



<u>Decision Ref:</u>	2021-0049
<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 Complainants with the Provider. The mortgage loan account which is the subject of the complaint was secured on the Complainants' Buy-to-Let ("BTL") property.

The loan amount was €317,000 and the term of the loan was 25 years. The Mortgage Loan Offer Letter which was signed on **21 July 2006** outlined that the interest rate applicable to the loan was a tracker variable interest rate of ECB + 0.95% and that the monthly repayments were interest only for the first 7 years of the loan term.

An Agreement to Amend Mortgage Loan Offer Letter was signed by the Complainants on **6 February 2014** which provided for reduced repayments of €877.00 for a period of 60 months and amended the interest rate from the tracker interest rate to a Buy-to-Let variable rate of 2.45%.

The Complainants' Case

The Complainants submit that in **2013** the *"7 year interest only facility on the tracker rate was coming to an end. The economy was in free fall and we were not in a position to maintain the full principal payment which [the Provider] sought."*

The Complainants detail that consequently they entered into a “negotiation” with the Provider in relation to the repayment of their mortgage loan account in **2013**. The Complainants assert that they “were not seeking a change to our terms and conditions. It transpired that [the Provider] saw the opportunity to do exactly that, not us.”

They submit that they “had no choice” but to agree to the new amended terms offered by the Provider in **October 2013**, which provided for the “removal” of the tracker interest rate from their mortgage account. They state that at that time the “market had more or less collapsed and we had no alternative but to accept this.”

The Complainants further submit that they were “not offered any other facility other than what was put forward. Does that constitute a negotiated process?” They state that “No alternative was ever discussed, mentioned or commented upon in any fashion”.

The Complainants do not accept the Provider’s submission that they gave their “consent” to the removal of the tracker rate from their mortgage loan account. They submit that “Consent suggests agreement given freely and without any incumbrance [sic]. That is certainly not the case as [the Provider] well know.” They further state that the Provider’s submission that they “chose” to accept the Provider’s offer “is once more an incorrect statement. There was no choice so how could we have chosen. There was great uncertainty and matters needed to be stabilised. Accepting the only offer does not constitute consent.”

The Complainants have submitted that they “are very disappointed at the opportunistic removal of the tracker rate which had applied for the previous 7 years without issue. It makes an already difficult situation more difficult. We fail to see how this forms part of a long-term solution.” The Complainants outline that they wrote to the Provider by letter dated **6 February 2014** “outlining our disappointment”. They state that they “never” got a response to this letter from the Provider.

The Complainants state that they received a letter from the Provider on **6 September 2019** which informed them that their loan was being transferred to a third party provider. The Complainants submit that it “strikes [the Complainants] as being more than a coincidence that this would happen at this time and is again a further effort by [the Provider] to continually misrepresent the facts, the truth and if an issue is becoming problematical in any way, just move it on. That is exactly what they are doing yet again”.

The Complainants are seeking the following;

- (a) The tracker rate restored to their mortgage loan account; and

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(b) Redress “for the position we were put in at the time and since then.”

The Provider’s Case

The Provider submits that it issued a Mortgage Loan Offer Letter dated **21 July 2006** to the Complainants, which provided for a loan amount of €317,000 for a term of 25 years. It states that the Loan Offer Letter provided for interest only repayments for the first 7 years, after which point the repayments would move to full capital and interest repayments on **30 August 2013**. It states that the mortgage loan account was drawn down on **30 August 2006** on a tracker interest rate of ECB + 0.95%.

The Provider has submitted details of the history of the Complainants’ mortgage loan account between **January 2007** and **August 2013** as follows;

- On **19 January 2007** the mortgage loan account first entered into arrears.
- The Complainants wrote to the Provider by letter dated **19 January 2009** enclosing a **mortgage fixed overpayment application form** requesting to increase the monthly mortgage payments to €981.40.
- On **1 June 2009** the Complainants cleared the arrears on the mortgage loan account.
- The Complainants wrote to the Provider dated **27 July 2012** seeking to increase the repayments on the account by €250.00 per month.
- On **4 June 2013** the Provider sent an Interest Only Review letter to the Complainants.
- On **19 June 2013** the Provider telephoned the Complainants to advise them that the mortgage loan account was due to revert to capital and interest payments, but there was no answer.
- On **8 August 2013** the Complainants wrote to the Provider requesting to increase the principal repayments on the account by €250.00, which would represent monthly payments of €880.94 with reference to the existing rate.
- The Complainants submitted a **Standard Financial Statement** on **26 September 2013** seeking a period of reduced payments at €877.00, representing an increase of €500.00 of the interest only repayments which the Complainants were making at that time.
- The Provider issued an **Agreement to Amend Mortgage Loan Offer** to the Complainants on **3 October 2013** which offered them reduced payments of €877.00 on the mortgage loan account for a period of 5 years, subject to the Provider’s Buy-to- Let pricing policy. The Provider states that this is the figure offered initially in the Complainants’ proposal.

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The Provider submits that *“the above interactions clearly evidence that the Provider sought to agree an approach with the Complainants to resolve their financial difficulties, having assessed the Complainants’ financial position and proposal.”*

It details that the Complainants were rolling off their interest only payment schedule in **2013** and were not in a position to meet the increased capital and interest repayments and were therefore seeking a change to their repayment terms and conditions.

The Provider details that it had 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 outlines that the Complainants’ mortgage loan account re-entered arrears on **18 October 2013**. It details that, further to attempts by the Provider to contact the Complainants, the First Complainant phoned the Provider on **22 October 2013** stating that he felt the Agreement to Amend Mortgage Loan Offer did not give the Complainants *“certainty”*. The Complainants then wrote to the Provider on **31 October 2013** advising that they intended to appeal the Provider’s offer on the basis that it was *“uncertain”*. The Provider states that it advised the Complainants on **21 November 2013** that the property was an investment property and therefore the procedure was not subject to appeal but to conduct a reassessment instead. It states that it advised the Complainants that a formal arrangement needed to be entered into as at that time the arrears had risen to €3,424.72.

The Provider states that a meeting between the First Complainant and the Provider took place on **25 November 2013**, at which the First Complainant accepted that the Complainants would lose the tracker rate but stated that he could not live with the uncertainty of the rate increasing in excess of 1% above the existing prevailing rate on the mortgage. It details that the First Complainant stated that they would sign the Agreement to Amend Mortgage Loan Offer if he was given certainty that the rate would not increase above 1% of the existing rate. The Provider states that it advised the First Complainant of the operation of its BTL pricing policy and of the *“unlikeliness of this certainty being offered”*.

The Provider submits that on **7 January 2014** the Complainants' representative sought a write-down of the Complainants' debt. The Provider states that it advised the Complainants' representative that the write-down of debt was not a resolution policy employed by the Provider and reiterated its BTL pricing policy. It details that on **15 January 2014** the Complainants' representative emailed the Provider stating that "*despite reservations of the offer*" the Complainants were prepared to accept it.

The Complainants signed and accepted the Agreement to Amend Mortgage Loan Offer on **6 February 2014**, at which point the account was in arrears of €8,888.10. The Provider submits that in their letter the Complainants again "*advised of disappointment at loss of tracker*".

The Provider rejects the Complainants' submission that they had "*no alternative*" but to agree to the removal of the tracker rate from their mortgage loan account in **2014**. The Provider outlines that it was entirely within the ability of the Complainants to accept or reject the offer made by the Provider and in circumstances where they had opted to reject the offer, the mortgage loan account would have remained on a tracker interest rate with capital and interest repayments.

The Provider states that the Complainants' 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.

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.*" It outlines that it is satisfied that it has acted fairly with respect to the offer of a new arrangement with the Complainants in **October 2013**, with reference to the Consumer Protection Code 2012. It 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 Complainants as to the real or perceived advantages or disadvantages of any product or service, and it sought information from the Complainants relevant to the product requested (reduced repayments), and made a full disclosure to the Complainants of all relevant material information in a way that sought to inform the Complainants.

The Provider submits that in **October 2016** the First Complainant informed the Provider that he was no longer working but that the Complainants *“would be able to maintain the payments on the mortgage loan account and did not wish to speak with or meet the Provider to discuss possible alternative repayment arrangements.”*

The Provider details that the First Complainant attended a meeting with the Provider in **June 2017** in relation to the mortgage loan repayments at which he indicated that the repayments of €877.00 per month were sustainable and the Complainants would be willing to extend the term of the loan to 80 years. The Provider outlines that it received a **Financial Review Form** and supporting documentation from the Complainants on **26 June 2017**, however this Form did not outline the Complainants' up to date position, and therefore a new Form was submitted on **4 September 2017**. The Provider submits that on **12 September 2017** it issued a letter to the Complainants declining the Complainants' request for capitalisation of the arrears as the mortgage loan account was deemed unsustainable.

The Provider outlines that it telephoned the First Complainant on **28 January 2019** to advise him that the mortgage loan account would shortly be rolling to full capital and interest repayments. It states that the First Complainant advised that the Complainants would not be able to afford a step up in repayments, and requested a new **Financial Review Form**, which was issued by the Provider that day.

The Provider submits that it wrote to the Complainants on **27 February 2019** reminding the Complainants of the expiry of the fixed repayments provided for in the Agreement to Amend Mortgage Loan Offer of **3 October 2013**.

The Provider details that the First Complainant subsequently advised the Provider during a telephone call on **15 April 2019** that the Complainants would not be completing the Financial Review Form until their complaint to the office of the Financial Services and Pensions Ombudsman is resolved.

The Provider outlines that on **20 September 2019** the arrears on the Complainants' mortgage loan account stood at €18,202.86.

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The Complaint for Adjudication

The complaint for adjudication is that the Provider acted inappropriately by removing the tracker interest rate from the Complainants' mortgage loan account in **February 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 Complainants were given the opportunity to see the Provider's response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

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

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

A Preliminary Decision was issued to the parties on **26 January 2021** outlining my preliminary determination in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

Following the consideration of additional submissions from the parties, 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 Complainants, 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 Complainants' mortgage loan documentation and to consider the interactions with the Complainants in **2013** and **2014** in relation to the alternative repayment arrangement proposed and offered.

The Provider issued a **Mortgage Loan Offer Letter** to the Complainant dated **21 July 2006**, which provided for an advance of €317,000 over a term of 25 years.

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

1. "Amount of Credit advanced:	€317,000
2. Period of Agreement:	25 Years
3. Number of Repayment Instalments	4. Amount of each Instalment
84	€977.42
216	€2,012.33"
Instalment Type	
Variable at 3.700%	
Variable at 3.700%	

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

11. "Type of Loan:	Interest Only
12. Interest Rate:	3.700% Variable"

At the bottom of **page 1** it states as follows;

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

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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 Society 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 Society. The amounts of such repayments and the due dates for payment thereof shall be determined by the Society 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 Society 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 Society, the Loan may be repaid in 10 or 11 payments in any year of the term and such payments (unless the Society 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 Society may at its absolute discretion, and with the consent of the Borrower, vary any payment of principal, interest or any other amount payable in respect of the Loan.”*

General Conditions 6 and 7 of Part 3 – The General and Special Conditions details as follows;

“6. Variable Interest Rates

- a) *Subject to clause 6 (c), at all times when a variable interest rate applies to the Loan the interest rate chargeable will vary at the Society’s discretion upwards or downwards. If at any time a variable rate of interest applies, repayments in excess of those agreed may be made at any time during the term of the Loan without penalty.*

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- b) *The Society shall give notice to the Borrower of any variation of the interest rate applicable to the Loan, either by notice in writing served on the Borrower in accordance with clause 1 (c) above, or by advertisement published in at least one national daily newspaper. Such notice or advertisement shall state the varied interest rate and the date from which the varied interest rate will be charged.*
- c) *Notwithstanding anything else provided in this Offer Letter, the varied applicable interest rate shall never, in any circumstances, be less than 0.1% over one month's money at the Euro Inter Bank Offered Rate (EURIBOR).*

7. Fixed Interest Rates

- (a) *The Society 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 Society's fixed rate available for the fixed period selected by the Borrower at the date of draw down.

- (b) *The Society shall have sole discretion to provide any further or subsequent fixed rate period. If the Society does not provide such a further or subsequent fixed rate period or if the Society 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

1. *The following special conditions apply to the Loan:*

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ii. *For the first seven years of the term of the Loan, repayment of this Loan shall be comprised of interest and any other amounts payable only and General Condition 4(a) is hereby varied. At the end of the above period, repayments shall be comprised of interest and any other amounts payable fully in accordance with General Condition 4(a). The amount of such revised repayment instalments shall be advised to the Borrower by the Lender in writing. The Lender may at any time during the initial interest-only period and at its absolute discretion (or at the request of the Borrower), convert the Loan to an annuity or repayment loan whereupon the Borrower shall be obliged to make such revised repayment instalments comprising both of principal and interest and any other money payable as the Lender shall advise the Borrower in writing.*

...

iv. *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 0.95% above the European Central Bank Main Refinancing Operations Minimum Bid Rate ("Repo Rate") for the term of the Loan. Variation in interest rates shall be implemented by the lender not later than close of business on the 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.

..."

I note that the **Acceptance and Consents** section of the **Mortgage Loan Offer** was signed by the Complainants on **25 July 2006** 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 tracker variable interest rate of ECB + 0.95% for the term of the loan. The **Special Conditions** provided that the repayments would be interest only for the first 7 years of the term of the loan. The Complainants accepted the Letter of Offer, having confirmed that they had read and fully understood the Loan Offer.

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I note that the initial interest only repayment period on the mortgage account was due to expire on **30 August 2013**.

The Provider's internal note dated **18 June 2013** details as follows;

"...a/c due to roll off IO on 30.08, start date-01.09. Tracker rate- 1.45%, No arr[ear]s.IO [payment] E630.94 & full C&I [payment] E1640.43. Rang [First Complainant] mob no from [Provider's system], no ans[wer], left VM req[uesting] callback. Action: monitor callback from cust[omers] on n[e]xt review, if no update make 2nd call..."

The Provider's internal note dated **19 June 2013** details as follows;

"Acc tx 22 for 630.94, has gone through as per MCA, Cust adv[ised] already spoken to agen [sic] about this, adv[ised] cust wont receive another call about this [payment], ok with this."

The Complainants wrote to the Provider by letter dated **8 August 2013** and detailed as follows;

"With effect from next payment date i.e. 30/8/13 please increase principal repayment by €250.

This will make the total principal repayment €500. On the basis of existing rates the amended monthly payment will be €880.94."

I note from the **mortgage loan statements** that the monthly repayments were adjusted to €880.94 from **2 September 2013**.

The Provider's internal note dated **25 September 2013** details;

"SFS rec'd today, sent to SFS prep team"

I am disappointed to note that a copy of the **Standard Financial Statement** submitted by the Complainants to the Provider on **25 September 2013** has not been provided in evidence to this office, nor has the Provider provided any explanation for not providing this document in evidence.

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The Complainants, in their post Preliminary Decision submission of **3 February 2021**, have submitted as follows;

“[We] note several instances of the Provider not providing requested information and documentation. Is that a satisfactory situation in this matter?”

Provision 11.5 and 11.6, Chapter 11 of the Consumer Protection Code 2012 (which was effective from **01 January 2012**) outlines as follows;

“11.5 A regulated entity must maintain up-to-date consumer records containing at least the following

- a) a copy of all documents required for consumer identification and profile;*
- b) the consumer’s contact details;*
- c) all information and documents prepared in compliance with this Code;*
- d) details of products and services provided to the consumer;*
- e) all correspondence with the consumer and details of any other information provided to the consumer in relation to the product or service;*
- f) all documents or applications completed or signed by the consumer;*
- g) copies of all original documents submitted by the consumer in support of an application for the provision of a service or product; and*
- h) all other relevant information [and documentation] concerning the consumer.*

11.6 A regulated entity must retain details of individual transactions for six years after the date on which the particular transaction is discontinued or completed. A regulated entity must retain all other records for six years from the date on which the regulated entity ceased to provide any product or service to the consumer concerned.

The Complainants’ mortgage loan was incepted in **2006** for a term of **25 years** and the Provider purportedly received the Standard Financial Statement completed by the Complainants in **September 2013**. The Provider is obliged to retain that documentation on file for six years from the date the relationship with the mortgage holder ends. It appears that the mortgage loan account remains presently active with the Provider. It is therefore unclear to me why this documentation has not been provided by the Provider. This is most disappointing.

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The Provider's internal notes dated **1 October 2013** outline as follows;

<p><i>"Proposal received via Financial Advisor [redacted]. Customer priority is the [text redacted]</i></p> <p><i>(d) No repayments will be made on the residual amount and debt will accumulate with no interest repayments"</i></p>
<p><i>"(ii) BTL [ending 8482], has just rolled off i/o. – however had been overpaying DD 630pm – now offering 877pm – i/o is 377pm + 500pm AND retain tracker. Note: with 1% loading = 636 i/o + 241 capital @ 877pm 'v' gross rent @ 825pm"</i></p>
<p><i>"OTHER QUERIES RAISED BY CUSTOMERS FINANCIAL ADVISOR : Q. Reviews should be at maximum annually (in order keep financial advisor costs down) A. We cannot guarantee how often the mortgages will need to be reviewed. However once meeting the agreed forbearance agreements the preference is to seek further reviews only when necessary. Q. Credit rating will not be affected negatively A. The mortgage repayment history will be reflected with the ICB so we cannot guarantee that the customers Credit Rating will not be viewed as negative for the relevant periods of arrears."</i></p>
<p><i>"Currently forbearance repayments are not reflected as arrears on the ICB (bar moratoriums). However should this change, again we cannot guarantee that the customers Credit Rating will not be viewed negatively. Q: These proposals are made on the basis that if [the Provider] policy-strategy changes OR debt write down comes to pass, then customers will not be excluded from applying for same. A: We cannot guarantee [the Provider's] position regarding this request as it does not form part of [the Provider's] credit policy."</i></p>
<p><i>"NOTE: [the First Complainant's employer] pays net 3482pm(payslip 3552pm on file) – [the Second Complainant's employer] 1400pm (was 2190 to 9/13 extra hours now gone) – joint [other Provider] c.ca standard operations no issues – DECISION [text redacted]</i></p> <p><i>(ii) BTL [account ending 8482] acknowledge overpay on this when i/o. However unable to override pricing policy re tracker.- (a) If taking @ eur 887pm @ current term (age 68) the DCF = no deficit (plus 2k), Assumes no rent increases. However it is very tight. (b) A max term extn yr 2043 + 1% tkr = 1227pm. Not affordable when net rent 660pm and trying to meet full C&I on pdh as well. (c) A 10% increase in rent over current mtg term, which is plausible for [Location redacted] city house = surplus 20.6k OR 99.1k surplus based max term AGREE : 5 Yr fixed payment @ Eur 877pm"</i></p>
<p><i>"pdh continues @ full C&I sustainable & itv 65% - if paying 20% of std are then left with 3623 pm to cover stated expenses 3771, though could cutback to 3411 (drop savings 200pm. Club 40pm & take 20% of prop expenses figure – baseline</i></p>

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ndi 2500. As stated the [Location redacted] BTL remains in MRT as customers will sell unsustainable. no pays being made."

"The [Location redacted] btl. after 5 yr fixed @ 877pm, we can review to look for a longer final fix. The rent will likely have increased by 2018 and possible could then afford a step up in repayment based on a max term extension. In addition dependent/s could be self sufficient at this stage. [Text redacted]"

"Decision for NON CCMA ref [ending 8482] (i) Fixed repayment @ EUR 877 x 60 months to 10/2018 (ii) DO NOT ACTION UNTIL FURTHER MMAIL INSTRUCTION FROM PRICING UNIT Decision for NON CCMA ref [ending 8482] Please issue Agreement to Amend Letter of Offer to customer(s). Interest rate to be converted to discounted variable rate of 1% above existing tracker rate"*

The Provider has outlined as follows with respect to its Buy to Let pricing policy;

"The Provider made a commercial decision to implement a pricing policy change in respect of Buy-to-Let mortgage loans. 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. This standard variable interest rate will be at the discretion of the Provider and will be influenced by market interest rates and can move up or down over the life of the mortgage. The tracker status of the loan ends completely on taking up of new amendments to the terms and conditions."

The Provider wrote to the Complainants by letter dated **3 October 2013** which detailed 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.

We have considered all aspects of your case including:

- a) Your personal circumstances:*
- b) Your overall indebtedness:*
- c) The information you provided in the financial assessment form or subsequently submitted:*
- d) Your current repayment capacity; and*
- e) Your previous repayment history.*

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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.

We strongly recommend that 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 are set out in an appendix to this letter.

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:

- Your loan capacity may not be repaid as quickly as is provided for in your initial mortgage loan offer letter.*
- It is possible that you may owe us more at the end of the alternative repayment arrangement than you owe us now.*
- The total cost of the credit is likely to be higher than outlined in the initial version of your mortgage loan offer letter.*
- 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.*
- 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.*
- 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.*

- *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.*
- ***You will lose the present tracker variable rate for the remaining term of the mortgage loan. [My Emphasis]***
- *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.”*

An **Agreement to Amend Mortgage Loan Offer Letter** dated **3 October 2013** 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

Alternative Repayment Arrangement

...

If you accept this form you are to pay an amount equal to the greater of the following amounts in each regular repayment instalment during the Agreed Period:-

- €877.00 (the “reduced regular instalment”); or*
- Interest due for payment on the Loan if the amount of interest due for payment is greater than the reduced regular instalment (that is possible, for example, because of a rise in interest rates).*

...

The “Agreed Period” means the period of 60 months starting from the date we put the alternative repayment arrangement into effect.

...

Conversion from Tracker Rate to New Interest Rate Type

Tracker to BTL Variable

/Cont’d...

This form converts the interest we charge on the Loan from a tracker rate which is 1.450% 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 2.450% per annum.”

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.*
- 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.)*

/Cont’d...

- 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.”*

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 €1,649.70 each and that the total cost to you of the Loan would be €42,494.34. 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.)*
- b) *If you accept this form, we estimate you will be obliged to pay monthly instalments of €877.00 each during the Agreed Period and of €2,240.70 each thereafter. The total cost of the Loan would be €87,737.34. 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.”*

/Cont'd...

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.

It is clear that the Agreement to Amend Mortgage Loan Offer Letter offered the Complainants reduced repayments of €877.00 on the mortgage loan for a period of 60 months, subject to the BTL variable rate of 2.45%.

The **mortgage loan statements** show that the Complainants’ mortgage loan account re-entered arrears on **18 October 2013**.

The Provider’s internal notes detail that the First Complainant phoned the Provider on **22 October 2013** as follows;

“...cust has rec[eived] mfa but feels he was looking for certainty [sic] and that does not give it to him. asked him if he would like to speak to someone and adv he would and [Location redacted] would be his local branch...”

The Complainants wrote to the Provider by letter dated **31 October 2013** which stated as follows;

“Further to yours of 3/10/13 and my telephone discussion with your office today I am as requested appealing the proposal received.

The main issue for me is certainty and the proposal is uncertain. I am preferred as detailed previously to include €500e on principal payment on top of the ECB Tracker rate. I make this proposal based on the criteria outlined in your letter.

...

The removal of the tracker and introduction of uncertainty is not a viable situation for us. Consequently I am asking you to reconsider this.

As you know this account has performed without issue in the past as has the family home also with yourselves.”

/Cont’d...

The Provider's internal note of **1 November 2013** details as follows;

"Non CCMA letter received...Letter to customer to advise and case will not be heard by the Appeals Board"

The Provider's internal note dated **5 November 2013** outline as follows;

***** 05/11/2013 ** Customer appeal letter 31.10.2013: BTL [account ending **8484**]. The loss of tracker & uncertainty [sic] of the forbearance, seeks re consideration. DECISION: Cannot currently offer long term sustainable option as unable to afford (i) C&I max term (loss tracker) = 1227 pm (ii) Max split 60% residual @ max term 881pm*

The approved forbearance offered is Eur 887pm, so the split option whilst long term would cost customer more... Tracker rate not negotiable. No NAM as with MRT. re advised case manager [redacted]"

The Provider's internal note of **20 November 2013** details as follows;

"...spoke with [First Complainant] adv[ised] [customer] of appeal not heard as BTL cust[omer] understood and adv[ised] he had received a letter regarding that matter adv[ised] cust[omer] we need to come to a formal arrangement with the ba[n]k regar[d]ing the arrears of 3424.72 cust[omer] in Q12 cust[omer] adv[ised] he still has not received a call from Nam [Redacted] email sent to adv[ise] NAM to arrange a call back for him"

The Provider's internal note dated **25 November 2013** details as follows;

- "I met with [First Complainant] in [Location redacted] today. While cust accepts that he will lose Tracker Rate on BTL he stated that he cannot live with the uncertainty of the rate increasing in excess of 1% above the existing prevailing rate on this mortgage. Cust advised that he will sign MFA if he is given certainty re. 1% increase above prevailing rate for the duration of the 5 yr period of fixed repymt offered & he is firmly of the belief that this is not an unreasonable request. I restated the Pricing Policy but cust has requested that I escalated his request as he is very anxious to resolve this and accept the 5 yr forbearance offered."*
- "Discussed with [Name redacted] (NAM) and noting customer request per meeting today 25/11. [Provider] Pricing Policy prevents such a request from taking place. No certainty can be given regarding the revised variable rate."*

/Cont'd...

The Provider's representative telephoned the First Complainant on **27 November 2013**.

The Provider's internal systems note of the same date details as follows;

"I explained to [First Complainant] that offer of variable rate stood & no guarantee could be given re. increase in variable rate over the 5 yrs of fixed payment offered."

The Provider's internal note of **27 November 2011** details;

"Contact cust[omer] next week if he hasn't reverted with MFA- he had wanted further time to consider loss of tracker & discuss with his Independent Advisor [Redacted]"

The Provider's internal notes dated **17 December 2013** details as follows;

- *"Scanned letter received by email on 12/12/13 from [Redacted] with various queries/clarification requests in relation to customer forbearance offer & residual debt on [Location redacted] property"*
- *"ICB from [Redacted] re. letter sent to me on 12/12/13 – see previous note today. I advised [Redacted] that I could not respond in writing. In relation to point 3 of this letter -I advised [Redacted] that if this situation arose that customers would need to complete a new SFS. Point 4 – I reiterated that new rate will be a variable rate & not necessarily linked to matrix home loan rate – security property is a BTL. Point 5 – this cannot actually be assessed until the sale on [Location] property is completed. Point 6 – similar to existing SFS process, [updated] financial position & sup[porting] docs, Point 8 – not possible due to arrears on a/c...."*

Point 9 – ICB reflects a/cs which are ooo & also a/c's with arrangements in place. [The Complainants' representative] stated that he believes that [the Provider] are being very inflexible in comparison to other institutions which are writing down debt. I explained that this is not [Provider] policy. He will revert to customers & in all likelihood it will be the first week of January before they come back to me with their decision as to whether or not they are accepting forbearance offered."

/Cont'd...

It appears that on **12 December 2013** the Complainants' representative wrote to the Provider with a number of queries regarding the **Agreement to Amend Mortgage Loan Offer** and outlining a proposal to write down the Complainants' debt. Again, it is most disappointing that a copy of this correspondence has not been provided in evidence to this office.

Nor has any explanation been provided as to why this correspondence has not been furnished in evidence. I refer again to the Provider's obligations under **Provision 11.5 and 11.6, Chapter 11 of the Consumer Protection Code 2012** as set out above.

It appears from the evidence before me that the Provider rejected the Complainants' proposal of a debt write down in **December 2013**. I accept that there was no obligation on the Provider to accept the proposal submitted by the Complainants in **December 2013**, as it was entitled to seek repayment in full of the outstanding monies due on the mortgage loan account in accordance with the mortgage contract. In accordance with **General Condition 4(a)** the obligation was on the Complainants to maintain the repayments on the mortgage loan and the Complainants were not doing so.

It appears that the Provider received a further telephone call from the Complainants' representative on **6 January 2014**. The Provider's internal note dated **7 January 2014** outlines as follows;

"...[Complainants' representative] stated that customers had considered their position over the holiday period & wanted to know if there was any possibility of getting a long term 'commercially viable solution' i.e. write down of part of the debt. I reiterated again that this is not [Provider] policy. He also queried again the BTL Tracker Pricing Policy – I again reiterated our position on this. [Redacted] advised that it would be another 10 days before his customers revert with their decision re. accepting forbearance offer or not as they needed time to take advice on the Insolvency legislation."

On **9 January 2014** the Provider recorded an internal note of a telephone call with the First Complainant, as follows;

"IBC from [First Complainant], arrears on account E6,774.64, cus[tomer] adv[ised] that not aware of these arrears, cus[tomer] adv[ised] that his is in negotiations with [Provider representative] and that he had almost come to an agreement with her, adv cus[tomer] I would get [Provider representative] to contact cus[tomer], can see now from prev note that [Complainants' representative] dealing with [Provider representative] and that it would be another 10days before customers revert with decision, acc excluded from dialler until 17.01."

/Cont'd...

The Provider's internal systems notes dated **15 January 2014** details as follows;

- *"Inbound email: From [Redacted]
Sent: 13 January 2014 17:02 To: [Redacted] Subject: [The Complainants]
Dear [Redacted] [the Complainants] have thought through their situation. As you know, they have reservations about what is on offer to them from [the Provider], in particular because it is not a long term sustainable solution. However, having thought through their situation they are of the option that they have very few alternatives and therefore have decided to go with what was outlined by [the Provider].

...you might let [the Complainants] know whatever procedure needs to be followed from here to implement the agreement. Thank you for your own professionalism and prompt service. Yours sincerely, [Redacted]."*
- *"Confirmed with [Redacted] that it is in order to have customers sign MFA's which issued in Oct 13"*
- *"...Customer confirmed that he has the paperwork to sign – both parties will sign & return to me in [Location]. Cust[omer] intends to make repymnts over the phone with Laser Card as he is fearful that unpaid charges may be incurred if he sets up D/D & he doesn't want to have the inconvenience of calling to branch to lodge."*

I note from the Provider's internal system notes that on **16 January 2014** the First Complainant requested a new copy of the **Agreement to Amend Mortgage Loan Offer Letter** from the Provider.

The Provider's internal note dated **17 January 2014** details;

"IBC on Friday evening 17/01/14 from customer [First Complainant]. While he has the original MFA which issued, cust stated that it is covered in notes & requests that it be reissued. I advised it would be Monday 20th before I could organise same as – cust was agreeable to this. He will lodge over the phone by Laser Card as he does not wish to reinstate D/D."

The Complainants wrote to the Provider on **6 February 2014** and detailed as follows;

"In relation to yours of 3/10/13 resent and received on 24/1/13, a few things

/Cont'd...

1. *We are very disappointed at the opportunistic removal of the tracker rate which had applied for the previous 7 years without issue. It makes an already difficult situation more difficult. We fail to see how this forms part of a long-term solution.*
2. *The attached has been signed on the strict understanding that those matters agreed with our nominated intermediary [Redacted] are adhered to."*

The Complainants signed the **Acceptance of the Agreement to Amend Mortgage Loan Offer Letter** on **6 February 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 Complainants signed and accepted the **Agreement to Amend Mortgage Loan Offer Letter**, having ticked the box to confirm that they had received independent financial advice on the agreement and that they agreed to be bound by the terms and conditions of the agreement. It is clear from the evidence that the Complainants were aware, or ought to have been aware of the consequences of accepting/signing the agreement. If the Complainants were 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 Complainants could have decided not to accept the offer made by the Provider.

/Cont'd...

The Complainants have submitted that they *“were not seeking a change to our terms and conditions. It transpired that [the Provider] saw the opportunity to do exactly that, not us.”*

In their Post Preliminary Decision submission dated **18 February 2021** the Complainants have submitted as follows;

“As you well know [the Provider] have prevaricated, been disingenuous and refuse to acknowledge that removal of the tracker came from them, not me. As you will understand I was not in a position to make a call on that. To suggest that I contacted them to renegotiate and by the way, remove the Tracker rate is nothing short of ludicrous. It just does'nt stack up to any scrutiny.”

In the Complainants' post Preliminary Decision submission to this office dated **3 February 2021**, the Complainants outline as follows;

“[Our] mistake it seems is that [we] engaged after expiry of the initial 7 year interest only facility.

The whole point of [us] engaging was to agree certainty at a very difficult time in the economy. Everything was in freefall. [We] did so on the basis that full capital repayments were not possible at the time and what [we] really wanted was a reduced capital repayment structure on the existing basis. There were numerous discussions with [the Provider] on this. The ONLY OPTION put forward by them involved removal of the tracker rate. That was their only motivation and the opportunity had presented itself. Simple as that. They did not at any time discuss, suggest or offer any other solution. For [our] part a sale of the property had been looked at but the property market was distressed. The residual debt would have been unserviceable. They knew all that. [We] have been consistent in this from day one and [are] convinced beyond any doubt that was the case. On that basis [we are] making a submission. The error of fact being that no other solution was put forward leaving [us] only one option which [we] took because [we] needed some certainty. Unfortunately for [us] that involved removal of the tracker rate by [the Provider]. To say we should not have signed the 'only offer' and that would have left the tracker rate as it was is disengenous (sic) to say the least. They know well that is the case. Their position does not stand up to any objective scrutiny.

...

/Cont'd...

I repeat there was no other solution offered or discussed. It is inconceivable to suggest leaving matters as they were constituted a solution. It is just not true and they know it. The agenda was the removal of the tracker rate. Nothing else. I am firmly of that view and the facts bear it out."

I appreciate that the Complainants did not want to give up their entitlement to a tracker interest rate. However, it remains the case that the Complainants were seeking to vary the terms of their mortgage loan with the Provider by seeking forbearance on the loan. It was within the Provider's discretion to decide whether or not to accede to that request. Agreeing to renegotiate the terms of the mortgage gave the Provider the opportunity to introduce different terms to the agreement. The Complainants have submitted that "*what [we] really wanted was a reduced capital repayment structure on the existing basis.*" It is important for the Complainants to understand that there was no obligation on the Provider to offer the Complainants other alternative repayment arrangements, or indeed to offer the Complainants any form of forbearance on their mortgage loan at the time. Until the new terms were agreed, the original terms continued to apply.

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 Complainants' mortgage loan which is the subject of this complaint.

In the circumstances of this particular complaint, it appears that the Provider offered a variable rate of 2.45%. I note that the **Agreement to Amend Mortgage Loan Offer Letter** dated **3 October 2013** refers to the tracker interest rate applicable to the loan as being 1.45%. The loading of 1% was added to the tracker interest rate of ECB + 0.95%, and a variable interest rate of 2.45% was offered by the Provider to the Complainants.

I accept that the Complainants did not want to give up the entitlement to the tracker interest rate, however, the Complainants were seeking to agree an alternative arrangement with the Provider on a mortgage that was not secured on their principal private residence. The Provider made an offer to the Complainants to make reduced repayments for five years on the mortgage account on condition that a variable rate of 2.45% would apply to the mortgage loan. While I accept that the Complainants were in a difficult position, it was nonetheless a matter for the Complainants to decide whether to accept that arrangement on offer by the Provider.

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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 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 **Agreement to Amend Mortgage Loan Offer Letter**. The mortgage loan was not a Private Dwelling House mortgage loan.

It appears from the Provider’s internal letter history provided in evidence that it issued a Product Switch letter to the Complainants on **21 February 2014**. Again I am disappointed to note that a copy of this letter has not been furnished in evidence. Nonetheless it is not in dispute that the Complainants received this letter.

/Cont’d...

The Complainants wrote to the Provider by letter dated **7 March 2014** as follows;

“With reference to yours of 23/2/14 I would like the first line of the letter corrected. We did not ‘request’. We very reluctantly agreed as per letter of 6th February 2014. A further copy is attached.”

The Provider’s internal note dated **7 May 2014** details as follows;

“adv[ised] cust[omer] of arrears, cust[omer] adv[ised] that rec[eived] letter, adv cust system gen[erated] letter and wil cont[inue] to issue once arrears on acc, cust adv that has entered into a new agreement of i+partc. adv[ised] cust that must meet these repayments, cust declined repay[ment] towards arrears, cust adv[ised] fell into arrears due to los[s] of tracker”

The Complainants wrote again to the Provider by letter dated **22 February 2016** which stated as follows;

“I am writing in relation to discussions that took place earlier 201[4] resulting in the removal of a Tracker facility.

I remain unhappy about this as it was put through in a very pressurised manner and given the circumstances hardly seems equitable. I continue to fulfil my obligations as best I can but some issues such as BTL variable rate is not defined or was it explained what it meant we dealt with.

I am requesting an investigation of this file.”

The Complainants have submitted that they had “no choice” but to accept the arrangement on offer in **February 2014** as “No alternative was ever discussed” with them.

I accept that the Complainants did not want to give up the entitlement to the tracker interest rate of ECB + 0.95% on the mortgage loan, however, the reality of the situation at that time in **February 2014**, was that the Complainants could not service the repayments required within the original term of the loan. As outlined above, the Complainants were seeking to agree an alternative arrangement and it was a matter for them to decide whether to accept the arrangement on offer by the Provider. The consequences of accepting the offer and the appropriate information was provided to the Complainants in the Offer Letter. If the Complainants were not happy with the terms of the **Agreements to Amend Mortgage Loan Offer Letter**, including the amendment to the interest rate, the Complainants could have decided not to accept the offer made by the Provider.

/Cont’d...

Therefore there is no evidence before me which supports the Complainants' contention that there was an inappropriate or "opportunistic" removal of a tracker rate of interest from their mortgage loan account by the Provider in **February 2014**.

It appears from the Provider's internal notes that the Complainants submitted a new **Standard Financial Statement** to the Provider on **4 September 2017**. A copy of the Standard Financial Statement has not been provided in evidence.

The Provider's internal note of **8 September 2017** details;

"...BTL [ending] 8482 – Current forbearance at E877pm in place until Feb 2019. Seeking max term extn – primary issue relates to the change in customers circumstances since forbearance was approved in 2014. Customer ... Stepped down as [Occupation redacted] July 2016 and currently unable to work due to illness. Not advised of likely timeframe for return to work and potential income. Current repays at E877pm being maintained and same is in line with split mortgage / max term extn / Cap. Notwithstanding the fact that the customer is maintaining the current forbearance, there is no affordability evident per the SFS (overall shortfall of E825pm) and cannot agree split/cap on this basis.

Forbearance declined. Unsustainable. Strategy: Customers current forbearance continues to 2019. During this period, the customers employment situation will become clearer and would agree to review position closer to the rollover date"

The Provider wrote to the Complainants by letter dated **12 September 2017** which outlined as follows;

"Mortgage account number: [ending 8482]

Arrears: €10,130.56

Address of Property: [redacted]

We cannot offer you an alternative repayment arrangement

Dear [Complainants]

We have been considering whether an alternative repayment arrangement (ARA) would be suitable for you.

/Cont'd...

We have decided not to offer you an ARA because your mortgage is not 'sustainable'. For a mortgage to be sustainable, you have to be able to make all of your mortgage repayments in full and on time so that you pay off the full mortgage loan by the end of the mortgage term.

Due to your circumstances, we do not think that you will be able to pay off the mortgage by the end of the mortgage term. We do not believe any ARA we offer will change that position (for example, even if we used an ARA to reduce your payments to the maximum you can afford).

If you are in arrears and want to avoid legal action, there may be other options open to you. These and other important information are set out under 'Important information about mortgage arrears' in the appendix on the next page. These options would be better than legal action for you and us, and you should get independent legal and financial advice about them.

If you do not agree one of the other options with us, we may have to start legal proceedings or use other rights we have under your mortgage loan documentation.

If you are in arrears, the amount of those arrears is shown on page 1 of this letter. If you choose one of the other options described in the appendix, and we agree to it, you will have to pay off those arrears as part of the option.

For example, you would have to pay off the arrears from the proceeds of selling the property, or, if necessary, from other funds. Not paying off your arrears will affect your credit rating (see the appendix for more details)

We strongly recommend that you get independent financial and legal advice about the options shown in the appendix.

If you have any questions about this letter, please contact your local [Provider] branch's Mortgage Adviser. Or you can phone our Arrears Support Unit on [redacted]."

The Provider wrote to the Complainants by letter dated **24 October 2018** which detailed as follows;

"Your current repayments on this mortgage loan are €877.00. These repayments are due to end on 21/02/2019 after which the repayments will be the full principal and interest amount due under the mortgage loan.

/Cont'd...

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	Repayment (with agreed overpayment)
Buy to Let Variable	2.450%	€980.36	€2,179.06

**We will write to you again to confirm the actual repayment amount due on your mortgage account after 21/02/2019 when the full principal and interest repayments commence.*

If you foresee any difficulties in making your mortgage repayments, please contact our Customer Relationship Unit. [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 our Customer Relationship Unit at [redacted]."

The Provider's internal notes dated **28 January 2019** detail as follows;

- *"...adv[ised] cust[omer] acc [r]olling to full C+I cust[omer] adv[ised] cannot meet step up and will require further [forbearance], cust requested I post out FIF for him to complete and return..."*
- *"fif issued"*

The Provider's internal note dated **13 February 2019** details as follows;

"...Customer advised that he has gone to FSO. Declined to provide case number. Customer advised that he will be returning SFS. Advised SFS will need to be returned before 7th of March (2 weeks after rolling off)"

/Cont'd...

The Provider issued a letter to the Complainants on **21 February 2019** which stated as follows;

“Further to our previous letter regarding your [Provider] Homeloan we can confirm that your account has now been switched to a Repayment mortgage.

The amount of your revised repayment is €2,219.35 falling due on 28/03/2019.

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 our Customer Relationship Unit. [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 our Customer Relationship Unit at [redacted].”

The Provider issued a further letter to the Complainants on **27 February 2019** which detailed as follows;

“I confirm that the agreed changes to your mortgage have been applied to your account.

The updated details for your account are as follows.

Mortgage Type:	Repayment
Mortgage Rate Type:	Buy to Let Variable
Interest Rate:	2.450%
Repayment Frequency:	Monthly
Next Repayment Date:	28/03/2019
Mortgage Repayment:	€2,219.35
Maturity Date:	28/09/2031

The payment rates on this mortgage will be adjusted by us from time to time. If there are any changes in mortgage Interest rates we will advise you immediately.”

/Cont'd...

The Provider's internal note dated **25 March 2019** details;

"Adv cust fb has rolled and next payment will call for e2219.35 on 28/03. Queries status of sfs – cust adv still completing and may take another week or so to finish..."

The Complainants have submitted that the Provider informed them in **September 2019** that it was selling their mortgage loan account to another regulated financial service provider. No evidence documenting the transfer of the Complainants' mortgage to another financial service provider has been submitted to this office.

In any event I note that **Condition 10(a)** of the **General Mortgage Loan Approval Conditions** outlines;

"The Borrower's attention is drawn to the fact that the Loan and the Society's Security and any associated rights and interests (including the debt secured and rights and interest under related insurances and assurances) will be freely transferable by the Society (i) whether by transfer, conveyance, assignment, mortgage or charge, whether fixed or floating mortgage or charge and whether by sub-mortgage or sub-charge or otherwise; or (ii) whether as part of a loan transfer and securitisation scheme or otherwise, on such terms as the Society may think fit."

It is clear from the Terms and Conditions that the Provider did not require the consent of the Complainants prior to the sale of the mortgage. In any event the transfer of the Complainants' loan to a third party provider does not appear to have any bearing on the Complainants' complaint, which relates to the conduct of the Provider in removing the tracker rate from their mortgage loan account in **February 2014**.

In **October 2013** the Provider offered the Complainants reduced repayments on their mortgage loan account for a period of 60 months, on the condition that the Complainants agreed to change the interest rate applicable to the mortgage loan from a tracker interest rate to a Buy-to-Let variable interest rate. The Provider issued an offer to the Complainants to this effect on the mortgage loan in the form of the **Agreement to Amend Mortgage Loan Offer Letter**, which contained the appropriate warnings in compliance with the **CPC 2012**, about moving from a tracker interest rate to a variable interest rate. The Complainants accepted the **Agreement to Amend Mortgage Loan Offer Letter** with respect to the mortgage loan.

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

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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

1 March 2021

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

- (a) ensures that—
 - (i) a complainant shall not be identified by name, address or otherwise,
 - (ii) a provider shall not be identified by name or address,and
- (b) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.