



<u>Decision Ref:</u>	2020-0381
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Tracker Mortgage
<u>Conduct(s) complained of:</u>	Failure to offer a tracker rate throughout the life of the mortgage
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

This complaint relates to two mortgage loan accounts ending **2085** and **2325** held by the Complainant with the Provider. The mortgage loans are secured on two investment properties held by the Complainant.

- **Mortgage loan account ending 2325**
The loan amount was €169,000 and the term was 25 years. The particulars of the Loan Offer dated **01 August 2006** detailed that the loan was subject to a tracker rate of ECB + 1.50%.
- **Mortgage loan account ending 2085**
The loan amount was €229,000 and the term was 30 years. The particulars of the Loan Offer dated **24 August 2006** detailed that the loan was subject to a five year fixed rate of 4.89%, thereafter a tracker interest rate of ECB + 1.25% applied to the mortgage loan.

The Complainant's Case

The Complainant submits that he had two mortgage loan accounts with the Provider.

The Complainant submits that he *“paid [his] agreed mortgage repayments on both [his] mortgages for a number of years before [the Complainant] could not meet the agreed repayments.”*

The Complainant submits that he contacted the Provider in respect of his repayments and he was *“put on an interest only rate for a period of time.”* The Complainant details that once this arrangement had expired, he was not offered any further repayment arrangements.

The Complainant sought to renegotiate his repayment terms in **August 2014**. The Provider issued the Complainant an **Agreement to Amend Mortgage Loan Offer Letter** dated **29 August 2014** in respect of mortgage loan account ending **2325**. This agreement removed the Complainant’s contractual entitlement to a tracker rate and converted the applicable interest rate to a buy to let variable rate. The Complainant signed this Agreement on **08 September 2014**.

The Provider issued the Complainant an Agreement to Amend Mortgage Loan Offer Letter dated **12 September 2014** in respect of mortgage loan account ending **2085**. The Complainant signed the Agreement on **17 September 2014**.

The Complainant submits that he *“was forced into switching from [the Complainant’s] tracker rate to a variable rate in addition to the term of the mortgages being extended”*. The Complainant details that *“other repayment options should have been exhausted prior to being removed from [his] tracker rates”*.

The Complainant submits that he does not accept the Provider’s submission that he *“came to them seeking a maximum term extension.”* The Complainant submits that he informed the Provider that he would be in a position to revert to his original mortgage loan repayments once he had repaid his other outstanding debts. The Complainant states that *“it was at this point that [the Provider] suggested a term extension and told [the Complainant] that this was the only way that the issue could be resolved.”* The Complainant submits that he only chose the term extension on this basis.

The Complainant is seeking the following;

- a) The monetary difference between the tracker rate and the variable rate that was applied to the mortgage loan accounts since **2014**.
- b) The tracker rate to be restored to his mortgage loan accounts.

The Provider's Case

The Provider outlines that the Complainant entered into the following alternative repayment arrangements and moratoriums with respect to the mortgage loans that are the subject of this complaint between **2009** and **2013**:

(a) Mortgage Loan Account 2325

- The Complainant signed a **Mortgage Form Authorisation** on **17 August 2011**, which put in place interest only repayments for a 6 month period.
- The Complainant signed a **Mortgage Form Authorisation** on **01 February 2012**, which put in place interest only repayments for a 3 month period. The Provider submits that this agreement was backdated to **November 2011**.
- The Complainant signed a **Mortgage Form of Authorisation** on **11 February 2012**, which put in place interest only repayments for a 3 month period.

(b) Mortgage Loan Account 2085

- The Complainant received a moratorium of a capital and interest in **April, May and June 2009** by "*acknowledgement and agreement*". The Complainant signed for this on **25 March 2009**.
- The Complainant signed a **Mortgage Form of Authorisation** on **07 January 2011**, in order to receive a moratorium for a period of 3 months.
- The Complainant signed a **Mortgage Form of Authorisation** on **24 June 2011**, which put in place interest only repayments for a 6 month period.
- The Complainant signed a **Mortgage Form of Authorisation** on **24 January 2012**, which put in place interest only payments and part arrears for a 6 month period.
- The Provider capitalised the arrears in the amount of €5,285.39 on the mortgage loan account on **19 June 2013**.

The Provider detailed that on **16 June 2014**, the Complainant contacted the Provider by telephone requesting current balances on both mortgage loan accounts and requested a moratorium on both accounts due to "*financial constraints*" and a lack of "*disposable income*". The Provider outlines that the Complainant was advised to complete a Standard Financial Statement and speak to his area network manager. The Provider submits that its representative took the Complainant's contact details and a request was made to the network manager to contact the Complainant, which duly occurred on **24 June 2014**.

The Provider outlines that a Standard Financial Statement was completed by the Complainant on **29 July 2014**. The Provider submits that its network area manager met

/Cont'd...

with the Complainant on **18 August 2014** and the Complainant was seeking a maximum term extension.

The Provider details that on the completion of the assessment of the Complainant's financial circumstances, the Provider offered the Complainant an Alternative Repayment Arrangement by way of the Agreement to Amend the Mortgage Loan Offers dated **29 August 2014** and **12 September 2014**. The Provider outlines that the effect of these documents was to convert the applicable tracker rate to a BTL variable rate and to extend the terms of the Mortgage Loan until 01 May 2048.

The Provider submits that the mortgage terms and conditions of the original mortgage loan documentation allows for a variation of the terms of the mortgage loan agreement. The Provider submits that as a result of these terms *"the [Provider] can exercise its commercial discretion when amending loan terms in response to renegotiation of terms, where those mortgages are outside the scope of the Code of Conduct on Mortgage Arrears (CCMA)"*. The Provider further submits that due to the nature of the property, being a Buy to Let investment property, it was not afforded protection under the **Code of Conduct on Mortgage Arrears**.

The Provider submits that a new pricing policy was introduced on **26 November 2012** for non CCMA Buy to Let (BTL) tracker customers seeking any change to their existing repayment terms and conditions. The Provider states that under this policy, where a change in terms and conditions was deemed appropriate as part of a financial review, then the customer would be offered a new standard variable rate mortgage for the life of the loan, which was initially priced at 1% above what they were then paying on the tracker interest rate mortgage. The Provider outlines that the tracker status of the loan ends on taking up the amendments to the terms and conditions. The Provider submits that its offer to the Complainant on **29 August 2014** and **12 September 2014** in respect of the extension of mortgage loan terms were assessed by reference to this policy.

The Provider submits that it was open to the Complainant to accept or reject the Provider's offer. However, the Complainant signed and accepted the agreements on **08 September 2014** and **17 September 2014**.

The Provider outlines that the interest rates were explained and the advantages and disadvantages were also outlined. The Provider states that both agreements complied with the requirement of the **Consumer Protection Code 2012**.

The Provider details that the agreements contained the *"requisite legal notices to include warnings, indicative comparisons and details of the advantages and disadvantages."* The

Provider further submits that it acted honestly, fairly and professionally in the best interests of the Complainant.

The Provider submits that the Complainant had acknowledged and informed the Provider that he did not receive independent legal advice but that he had "*sufficient appreciation of financial and legal matters*" and understood the implications of the agreements. The Provider does not accept the Complainant's submission that he was "*forced*" to give up his tracker rate.

The Provider submits that it is satisfied that it "*did not recklessly, negligently or deliberately mislead the [Complainant] as to the real or perceived advantages or disadvantages of any product or service.*"

The Complaint for Adjudication

The complaints for adjudication are that the Provider incorrectly removed the tracker rates from both of the Complainant's mortgage loan accounts and that the Provider incorrectly forced the Complainant to extend the terms of the mortgage loan accounts in **2014**.

Decision

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

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

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

A Preliminary Decision was issued to the parties on 7 October 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

/Cont'd...

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.

In order to adjudicate on this complaint, it is necessary to review and set out relevant provisions of the Complainant's two mortgage loans (accounts ending **2325** and **2085**) and to consider the interactions between the Complainant and the Provider in **2014**.

Mortgage loan account ending 2325

The Loan Offer Letter dated **01 August 2006** with respect to mortgage loan account ending **2325**, outlined as follows:

<i>"Amount of Credit Advanced:</i>	<i>€169,000</i>
<i>Period of Agreement:</i>	<i>25 Years</i>
<i>...</i>	
<i>Type of Loan:</i>	<i>Repayment</i>
<i>Interest Rate:</i>	<i>4.250% Variable"</i>

The **Part 4 (vi)** of the Special Conditions details as follows;

"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 1.50% 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 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 will be the prevailing Home Loan variable rate."

General Condition 4 of Part 5 – The General Conditions details as follows;

"4. Repayment

- (a) *Unless otherwise stated herein or agreed by the Lender in writing, the repayment of the Loan shall be by monthly instalments in arrears by direct debit and the Borrower must effect and maintain a suitable direct debit*

/Cont'd...

mandate with the Borrower's bank or other financial institution. For an annuity, or other repayment loan, repayments shall be comprised of principal and interest and any other amounts payable and for an endowment loan shall comprise of interest and such other amounts only. The due dates for repayment of the Loan are those dates that are from time to time set by the Lender. The amounts of such repayments and the due dates for payment thereof shall be determined by the Lender at its absolute discretion.

- (b) In the event of any repayment not being paid on the due dates or any of them, or of any breach of the Conditions of the Loan or any of the covenants or conditions contained in any of the security documents referred to in clause 2(a), the Lender may demand an early repayment of the principal and accrued interest or otherwise alter the Conditions of the Loan.*
- (c) If so agreed in writing by the Lender, the Loan may be repaid in 10 or 11 payments in any year of the term and such payments (unless the Lender at its absolute discretion permits an extension of the term) shall be of such amounts as will discharge the liability of the Borrower during the year for that Loan.*
- (d) The Lender 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."*

The **Acceptance of the Loan Offer** details as follows;

"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 signed and accepted the **Loan Offer Letter on 10 August 2006**. It is clear that the mortgage loan offer envisaged a tracker interest rate of ECB + 1.5% would be applied to the mortgage loan account.

Mortgage loan account ending 2085

The Loan Offer Letter dated **24 August 2006** with respect to mortgage loan account ending **2085**, outlined as follows:

"Amount of Credit Advanced: €229,000

/Cont'd...

<i>Period of Agreement</i>	<i>30 Years</i>
...	
<i>Type of Loan:</i>	<i>Repayment</i>
<i>Interest Rate:</i>	<i>4.890%”</i>

The **Part 4 (ii)** of the Special Conditions details as follows;

“The interest rate applicable to the loan is a fixed rate and is fixed for the period set out in Part 1 of this Offer Letter. At the end of the fixed rate period the Lender shall have sole discretion to provide any further or subsequent fixed rate period.

If the Lender does not provide such a further or subsequent fixed rate period or if the Lender offers the Borrower a choice of interest rate at the end of any fixed rate period and the Borrower fails to exercise that choice then in either case, in accordance with general condition 7(b) of the Offer Letter, the interest rate applicable to the Loan will be a variable interest rate. This variable interest rate may vary upwards or downwards. The interest rate shall be no more than 1.25% above the European Central Bank Main Refinancing Operations Minimum 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 mortgage loan documentation contains the same **General Condition 4 of Part 5 – The General Conditions** as outlined above with respect to mortgage loan account ending **2325**.

The **Acceptance of the Loan Offer** details as follows;

“1. 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 signed and accepted the Loan Offer on **14 August 2006**. It is clear from the mortgage loan documentation that a five year fixed rate would apply to the mortgage loan account and on the expiry of the fixed rate a tracker interest rate of ECB + 1.25% would apply. The mortgage loan notes show that the mortgage loan was drawn down on **31 May 2007** and that the tracker interest rate of ECB + 1.25% was applied to the mortgage loan on **31 May 2012**.

/Cont’d...

It is not in dispute between the parties that the Complainant entered into a number of alternative repayment arrangements and moratoriums with respect to both mortgage loans (accounts ending **2325** and **2085**) between **2009** and **2013**.

The Complainant contacted the Provider by telephone on **16 June 2014**. I have not been provided in evidence with an audio recording of the telephone call, however, the Provider has furnished the note from its internal system of the call, which outlines as follows:

“CUST CALLED LOOKING FOR CUR-BAL ON 2 A/cs [ending 2325 and 2085]. Adv cust of info. Cust adv looking for a mora on his mortgage as adv things are tight.

Cust adv has not disposable income. Adv cust needs to complete SFS & speak to NAM. Cust adv [location] branch best suited for meeting. Cust adv [number] best contact number.”

The content of the call is not in dispute between the parties.

The Complainant completed and signed a **Standard Financial Statement (SFS)** on **29 July 2014**. The SFS recorded the “Reason(s) for Review/Arrears” as “Constant Financial Constraint”. The SFS recorded as follows:

<i>Total Monthly Income</i>	<i>2,887.50</i>
<i>Less Total Monthly Expenditure</i>	<i>980.63</i>
<i>Sub-Total</i>	<i>1,906.87</i>
<i>Less Mortgage Repayments Due</i>	<i>908.86</i>
<i>Total Other Monthly Debts Due</i>	<i>1270.77</i>
<i>Total Surplus/Deficit</i>	<i>-272.76</i>

A meeting took place between the Complainant and the Provider’s Network Area Manager on **18 August 2014**.

I have been provided in evidence with the Provider’s note of that meeting entitled “Summary of discussion with customer(s)” which records as follows:

“Path to long-term sustainability is max T/E across both mortgage a/c’s to give [the Complainant] the breathing space that he requires due to the fact that he only gets paid for 8 mths of the year & he still has to meet mthly outings 12 mths of the year. [The Complainant] needs to be able to build in funds in his c/a over the 8 mths that he is paid in order to be able to sustain the mthly outgoings during the 4mths that he is

/Cont’d...

not being paid. [The Complainant's] 8mth income months are as follows: March to October & he receives Jobseekers benefit Nov, Dec & Jan.

[The Complainant] is single with no dependents, he has worked in family business as a [title, name business and location] for the past 3 years. The work in [redacted] is seasonal as the business only trades from March to October each year. [The Complainant] is requesting a max T/E across both mortgage a/c's as he needs to free up some NDI in order to be able to sustain all his mthly outlays over the 12 mths while only getting paid during an 8 mth period and in receipt of jobseekers benefit for 3 of the 4 mths while he is not working. [The Complainant] has both security properties rented @ 625pm each. [The Complainant] lives rent free over the [business] presently & he does not see this as his long term plan & will be looking to rent a house in the short term.

[The Complainant] does not know whether or not he will ever return & live in either of the 2 security properties, his view on it presently is if he can keep them rented and not costing him too much each mth he would like to hold onto them until they return to positive equity & at that stage he would sell them, he does not see the point at selling them at a loss presently & he would still be liable for the shortfall."

It appears from the evidence that following this meeting the Provider's Network Manager conducted an assessment on the SFS. The "Branch Recommendation and Rationale" section of the assessment details as follows:

"Recommendation: Max term extension across both mortgage a/cs.

Rationale: [Complainant] is looking to free up some NDI due to the fact that he gets paid over 8mths of the year but has to sustain mthly outlays over the 12mths of the year, [The Complainant] is in receipt of jobseekers benefit of 814pm during 3 of the 4mths that he is not being paid but this is not enough all his outlays during the 4mths."

The "Extended Term" option was selected with a new maturity date of 01/05/2047.

The Provider submits that the Complainant "was seeking a maximum term extension". The Complainant takes issue with this statement and submits that he "informed the bank that if [he] was given more time interest free that [he] would be able to pay off other outstanding debts and return to paying the mortgage as usual".

I accept that the evidence does not support the Provider's position that the Complainant specifically sought a maximum term extension at the time. However it is clear from the

/Cont'd...

evidence that the Complainant was seeking some form of alternative repayment arrangement from the Provider. It is important for the Complainant to be aware that the Complainant at all times remained obliged to comply with the terms and conditions of the original **Mortgage Loan Offer Letter's**, which were signed and accepted by him, that is, to make the monthly repayments on those mortgage loans in accordance with **General Condition 4 of Part 5 – The General Conditions**. There was no obligation on the Provider to accede to the Complainant's request to "give" the Complainant "more time interest free". The evidence shows that the Provider's representative assessed the Complainant's financial circumstances and the recommendation made by the Provider's representative was to offer the Complainant term extensions on both mortgage loan accounts to May 2047.

Two agreements issued to the Complainant; on **29 August 2014** with respect to mortgage account ending **2325** and on **12 September 2014** with respect to mortgage account ending **2085**.

I note that **Section A** of the relevant forms details as follows;

Mortgage Account ending 2325	Mortgage Account ending 2085
<p><u>"SECTION A: WHAT THIS FORM DOES Conversion from Tracker Rate to New Interest Rate Type"</u></p> <p><i>Tracker to BTL Variable</i></p> <p><i>This form converts the interest we charge on the Loan from a tracker rate which is 1.650% per annum at present to a BTL Variable rate. The BTL Variable Rate will apply for the remaining term of the Loan (except for periods in which you and we agree in writing to fix the interest rate for the Loan). At present this BTL Variable rate is 2.650% per annum.</i></p> <p><u>Maturity Date of the Loan</u></p> <p><i>This form changes the maturity date of the Loan to 1/05/2048</i></p>	<p><u>"SECTION A: WHAT THIS FORM DOES Conversion from Tracker Rate to New Interest Rate Type"</u></p> <p><i>Tracker to BTL Variable</i></p> <p><i>This form converts the interest we charge on the Loan from a tracker rate which is 1.300% per annum at present to a BTL Variable rate. The BTL Variable Rate will apply for the remaining term of the Loan (except for periods in which you and we agree in writing to fix the interest rate for the Loan). At present this BTL Variable rate is 2.300% per annum.</i></p> <p><u>Maturity Date of the Loan</u></p> <p><i>This form changes the maturity date of the Loan to 1/06/2047</i></p>

Section B of both of the forms with respect to mortgage account ending **2325** and **2085** details as follows;

“SECTION B: FURTHER TERMS AND CONDITIONS OF THIS FORM

B.1 ANY COMMITMENT TO A TRACKER RATE ENDS

Any commitment or obligation in your Mortgage Loan Offer Letter or otherwise to provide you with a tracker variable rate for the Loan, now or in the future, will end once you complete and return this form.

This Clause takes precedence over any condition of your Mortgage Loan Offer Letter, this form or elsewhere concerning interest in general or tracker variable rates in particular including any Special Condition. The phrases “tracker rate”, “tracker interest rate” or “tracker variable rate” are popular expressions to describe an interest rate that is an agreed margin above the European Central Bank (“ECB”) Main Refinancing Operations Rate (including where it is described in your Mortgage Loan Offer Letter or elsewhere as the ECB Main Refinancing Operations Minimum Bid Rate). A tracker rate follows or “tracks” movements in this ECB rate. The word “tracker” and phrases containing that word are used with that meaning in this form.”

...

“B.7 This Form will amend the Mortgage Loan Offer Letter

- 7.1 This form will amend the terms and conditions that apply to the Loan, including the Mortgage Loan Offer Letter.*
- 7.2 This form does not change the maturity date of the Loan which will remain as provided for in the Mortgage Loan Offer Letter unless Section A says so (if it does say so, the term of the Loan is extended by the maturity date shown in Section A).*
- 7.3 Unless amended or replaced by this form, each of the terms and conditions of the Mortgage Loan Offer Letter will remain in full force and effect. (For example, the General Terms and Conditions contain clauses dealing with interest in general, additional interest charges on overdue payments, variable interest rates and fixed interest rates.*
- 7.4 If there is a conflict between a term or condition in the Mortgage Loan Offer Letter and a term or condition in this form, the term and condition in this form will take priority.*

/Cont’d...

B.10 About Your Acceptance of this Form

10.1 You have five weeks from the date of this form shown on page 1 (the “Acceptance Period”) to consider it and to return it to us properly completed.
...”

Section C of the forms provide as follows;

“SECTION C: LEGAL NOTICES

(PLEASE READ THESE CAREFULLY)

Warning: if you switch to an alternative interest rate, you will not be contractually entitled to go back onto a tracker interest rate in the future.

INDICATIVE COMPARISON OF THE COST OF YOUR LOAN AT ITS TRACKER INTEREST RATE TO THE COST OF YOUR LOAN AT THE RATE & ON THE TERMS OFFERED IN THIS FORM (Consumer Protection Code, Provision 6.9)”

Mortgage Account ending 2325	Mortgage Account ending 2085
<p>(a) We estimate you are now obliged to pay us monthly instalments of €751.42 each and that the total cost to you of the Loan would be €20,232.34. This estimate (i) is based on the tracker interest rate and the terms and conditions that apply to the Loan before you accept this form; but (ii) assumes you pay instalments of principal and interest on a normal annuity basis (for example, this estimate takes no account of any alternative repayment arrangement we may have entered into with you before we sent you this form.)</p>	<p>(a) We estimate you are now obliged to pay us monthly instalments of €899.19 each and that the total cost to you of the Loan would be €33,038.10. This estimate (i) is based on the tracker interest rate and the terms and conditions that apply to the Loan before you accept this form; but (ii) assumes you pay instalments of principal and interest on a normal annuity basis (for example, this estimate takes no account of any alternative repayment arrangement we may have entered into with you before we sent you this form.)</p>

<p><i>(b) If you accept this form, we estimate you will be obliged to pay monthly instalments of €505.41 each. The total cost of the Loan would be €69,379.45. These estimates are based on the rate of interest and other terms (for example, your reduced payment obligations during the Agreed Period) provided for in this form.</i></p> <p><i>(c) The increase in the cost of the Loan is because (i) the interest rate offered in this form is higher than your present tracker interest rate; and (ii) the Loan principal will not be repaid as quickly as set out in the initial version of your Mortgage Loan Offer Letter.</i></p> <p><i>(d) Each estimate (i) assumes you met your payment obligations to us in full and in time; (ii) is indicative only, for example, the amounts you pay in regular instalments may differ because of future changes in interest rates; (iii) assumes you make 12 monthly payments each year even if you have another arrangement with us; and (iv) includes arrears, even if arrears are not being capitalised as part of this agreement.</i></p>	<p><i>(b) If you accept this form, we estimate you will be obliged to pay monthly instalments of €769.48 each. The total cost of the Loan would be €89,964.87. These estimates are based on the rate of interest and other terms (for example, your reduced payment obligations during the Agreed Period) provided for in this form. The increase in the cost of the Loan is because (i) the interest rate offered in this form is higher than your present tracker interest rate; and (ii) the Loan principal will not be repaid as quickly as set out in the initial version of your Mortgage Loan Offer Letter.</i></p> <p><i>(c) Each estimate (i) assumes you met your payment obligations to us in full and in time; (ii) is indicative only, for example, the amounts you pay in regular instalments may differ because of future changes in interest rates; (iii) assumes you make 12 monthly payments each year even if you have another arrangement with us; and (iv) includes arrears, even if arrears are not being capitalised as part of this agreement.</i></p>
--	--

The **Agreement to Amend Mortgage Loan Offer Letters** also contained a section entitled “Advantages and disadvantages of tracker and other rates (Consumer Protection Code, Provision 6.9)” which provided the advantages and disadvantages of a Tracker Variable Rate, A BTL Variable Rate and a Fixed Rate.

The Complainant signed the **Acceptance of the Agreement to Amend Mortgage Loan Offer Letter** with respect to mortgage loan account ending **2325** on **08 September 2014** and with respect to mortgage loan account ending **2085** on **17 September 2014** on the following terms;

“By signing this form:-

- (1) I confirm I understand both the form and the information given to me in the letter that the Lender sent me with this form;*
- (2) I accept and agree to be bound by the terms and conditions of the form;*
- (3) I understand I am moving from a tracker rate of interest using this form. I have read and understood each part of the form concerning that, including Section C.*
- (4) PLEASE TICK AT LEAST ONE OF THE FOLLOWING BOXES:*

- I have received independent legal advice on this form.*
- I have received independent financial advice on this form.*
- I did not get independent legal or financial advice on this form because I have sufficient appreciation of financial and legal matters and of the meaning of this form to understand this form completely. I am satisfied to sign it without such advice; I will never raise the lack of advice as a reason to question this form.”*

The Complainant signed and accepted the **Agreement to Amend Mortgage Loan Offer Letters**, having ticked the box that he did not get independent legal or financial advice on both letters.

The Complainant submits that he was “*forced*” into switching from the tracker interest rate to a variable interest rate and to the term of the mortgage loans being extended. There is no evidence that the Provider “*forced*” the Complainant to enter into the arrangements in **September 2014**. The Complainant was seeking an alternative repayment arrangement. It was within the Provider’s discretion to decide whether to grant the Complainant an arrangement and in doing so, whether the Provider wished to introduce any different terms to the agreement. The Provider, in accordance with its Buy-to-Let Pricing policy offered a Standard Variable Rate which was to start at 1% above the current tracker interest rate on the Complainant’s mortgage loan.

I accept that the Complainant did not want to give up the entitlement to the tracker interest rates of ECB + 1.5% and ECB + 1.25% on the mortgage loans, however, the reality of the situation at that time in **September 2014**, was that the Complainant could not

/Cont’d...

service the repayments required within the original term of the loans. The Complainant was seeking to agree an alternative arrangement and it was a matter for him to decide whether to accept that arrangement on offer by the Provider. If the Complainant was not happy with the terms of the **Agreements to Amend Mortgage Loan Offer Letters**, including the amendment to the interest rate, the Complainant could have decided not to accept the offer made by the Provider.

Provision 6.9 of the **Consumer Protection Code 2012 (CPC 2012)**, outlines as follows;

“a regulated entity offers a personal consumer the option to move from a tracker interest rate to an alternative rate on their existing loan; the lender must provide the personal consumer with the following information on paper or on another durable medium:

- i. Indicative comparisons of the cost of the monthly repayments at the personal consumer’s current tracker interest rate and each of the alternative rate(s) being offered;*
- ii. An indicative comparison of the total cost of the loan if the personal consumer continue with the existing tracker interest rate and the total cost of the loan for each of the alternative rate(s) and terms being offered. Any assumptions used must be reasonable and justifiable and must be clearly stated; and*
- iii. Details of the advantages and disadvantages for the personal consumer of the tracker interest rate compared to each of the other rate(s) being offered.*

The following warning statement should also appear with the information above, in circumstances where a personal consumer will not be able to revert to a tracker interest rate if they move to an alternative rate:

Warning: If you switch to an alternative interest rate, you will not be contractually entitled to go back onto a tracker interest rate in the future.

This provision does not apply to a mortgage on a primary residence covered by the Code of Conduct for Mortgage Arrears which is in “arrears” or “pre-arrears” as defined in the Code of Conduct for Mortgage Arrears.”

The appropriate information and warnings under **provision 6.9** of the **CPC 2012** were contained in the **Agreements to Amend Mortgage Loan Offer Letters**. Neither of the Complainant's mortgage loans were secured on a primary residence.

Provision **6.10** of the **CPC 2012** details as follows;

"A regulated entity must allow the personal consumer at least one month to consider any change proposed under Provision 6.9 and advise the personal consumer of this entitlement".

The evidence shows that the Provider complied with **provision 6.9** and **6.10** of the **Consumer Protection Code 2012**.

Therefore I cannot accept that the Provider incorrectly removed the tracker rates from both of the Complainant's mortgage loan accounts and that the Provider incorrectly forced the Complainant to extend the terms of the mortgage loan accounts in **2014**. The Complainant was seeking an alternative repayment arrangement on his mortgage loans to assist with his *"constant financial constraints."*

The Provider offered the Complainant term extensions of circa 17 years on mortgage account ending **2325** and 10 years on mortgage account ending **2085** on the condition that the Complainant agreed to change the interest rate applicable to the mortgage loans from a tracker interest rate to a variable interest rate. The Provider issued an offer to the Complainant to this effect on each mortgage loan in the form of the **Agreements to Amend Mortgage Loan Offer Letters**, which contained the appropriate warnings in compliance with the **CPC 2012**, about moving from a tracker interest rate to a variable interest rate. The Complainant accepted the **Agreement to Amend Mortgage Loan Offer Letter** with respect to each mortgage loan.

For the reasons outlined in this Decision, I do not 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 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.

/Cont'd...



GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

29 October 2020

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

(a) ensures that—

(i) a complainant shall not be identified by name, address or otherwise,

(ii) a provider shall not be identified by name or address,

and

(b) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.