interest overcharge of €31,599.09 between **August 2011** and **November 2017** is a significant sum and the conduct of the Provider in overcharging the Complainants during this period is most unsatisfactory. I note that the Complainants have received compensation of €8,317.90, including the Independent Appeals Panel award of €5,000. This compensation was paid together with redress of €33,179.04, (interest overpaid €31,599.09 and time value of money payment of €1,579.95).

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Taking into consideration all of the evidence before me in terms of the level of overcharging and the extended period over which the overcharging occurred, and the impact such overcharging had on the Complainants, I am of the view that the level of compensation offered and paid of €8,317.90 is not sufficient or reasonable to compensate the Complainants for the inconvenience suffered by them during the impacted period.

Therefore, I substantially 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 €16,000 compensation to the Complainants in respect of the loss, expense and inconvenience the Complainants have suffered. For the avoidance of doubt, the total sum of compensation of €16,000 is inclusive of the €8,317.90 compensation already offered to the Complainants for the Provider's failure.

For the reasons outlined in this Decision, I substantially uphold this complaint.

### **Conclusion**

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

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 Complainants in the sum of €16,000, to an account of the Complainants' choosing, within a period of 35 days of the nomination of account details by the Complainants to the Provider. For the avoidance of doubt, the total sum of compensation of €16,000 is inclusive of the €8,317.90 compensation already offered to the Complainants for the Provider's failure.

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

**GER DEERING**  
**FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

28 July 2021

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.