



<u>Decision Ref:</u>	2018-0030
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Investment/buy to Let Mortgage
<u>Conduct(s) complained of:</u>	Wrongful consideration of forbearance request Arrears handling buy-to-let Application of interest rate
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The complaint concerns a mortgage the Complainant has with the Provider.

The Complainant's Case

The Complainant approached the Provider early in 2016 to request an extension to the interest only facility on her investment property. The Complainant is struggling financially and states that the property is in *"high negative equity"*. She submits that the Provider agreed to an extension of the interest only period *"on the basis I surrender my tracker rate and more than double my current rate"*. She contends that this is an *"excessive penalty on someone who is already financially strapped"* and that the solution is not in her best interests. The Complainant submits that the Provider's offer is *"unfairly biased to benefit the bank and not in my best financial interest as a consumer"*. She submits that the interest rate will double from .9% to 1.9% *"so ... will leave me repaying substantially more interest while not reducing my capital balance"*. She states that the property was purchased in 2006 for €200,000.00 and is now worth approximately €65,000; it is rented at €650.00 per month.

The complaint is that the Provider has wrongfully attached an unfair condition to the Complainant's request for interest only payments on her mortgage. The Complainant would like to retain her existing tracker rate and repay the sum of €260.00 per month.

The Provider's Case

The Provider states that its decision was "*fair and reasonable*". It states that the Complainant is in a position to pay "*the suggested reduced repayments of €260.80 per month*". It states that when Buy to Let Tracker (BTL) mortgage customers who are not subject to the Code of Conduct of Mortgage Arrears (CCMA) "*seek a new amendment to their terms and conditions these will only be offered on a variable rate mortgage*". It states that should the Complainant stay on her "*existing terms and conditions.... you will of course retain your existing Tracker rate*".

The Provider states that the property on which this mortgage loan is secured is not the Complainant's principal private residence or "*the only property within the state*" and accordingly does not come within the provisions of the CCMA. It states that the Complainant has stated that she "*was not seeking forbearance in relation to her primary residence or her additional investment property ..*".

The Provider states that the Complainant submitted her financial information on the 1 March 2016 and that arising from its assessment it offered her a further period of interest only for a period of 56 months subject to the conversion of the interest rate from a tracker rate which was at 0.950% (ECB +0.900%) per annum to a buy to let variable rate priced at 1.950% per annum. It states that "*an amended repayment schedule can only be implemented when agreed by both parties to the loan*".

Decision

During the investigation of this complaint by the Financial Services Ombudsman's Bureau, 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.

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 was 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 was also satisfied that the submissions and evidence furnished were sufficient to enable a determination to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Finding was issued to the parties on the 13 December 2017 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

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parties, within that period, a Legally Binding Finding would be issued to the parties, on the same terms as the Preliminary Finding, in order to conclude the matter.

Following the commencement of the **Financial Services and Pensions Ombudsman Act 2017**, on 1 January 2018, the final determination of this office is now issued to the parties, by way of this Legally Binding Decision of the Financial Services and Pensions Ombudsman.

In the absence of additional submissions from the parties, the final determination of this office is set out below.

The Complainant's loan offer issued on the 8 March 2006 as follows:-

PART 1

1. Amount of Credit Advanced	€160,000	
2. Period of Agreement	20 Years	
3. Number of Repayment Instalments		4. Amount of each instalment...
120 Variable at 3.600%	€480.00	
120 Variable at 3.600%	€1,589.68

...

PART 2...

- 11. Type of Loan Interest Only
- 12. Interest Rate: 3.600% Variable
- 13. Property to be Mortgaged...

....

PART 3 – The General and Special Conditions

...

4. Repayment

(a) Unless otherwise stated herein the repayment of the Loan shall be by monthly instalments in arrears ... For an annuity or other repayment loan, repayments shall be comprised of principal and interest and any other amounts payable ...

...

The Society may at its absolute discretion and with the consent of the Borrower vary any payment of principal, interest or any other amount payable in respect of the Loan...

...

11. Special Conditions

(a) The following special conditions apply to the Loan:

...

(ii) 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 European Central Bank Main Refinancing Operations Minimum Bid Rate...

...

For the first 10 years of the term of the Loan, repayment of this Loan shall be comprised of interest and any other amounts payable only ... At the end the above period repayments shall comprise of principal and interest and any other amounts payable ...”.

The Complainant signed the letter of offer, indicating her agreement to these terms, on the 9 March 2006 as follows:-

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"I confirm that I have read and fully understand..... the terms and conditions contained in this Offer Letter and I confirm that I accept the Offer Letter on such terms and conditions..."

The Provider states that on the 5 January 2007 it *"agreed a reduced rate of ECB+0.900%"* with the Complainant.

In January and February 2016 in circumstances where the Complainant's interest only period was due to end in May 2016, the Complainant submitted details of her financial situation to the Provider and had a number of meetings with it.

On the 7 March 2016, the Provider wrote to the Complainant as follows:-

*"We have carefully assessed your mortgage loan and ... outline the full details of the alternative repayment arrangement option available to you.
... there are some matters for you ... to consider.*

Accepting the form of Agreement will have long term implications for you, for example:

- i) Your loan capital may not be repaid as quickly as is provided for in your initial mortgage loan offer letter.*
- ii) It is possible that you may owe us more at the end of the alternative repayment arrangement than you owe us now.*
- iii) The total cost of the credit is likely to be higher than outlined in the initial version of your mortgage loan offer letter.*
- iv) Where the alternative repayment arrangement lasts for an agreed period only, once that period ends, we will recalculate your repayment instalments and they will have to be enough to ensure you repay the mortgage over the remaining term of the loan. These repayments are likely to be higher than the repayment instalments set out in the initial version of your mortgage loan offer letter...*

*...
viii) You will lose the present tracker variable rate for the remaining term of the mortgage loan...*

*...
Agreement to Amend Mortgage Loan Offer Letter...*

*...
... The "Agreed Period" means that period of 54 months starting from the date we put the alternative repayment arrangement into effect...*

When the Agreed Period ends you 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 principal and other sums which you did not pay during the Agreed Period ...

*...
This form converts the interest we charge on the Loan from a tracker rate which is 0.950% per annum at present to a BTL Variable rate. The BTL Variable rate will apply for the remaining term of the Loan ... At present this BTL Variable rate is 1.950% per annum...
Any commitment or obligation in your Mortgage Loan Offer Letter ... to provide you with a tracker variable rate for the Loan... will end once you complete and return this form....*

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We estimate you are now obliged to pay us monthly instalments of €1,370.11 each and that the total cost to you of the Loan would be €8,005.95 ...

If you accept this form we estimate you will be obliged to pay monthly instalments of €260.84 each during the Agreed Period and of €2461.09 each thereafter. The total cost of the Loan would be €23,382.99...”.

The Complainant wrote to the Provider on the 6 April 2016 pointing out that *“your original offering obviously is more beneficial to the bank but it is not at all beneficial to myself”*. She suggests that *“a fairer solution to all parties concerned would be to maintain the tracker rate at .9%. I repay the €253 per month as above ... until October 2020 at which time I will increase the repayments to full capital and interest repayments while maintaining the tracker rate”*.

The Provider states that it can *“exercise its commercial discretion when amending loan terms in response to requests for a renegotiation of terms, where those mortgages are outside the scope of CCMA This amendment can only be implemented with the consent of the borrower and it is at all times open to the borrower not to accept the Bank’s offer”*. It states when Buy to Let borrowers seek to amend the terms and condition of their original mortgage *“they will only be offered such changes subject to the conversion of their existing tracker rate to a standard variable rate”*.

I accept that there is no regulatory requirement for financial institutions to agree to a particular demand from an account holder, for a specific interest rate. While it is my view that the Provider should do its utmost to agree a more long-term and permanent solution in the interests of both parties, it is important for the Complainant to be aware that she has a contractual obligation to repay the monies borrowed to the Provider in the way which was set out to her in March 2006; this was agreed when she entered into the mortgage agreement by signing her acceptance of the letter of loan offer which specified those terms. I appreciate that the Complainant is under financial pressure and understandably would like the tracker interest rate to continue to apply to her mortgage. I note, however, that this mortgage is secured on an investment property, which is not the Complainant’s primary residence, and that she owns a number of properties. Accordingly, I accept that the protections of the CCMA do not apply in this instance. I am also of the view that the Provider has a commercial discretion in determining the outcome of any application from an account holder to amend the mortgage agreement. Accordingly, I accept that the Provider is entitled to refuse the Complainant’s request to have a further interest only period while also remaining on the tracker interest rate. I am satisfied that there is no regulatory requirement for financial institutions to agree to a particular demand from a borrower regarding changes to the agreed contractual repayment arrangement on a loan.

For the reasons outlined above, I am satisfied that I have not been furnished with evidence of any wrongdoing on the part of the Provider. I accept that the Provider was entitled to exercise commercial discretion to refuse the Complainant’s proposal and to instead offer a counter proposal, which the Complainant however is unwilling to accept. One can well understand why the Complainant does not find the Provider’s counter proposal acceptable, as the short term benefits will ultimately create a significant cost to her in the

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future and were she to accept the counter proposal, the BTL variable rate would be subject to variation at the discretion of the Bank, whereas the existing tracker rate varies only when the ECB rate is varied which is a matter outside the control of the Provider. Just as the Complainant is unwilling to accept the Provider's counter proposal the Provider is however unwilling to facilitate the Complainant's request for a further interest only period, without other changes to the loan agreement being put in place. For the reasons outlined above however, the Provider is entitled to maintain this position and therefore I am satisfied that the complaint cannot be upheld. I would, however, urge the parties to engage with a view to achieving agreement on a mutually satisfactory repayment arrangement.

For the reasons outlined above, my Decision is that I am not in a position to uphold the complaint.

Conclusion

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is rejected.

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.

MARYROSE MCGOVERN
DIRECTOR OF ADJUDICATION AND LEGAL SERVICES

17 January 2018

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) in accordance with the Data Protection Acts 1988 and 2003.