



<u>Decision Ref:</u>	2020-0403
<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**

The complaint relates to a mortgage loan account held by the Complainant with the Provider. The mortgage loan account which is the subject of the complaint was secured on the Complainant's Buy-to-Let ("BTL") property.

The loan amount was €134,900 and the term was 20 years. The Mortgage Loan Offer Letter which was signed on **24 July 2002** outlined that the interest rate applicable to the loan was "4.09% Fixed for 12 months".

An Agreement to Amend Mortgage Loan Offer Letter was signed on **18 February 2016** which extended the term of the loan to **27 February 2026**.

The Complainant's Case

The Complainant drew down his mortgage loan account in **January 2003** on a fixed interest rate of 4.09% for a period of 12 months. On expiry of the fixed rate period, the Complainant's mortgage loan account rolled to the Provider's investment property variable rate of 4.1% in **January 2004**. In **October 2004** a tracker interest rate of ECB + 1.6% was applied to the Complainant's mortgage loan account.

In **January 2013** the Complainant signed an **Agreement to Amend Mortgage Loan Offer (Interest Only) Long Term** which provided for 36 months of interest only repayments on the mortgage loan account.

On expiry of the interest only repayment period in **January 2016**, the mortgage loan account was due to revert to capital and interest repayments and the Complainant sought further forbearance on the account. The Provider offered an Agreement to Amend Mortgage Loan Offer to the Complainant in **February 2016** which extended the term of the Complainant's mortgage loan from **February 2023 to February 2026**. The Agreement to Amend Mortgage Loan Offer also provided for the tracker rate on the mortgage loan be brought to an end and a variable interest rate at 1% above the existing tracker rate to be applied to the account.

The Complainant outlines that *"I made numerous pleadings to [the] bank to extend the time period of my mortgage and leave me on the 1.3% rate which fell on deaf ears. I am a lone individual and [the] bank was telling me that what was best for me was to accept [the] "Offer" of a mortgage extension at a rate of 2.3%. This clearly was not in my best interest. I was put under duress as far as I was concerned to sign this as this was the only option as I couldn't make the full Interest/Principal payment. This caused me great stress, anxiety, poor sleep and in general, poor health."*

The Complainant submits that *"In bailing out the banks my conditions of work were changed ie I have to work more hours, I have less sick leave entitlement and my salary was cut substantially ... My personal situation was therefore altered substantially in that I did not have the same finances available to me as I had before the crash and I had made lifetime decisions based on those earnings. I had to bail out the banks and myself and then on the treble [the Provider] decided they would put the boot in by charging me a higher interest rate rather than leaving me on a rate of 1.3%. They increased the rate and extended the years of repayment which cashes them up more. This by any stretch of the imagination as defined above is not morally right or fair."*

The Complainant further submits that if the Provider was *"interested in keeping me afloat they would have been as lenient as possible with people such as myself, instead, they took the position of seeing how much pain their customers could take without them possibly going under financially. They have been ruthless with their customers, and I know many of them, so I would argue that their decision in my case is not based on good or acceptable sense but only on greed and maximum gain."*

The Complainant asserts that the Provider *"could easily have left me on the original Tracker rate I was on and helped me get out from under their oppressive approach, instead, I got a higher rate from them and over a longer period of time."*

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The Complainant is seeking for a tracker interest rate to be restored to his mortgage loan account and backdated to **February 2016**.

The Provider's Case

The Provider submits that it issued a Mortgage Loan Offer Letter dated **10 July 2002** to the Complainant, which provided for a loan sum of €134,900 for a term of 20 years. It states that the mortgage loan account was drawn down on **31 January 2003** on an interest rate fixed for 12 months, rolling to the Provider's "*Investment Property Variable Rate*" of 4.1% thereafter. It details that on **14 October 2004** an "*RIL Tracker Variable*" interest rate of 3.6% (ECB + 1.6%) was applied to the account.

The Provider states that the Complainant has never been in arrears for 31 days or more on the mortgage loan account, and any missed payments are cleared within a very short space of time.

The Provider outlines the history of the Complainant's mortgage loan account as follows;

- On **3 March 2008** the Complainant completed a **Mortgage Form of Authorisation** ("MFA") for 12 months interest only on the mortgage account. On **6 March 2009** the mortgage account reverted to capital and interest repayments.
- On **29 September 2012** the Complainant contacted the Provider to seek forbearance on the mortgage account. He submitted a **Standard Financial Statement** ("SFS") and supporting documentation for assessment on **30 October 2012**.
- On **7 November 2012** the Provider concluded that it was not willing to offer forbearance as the rent being received from the secured property was sufficient to meet the full annuity repayments on the account.
- On **20 November 2012** the Complainant appealed the Provider's decision and requested "*24 months Interest Only on both his PDH & BTL mortgages.*"
- On **21 December 2012** the Provider approved 36 months interest only repayments on the subject mortgage loan account.
- On **4 January 2013** the Provider issued an **Agreement to Amend the Mortgage Loan Offer Letter** to apply interest only repayments to the account for 36 months, which the Complainant signed and accepted on **17 January 2013**.

The Provider details that the interest only payment on the mortgage loan account was €90.37 in **December 2015** and was due to revert to capital and interest payments of €1,023.69 per month in **January 2016**.

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It details that prior to the expiry of the interest only period the Complainant advised the Provider that he was not in a position to meet the increased capital and interest repayments.

The Provider states that it advised the Complainant that *“any forbearance offer made by the Provider on Buy-to-Let mortgage loan accounts would involve the tracker rate being discontinued. The Complainant stated he did not wish to lose his tracker rate of interest on the mortgage loan account and sought to apply for interest-only repayments applied to his private dwelling house instead for a period of 18 months so he could service his credit card debt. He stated that he did not wish to restructure this mortgage loan account at all, nor did he wish to restructure his short term debt.”*

The Provider details that on **24 December 2015** it completed the Complainant’s **Standard Financial Statement (“SFS”)** following instructions received from the Complainant over the telephone and a copy of the form was issued to the Complainant so that he could attest to its accuracy, which he duly returned on **12 January 2016**. The Provider outlines that the SFS evidenced that *“the Complainant had substantial credit card debt on his [Provider] Credit Card, nearly €10,000, and was paying €200 a month towards this. He was advised by the Provider that his mortgage loan accounts should be prioritised, and, if he was not able to make repayments on his credit card, he should approach the Provider to restructure his credit card debt. The Complainant declined to do so.”*

The Provider details that *“A review by the Provider’s Arrears Support Unit noted the Complainant’s mortgages on his principal residence had been restructured and there were no arrears at the time. His Buy-to-Let property (the subject of this complaint) was rented for €800, according to the Complainant. The rent was paid in cash, the tenancy was not registered with the Residential Tenancies Board and the Complainant does not have a rent account. The Complainant also had two other unencumbered buy-to-let properties ... These were not included in his Standard Financial Statement and their estimated valuations were not provided in the Standard Financial Statement.”* The Provider further details that following the prior restructure of the mortgages on the Complainant’s principal residence, the Complainant had evidenced that he could afford full annuity repayments on his principal residence. It states therefore that capital and interest repayments on the subject mortgage loan account were deemed affordable if a term extension for 35 months was applied and consequently there was no need for a further grant of interest-only on the mortgage loan account.

The Provider submits that it offered the Complainant a term extension of 36 months on the mortgage loan account, which would extend the term from **2023 to 2026**.

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It states that the term extension was subject to its Buy to Let pricing policy and therefore the interest rate applicable to the account would switch from the tracker rate to an investment variable rate of 2.3% which *“would not be a tracker rate of interest and would vary at the discretion of the Provider. The rate itself would be the existing tracker rate with a ‘loading’ of 1%. In the Complainant’s case, this yielded a rate of 2.3%. This rate would be substantially lower than the prevailing market rate and was assessed as being affordable by the Complainant.”* The Provider details that the Complainant’s monthly repayments would be €778.00 following this restructure, in line with the rent being received by him for the property.

The Provider outlines that the Provider’s offer of a restructure subject to changing the interest rate on his Buy-to-Let property was communicated to the Complainant in a telephone call on **20 January 2016** and the Complainant was not happy with the offer and advised that he would not be accepting it.

The Provider details that it issued the Agreement to Amend Mortgage Loan Offer to the Complainant on **1 February 2016**. It states that on **8 February 2016** the Complainant called the Provider as he had received a text message stating that he would need to lodge funds to meet the repayment of €1,023.69 for his mortgage loan account. He disputed that this was correct as he claimed to have agreed to a term extension for his mortgage loan account and reduced repayments of €778.00 per month. The Provider details it advised him that the change could only take place once he signed and returned the Agreement and it may take over a week for the changes pursuant to the Agreement to come into effect. The Provider states that the Complainant signed and accepted the Agreement to Amend Mortgage Loan Offer on **18 February 2016** and the change was duly implemented on the mortgage loan account.

The Provider states that it does not accept the Complainant’s assertion that he agreed to the removal of the tracker rate from his mortgage loan account in **February 2016** *“under duress”* as it was the only option available to him. It submits that *“There is and was no evidence or suggestion of duress at the time the Complainant signed the Agreement. The Complainant was advised at all material times that he could and should seek legal and financial advice regarding the Agreement or any forbearance arrangement and the Complainant was free to refuse the offer of forbearance if he wished.”* The Provider states that having advised the Complainant that he should seek independent legal and financial advice and he indicated that he would have a third party deal with the matter, however he never returned a completed Letter of Authority to the Provider.

The Provider further submits that *“the Complainant’s circumstances were carefully considered when offering him an alternative repayment arrangement. The Complainant was not happy with the offer he received and stated he would not agree to the forbearance on the mortgage loan account. This option was respected and acknowledged by the Provider, who explained the effect of this decision to him (as was required by law). There is no evidence of any pressure to accept being brought to bear on the Complainant nor is there any evidence to suggest any duress was exercised by the Provider. The Complainant was, at all times, aware of the consequences of refusing the Agreement (i.e. his repayments would step up to interest and capital repayments) and the consequences were he to accept.”* The Provider further states that **condition 4(d)** of the loan offer expressly provides that any proposed variation in the terms of the loan are *“with the consent of the borrower”*.

The Provider further submits that *“the Complainants indebtedness to the Provider arises on foot of binding written loan agreements freely entered into by him with the Provider. Whilst the Provider will consider proposals put forth by a customer, the Provider is under no obligation to offer a specific alternative repayment arrangement requested by a customer, unless it is deemed appropriate and sustainable. It is imperative that when accepting the terms of such an Agreement, that a customer is satisfied and fully aware of the full implications of their commitment in respect of the transaction. If they have any doubts about the contents of such an Agreement, they should raise this with their legal or financial advisor.”*

The Provider submits that it made a commercial decision to implement a new pricing policy for non-CCMA Buy to Let Tracker customers in **late 2012** for customers seeking any change to their existing repayment terms and conditions. It states that *“As part of a financial review, if a change of terms and conditions is deemed appropriate (e.g. Interest Only), the Buy-To-Let Tracker customer will be offered a new Standard Variable Interest Rate mortgage for the life of the loan, which is initially priced at 1% above what they are currently paying on their tracker mortgage”* and the *“tracker status of the loan ends completely on taking up of new amendments to the terms and conditions”*.

The Provider states that the mortgage loan account is not subject to the **Code of Conduct on Mortgage Arrears (“CCMA”)** and therefore, does not attract the protections afforded to mortgages secured by a borrower’s primary residence. It details that the Provider is not legally obliged to offer forbearance on mortgage loans and it is free to renegotiate the terms of a non CCMA mortgage loan in a manner it deems fit, except where the borrowers are personal consumers, and the relinquishing of a tracker rate is at issue, the Provider must then comply with certain provisions of the Consumer Protection Code 2012.

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The Provider refers to **Chapter 2 of the Consumer Protection Code 2012** and states that it has acted *“honestly, fairly and professionally”* and *“with due skill, care and diligence in the best interest of its customers.”*

The Provider outlines that it is satisfied that it has acted fairly with respect to the offer of a new arrangement with the Complainant in **January 2016**, with reference to the Consumer Protection Code 2012. It refers to Chapter 6 of the CPC 2012 and in particular **Provisions 6.9** and **6.10**. It further refers to Chapter 8 and in particular **Provision 8.3**.

The Provider submits that the **Agreement to Amend Mortgage Loan Offer Letter** set out clearly the effects of accepting the Agreement and the ending of the tracker interest rate if accepted. It states 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, and it sought information from the Complainant relevant to the product requested (extension of the term and reduced repayments), and made a full disclosure to the Complainant of all relevant material information in a way that sought to inform the Complainant.

The Complaint for Adjudication

The complaint for adjudication is that the Provider acted inappropriately by removing the tracker rate from the Complainant’s mortgage loan account in **February 2016**.

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.

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I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties on 14 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 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.

At the outset, it is important to point out the jurisdiction of this Office in complaints regarding arrears handling. This Office can investigate the procedures undertaken by the Provider regarding the arrears, in this matter under the **Consumer Protection Code 2012**, but will not investigate the details of any re-negotiation of the commercial terms of a mortgage which is a matter between the Provider and the Complainant, and does not involve this Office, as an impartial adjudicator of complaints. This Office will not interfere with the commercial discretion of a financial service provider, unless the conduct complained of is unreasonable, unjust, oppressive or improperly discriminatory in its application to a complainant, within the meaning of **Section 60 (2) of the Financial Services and Pensions Ombudsman Act 2017**.

In order to consider this complaint, it is necessary to review and set out the relevant provisions of the Complainant's mortgage loan documentation and to consider the interactions with the Complainant between **2013** and **2016** in relation to the alternative repayment arrangements proposed and offered.

The Provider issued a **Mortgage Loan Offer Letter** to the Complainant dated **10 July 2002**, which provided for an advance of €134,909 over a term of 240 months.

Part 1 (The Statutory Loan Details) of the **Mortgage Loan Offer** details as follows;

- | | |
|--|---|
| 1. <i>Amount of Credit advanced:</i> | <i>EUR 134,909</i> |
| 2. <i>Period of Agreement:</i> | <i>240 months</i> |
| 3. <i>Number of Repayment Instalments:</i> | <i>240</i> |
| 4. <i>Amount of each Instalment:</i> | <i>12@ EUR 822.94</i>
<i>228@ EUR 867.69</i> |

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...”

Part 2 (The Additional Loan Details) outlines as follows;

11. “Type of Loan (e.g. Annuity or Endowment):	Annuity
12. Interest Rate & whether Fixed or Variable: months	4.09% Fixed for 12 months (See Special Conditions – Section 11)
13. Fixed Rate Period (if interest rate is fixed):	12 Months
14. Normal Review Date (if applicable):	June 2003

At the bottom of **page 1** it stated 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.”

General Condition 4 of Part 3 – The General and Special Conditions details as follows;

“4. Repayment

- (a) *Unless otherwise stated herein or agreed by the Bank 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 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 Bank. The amounts of such repayments and the due dates for payment thereof shall be determined by the Bank 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 Bank may demand an early repayment of the principal and accrued interest or otherwise alter the Conditions of the Loan.*

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- (c) *If so agreed in writing by the Bank, the Loan may be repaid in 10 or 11 payments in any year of the term and such payments (unless the Bank 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 Bank 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.”*

General Condition 7 of Part 3 – The General and Special Conditions details as follows;

“7. Fixed Interest Rates

- (a) *The Bank may at its absolute discretion permit the Borrower to avail of a fixed interest rate in respect of all or any part of the principal sum borrowed. In the case of a fixed rate loan, the interest rate shall, subject to these Conditions, be fixed from the date of draw down for the fixed period stated in this Offer Letter.*

The fixed rate of Interest set out in this Offer Letter is the fixed rate which would apply were the Loan drawn down today. There is no guarantee that the fixed rate so stated will be available when the Loan is in fact drawn down. The actual fixed rate that shall apply shall be the Bank’s fixed rate available for the fixed period selected by the Borrower at the date of draw down.

- (b) *The Bank shall have sole discretion to provide any further or subsequent fixed rate period. If the Bank does not provide such a further or subsequent fixed rate period or if the Bank 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 the interest rate applicable to the Loan will be a variable interest rate.*
...”

Special Condition 11 of Part 3 – The General and Special Conditions details as follows;

“11. Special Conditions

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

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1. *The interest rate applicable to this loan has been fixed for the first twelve months. At the expiration of a fixed rate period, the rate of interest which will apply to this loan shall be the Bank's investment property variable rate. The investment property variable rate is currently 4.74% (APR 4.8%). Being a variable rate the interest may change upwards or downwards.
..."*

I note that the **Acceptance and Consents** section of the **Mortgage Loan Offer** was signed by the Complainant on **24 July 2002** on the following terms;

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

It is clear to me that the Loan Offer Letter envisaged a fixed interest rate of 4.09% for a period of 12 months with a variable interest rate applying thereafter. The variable rate in this case made no reference to varying in accordance with variations in the ECB refinancing rate, rather it was a variable rate which could be adjusted at the discretion of the Provider. The Complainant accepted the Letter of Offer, having confirmed that he had read and fully understood the Loan Offer.

A screenshot of the **Repayment Change History** on the mortgage loan account has been furnished in evidence and details as follows;

<i>"Change Date</i>	<i>...</i>	<i>Mortgage ...</i>	<i>Interest</i>	<i>Cur</i>	<i>Payable</i>
<i>...</i>	<i>...</i>	<i>Type</i>	<i>Rate</i>	<i>...</i>	<i>Repayment</i>
<i>14/10/2004</i>	<i>...</i>	<i>R</i>	<i>3.600</i>	<i>EUR</i>	<i>791.29</i>
<i>2/02/2004</i>	<i>...</i>	<i>R</i>	<i>4.100</i>	<i>EUR</i>	<i>822.93"</i>

It appears that the mortgage loan account was switched to a variable rate of 4.1% on the expiry of the initial fixed interest rate period in **February 2004** and subsequently the tracker interest rate of 3.6% (ECB + 1.6%) was applied to the mortgage loan account in **October 2004**. I have not been provided with the evidence of the interactions between the parties in relation to these rate changes. Nonetheless it is not disputed between the parties that this is what occurred.

I note that the Provider's internal notes from **2008** detail as follows;

Date	
27 February 2008	<i>"Customer is seeking interest only on his ril for 1 year Ltv circa 45% Customer has a 3m account"</i>
28 February 2008	<i>"The customer's request for Interest Only on this account has been approved and a Mortgage Form of Authorisation (MFA) has been issued directly to them. Once we receive the signed MFA, we can update the mortgage account"</i>
6 March 2008	<i>"We have received the signed Mortgage Form of Authorisation for the Interest Only request on this account and the details have now been changed. Confirmation will issue shortly to the customer"</i>

It does not appear to be in dispute between the parties that a period of interest only was applied to the mortgage loan account for one year in **March 2008**.

The Provider's internal note dated **6 November 2012** details as follows;

"ccmax3, non ccma x1- customer is unable to repay full C+I reps on all his mortgages due to reduced income, his (sic) is a full time [Occupation] & also self employed [Occupation], her (sic) has had no previous f/b & no history of arrears, his expenses are inline with [Provider] guidelines & his std is small & manageable (sic) should be cleared in full over the next 12 months, the 2 equity releases on his pdh relate ril's in [Country] & [Country], neither of which are currently (sic) rented out although (sic) he does expect to sell the ril in [Country] which will clear one of the equity releases ... his btl in [Location] is rented out @ 750PM which is sufficient to meet full annuity reps on same, I am going to approve 12 months I/O on a/c's [ending] 9344 & [ending] 0712 from dec12-nov13, to allow customer (sic) more time to sell investment property in [Country] which will clear one the mortgage thus relieving some of his financial burden ... btl [ending] 8349 to remain on full annuity reps".

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The evidence shows that the Complainant was dissatisfied with the Provider's decision to offer the Complainant an alternative repayment arrangement for 12 months interest only repayments and appealed the decision to the Provider's Appeals Board. The Provider's internal note dated **11 January 2013** details as follows;

"APPEAL HEARD 21/12/2012 ... Decision 36mth interest only on BTL [ending] 8349. LETTER AND MFA ISSUED APPEAL CLOSED"

The Provider issued an **Agreement to Amend Your Mortgage Loan Offer Letter** dated **4 January 2013** to the Complainant which outlined as follows;

"This is an important legal document. It will amend the terms and conditions that apply to your mortgage loan. We strongly recommend you get independent legal or financial advice before you sign it."

Section A of the form states as follows;

"SECTION A: WHAT THIS FORM WILL DO

This form allows you to pay interest only in your regular instalment payments for a period of 36 months (the "Agreed Period"). When the Agreed Period ends, you will be obliged to repay the entire principal amount of the Loan on an annuity basis.

That means your repayment instalments will then include repayments of principal and payment of interest so that the Loan is repaid in full by the maturity date of the Loan.

...

This form does not extend the maturity of the Loan.

The arrangement set out in this form will be reviewed after 3 years (unless the Agreed Period is shorter than 3 years).

...

SECTION B: THE TERMS AND CONDITIONS OF THIS FORM

...

Interest Only during Agreed Period

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3. During the Agreed Period you pay interest only on the Loan by monthly instalments.

Annuity Payment once Agreed Period Ends

5. Once the Agreed Period ends, you must repay the Loan by monthly instalments of principal and interest and any other amount you may owe us under the Loan. We will calculate the amount of principal you must pay in each monthly instalments so that the Loan will be repaid in full or on or before the maturity date of the Loan.

...

Interest

7 The Interest rate on the Loan will be applied as set out in your Mortgage Loan Offer Letter

7.1 The interest rate on the Loan will be a tracker variable rate of 1.6% per annum above the European Central Bank ("ECB") Main Refinancing Operations Minimum Bid Rate ("Repo Rate"); and the following conditions will apply to that tracker rate:

7.1.1 we will change the rate not later than 5 working days following a change in the Repo Rate by the ECB; and

7.1.2 if we certify that the Repo Rate is unavailable at any time or times we will charge you or prevailing variable rate

...

How This Form Amends your Mortgage Loan Offer

13 This form will amend the Mortgage Loan Offer Letter in the following ways:

13.1 This form will amend the terms and conditions that apply to the Loan, including the Mortgage Loan Offer Letter.

13.2 If this form extends the term of the Loan, Section A says how. (The term of the Loan is not extended unless Section A says so).

13.3 *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.*

13.4 *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."*

The **Acceptance** section of the form was signed by the Complainant on **17 January 2013** 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 to me with this form;

(2) I accept and agree to be bound by the terms and conditions of the form;

(3) 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 have not received 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 ticked the third option confirming that he had not received independent or financial advice in relation to the form. It appears that a 3 year interest only arrangement was applied to the Complainant's mortgage loan account at this time. The tracker interest rate of ECB + 1.6% continued to apply to the mortgage loan under the Agreement **to Amend Your Mortgage Loan Offer Letter** dated **4 January 2013**.

Prior to the expiry of the interest only period, the Provider wrote to the Complainant by letter dated **21 September 2015** which detailed as follows;

"Your current repayments on this mortgage loan are €90.79. These repayments are due to end on 18/01/2016 after which the repayments will be the full principal and interest amount due under the mortgage loan.

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If you started making full repayments of principal and interest from today, we estimate your repayments would be as set out in Column 3 of the Table below.

...

Mortgage Type: Interest Only Combo

Description	Rate	*Estimated Standard Repayment
TRACKER VAR ECB +1.60% RIL >75%	1.300%	€980.36

**We will write to you again to confirm the actual repayment amount due on your mortgage account after 18/01/2016 when the full principal and interest repayments commence.*

If you foresee any difficulties in making your mortgage repayments, please contact your branch. [The Provider] is committed to working with you in relation to any mortgage repayment difficulties you may encounter.

If you have any queries on the above, please do not hesitate to contact me."

The Provider's internal notes details as follows;

6 November 2015	<i>"[Complainant] stated [Provider] lowest form of institution. Advised of BTL Tracker Policy and [Complainant] stated that [Provider] treating the customers and public who bailed them out in an awful manner. [Complainant] extremely sorry he opened bank account day 1. Has bills to pay and looking for extension 6/12 mts on i/o and if I could recommend this, I advised will have to go t[h]rough SFS process. [Complainant] asked what repay will be I stated approx. E1045PM but will loose Tracker if accepted. [Complainant] stated to refer his request but not happy to deal with faceless people again ... No arrears ... [Complainant] was advised that we can assist with SFS completion."</i>
16 November 2015	<i>"Spoke with cust who declined SFS OTP as does not wish to lose his tracker. I adv of [Provider] policy re trackers on all BTLs where forb is accepted and applied. Cust wanted to know what pays would be if he were on I/O with varibale [sic] applie[d] etc so gave him</i>

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	<i>number for [Provider department] as I did not have those figures. Call ended.”</i>
30 November 2015	<i>“...Customer proceeded with a further query if he was to look for 12 months I/O on a BTL I adv customer that I would be routing him through SFS OTP team if he wished to proceed with request for FB I adv customer of Tracker Policy I customer also enquired about FB on his PDH I adv again he would need to go through the process however if deemed affordable FB may not be approved...”</i>

A further telephone call took place between the parties on **24 December 2015**. I have considered the content of the audio recording of the telephone call, which has been provided in evidence and I have considered the Provider’s internal systems note of the same date. I accept that it was an accurate account of the conversation and details as follows;

“Outbound Call from the Provider to the Complainant to complete Standard Financial Statement. Complainant was advised of the Providers BTL pricing policy. Complainant seeking forbearance of 12-18 months Interest Only on CCMA property does not want to lose Tracker rate. Complainant advised of the need to submit supporting documents and sign the completed form. SFS issued.”

The Provider’s representative completed the Standard Financial Statement during the telephone call with the Complainant.

The Provider wrote to the Complainant on **24 December 2015** enclosing a copy of the completed **Standard Financial Statement**. The letter outlined as follows;

“I enclose your financial assessment form (FAF), which includes the details you provided in our phone call on 24.12.15.

Below we have listed the documents we need to help us assess your case.

- *Your last payslip*
- *Any other relevant documents you think we should consider*

Please make sure that you and any joint borrowers sign and date the FAF, and that you send us the documents we need within 20 working days from the date of this letter.

/Cont’d...

If you do not return the signed FAF (and all the documents we need) within 20 working days, and your account is in arrears, we may start legal proceedings.”

The **Standard Financial Statement** signed by the Complainant on **12 January 2016**, details as follows;

<i>Total Monthly Income (B11)</i>	€3,920.00
<i>Less Total Monthly Expenditure (C38)</i>	€1,724.07
Sub- Total (G1 minus G2)	€2,195.93
<i>Less Mortgage Repayments Due (D1)</i>	€1,115.25
<i>Less Other Monthly Debt Due (D22)</i>	€290.79
Total Surplus/Deficit (subtract G4 and G5 from G3)	€789.89

The Reason(s) for review/arrears stated *“Buy-to-Let – interest/repayments”*.

It was outlined in the **Monthly Income** section that the Complainant was in receipt of €800 rental income per month. I also note from the **Current Monthly Debt Payments** section that the Complainant was paying €200 monthly on his credit card.

The **Branch SFS/FRF Checklist** has been provided in evidence and outlines as follows;

“Summary of discussion with customer(s)

Account is up to date. BTL is due to revert to Full C + I in Jan '16. Customer is requesting 12-18 months I/O on both CCMA accounts to allow time for customer to clear C/C bill.

Customer advised property is rented for cash. He does not have a lease agreement – rented to friends. He does not have a rent account. Customer advised he does not want to sell the property until the prices go up and then he will sell it and clear mortgage in full. Customer advised he does not want to accept FB on BTL as does not want to lose tracker. Advised he wants FB on CCMA to allow time to clear [Provider] C/C in full and then he will be able to revert to Full C + I across all accounts.

Customer advised he has to buy a new car in Jan '16 – advised it will cost him 4400. Property Tax is deducted at source. Mobile bill is paid by work.

/Cont'd...

Customer advised he does not want to restructure his C/C. Advised he pays his sister back in lump sums for loan – hoping to have it cleared in 6 weeks. Advised reason for loan was to prevent him been (sic) kicked out of his house. Customer did not extend on this.

Request: 12-18 months I/O on CCMA to allow time to clear C/C bill.

Recommendation: 6 months I/O on BT to allow time for customer to clear C/C bill.”

The Provider wrote to the Complainant by letter dated **18 January 2016** and detailed as follows;

“we can confirm that your account has now been switched to a Repayment Mortgage.

The amount of your revised repayment is €1,023.69 falling due on 31/01/2016.

The payment rates on this HomeLoan may be adjusted by the Lender from time to time. If there are any further changes in Mortgage Interest Rates we will advise you. ...”

The Provider’s **internal note** dated **19 January 2016** details as follows;

*“***Customer background***: CCMA PDH IN MARP &NON CCMA BTL ASSESSMENT: Sole Borrower single no dependents age: [redacted] working as [Complainant’s occupation] total net household income E3137pm. The [Provider’s] btl security property is rented @ E800 pm with ril expenses of E38 pm. The btl is about to roll off 36 months I/o f/b from E92 pm to E1024 pm. The Borrower does not want f/b on the btl as he does not wish to lose his tracker rate he is seeking 12-18 months I/o on his pdh a/c’s in order to clear his std, the borrower has also advised she (sic) does not wish to t/s his std.”*

“Contd>>> The Nam has recommended 6 months I/o on the btl subject to btl pricing policy to allow borrower to clear std. The purpose of the equity releases on [account ending 9344] & now cleared a/c [ending 0712] were to fund the purchase of a BTL in [Country] and [Country] the borrower does not mention some of these properties in the sfs they were not rented in the last assessment in September 2014 estimated valuations are unknown.

/Cont’d...

Contd>>>No history of arrears on btl: [account ending 8349] perfect a/c operation to date, I/o reps adhered too (sic) for the last 36 consecutive months inline with I/o f/b in place. Short term debt exposure: E9300 @ E200 pm no action required at this time. Overall living expenses @ E1691 pm are above [the Provider's] guidelines reduced in line to E1238 pm Other assets: unencumbered ril x2 in [Countries] estimated values are unknown.

...

*“***Recommendation***: Agreed 36 months t/e pre arrears on non ccma btl a/c [ending 8349] @ E778 pm from the 31/01/2016, new maturity date: 28/02/2026. f/b approved subject to btl pricing policy. No f/b required or arrears to address on ccma pdh a/c's: [ending 0712 & 9344] a/c's to remain on full annuity reps. 12-18 months I/o request from borrower to avoid rate loading on btl & to clear std outside credit guidelines & not appropriate in this case. The Borrower can afford full annuity reps on his pdh a/c's & proposed t/e reps on the btl*

Contd>>>borrower needs to prioritise mtg reps over std, if std is an issue borrower need to look at restructuring same.”

I have considered the audio recording of the telephone call between the Provider's representative and the Complainant on **21 January 2016**.

I have considered the Provider's internal systems note of the same date and I accept that it is an accurate account of the conversation. It outlines as follows;

“36 months T/E approved on the BTL prop. Rang mob, spke with [Complainant], advised cust of decision, advised cust of loss of tracker & 1% rate loading/right to seek independ L&F advice. advised cust CCMA a/cs to remain the same, advised assessor had recommended cust approach bank to restructure STD. cust unhappy with decision, advised will not accept FB on BTL prop. requested I contact assessor to request pmts be €1400 across all 3 a/cs. advised cust assessor will probably not change offer, cust requested I contact assessor anyway and call back with resp. Emailing assessor”.

I have considered the audio recording of the second telephone call between the Provider's representative and the Complainant that took place later on **21 January 2016**.

/Cont'd...

I accept that the Provider's internal systems note is an accurate account of the conversation and details as follows;

"cust requested call back to get answer from assessor. rang mob, spoke with [the Complainant], advised cust of assessor response – original decision still stands. advised cust of right to seek independ L&F advice/ T/F to return MFA/ loss of tracker & 1% rate loading conseqs. advised cust of assessor recommendation of approaching bank to restructure STD. advised PDH must be prioritised over any other debt and mtgs need to be prioritised over any STD. advised cust of approx figures. Rescheduled to monitor for MFA to be issued."

The Provider's internal note dated **27 January 2016** details as follows;

"cust requested call back, rang mob, spoke with [Complainant]. Cust requesting copy of all docs of agreements he entered into with [the Provider]. Advised cust would need to send this request in writing to [Provider] address, cust advised third party will be dealing with mtg g/f. advised cust to send in LOA as [Provider] will not be able to speak with a third party without an LOA on file. Cust advised will submit this. Cust requested a figure for BTL mtg for T/E without the loss of tracker & 1% rate loading, advised cust unable to give this, as rate loading auto applies if BTL. Cust advised will submit request for docs"

The Provider's internal note dated **29 January 2016** details as follows;

"Gives authority for [Third party] but no contact details"

The Provider wrote to the Complainant by letter dated **1 February 2016** which detailed as follows;

"Please find enclosed a copy of the offer letters that issued to you in relation to your mortgage accounts and also a copy of the Standard Financial Statement submitted by you in January 2016.

...

As account [ending] 8349 is a buy to let mortgage this is not covered under CCMA.

Please find enclosed a blank letter of authority form to give us authority to deal with your nominated third party. Upon receipt of the filled-in letter of authority we will update our records accordingly."

The Provider wrote to the Complainant by letter also dated **1 February 2016** detailing as follows;

“We have carefully assessed your mortgage loan and Section A of the enclosed Agreement to Amend Mortgage Loan Offer (the “form of Agreement”) outlines the full details of the alternative repayment arrangement option available to you.

Why this Alternative Repayment Arrangement is suitable for you

This alternative repayment arrangement is considered the most appropriate, sustainable and suitable for you based on your assessment of:

- a) Your personal circumstances.*
- b) Your overall indebtedness.*
- c) The information you provided in the financial assessment form or subsequently submitted.*
- d) Your previous repayment history.*
- e) Your current repayment capacity.*
- f) The range of alternative repayment arrangements we currently offer.*
- g) The effect of the alternative repayment arrangement on your financial circumstances.*
- h) The other arrangements we are making with you (if any).*

What this Alternative Repayment Arrangement means for you

If you accept the accompanying offer, it will mean moving you from your present tracker rate of interest to a new rate of interest and we explain what this will mean for you in the enclosed form of Agreement.

When deciding whether to take up this offer, there are some matters for you (and your advisers) to consider.

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

- i) Your loan capacity 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.*

/Cont'd...

- 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 repayment 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.*
- v) *You agree to pay the repayment instalments for the alternative repayment arrangement set out in the form of Agreement and acknowledge that if the interest rate on the Loan increases, these repayments will increase accordingly.*
- vi) *We may record the alternative repayment arrangement with the Irish Credit Bureau (ICB). If you break the terms of the alternative repayment arrangement, we may report that to the ICB. Such a report could make it more difficult for you to get credit from us or other financial institutions, for example, you may have difficulty getting a new home/business loan.*
- vii) *The life assurance policy you have in place to cover the mortgage loan will probably need to be adjusted to make sure you have enough cover for the whole period of the mortgage loan. Please make sure you review your life policy with your assurance company to ensure you have enough cover.*
- viii) ***You will lose the present tracker variable rate for the remaining term of the mortgage loan. [My Emphasis]***
- ix) *We will change your mortgage repayment amount based on your current financial circumstances. Please now review, and continue to review, your expenses and outgoings to ensure you pay the new repayment amount in full and on time because if you do not pay the new repayment amount, we may end this alternative repayment arrangement.*

...

We strongly recommend you get independent financial and legal advice to help you decide whether to accept our offer of an alternative repayment arrangement. Your local MABS Office can provide free and independent financial advice. Their contact details together with other important information which we have a duty to tell you about, are set out in an appendix to this letter.”

An **Agreement to Amend Mortgage Loan Offer Letter** dated **1 February 2016** was enclosed with the letter issued to the Complainant. I note that **Section A** of the form details as follows;

“SECTION A: WHAT THIS FORM DOES

Conversion from Tracker Rate to New Interest Rate Type

/Cont’d...

Tracker to BTL Variable

*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.*

Maturity Date of the Loan

This form changes the maturity date of the Loan to 27/02/2026”

Section B of the form 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.*

/Cont’d...

- 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.

...

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 form provides 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)

- a) We estimate you are now obliged to pay us monthly instalments of €1,035.70 each and that the total cost to you of the Loan would be €3,971.27.

/Cont'd...

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.)

- b) If you accept this form, we estimate you will be obliged to pay monthly instalments of €778.90 each. The total cost of the Loan would be €10,183.67. 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.*
- 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.*

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

I note that the Provider wrote to the Complainant by letters dated **2 February 2016** and **10 February 2016** to advise him that the most recent payment of €314.48 on the mortgage loan account had not been made by the due date of **1 February 2016**.

The Provider’s internal note dated **9 February 2016** outlines as follows;

“cust adv rec’d SMS from [the Provider] adv needs to lodge funds for DD due E1, 023.69, cust adv has agreed to term extension for a/c [ending 8349] & approx pymt of E700, adv cust MFA was issued out 02/02/16 & until this is signed & returned no amendments will be made to the mort a/c, cust adv to issue this out, adv cust MFA was issued out 02/02/16 & takes at least 10 working days to rec, adv cust of trans overpay to clear arrs bal, cust agreed to trans E314.48 of overpay from a/c [ending 9344] to a/c [ending 8349]. Adv cust importance of signing & returning MFA”.

/Cont’d...

The Provider's internal note dated **16 February 2016** details as follows;

"cust adv has forms will be [returning] cannot understand why his tracker is being taken, adv cust T&C"

The Complainant signed the **Acceptance of the Agreement to Amend Mortgage Loan Offer Letter** on **18 February 2016** 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 Letter**, having ticked the box to confirm that he had not received any independent legal or financial advice on the agreement and that he agreed to be bound by the terms and conditions of the agreement. It is clear from the evidence that the Complainant was fully aware of the consequences of accepting/signing the agreement. If the Complainant was not happy with the terms of the **Agreement to Amend Mortgage Loan Offer Letter**, including the amendment to the interest rate from the tracker interest rate to the variable interest rate, the Complainant could have decided not to accept the offer made by the Provider.

/Cont'd...

On **23 February 2016** the Provider wrote to the Complainant detailing as follows;

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

Mortgage Product Type:	<i>Buy to Let Variable</i>
Mortgage Type:	<i>Repayment</i>
Interest Rate:	<i>2.300%</i>
Repayment Frequency:	<i>Monthly</i>
Maturity Date:	<i>28/02/2026</i>
Next Repayment Date:	<i>30/03/2016</i>
Mortgage Repayment:	<i>€776.60</i>

The payment rates on this HomeLoan may be adjusted by the Lender from time to time. If there are any further changes in Mortgage Interest Rates we will advise you.

If you foresee any difficulties in making your mortgage repayments, please contact your branch. [The Provider] is committed to working with you in relation to any mortgage repayment difficulties you may encounter.

If you have any queries on the above, please do not hesitate to contact me.”

It is important for the Complainant to be aware that he at all times remained obliged to comply with the terms and conditions of the original **Mortgage Loan Offer Letter**, which was signed and accepted by him, that is, to make the repayments on the mortgage loan. At that time the agreement was entered into with the Complainant in **February 2016** the mortgage loan account was not in arrears.

Whilst I accept that the Complainant may have felt that the agreement offered by the Provider was *“the only option as [he] couldn’t make the full Interest/Principal payment”*, there is no evidence to suggest that any *“duress”* was placed on the Complainant to enter into the arrangement in **February 2016**.

I note the Provider had suggested to the Complainant that he could make alternative arrangements regarding his credit card debt but the Complainant did not pursue that option.

/Cont’d...

The Complainant was seeking to vary the terms of his mortgage loan with the Provider by seeking further forbearance on the loans. It was within the Provider's discretion to decide whether or not to accede to that request and in doing so, whether the Provider wished to introduce any different terms to the agreement. There was no obligation on the Provider to offer the Complainant forbearance on his mortgage loan at the time.

The Provider, in accordance with its Buy-to-let Pricing policy offered a Standard Variable Rate which I understand was to start at 1% above the current tracker interest rate on the Complainant's mortgage loan which is the subject of this complaint. In the circumstances of this particular complaint, it appears that the Provider offered a rate of 2.3%. I note that the **Agreement to Amend Mortgage Loan Offer Letter** dated **1 February 2016** refers to the tracker interest rate applicable to the loan as being 1.3%. It appears that the mortgage loan switched from a tracker interest rate of ECB + 1.6% to a tracker interest rate of ECB + 1.3% at the end of the interest only period in January 2016. The basis for the reduction in the tracker interest rate is unclear, however in any event, this appears to be what occurred at the time. The loading of 1% was added to the tracker interest rate of ECB + 1.3%, and a variable interest rate of 2.3% was offered by the Provider to the Complainant.

I accept that the Complainant did not want to give up the entitlement to the tracker interest rate, however the Complainant was seeking to agree an alternative arrangement with the Provider on a mortgage that was not secured on his principal private residence. The Provider made an offer to the Complainant to extend the term of the loan on condition that a variable rate of 2.3% would apply to the mortgage loan. It was a matter for the Complainant to decide whether to accept that arrangement on offer by the Provider.

Provision 6.9 of the **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 contuse 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 **Agreement to Amend Mortgage Loan Offer Letter**. The mortgage loan was not a Private Dwelling House mortgage loan.

Therefore I have no evidence to support the Complainant's contention that there was an inappropriate removal of a tracker rate of interest from the Complainant's mortgage loan account by the Provider in **February 2016**.

I note that the Provider wrote to the Complainant again on **2 March 2016** to detail that the most recent payment of €1,023.69 was not paid in full by the due date.

The Provider's internal note dated **10 March 2016** details as follows;

"HI please see MFA was returned by customer on the 19.02.16 and not put in place until 23.02.16 as a result of this the acc billed for full cap and interest repayment customer is not happy and wants the account to be backdated for the new repayment amount as he stated he had the form in on time for feb repayment."

I note that the Provider wrote to the Complainant again on **11 March 2016** to detail that the most recent payment of €247.09 was not paid in full by the due date.

/Cont'd...

The Provider's internal note dated **15 March 2016** details as follows;

*"Hi I
Have backdated same"*

The Provider wrote to the Complainant again on **15 March 2016** and stated as follows;

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

Mortgage Product Type:	<i>Buy to Let Variable</i>
Mortgage Type:	<i>Repayment</i>
Interest Rate:	<i>2.300%</i>
Repayment Frequency:	<i>Monthly</i>
Maturity Date:	<i>28/02/2026</i>
Next Repayment Date:	<i>30/03/2016</i>
Mortgage Repayment:	<i>€776.13</i>

The payment rates on this HomeLoan may be adjusted by the Lender from time to time. If there are any further changes in Mortgage Interest Rates we will advise you."

The Provider's internal note dated **4 April 2016** details as follows;

"A/c was backdated as cust had returned MFA but called for full C&I."

The Provider has submitted that the Complainant *"has never been in arrears for 31 days or more on this account, and any missed payments are cleared within a very short period of time."*

The evidence before me shows that the Provider wrote to the Complainant on the following dates to indicate that the most recent payment of €776.13 was not paid in full by the due date;

- **31 March 2016**
- **4 May 2016**
- **31 May 2016**
- **8 June 2016**
- **1 July 2016**
- **11 July 2016**

/Cont'd...

- **3 August 2016**
- **11 August 2016**
- **2 November 2016**
- **1 December 2016**
- **3 January 2017**
- **31 January 2017**
- **8 February 2017**
- **1 March 2017**
- **9 March 2017**
- **31 March 2017**

I note from the evidence that there were also a significant number of telephone calls between the parties between **2016** and **2018** in relation to the monthly payments.

The Complainant phoned the Provider on **6 April 2017** to advise that he had lodged the money for the mortgage payment.

This call included the following exchanges;

Provider: *"OK, so I can see the mortgage repayment was missed"*

Complainant: *"That money is in there now ... so you can take that out now straight away"*

Provider: *"OK, its actually going to re-present itself on the seventh which will be tomorrow"*

Complainant: *"Its not going to re-present itself at all"*

Provider: *"Sorry?"*

Complainant: *"The money is in the account now so its not going to re-present itself tomorrow. The money is there now so take it out"*

Provider: *"Well if I take it out there now there'll be an unpaid fee on the current account tomorrow"*

Complainant: *"Sorry? How can there be an unpaid fee tomorrow if its being paid today?"*

Provider's representative: *"Because I'm trying to advise you of the direct debit cycle, I can't stop that there on the account"*

Complainant: *"Well then somebody, you're gonna have to reimburse me for it so, because the money is going in there today".*

Provider's representative: *"OK ... there is an arrears cycle there, a direct debit cycle, so I can advise you that the payment will re-present itself tomorrow, I can certainly take the payment but I'm advising you that you may receive an unpaid fee from the current account provider"*

Complainant: *"So are you going to reimburse me the money so?"*

/Cont'd...

Provider: *"No, we won't be reimbursing you the money. If you have an issue with your current account you'll have to sort that out wherever you have your current account. You missed the payment."*

Further letters issued from the Provider to the Complainant on the following dates to indicate that the most recent payment of €776.13 was not paid in full by the due date;

- **3 May 2017**
- **31 May 2017**
- **9 August 2017**
- **31 August 2017**

A telephone call took place between the Provider and the Complainant on **6 September 2017** I have considered the audio recording of the Provider's telephone call with the Complainant which includes the following exchanges'

Complainant: *"I'm just ringing to let you know that there's money in an account there now for a mortgage outstanding there for the last few days ... The money is in the account there"*

Provider: *"...Its due to re-present today so should go through as normal"*

Complainant: *"...I don't want the cost of €12.70 off ye"*

Provider: *"You do incur unpaid fees when the direct debit is returned unpaid"*

Complainant: *"Ah no but it isn't unpaid now today, you have the money today so you won't be charging me €12.70"*

Provider: *"The funds are in the account of today, it should go through as normal ... Does the date suit you going forward? I can see it was missed there previously".*

Complainant: *"It doesn't matter whether it suits me or not, it only matters when it suits ye".*

Further letters issued from the Provider to the Complainant on the following dates to indicate that the most recent payment of €776.13 was not paid in full by the due date;

- **3 October 2017**
- **1 November 2017**
- **9 November 2017**
- **1 December 2017**
- **11 December 2017**
- **31 January 2018**
- **8 February 2018**
- **1 March 2018**
- **9 March 2018**

/Cont'd...

- **1 May 2018**
- **31 May 2018**
- **8 June 2018**

A further telephone call took place on **14 June 2018**. I have considered the audio recording of the Provider's telephone call with the Complainant which includes the following exchanges;

Complainant: *"That 776.13 is now in the account and you can take it out."*

Provider's representative: *"Let me have a look here now to see if that direct debit is gonna re-present ... I'll have to set up a credit transfer, the direct debit has already gone through at this stage ... Do you know the reason the payment was missed there the first time around?"*

Complainant: *"I have no idea. The main thing is that you have the money today, that's the main thing. You're happy and I'm happy and [the Provider] are happy and that's it."*

Provider's representative: *"Right and do those repayment dates suit you then, the thirtieth of the month? ... I can see it keeps missing there every month on the thirtieth".*

Complainant: *"Don't worry about that, sure [the Provider] are making 24, 25 euros every time that happens ... They'll cash themselves up, don't worry about that".*

Provider's representative: *"It's just, the account being in arrears may affect your own credit rating".*

Complainant: *"What about [the Provider's] credit rating, is that affected at all ... I won't take that lecture now on [the Provider]"*.

A further letter issued from the Provider to the Complainant on **31 August 2018** to indicate that the most recent payment of €776.13 was not paid in full by the due date.

The Provider's internal note dated **26 September 2018** details as follows;

"Cust rang to advise he will be a couple of days late making payments (next Thursday) and does not want to receive any calls. While I was advising of conseq, cust ended call."

Further letters issued from the Provider to the Complainant on the following dates to indicate that the most recent payment of €776.13 was not paid in full by the due date;

- **2 October 2018**
- **31 October 2018**
- **2 January 2019**

/Cont'd...

The Provider's internal note dated **8 January 2019** details as follows;

"Cust adv to forget about the arrears that he wanted to know where unpaid fees are coming from on his current a/c adv if a dd misses adv will be charged unpaid fee from current a/c side. Cust became irate in relation to the charges and ended the call"

Further letters issued from the Provider to the Complainant on the following dates to indicate that the most recent payment of €776.13 was not paid in full by the due date;

- **10 January 2019**
- **1 March 2019**
- **2 April 2019**
- **1 May 2019**
- **9 May 2019**

Provision 8.3 and **Provision 8.4** of the **Consumer Protection Code 2012** outline as follows;

*"8.3 Where an account is in **arrears**, a **regulated entity** must seek to agree an approach (whether with a **personal consumer** or through a third party nominated by the **personal consumer** in accordance with Provision 8.5) that will assist the **personal consumer** in resolving the **arrears**.*

*8.4 Where an account remains in **arrears** ten **business days** after the arrears first arose, a **regulated entity** must immediately communicate clearly with the **personal consumer** to establish in the first instance why the **arrears** have arisen."*

Under **Provision 8** of the **CPC 2012** the Provider is obliged to issue correspondence to customers in arrears. Having considered the evidence, I accept that the Provider issued arrears correspondence to the Complainant in accordance with its obligations under the **CPC** in circumstances where arrears were accruing at the time.

I note that on a number of occasions the Complainant expressed his dissatisfaction to the Provider regarding the charges that accrued on his current account as a result of failing to meet the monthly direct debit on time. I note that the Provider sought to query whether the direct debit date was suitable for the Complainant but he dismissed any discussion in this respect. It is not clear to me why the Complainant was unwilling to discuss the matter with the Provider's agent who appeared to be trying to assist him in avoiding incurring charges, or did not opt to amend the date of his monthly payment on the mortgage loan account in circumstances where he continuously failed to lodge monies in time to meet the monthly direct debit.

/Cont'd...

Instead the Complainant repeatedly lodged the required payment to the account at a later date and was unwilling to engage regarding the option of changing the date of his direct debit.

Having considered the content of the audio recordings furnished in evidence, I am of the view that the Complainant's demeanour during the course of these telephone calls was not helpful, in that, he often became argumentative and abrupt with the representative to whom he was speaking. I found that the Provider's representatives remained courteous and attempted to be helpful in their dealings with the Complainant.

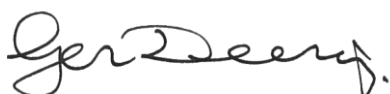
Having considered the evidence, I cannot accept that as has been asserted by the Complainant there was an inappropriate removal of a tracker rate of interest from the Complainant's mortgage loan account by the Provider in **February 2016**. The Complainant was offered a term extension to the mortgage loan to reduce the monthly mortgage loan repayments which he was contractually obliged to pay to the Provider. The Provider was willing to accede to the Complainant's request for forbearance by extending the term of the loan by 3 years and the Complainant agreed to change the interest rate applicable to the mortgage loan from a tracker interest rate to a variable interest rate of 2.3%. The Provider issued an offer to the Complainant to this effect in the form of the **Agreement to Amend Mortgage Loan Offer Letter**, which contained the appropriate warnings under 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** on **18 February 2016**.

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



GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

6 November 2020

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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.

