



<u>Decision Ref:</u>	2021-0119
<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

This complaint relates to two mortgage loan accounts held by the Complainant with the Provider. The mortgage loan accounts that are the subject of this complaint were secured on the Complainants' Buy-to-Let properties.

The mortgage loan account ending **2812** was for the loan amount of €400,000 and the term of the loan was 25 years. The Mortgage Loan Offer Letter dated **05 July 2007** detailed that the loan type was "*Interest Combo*" and the interest rate was "*4.750% Variable*". The Special Conditions provided that the repayments would be comprised of interest only for the first 7 years of the term of the loan. This mortgage loan account was redeemed on **15 June 2016**.

The mortgage loan account ending **2900** was also for the loan amount of €400,000 and the term of the loan was 25 years. The Mortgage Loan Offer Letter dated **6 July 2007** detailed that the loan type was "*Interest Combo*" and the interest rate was "*4.750% Variable*". The Special Conditions provided that the repayments would be comprised of interest only for the first 7 years of the term of the loan.

The Complainant's Case

The Complainant submits that the two mortgage loan accounts ending **2900** and **2812** were drawn down in **2007** in circumstances where she had separated from her former spouse and he *"could no longer reside at the family home"*.

She details that her ex-husband *"negotiated"* the terms of a new mortgage with the Provider which was required to *"to buy another property for him to live in"* which *"was purchased for Eur900K + stamp duty."*

The Complainant outlines in relation to the mortgage application process in **2007** that *"I was not involved at any stage although I was a co-signatory on what I believed to be 1 loan for Eur800k."* She details however that *"Without my knowledge, my ex-husband, allegedly at the Bank's insistence mortgaged another house as well and in fact the loan was split Eur400k across each property."* Both mortgage loan accounts ending **2900** and **2812** were drawn down for the loan amount of €400,000 each on tracker interest rates of ECB + 0.75%.

The Complainant submits that she wrote to the Provider *"at least twice"* in **2008** to outline her difficult personal circumstances. She states that *"the Bank would have known from 2008 that I was a very vulnerable customer."*

The Complainant details that the property purchased in **2007** was not purchased as a Buy-to-Let (BTL) property, but was for her ex-husband to live in. She submits that the Provider in its response to the complaint has *"made frequent reference to [its] 'buy to let' policy but ... this house was not 'bought to let'."* She outlines that *"It only became an investment property in April 2010 after Judicial Separation Court order awarded the house to me"*. Following their separation proceedings the Complainant's ex-husband was removed as a party to the mortgage account ending **2812** in **2010**.

The Complainant details that *"In 2010, when I became solely responsible for the mortgages, I had no idea that in 4 years the repayments would multiply by 6 and become unsustainable"*. She submits that when she took on sole responsibility for the mortgage accounts ending **2812** and **2900** in **2010**, this *"would have been an opportune time for [the Provider] to set out the seriousness of what I was taking on before allowing my ex husband 'off the hook.'"* She submits she was unaware that the interest only repayments would expire in **2014** and had *"planned to start paying back capital in 2019 when [she] finished paying back the family home mortgage."*

The Complainant submits that prior to the expiry of the interest only periods on the mortgage loan accounts in **2014**, she “became a target” of a campaign by the Provider which was “using unsolicited phone calls with the aim of transferring low value business (tracker mortgage) to high value business for the bank”. She states that “It is most certainly not an ‘information service’ as asserted in the latest communication and it is most disingenuous of [the Provider] to suggest otherwise

This particular campaign was sinister because it then used ‘mobile’ telephone calls and face to face interactions of their agents (Network Area Managers) with customers but never putting anything in writing or recording any of the calls.”

The Complainant submits that “It is hard not to be disgusted at the callous ‘cold calling’ of a customer which the Bank knew was vulnerable and whose repayments would soon be 6 times the amount of the previous 7 years. I became a target of their so called [Redacted] campaign in APRIL 2014 so it is likely I was flagged even earlier than this but [the Provider] did nothing to alert me ... Clearly, I was ‘targeted’ mercilessly with unsolicited telephone calls the aim of which was to persuade / trick me into giving up my trackers.”

The Complainant further submits that the Provider “argues that making repeated unsolicited campaign calls to a customer who knew she was not in arrears constituted an attempt to warn me that my repayments were set to increase 6 fold in August 2014. The case record notes show that not 1 of these calls was successful for reasons already outlined in my previous submissions and yet the Bank did not see fit to write to me for 2 months.”

The Complainant submits that in summer **2014** she received “notice” from the Provider that the interest only period on the mortgage accounts ending **2812** and **2900** was ending in **October 2014** and the payments would increase from €455.00 per month to €3,049.00 per month. She states “I knew that I could not make these payments being sole provider for [number of] children and the Bank seemed very understanding and willing to work with me.”

The Complainant details “I told the Bank that I planned to sell one of the properties to make the other one more manageable. I was advised by [the Provider] to go through their process and be properly advised by their Network Manager as they don’t want people to have to sell. I completed all the forms and then met with [the Provider’s Network Area Manager] all the while maintaining that my only option was to sell a property.”

The Complainant outlines that she engaged with the Provider’s Network Area Manager and that “At no time during the entire process did the question of losing both trackers come up.

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My proposal was submitted in writing ... and I proceeded to put one of the houses on the market. What came back from the bank was a proposal to take me off both trackers. When I expressed my outrage at what happened, I was invited to put in a complaint and given a telephone number to suspend the direct debit with the mortgage arrears unit while the matter was being investigated."

The Complainant further submits that *"Strangely, the Network Manager stated that they were not allowed to put things in writing which is very bizarre if they are being clear and straight with their business. He invited me to come back for another meeting but I declined after he told me he was not allowed to put things discussed on the phone or in person in writing."* She further states that the Provider *"does not seem to have recorded any of the telephone conversations between myself and [the Provider's employees] which would be the most relevant to this topic. Combined with [the Network Area Manager] refusing to commit what he was saying in writing makes it all look sinister."*

The Complainant submits that *"There is absolutely no doubt that the goal of the 'Network Area Manager' was to have me relinquish both of my tracker mortgages but retain the variable mortgages. From the case notes, it is clear that I was deemed to be a very reliable payer of mortgages and a suitable target for their campaign. It was clear that the Network Area Manager was very unhappy with my proposal to sell the house, clear the tracker on that house as well as a variable interest loan on my family home. This plan made perfect financial sense and therefore, it is entirely incorrect for [the Provider] to refer to this person as an 'Adviser'. At best, the NAM was a 'Salesman' and at worst 'a Con Man' who lied when he tried to defend himself by stating that I refused to sell."*

The Complainant did not accept the Provider's proposed alternative repayment arrangements offered in **October 2014** which provided for the removal of the tracker interest rate from both mortgage loan accounts.

The Complainant submits that she fell ill and was hospitalised in early in **2015**. She details that consequently she was unable to work or drive *"for a few months while a diagnosis was sought and I was re-admitted on a few occasions for various testing"*. She submits that during this period *"I wasn't being paid and was unable to pay bills including school fees, mortgages etc and got an adverse credit rating which I only discovered when I applied for an overdraft from [third party provider] ... I believe I will have this adverse credit rating for 5 years. I was unable to go guarantor for my daughter who is studying [Redacted] (Fees 15,200 per annum) when she was offered an interest free loan of EUr10,000 from [third party provider] and had to go to a family member to help me out which was very humiliating."*

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The Complainant submits that when she first wanted to sell the property in **2014** it was valued at €675,000. She states that the Provider's actions at that time caused the sale of the property to be delayed and as a result *"The delay in selling brought it under the new central bank restrictions introduced in 2015 and it was eventually sold for Eur625,000. The reduction was explained by the agent in terms of central bank borrowing restrictions on houses in that bracket."*

The Complainant sold the security property and redeemed the mortgage loan account ending **2812** on **15 June 2016**.

The Provider's Case

The Provider submits that mortgage loan account ending **2812** was drawn down **24 August 2007** as a Residential Investment Property Loan. It states that the Offer Letter dated **5 July 2007** provided for a tracker variable interest rate. It states that **Special Condition Part 4 a(ii)** provided for interest only repayments for the first 7 years, thereafter reverting to capital and interest repayments in **October 2014**. The Provider details that the purpose of mortgage loan account ending **2812** was to assist with the purchase of a Buy-to-Let property ("Property A").

The Provider submits that it is sympathetic to the personal background as outlined by the Complainant, however it rejects the Complainant's contention that the Provider *"allowed"* the Complainant's ex-husband to be removed from the mortgage. It states *"On the contrary, the Complainant's representative sent correspondence on multiple occasions requesting the removal of the Complainant's ex-husband from the mortgage, pursuant to a Court Order"*.

The Provider outlines that by letters dated **26 April 2010** and **24 June 2010**, the Provider informed the Complainant's representative that the Complainant's ex-husband was released from all obligations under the deed of mortgage in relation to mortgage account ending **2812**.

The Provider submits that mortgage loan account ending **2900** was also drawn down on **24 August 2007** as a Residential Investment Equity Release Loan. It states that the Offer Letter dated **6 July 2007** provided for a tracker variable interest rate. It states that **Special Condition Part 4 a(ii)** provided for interest only repayments for the first 7 years, thereafter reverting to capital and interest repayments in **October 2014**. The Provider details that mortgage loan account ending **2900** was an equity release which was secured on an unencumbered property owned by the Complainant ("Property B").

The Provider details that each mortgage account relates to a different residential investment property and is secured against a separate security address. It further states that when the mortgage loan accounts were drawn down the Complainant had the full benefit of the legal advice of her solicitors. It does not accept that the Complainant was not aware of her commitments and liability to the Provider. In this regard it states that both Offer Letters detail on **page 2** that it was *“strongly recommended to seek legal advice before signing it.”*

The Provider states that the Complainant’s solicitor had a clear duty to explain in detail the full implications of the Complainant’s commitments in respect of this transaction. It submits that if the Complainant had any doubt about the contents of the Offer Letters, she should have raised this with her solicitor at the time. It states that she signed and accepted the Offer Letters relating to each mortgage loan account, which is mutually binding on all parties. The Provider states that it is satisfied it has fully adhered to the terms and conditions of the Offer Letters.

The Provider states that the *“[Redacted] campaign”* referred to by the Complainant *“is an internal description of a service provided by the Provider to all of its customers who are due to roll off an interest only arrangement or a particular interest rate product is due to expire”*. It details that *“Whilst the customer will be informed by way of letter that they are due to roll off an interest rate, the [Redacted] Campaign will seek to contact the customer to confirm that they are aware of the situation, confirm that the customer is aware of the available options to them upon rollover, and confirm that they are in a position to meet their contractual obligations.”*

The Provider details that a number of *“unsolicited”* calls were made to the Complainant as part of this campaign service, beginning on **16 April 2014**, around 4 months before the mortgage loan accounts were due to roll off the interest only payment schedule. It states that as can be seen from its internal records, a number of these calls were unsuccessful as the Complainant was unable to take them. It submits that the Complainant did not contact the Provider expressing concern at her inability to pay capital and interest repayments until **June 2014**. The Provider states that *“The evidence in respect of the multiple attempted phone calls represents a best effort by the Provider to contact the Complainant at least 4 months prior to the Complainant’s rolling on to full capital and interest repayments.”*

The Provider outlines that it contacted the Complainant on the following occasions;

- By way of telephone calls on **16 April 2014** and **28 April 2014**, to advise the Complainant that both mortgage loan accounts were due to revert to capital and

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interest repayments on **2 October 2014**. The Complainant *“declined to accept these calls.”*

- By telephone call on **15 May 2014**, during which the Complainant advised that she could not speak at that time but was aware the Provider was calling to discuss her mortgage loan accounts and she would call back. The Provider states that she was advised that both mortgage accounts were due to revert to capital and interest repayments and she was asked if this step up in repayments was affordable.
- By telephone on **23 May 2014** but the phone call was ended due to no signal.
- By letter on **25 May 2014** (account ending **2900**) and **26 May 2014** (account ending **2812**) confirming the upcoming expiry of the interest only period.
- The Complainant contacted the Provider by telephone on **26 June 2014** and was provided with the full capital and interest repayments of approximately €2,005.58 and €1,033.85. The Provider states that the Complainant was *“annoyed and advised that this was not in her mortgage loan agreement with the Provider”*. The Provider states that it confirmed that this was provided for in the Offer Letters and the Complainant advised that she would contact the Provider’s branch and complete a **Standard Financial Statement (SFS)** as she could not afford to meet the repayments.
 - On **27 June 2014** the Complainant wrote to the Provider seeking to arrange a meeting with the Provider.
 - On **21 July 2014** the Provider contacted the Complainant. She was abroad but agreed to complete an SFS and to contact the Provider if she required assistance.
 - On **28 July 2014** the Provider issued an SFS to the Complainant for completion.

The Provider has outlined various communications between the Provider and the Complainant in **August** and **September** of **2014** in relation to the completion of the SFS.

The Provider states that a meeting between the Provider’s Network Area Manager (NAM) and the Complainant took place on **9 September 2014**. The Provider states that the Complainant was advised that the information within the SFS indicated that the mortgage loan accounts were unsustainable. It states that *“The sale of one of the secured property was discussed to reduce/clear the mortgage loan account(s). The Complainant was advised to take independent financial advice.”*

The Provider submits that it followed up with the Complainant by telephone on **18 September 2014** and she advised that she had suffered a family bereavement and would revert to the Provider by **25 September 2014** after speaking with her financial adviser.

The Provider states that on **26 September 2014** the Complainant confirmed by email that she had asked her accountant to prepare a proposal to the Provider and this proposal was received by the Provider on **2 October 2014**.

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It states that the Complainant's proposal was to sell Property A (mortgage account ending **2812**) which was valued at €675,000, and use the proceeds of sale to repay €200,000 owed to the Provider and the remainder to repay other loans on variable interest rates. It states that the proposal stated that this would leave a good level of comfort to repay the monthly payment for mortgage account ending **2900**, and if the proposal was acceptable the Complainant would place Property A on the market and request that the Provider extend the interest only repayment period to allow the sale of the property to occur.

The Provider states that the mortgage accounts reverted to capital and interest repayments on **2 October 2014**. It details that on **15 October 2014** the Provider met with the Complainant and she was advised that the mortgage loan accounts were unsustainable based on the figures provided by her in the SFS.

The Provider submits that it assessed the Complainant's financial circumstances on **22 October 2014** and accepted her proposal for the continuation of the interest only repayments and noted that there was *"scope for the application of a term extension [or] a split mortgage in the future"*. It states that *"The assessor was satisfied that based on the information submitted the mortgage loan accounts were unsustainable and the Provider noted the impact of the proposed sale of one of the secured properties was a tangible event which would provide the basis for a long term solution."*

The Provider states that the Complainant makes reference to a number of conversations between herself and the NAM and states that the NAM would not put what was discussed between them in writing. The Provider states that *"The role of the NAM is to ensure the accuracy of the details contained in the SFS and to ensure the SFS is completed correctly by the customer. The NAM will also assist the customer with any queries they may have and they will make recommendations for forbearance to the ASU based on a customer's financial circumstances."* It further states that *"a NAM does not have authority to make any decision or offer of forbearance to a customer. It is in that context that a NAM in the present situation would not have been able to issue a written response as envisaged by the Complainant."* The Provider further states that telephone calls between its NAM and the Complainant were not recorded as NAMs *"mainly use mobile phones"* and *"are also based in branches, where no calls are recorded"*.

The Provider submits that on **24 October 2014** it contacted the Complainant advising of the Provider's alternative repayment arrangement offer of 6 months' interest only repayments on both mortgage loan accounts subject to the Provider's Buy-to-Let pricing policy. The Provider states that the Complainant advised that she was not aware of the loss of the tracker interest rate and would not be willing to accept this offer.

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The Provider states that two **Agreement to Amend Mortgage Loan Offer Letters** in respect of each mortgage loan account were issued to the Complainant on **29 October 2014**, which each provided for a six month interest only period subject to the Complainant agreeing to a change to the then applicable interest rate of 0.80%, to the Provider's Buy to Let variable rate of 1.80%.

The Provider details that in **late 2012** it had implemented a new pricing policy for non CCMA Buy-to-Let Tracker customers seeking any change to their existing repayment terms and conditions. It states that as part of this it was offering Buy-to-Let Tracker customers a new standard variable rate mortgage for the life of the loan, initially priced at 1% above what they are currently paying on their tracker mortgage. The Provider details that the Complainant was rolling off her interest only repayment schedule and was seeking a change to her repayment terms and conditions as she was unable to revert to capital and interest repayments. It states that it was in those circumstances that it was assessed that if the Complainant sought a period of forbearance in respect to the mortgage loan accounts, then they should be transferred to the standard variable rate.

The Provider details that the Complainant's mortgage loan accounts are not subject to the **Code of Conduct on Mortgage Arrears** and therefore do not attract the protections afforded to mortgages secured by a borrower's primary residence. It states the Provider must then comply with certain provisions of the **Consumer Protection Code 2012 (CPC 2012)**.

The Provider submits that both Agreement to Amend Mortgage Loan Offer Letters that issued in **October 2014** reflected the requirements of the **CPC 2012** by containing the requisite legal notices to include warnings, indicative comparisons and details of the advantages and disadvantages. It further states that both offer letters afforded the Complainant 5 weeks to consider the offer. It states that the Provider was wholly compliant with its requirements under the **CPC 2012** and the Complainant chose not to accept either of the Agreement to Amend Mortgage Loan Offer Letters.

The Provider states **Condition 4(d)** of the Offer Letter terms expressly provides that any proposed variation in the terms of the loan are "*with the consent of the borrower*". It states that in this case the Complainant did not accept the Provider's offers and both mortgage loan accounts remained on a tracker interest rate. It states therefore that "*it is impossible to reinstate a tracker interest rate that was never taken from the Complainant*". The Provider submits that mortgage loan account ending **2812** remained on a tracker interest rate of ECB + 0.75% until it was redeemed on **15 June 2016** and that mortgage loan ending **2900** remains on a tracker interest rate of ECB + 0.75%.

The Provider states that it is satisfied that it has acted honestly, fairly and professionally with respect to the offer of a new arrangement in **October 2014**. It refers to its obligations under Chapter 6 of the CPC 2012 and in particular under Provisions 6.9 and 6.10. It also refers to its obligations under Chapter 8 of the CPC and in particular Provision 8.3.

The Provider further states that it is satisfied that it did not recklessly, negligently or deliberately mislead the Complainant as to the real or perceived advantages or disadvantages of any product or service. It further states it is satisfied that it sought relevant information from the Complainant relevant to the product requested (extension of interest only) and the Provider 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 conduct complained of is that the Provider acted inappropriately when the Complainant sought to restructure her mortgage loan accounts by seeking to remove the tracker interest rate as part of an alternative payment arrangement in **2014**.

Decision

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

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

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

A Preliminary Decision was issued to the parties on **22 March 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 issue of my Preliminary Decision a post Preliminary Decision submission was received from the Complainant dated **2 April 2021**.

A copy of the Complainant's additional submission was exchanged with the Provider. Following the consideration of that additional submission, I set out below my final determination.

Before dealing with the substance of the complaint, I note that the Complainant has submitted as follows in her post Preliminary Decision submission dated **2 April 2021**:

"There is no mention of the fact that I wrote to [the Provider] in 2008 when I discovered that the 2nd property had been mortgaged. Eventually I obtained the documents purported to have been signed by me and wrote to the bank alleging fraud.

...

[The Provider] knew that I had no dealings regarding these mortgages and acknowledged receipt of my letter alleging fraud in 2008. They referred it to their fraud department. I heard nothing further and didn't have the strength to pursue it ..."

The Complainant was informed of the parameters of the investigation by this office, by letter, which outlined as follows:

"...it is important for you to know, that this office does not investigate allegations of a fraudulent nature. Fraud is a criminal offence and the FSPO is neither established nor equipped to deal with situations involving fraudulent actions.

As such, the conduct that remains under investigation by this office is in relation to the Provider seeking to remove the tracker rate arrangement from your mortgage loan accounts in 2014. This office will not be considering any allegations from the sale of the loan.

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This office is proceeding with the investigation on that basis.”

I again re-emphasise that this office does not have jurisdiction to investigate allegations of fraud or any other criminal offence. Therefore, those allegations have not been considered as part of this investigation.

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 in **2014** in relation to the alternative repayment arrangement proposed and offered.

A Mortgage Loan Offer Letter dated **5 July 2007** was issued in respect of mortgage loan account ending **2812** which provided for an advance of €400,000 over a term of 25 years. This mortgage loan account was secured on “Property A”.

A Mortgage Loan Offer Letter dated **6 July 2007** was issued in respect of mortgage loan account ending **2900** which provided for an advance of €400,000 over a term of 25 years. This mortgage loan account was secured on “Property B”.

Part 1 – The Statutory Loan Details of both Offer Letters, detailed as follows;

“1.	<i>Amount of Credit Advanced</i>		€400,000
2.	<i>Period of Agreement</i>		25 Years
3.	<i>Number of Repayment Instalments</i>	<i>Instalment Type</i>	4. <i>Amount of each Instalment</i>
	84	Variable at 4.750%	€1,577.11
	216	Variable at 4.750%	€2,754.41”

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Part 2 - The Additional Loan Details of both Offer Letters outlines as follows;

11. "Type of Loan: Interest Combo
12. Interest Rate: 4.750% Variable"

Part 4 – The Special Conditions of both Offer Letters, details as follows;

"...

- (ii) *For the first 7 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 comprise of principal and 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 moneys 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 0.75% 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."*

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

"This is an important legal document. You are strongly recommended to seek independent legal advice before signing it.

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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 5 – The General Conditions of both Loan Offers details as follows;

“4. Repayment

- (a) Unless otherwise stated herein or agreed by the Lender in writing, the repayment of the Loan shall be by monthly instalments in arrears by direct debit and the Borrower must effect and maintain a suitable direct debit mandate with the Borrower’s bank or other financial institution.*

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

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

I note that the **Acceptance and Consents** section of the **Mortgage Loan Offers** were signed by the Complainant on **6 July 2007** on the following terms;

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

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It is clear to me that the Loan Offer Letters envisaged a tracker variable interest rate of ECB + 0.75% 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 and at the end of that period the repayments would be comprised of principal and interest.

I note that the Complainant's solicitor wrote to the Provider on **20 January 2010** as follows;

*"...
The Solicitors for [the Complainant's ex-husband] have informed us that the transfer is by court order and not voluntary and therefore they are not obliged to provide a declaration of solvency of [the Complainant's ex-husband].
..."*

The Complainant's solicitor wrote to the Provider again on **4 March 2010** as follows;

"We do not appear to have received confirmation from you that [the Complainant's ex-husband] is released from his liability under the mortgage on the above property. The Solicitors for [the Complainant's ex-husband] have informed us that they require same before [the Complainant's ex-husband] will vacate [Property A].

We would therefore appreciate your assistance in this matter and look forward to hearing from you at your earliest convenience."

The Complainant's solicitor wrote to the Provider again on **19 March 2010** as follows;

"Please confirm by return that [the Complainant's ex-husband] has been released from his obligations under the mortgage affecting this property. This confirmation is required urgently."

The Complainant's solicitor wrote to the Provider again on **24 March 2010** as follows;

"This matter is due back before the Court in a number of days and so we would be obliged if you would kindly expedite the sealing of the Transfer and return it to us urgently."

I note that the Provider wrote to the Complainant's legal representative by letter dated **24 June 2010** in respect of each of the mortgage loan account ending **2812** and **2900**.

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The letter details as follows;

“We refer to your letter dated 21st June 2010, with enclosures therein. We confirm that [the Complainant’s ex-husband] has been released from all obligations under the deed of mortgage.”

I note that the Complainant has submitted as follows in her post Preliminary Decision submission of **2 April 2021**:

“The court did not order the bank to release my ex husband from the mortgage arrangement. It is true that it was requested because he refused to leave the house despite the court ordering him to do so. It is true that I and my solicitors thought I could handle repayments as neither one of us was aware of the escalation.”

It is clear from the evidence before me that the Complainant’s solicitor requested on her behalf, that the Complainant’s ex-husband *“be released from his obligations under the mortgage”* by the Provider. In any event, what is of relevance to this complaint is that the Complainant’s ex-husband was removed as a party to both mortgage loan accounts in **June 2010**.

I note that the initial interest only repayment period on the mortgage accounts was due to expire on **24 August 2014**.

The evidence shows that the Provider wrote to the Complainant on **6 January 2014** and **9 January 2014** (mortgage account ending **2900**) and **20 January 2014** (mortgage account ending **2812**) in relation to arrears on the mortgage loan accounts. At that time both mortgage accounts were on interest only repayments.

The Provider’s internal note dated **15 April 2014** details as follows;

*“ACC [ending] 8212 ACC [ending] 2900 due to r[oll]/o[ff] i[n]terest/o[nly]
24/08/2014
...”*

I have considered the audio recording dated **16 April 2014** furnished in evidence. I note that the Provider left the Complainant a voicemail requesting her to call the Provider’s mortgage team.

/Cont’d...

The Provider's internal notes provided in evidence show that further telephone calls were placed to the Complainant on the following dates;

25 April 2014	<i>"...cust did not verify as busy and adv[ised] to call back later in the week, adv[ised] we can call Friday cust adv ok"</i>
28 April 2014	<i>"Customer declined to verify Not retrievable"</i>
15 May 2014	<i>"cust adv could not speak but aware [Provider] calling..req[uested] a call back next week to discuss acc[ount]s...both accs due to revert to full cap+int repayments in august...need to query that this step up is affordable..."</i>
23 May 2014	<i>"3rd party answered but no signal so call ended. Two accounts [ending] 2812 and [ending] 2900 both rolling off io on the 24/08/14. Reverting to full c&i repayments of approx. 2005.58 and 1033.85.. TRC TRACKER VAR ECB+1.25%..."</i>

It is apparent from the evidence that the Provider contacted, or attempted to contact the Complainant, by telephone on a number of occasions between **April 2014** and **May 2014**. However, I note that on the occasions that the Complainant did answer the telephone calls it appears to me that she was either not willing or unable to engage in discussions with the Provider over the phone.

The Complainant has submitted that *"The case record notes show that not 1 of these calls was successful for reasons already outlined in my previous submissions and yet the Bank did not see fit to write to me for 2 months."* It appears to me that on the one hand the Complainant is unhappy with the number of phone calls she received from the Provider during this period.

However, the Complainant has also submitted that she is unhappy that the Provider did not *"warn"* her sooner that the interest only period on the mortgage accounts was due to expire. It appears that the Complainant's submissions in this respect are somewhat contradictory.

In her post Preliminary Decision of **2 April 2021**, the Complainant has submitted:

"The Bank has provided no evidence that it informed me of the massive increase in repayments until the letter dated 26th May 2014 which came as a total shock as evidenced by the response.

/Cont'd...

I absolutely refute the idea that any unsolicited calls during April or May even took me through security never mind informing me of the purpose of the call. Had the bank wanted to warn me in April 2014, they would have written to me first and then I would have understood all the unsolicited calls at a time when I was working night and day to ensure that I was not in arrears on any of my loans. I believe [the Provider] must show the duration of those calls and why they believe I knew the purpose.

...

I do not believe for an instant that [the Provider] seriously wanted to give me warning about the huge increase in mortgage repayments in April or May and could only think to do so [b]y making repeat unsolicited calls under their 'marketing' / 'information' programme."

As I have outlined above, it appears from the evidence that the Provider attempted to contact the Complainant on several occasions in **April** and **May** of **2014** to advise her that the mortgage loan accounts were due to roll off the interest only repayment periods. It does not appear from the evidence that the Provider had an opportunity to discuss the purpose of these telephone calls with the Complainant in circumstances where the Complainant was either unable or unwilling to engage with the Provider during these calls. I accept that these telephone calls were "*unsolicited*", however in my view there is no evidence that the Complainant was "*targeted' mercilessly*" by the Provider or that the number of telephone calls placed to the Complainant was excessive.

In circumstances where the interest only periods on the mortgage loan accounts were not expiring until **24 August 2014**, I do not accept that there was any obligation on the Provider to write to the Complainant prior to telephoning her in **April 2014** to inform her of this.

In any event, I am of the view that the Complainant ought reasonably to have been aware that the interest only repayment periods were due to expire in **August 2014**, in circumstances where the **Special Conditions** of both Offer Letters dated **5 July 2007** and **6 July 2007** respectively, provided that for the first 7 years of the term of the loans, repayment of the loans would be comprised of interest only, and at the end of the above period, the repayments would comprise of principal and interest.

/Cont'd...

The Provider has submitted that it wrote to the Complainant on **26 May 2014** to state that the interest only period on the mortgage loan accounts was ending. I am disappointed to note that a copy of this letter has not been provided in evidence to this office, nor has the Provider provided any explanation for not providing this document in evidence.

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 Complainant’s mortgage loans were incepted in **2006** for a term of **25 years** and the Provider purportedly issued the letter to the Complainant in **May 2014**. 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 ending **2900** remains presently active with the Provider and the mortgage loan account ending **2812** was redeemed in **2016**. It is therefore unclear to me why this documentation has not been provided by the Provider. This is most disappointing.

/Cont’d...

Nonetheless, I note that the Complainant indicated in her letter to the Provider of **27 June 2014** that she did receive this correspondence.

The Provider's internal notes show that it placed further telephone calls to the Complainant on the following dates as follows;

23 June 2014	<i>“no arr[ear]s across accs adv two accounts XXX2812 and XXXX2900 both rolling off io on the 24/08/2014. Reverting to full c&i payments of approx. 2005.58 and 1033.85. TRC TRACKER VAR ECB+1.25% INV. Cust very annoyed adv[ised] this was not in contract...adv was dealing with [Redacted] in branch and will follow up with her and fill out sfs as cannot meet repayments”</i>
26 June 2014	<i>“3rd party answered, account not discussed. Not retrievable”</i>

The Complainant wrote to the Provider by letter dated **27 June 2014** as follows;

“Dear [Redacted],

*I received a very unexpected letter from [the Provider] dated 26th May 2014 stating that the interest only combo period of my mortgage had expired and my repayments would be increasing from the current Eur333.95 per month to Eur **2,004.87** on mortgage [ending] 2900.*

*The increase on mortgage [ending] 2812 is from Eur172.14 per month to over **Eur1,000**.*

I phoned the branch straight away and spoke to you about it but haven't heard anything since. However, I am getting repeated calls from a call centre in [Location] which is distressing.

I was not involved in any way in negotiating this mortgage and your records will show that it was my estranged husband who dealt exclusively with [Redacted].

...

In our conversation, you had said that you would get back to me but I haven't heard anything yet. I know it is holiday season but I would appreciate if you could call me next week and / or arrange a meeting.”

/Cont'd...

The Provider's internal notes show that it placed a further telephone call to the Complainant on **18 July 2014** as follows;

"First Call to Customer- [Complainant]-abroad-agreed to call back 28/07...Cm agreed to complete SFS...[Complainant] to contact when SFS pack received if assistance required...Adv [Complainant] of consequences of non co-operation...Perm[ission] given for next call"

The Provider's internal note dated **25 July 2014** details as follows;

*"[Complainant] also has pdh mortgages with [Redacted] Does not have sig salary; relies on rental incomes 50k p.a. advised her best option is to complete SFS & have a meeting with NAM. also asked her if she had financial advisor-no-solicitor-has contact. May consider selling [Property A under account ending **2812**]. she may also go back to court as not divorced-she has had to raise [number of] children, all in private education. agreed to email her SFS etc."*

The Provider's internal notes indicate that a Standard Financial Statement was issued to the Complainant for completion on **25 July 2007**.

The Provider's internal note dated **13 August 2014** details as follows;

*"...
[Complainant] had not opened my email of 28/07. Said she is up to her eyes with separation issues.
..."*

The Provider wrote to the Complainant in relation to mortgage account ending **2900** on **13 August 2014** as follows;

"Thank you for your recent enquiry in relation to your mortgage account number [ending] 2900.

We are writing to confirm that the interest only period on your mortgage account number [ending] 2900 is due to expire on the 24/08/2014.

On expiry of the interest only we would estimate your new repayment to be for approximately €2011.80 per Month."

/Cont'd...

The Complainant emailed the Provider's representative on **14 August 2014** as follows;

"I hope you have enough information to process possible options without engaging my accountant too much.

...

I think [Property A] needs to be sold unless you are able to put a hold on the need to start capital repayments.

..."

The Complainant emailed the Provider's representative on **25 August 2014** and stated as follows;

"Hi [Redacted] I have sent off all the bank statements now so hopefully you have everything. I hope you have enough now to arrange the meeting. If [the Provider] can offer some relief it needs to happen fairly quickly. I am a single parent of [Complainant's children] in full-time education for the foreseeable future. All are planning to do [College course] or already accepted.

My health is suffering from all the stresses I've been under. I need to work when I am not taking care of the needs of the children so if it looks like I have to sell I'd rather do it sooner than later."

It appears from the evidence that the Complainant met with the Provider's Network Area Manager on **9 September 2014** in relation to the mortgage loan accounts. The Provider's internal note on that date, details as follows;

"Meeting Summary .Customer situation summary : BTL [Ending 2900] and [ending 2812] return to full C & I on 2/10/2014. both accounts on Tracker. Summary of discussion with customers: Unsustainable case. Sale of one of the BTL discussed to reduce/clear [Provider] BTL debt. Complex case, BTL in [Complainant] sole name after separation arrangement through the courts. [Complainant's] legal team did not spot that reps were on an i/only basis. Nam advised [Complainant] to take independent financial advice.

..."

The Provider has also furnished in evidence the Network Area Manager's record of the meeting with the Complainant on **9 September 2014**, which details as follows;

"Private meeting with [the Complainant] on 9 September 2014

/Cont'd...

I had a private meeting with the customer in [Redacted] branch on 9/9/2014 to discuss customer's non CCMA mortgage position. Both accounts listed above were due to return to full Capital & Interest on 2/10/2014.

The customer outlined her financial and personal circumstances in detail to me. I asked the customer had she considered selling one or more of the properties to reduce overall level of debt, as the mortgage repayments were unsustainable based on the figures presented on the Standard Financial Statement. The customer insisted that she was not going to sell any property as she was not going to give up the tracker rate.

I cannot recall the level of detail in relation to BTL pricing and tracker rate, but I'm satisfied that the matter was discussed.

I then advised the customer that before progressing matters, she should take independent financial advice."

The Complainant, in her post Preliminary Decision submission of **3 April 2021**, detailed:

"[The Provider] Network Area Manager lied when he declared in internal notes from 9th September meeting that I refused to sell either property. I was the one who proposed selling and saw no other way out. He tried to persuade me otherwise and by doing so delayed the inevitable and put me at greater loss.

...

The above is a blatant lie and clearly a massive turning point in the entire debacle. Had I put the house on the market using my own judgement in August 2014 I would have got a much better price and my credit rating would not have been impacted. It was a total breach of trust as the Network Area Manager had positioned himself as someone who was trying to help me.

He also lied about telling me about the loss of trackers if I failed to meet the increased payments due in October. Had I sold the house as I originally intended I could have met the payments for the few months the transaction was going through. [The Provider] did not once indicate their intention to remove both trackers."

Contrary to what the Complainant now asserts, the evidence does not support the statements made in her post Preliminary Decision submission in relation to the Network Area Manager.

/Cont'd...

It is clear from the evidence that the Complainant was contemplating the sale of one of the properties prior to the meeting with the Network Area Manager which took place on **9 September 2014**. I note in this regard that the Complainant indicated on **25 July 2014** that she may “*consider selling*” the property and on **14 August 2014** she stated that “*I think [Property A] needs to be sold unless you are able to put a hold on the need to start capital repayments*”. In these circumstances, the Network Area Manager’s assertion that the Complainant “*insisted that she was not going to sell any property*” at the meeting on **9 September 2014**, is somewhat at odds with the evidence.

I note the Complainant now submits that if the loss of the tracker interest rate was discussed with her at that meeting, she would have proceeded to sell one of the properties at that time. If the Complainant wanted independent advice about the possibility of selling one of the properties, the Complainant should have been aware that she could only get that advice from an independent third party advisor, and not from an employee of the Provider. In this regard I note that the Complainant had engaged the services of a legal representative at that time.

In any event, the reality of the situation in **September 2014** was that the Complainant was unable to meet the capital and interest repayments on the loans and she was seeking to vary the terms of her mortgage loans with the Provider by seeking forbearance on those 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 her mortgage loans at the time.

The Complainant completed and signed a **Standard Financial Statement (SFS)** on **9 September 2014**.

In **Section B: Your Monthly Income** it detailed as follows;

	<i>Borrower 1</i>
<i>Gross Monthly Salary (before tax and any other deductions at source)</i>	5,000
<i>Net Monthly Salary (after tax and any other deductions at source)</i>	3,100
<i>Monthly Social Welfare Benefits Please list</i>	Nil

/Cont’d...

<i>Benefit: expenses</i>	<i>2000</i>
...	
<i>Child Benefit</i>	<i>260 pm</i>
...	
<i>Monthly Income from Property assets (other than primary residence) ...</i>	<i>4,450</i>
...	
<i>Total Monthly Income...</i>	<i>9,810</i>

I note that the Complainant's total monthly income of €9,810.00, included her net monthly salary of €3,100.00 and monthly income from property assets of €4,450.00.

Section C: Total Monthly Expenditure detailed that the Complainant's total monthly expenditure was €7,485.00.

In response to the question *"Please Provider details of any steps you have taken to reduce your monthly expenditure and the savings you have achieved"* the Complainant detailed as follows;

- 1. Changed gas/Electricity Company*
- 2. Change phone company*
- 3. Reduced TV package*
- 4. Stopped all club membership apart from son's gym*
- 5. Reducing food/lifestyle expenses by going out only 1 / week and shopping more special offers"*

Section D: Your Current Monthly Debt Payments detailed that the Complainant's total monthly debt payment was €4,095.48, to include the mortgage payment of €2,640.00 on her primary residence, a monthly credit card debt of €1,000, and monthly mortgage debt of €455.48 on a property other than her primary residence.

The SFS detailed that the Complainant's monthly income was €9,810.00 and her monthly expenditure was €7,485.00. The Complainant's monthly debt repayments were €4,095.48. This left a monthly deficit of €1,770.48.

/Cont'd...

The Complainant emailed the Provider on **26 September 2014** at **12:28PM** as follows;

"I have asked [the Complainant's representative] to prepare a plan to submit to you and will remind him of it today."

The Provider's representative emailed the Complainant on **26 September 2014** at **14:17PM** as follows;

"It looks like full payments on both accounts will be requested on 2nd October."

The Complainant emailed the Provider on **26 September 2014** at **14:56PM** as follows;

"I thought you said I had an extra week given [family bereavement] to get the documents together?"

Can you confirm what is happening?"

The Provider's representative emailed the Complainant on **26 September 2014** at **15:02PM** as follows;

"I don't have authority to hold the repayments.

I had dairied [sic] forward initially for a week to allow time for receipt of proposal, and noted same on the file.

The number to call to suspend the direct debits is XXXXX XXXXX, but it's too late to stop repayment due 2nd October.

I'm very sorry for the misunderstanding."

The Complainant emailed the Provider's representative on **26 September 2014** at **15:31PM** as follows;

"What do you suggest?"

The Provider's representative emailed the Complainant on **26 September 2014** at **16:06pm** as follows;

"All we can do is submit an application as soon as the proposal is received.

/Cont'd...

Assuming that the payments due 2nd October are not made, I suggest you make a payment over the phone for the same amount as last month, or the maximum that you can afford."

The Complainant emailed the Provider on **26 September 2014** at **17:14PM** as follows;

"I haven't heard from [the Complainant's representative] so I have prepared it myself. It is fairly straightforward but obviously urgent."

The Provider's representative emailed the Complainant on **8 October 2014** as follows;

"Sorry for the delay in getting back to you.

I am working on your application, and there are a number of things I need to clarify with you.

Can you spare 20 minutes on the phone tomorrow morning to help put me in a position that I can submit your application."

The Complainant submitted a proposal to the Provider in relation to the mortgage accounts ending **2900** and **2812**. The document had a handwritten date of **26 September 2014** and was stamped as received by the Provider on **14 October 2014**.

The proposal detailed as follows;

"Background

The above mortgages were negotiated by my ex-husband with [the Provider] without any involvement whatsoever on my part. I understood that they were interest only mortgages and was shocked to get correspondence stating that they converted to full repayment mortgages in October 2014.

I have been co-operating with the Bank since becoming aware of the issue. Under the current arrangements my repayments change as follows:

	XXXX2812	XXXX2900	Total
Current:	<i>Eur 154.93</i>	<i>Eur 300.55</i>	<i>Eur455.48</i>
Planned:	<i>Eur1,036.39</i>	<i>Eur 2,012.44</i>	<i>Eur3,049.82</i>

/Cont'd...

Current Status

In association with a Financial Advisor, I have decided that it will not be possible to meet this unexpected increase in repayments as well as look after the needs of [number of] dependent children and myself.

Mortgage [ending] 2812 is on a 4 bed roomed rented property at [Address redacted]. Rental income is currently Eur1,650 per month.

Mortgage [ending] 2900 is on a 2 bed roomed rented property at [Address redacted] and rents for Eur1,350 (soon to increase to Eur1,600)

Proposal

My proposal is to sell [Property A] which is estimated to be worth Eur675,000. The proceeds of this sale will repay Eur200,000 owed to [Provider]. The remainder will be used to pay off other loans which carry variable interest rates. This will then leave a good level of comfort to repay the monthly mortgage on loan [ending] 2900.

Assuming this proposal is acceptable to the bank I will place the property on the market with [Redacted] who have already given a valuation.

I request that the Bank extend the interest only period to allow time for the sale to occur.”

I note that the full interest and capital repayments commenced on mortgage loan accounts ending **2812** and **2900** from **2 October 2014**.

The Provider internal note of **22 October 2014** details as follows;

*“Step up: Sale of BTL property as proposed. Taking income and living expenses stated on SFS this mortgage debt is unsustainable.***Recommendation***:Refer for sign off given TGE e802k. Decision for NON CCMA [ending 2812]: 12 months interest only rpmts commencing 02/11/2014 (308pm)BTL PRICING POLICY TO BE APPLIED. Decision for NON CCMA [ending 2900]: 12 months interest only rpmts commencing 02/11/2014 (e598pm) BTL PRICING POLICY TO BE APPLIED. Subject to LOA”.*

/Cont'd...

The Complainant, in her Post Preliminary Decision submission of **2 April 2021**, detailed:

“It is clear from the plan I drew up on 26th September 2014 re-iterating the plan to sell, clear the mortgage on that house and also the variable one keeping the other tracker in place. My plan was rejected unless I forfeit both trackers.”

It appears from the evidence before me that the Provider accepted the Complainants’ proposal but subject to the removal of the tracker rate from both mortgage loan accounts. I remain of the view that there was no obligation on the Provider to accept the proposal submitted by the Complainant in **October 2014**, as it was entitled to seek repayment in full of the outstanding monies due on the mortgage loan accounts in accordance with the mortgage contracts. In accordance with **General Condition 4(a)** the obligation was on the Complainant to maintain the repayments on the mortgage loans. Unfortunately, the Complainant was unable to do so.

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. Buy-to-Let customers who do not amend their terms and conditions continue on their existing tracker rate.”

The Provider’s internal note of **24 October 2014** details;

“...Phone Call...Communicate Decision on non CCMA...6 months i/o on both BTLs subject to loss of tracker to allow timeframe for sale of one BTL [Complainant] responded that she was not aware of loss of tracker, and could not accept offer on that basis. Phone call had to be cut short, [Complainant] busy with her daughter, NAM on leave for next week, will contact [Complainant] on return week comm[encing] 5/11/14...advised [Complainant] that offer will issue...”

/Cont’d...

The Complainant emailed the Provider's representative on **28 October 2014** as follows;

"I was shocked that the proposed plan involved me losing my tracker mortgage. All I needed was a few months breathing space. I don't know why things can't be put in writing [Redacted]. I was giving my daughter a driving lesson when you called on the phone and so I couldn't really talk properly or take in what you were saying.

There are no circumstances in which I would be prepared to lose my legal right to the tracker and I think the Bank should have informed me of the facts right at the start. It would have saved us a lot of time and trouble getting all the documents together.

I haven't yet received the Banks offer and am just going off what you said on the phone."

The Provider wrote to the Complainant by separate letters dated **29 October 2014** in relation to mortgage loan account ending **2900** and **2812**. These letters 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.

This alternative repayment arrangement is for the Agreed Period and is offered on the basis that at the end of the Agreed Period you expect your repayment capacity to increase and you will be able to repay full capital and interest repayments, estimated to be €2,243.87 per month. This is based on the current interest rate of your mortgage loan and the estimated balance and term remaining at the end of the Agreed Period. At the end of the Agreed Period we will confirm the actual repayment in writing to you which could differ from the estimated amount for example because of a change in interest rate, the amount repaid during the Agreed Period.

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 an assessment of:

- a) Your personal circumstances.*
- b) Your overall indebtedness.*
- c) The information you provided in the financial assessment form or subsequently submitted.*

/Cont'd...

- 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:

- Your loan capital 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.*

/Cont'd...

- *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.*

...

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.

..."

Two **Agreement to Amend Mortgage Loan Offers** dated **29 October 2014** were enclosed with the letters issued to the Complainant. I note that **Section A** of both forms details as follows;

"SECTION A: WHAT THIS FORM DOES

Alternative Repayment Arrangement

Interest only

...

If you accept this form (a) you are to pay interest only as it falls in each regular instalment in the Agreed Period; and (b) you agree to make these payments during the Agreed Period.

...

The "Agreed Period" means the period of 6 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

This form converts the interest we charge on the Loan from a tracker rate which is 0.800% 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 1.800% per annum.”

Section B of both forms 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).*

/Cont’d...

- 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.”

Section C of the form relating to mortgage loan account ending **2900** 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 €2,003.55 each and that the total cost to you of the Loan would be €29,285.51. 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 €589.31 each during the Agreed Period and of €2,236.64 each thereafter. The total cost of the Loan would be €69,336.79. 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.

/Cont'd...

- 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.”*

Section C of the form relating to mortgage loan account ending **2812** 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)

- d) *We estimate you are now obliged to pay us monthly instalments of €1,032.80 each and that the total cost to you of the Loan would be €15,095.85. 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.)*
- e) *If you accept this form, we estimate you will be obliged to pay monthly instalments of €308.42 each during the Agreed Period and of €1,152.96 each thereafter. The total cost of the Loan would be €35,742.85. 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.*
- f) *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;*

/Cont'd...

(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.”

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

It is clear that the Agreement to Amend Mortgage Loan Offer Letters offered the Complainant reduced repayments on each of the mortgage loans for a period of 6 months, subject to the BTL variable rate of 1.80%.

The Complainant emailed the Provider’s representative on **3 November 2014** as follows;

“I am very concerned regarding the proposal being put forward. As discussed, I had no awareness that [the Provider] was planning to take away my tracker mortgage. Can you clarify in writing what is being suggested? I received documents in the post this morning showing differences in cost of mortgage but my calculations would differ greatly and I have lost trust in the process.

Also, I would like clarifications of the amounts shown on the mortgage amounts. The mortgages should be Eur200,000 and Eur400,000.

Loan [ending] 2900 is showing as Eur339,123 even though I repaid a capital amount last month of Eur2,000.

Loan [ending] 8912 is showing as Eur205,742 even though I repaid a capital amount last month of Eur1,000.

Please email me with these clarifications as soon as possible as I do not wish to go into arrears and currently do not know what is happening.”

The Provider’s representative responded by email on **4 November 2014** as follows;

“Hi [Complainant],

I am back in the office today, I was on annual leave there was an issue with the out of office on my e mail.

/Cont’d...

I am happy to meet with you to discuss and clarify the Bank's offer.

The Bank's policy in relation to renegotiation of terms of Buy to Let Tracker Rate mortgages is that the Tracker Rate will be lost. It will change to a variable rate, based on the existing interest rate plus a margin of 1%, the variable rate is at the discretion of the Bank.

I am sorry that you were not aware of this after our discussions.

I can meet you in [location] branch on Thursday morning 6 November next Tuesday morning 11 November to review matters.

I will post out statements on both accounts today, I don't have the facility to scan and send by email."

The Complainant emailed the Provider's representative on **4 November 2014** as follows;

"I am very disappointed that you have gone from a position of being 'surprised if you didn't mention' the loss of tracker rates to stating that you in no way accept that you didn't mention it. You heard my reaction on the phone when you tentatively stated that the bank had accepted the proposal and then added in that it would mean the loss of the tracker. I wondered why you seemed nervous giving what should have been good news and as you know I reacted furiously.

It is very clear to me that the loss of trackers is being hidden under the promise of helping people find a way to sort out their affairs. I made it clear during our meeting that by selling one property I had no need to involve the other loan at all and yet in the Bank's proposal they arranged it so that I lost both trackers.

What adds to my level of suspicion is that you refuse to put anything in writing and told me today that you are not allowed put things in writing. You make a virtue of the fact that [the Provider] is the only bank which meets customers but if what is discussed is not able to be committed to paper then it does not help customers, only the Bank.

I am writing to you now asking you to explain why [the Provider] trusts you completely to communicate verbally but will not allow you to put what is discussed in writing. I maintain absolutely that there was never a mention of losing the tracker mortgage by anyone at any time during the process except when you added it nervously at the end of the phone call when I was in the car.

/Cont'd...

*My antennae are very sharp in this regard and you will know how I reacted when you mentioned it. I have degrees in [Redacted] and post graduate in [Redacted] and this is not something I would have missed had it been mentioned.
..."*

The Complainant emailed the Provider's representative again on **4 November 2014** as follows;

"I checked my [third party provider] account and it is showing that [the Provider] went ahead and took the full amount of repayment despite our ongoing process. It has put my account into arrears and will be bounced back no doubt at my expense yet again.

At this stage I am completely confused as to what is happening and the amounts being quoted on documents etc. I want to keep everything in writing going forward as I have lost trust in verbal agreements."

The Provider's internal note dated **4 November 2014** details;

"... [Complainant] has raised complaint in relation to loss of tracker, and the banks lack of communication on this matter in initial corresp from Bank and during the process. Complaint made verbally on phone and by email after call..."

I note that the Provider wrote to the Complainant on **6 November 2014** in relation to arrears of €1,032.36 on mortgage loan account ending **2812**.

The Provider's internal note dated **10 November 2014** detailed as follows;

*"Core Complaint: 5 day acknowledgement letter issued 10/11. Customer complaint re handling of BTL SFS application re [account ending **2900** and account ending **2812**]. Customer states that loss of tracker rate not raised by NAM. MFA issued to customer confirming loss of tracker rates. Customer unhappy that NAM unable to clarify position in writing."*

The Provider wrote to the Complainant by letter dated **10 November 2014** as follows;

"I am writing to acknowledge your complaint as set out in your conversation with a [Provider] staff member on 04/09/2014. I am investigating this complaint for you."

/Cont'd...

The Provider wrote to the Complainant by letters dated **3 December 2014** in respect of each mortgage account, as follows;

"We refer to our recent letter in which we offered you an alternative repayment arrangement (ARA) on your mortgage loan(s) and enclosed the documentation for you to accept that offer.

To date you have:

(a) Advised us that you do not wish to take up this offer and the date for acceptance of the documentation has passed

...

We take this as meaning that you are not willing to enter the ARA.

This means that where arrears exist we can commence legal proceedings for possession of the property.

..."

The Provider wrote to the Complainant on the following dates;

- **3 December 2014** in relation to the arrears on account ending **2900** of €2,002.69
- **3 December 2014** in relation to the arrears on account ending **2812** of €1,032.26.
- **9 December 2014** in relation to the arrears on account ending **2812** of €1,032.26.

The Provider issued a Final Response Letter to the Complainant on **22 December 2014** which detailed as follows;

"...

I understand you're your complaint is in relation to you stating that your Network Accounts Manager [Redacted] never advised you that you would lose your tracker rate if an amended repayment request was offered on your Buy to Let property.

...

The bank records that you met with [Redacted] (NAM) at [Provider branch] on the 9th September 2014 and you discussed in detail your financial circumstances. The NAM recommended a six month interest only period on both mortgage accounts to progress the sale of [Property A]. The NAM has recorded that the recommended option was fully explained and you were also advised to take independent legal advice.

/Cont'd...

I can confirm that you did agree to seek independent legal advice as per your email dated the 26th September you stated that you would prepare submission of SFS without the advice of your solicitor as paperwork was “fairly straightforward”.

To precede my investigations I spoke to [Redacted] in relation to meeting of the 9th September 2014 and he has stated that the loss of the tracker was discussed but he can't confirm the level of detail in which it was discussed. [Redacted] has also stated that due to the complexity of your situation he advised you to obtain independent advice and that a further meeting would be held to discuss financial circumstances in more detail.

The bank records that a follow up meeting was held with you and [Redacted] on the 15th October 2014. I spoke to [Redacted] in relation to this meeting and he has stated that he did not discuss the loss of the tracker rate in this meeting and I can confirm no discussions in relation to same has been recorded.

I can confirm that an assessment of your financial circumstances was carried out in October 2014 and despite Arrears Support Unit (ASU) deeming both BTL mortgages as unsustainable based on financial information provided, you were approved interest only repayments for a period of six months from November 2014 to April 2015 in order to progress the sale of [Property A]. This amended repayment request is subject to the loss of the tracker rate.

The Agreement to Amend Mortgage Loan Offer Letters (ALLOO) were issued on the 29th October 2014.

By way of background you have indicated that they are not in a position to meet the contractual repayments due in respect of their mortgage loans. The Bank's amending offer letters acknowledges this request, and as a result the Bank has exercised its right to vary the interest rate as provided for in the special conditions Part 5, provision 4 (d)

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

You will agree that this allows the Bank exercise its commercial discretion in such matters, and allows distressed borrowers who are unable to adhere to original terms and conditions of their loan offer(s), an opportunity to lock into longer term, more affordable repayment arrangements by means of an amending offer letter, in line with their ability to make repayments.

The bank records that you have not returned the ALLOO's within the 25 business day timeframe and therefore a customer decline letter issued on the 3rd December 2014.

The Bank wishes to apologise unreservedly for any confusion which may have been caused as a result of your dealings with [Redacted] and also any lack of clarification in relation to the loss of your tracker rate if an amended repayment request was offered on your BTL accounts.

I refer to [Redacted's] email issued to you on the 4th November 2014 apologising if it was not made clear in your discussions with him that you would indeed lose your tracker rate if an amended repayment request was approved in relation to your Buy to Let accounts and offered you the opportunity for a follow up meeting to discuss same."

The Complainant emailed the Provider's representative on **31 December 2014** as follows;

"I would like to see the records of our meetings / telecoms.

I suspended the mortgage payments pending the outcome of my complaint using the telephone number you advised but there is no reference to this in the letter from [Provider employee]. My record is showing arrears which I am most unhappy about.

The reason I refused a further meeting with you is that you asserted that you are not allowed put things in writing. This is a most unusual prohibition in my experience in business.

I placed [Property B] on the market with [Redacted] before Christmas.

As you know from our meetings, my intention is to pay back one of the loans in full and keep my existing tracker on the other property. This issue may need to go to the Financial Services Ombudsman but that is down to you and your colleagues."

/Cont'd...

The Provider's internal note of **2 January 2015** details;

"...Cust not happy with decision and cust adv that she was under the impression that activity on 2 a/c's was suspended until complaint was resolved. Adv cust of bank rationale RE loss of tracker ... cust adv that 1 non CCMA property is on the market for 500,000..."

The Provider wrote to the Complainant again on the following dates;

- **2 January 2015** in relation to the arrears of €4,003.58 on mortgage loan account ending **2900**
- **2 January 2015** in relation to the arrears of €2,064.72 on mortgage loan account ending **2812**.
- **9 January 2015** in relation to the arrears of €1,032.36 on mortgage loan account ending **2812**

The Complainant emailed the Provider's representative again on **8 January 2015** as follows;

"I haven't had any response to my request for further information. Can you please respond with records of our meetings/telecoms? I have a pack ready to go to the Financial Services Ombudsman but will wait until tomorrow to send it."

The Provider's representative responded by email dated **12 January 2015** as follows;

"I have returned to the office today from leave.

I passed on your email dated 31st December to the Customer Complaints Team on same date.

I have also forwarded your email dated 8 January to the same team.

I am available to meet you to discuss matters, alternatively I can arrange for another colleague to meet with you."

The Complainant emailed the Provider's representative on **12 January 2015** as follows;

"I completed a submission to the financial ombudsman ready for posting.

/Cont'd...

What I would like to do is have my proposal to the Bank respected:

- 1. Continue with tracker mortgage on the Eur200,000 loan paying back Eur1,000 per month as per original agreement.*
- 2. The house with Eur400,000k mortgage is on the market since December so I need time to allow this to be sold and loan repaid. I could sign the new loan arrangements on this property.*

If you can confirm that this is ok with the bank then we can move ahead without further problems for either of us. If you can't confirm but still want a meeting to explain why I should lose both trackers I'd prefer to submit the complaint and have the Ombudsman deal with it."

The Provider's representative replied by email on **12 January 2015** as follows;

"I can't amend the decision that has already issued.

I would of course be prepared to meet with you, however I don't have any control in relation to [the Provider's] pricing policy on tracker rates."

The Complainant declined to accept the **Agreement to Amend Mortgage Loan Offers** dated **29 October 2014** and consequently the mortgage loan accounts remained on capital and interest payments and on the tracker interest rate of ECB + 0.75%.

It is clear from the evidence that the Complainant was aware of the consequences of accepting/signing the agreements issued to her in **October 2014**. If the Complainant was not happy with the terms of the **Agreement to Amend Mortgage Loan Offer Letters**, including the amendment to the interest rate from the tracker interest rate to the variable interest rate, the Complainant could have and did, decide not to accept the offer made by the Provider. It is important for the Complainant to understand that she was seeking to vary the terms of her mortgage loans with the Provider by seeking forbearance on the loans in **2014**. 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 her mortgage loans 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 loans which are the subject of this complaint.

/Cont'd...

In the circumstances of this particular complaint, it appears that the Provider offered a variable rate of 1.80%. I note that the **Agreement to Amend Mortgage Loan Offer Letters** issued in **October 2014** refers to the tracker interest rate applicable to the loan as being 0.80%. The loading of 1% was added to the tracker interest rate of ECB + 0.80%, and a variable interest rate of 1.80% was offered by the Provider to the Complainants.

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 mortgages that were not secured on her principal private residence. The Provider made an offer to the Complainant to make interest only payments for six months on the mortgage account on condition that a variable rate of 1.80% would apply to the mortgage loan. While I accept that the Complainant was in a difficult position, it was nonetheless a matter for the Complainant to decide whether or not 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 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 Letters**. The mortgage loans were not Private Dwelling House mortgage loans.

I accept that the Complainant did not want to give up the entitlement to the tracker interest rate of ECB + 0.75% on the mortgage loans, however, the reality of the situation at that time in **October 2014**, was that the Complainant could not service the repayments required within the original terms of the mortgage loans. As outlined above, the Complainant was seeking to agree an alternative arrangement and it was a matter for her to decide whether to accept the arrangements on offer by the Provider. The consequences of accepting the offer and the appropriate information was provided to the Complainant in the Offer Letter.

The Provider wrote to the Complainant in relation to the arrears on both mortgage account on the following dates;

- **2 February 2015**
- **9 March 2015**
- **11 June 2015**
- **13 July 2015**
- **22 July 2015**
- **10 August 2015**
- **17 August 2015**
- **15 September 2015**
- **16 September 2015**
- **17 September 2015**
- **15 October 2015**
- **16 October 2015**
- **9 November 2015**
- **15 December 2015**
- **15 January 2016**
- **5 February 2016**

/Cont'd...

- **15 February 2016**
- **16 February 2016**
- **15 March 2016**
- **14 April 2016**
- **15 April 2016**
- **5 May 2016**
- **16 May 2016**

I note that by **May 2016** the arrears balance on mortgage loan account ending **2900** was €18,008.36 and the arrears balance on mortgage loan account ending **2812** was €6,189.98.

The Provider wrote to the Complainant on **16 May 2016** in relation to the mortgage account ending **2812** as follows;

*“Further to your recent enquiry, the amount required to redeem the above referenced mortgage account, calculated today, is €194,942.86 as set out below.
...”*

I note that on **4 June 2016** the Complainant issued a cheque for €18,008.36 to the Provider to clear the arrears on mortgage account ending **2900**.

The Provider wrote to the Complainant on **10 June 2016** to confirm that the mortgage loan account ending **2812** was now *“paid off”*.

The Provider wrote to the Complainant again on the following dates in relation to arrears on mortgage loan account ending **2900**;

- **15 June 2016**
- **17 August 2016**
- **20 March 2018**
- **19 June 2018**
- **18 July 2018**
- **27 July 2018**
- **16 August 2018**
- **17 August 2018**
- **28 August 2018**
- **19 November 2018**
- **28 November 2018**
- **17 December 2018**
- **18 January 2019**
- **30 January 2019**
- **15 February 2019**

/Cont'd...

The Complainant wrote to the Provider on **13 March 2019** as follows;

“My mortgages are in arrears because I had to represent myself in court in a long divorce proceedings running throughout 2019.

I had to represent myself because since 2015 I have been unable to raise any finance and so couldn't afford a legal team.

My divorce is now finished and I am back working ... I will resume paying the mortgage as soon as I can (next 3 months).

...”

The Provider wrote to the Complainant again on **15 March 2019** in relation to arrears of €3,992.72 on mortgage account ending **2900**.

I note that the Provider issued a **Financial Information Form** to the Complainant for completion under cover of letter dated **25 March 2019**.

The Provider wrote to the Complainant again on **6 April 2019** as follows;

“We acknowledge the receipt and content of your letter to this office dated 13th of March 2019.

You will need to complete a Standard Financial Statement (SFS) so that we may conduct a review of your current financial circumstances with a view to reaching a sustainable repayment solution.

...”

I note that the Complainant completed a Standard Financial Statement on **12 April 2019**.

The Provider wrote to the Complainant again on **15 April 2019** in relation to arrears of €5,989.08 on mortgage account ending **2900**.

Provision 8.3 and 8.4 of the **Consumer Protection Code 2012** outlines 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**.*

/Cont'd...

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.”*

Provision 8.6 and 8.8 of the Consumer Protection Code 2012 (“CPC 2012”) state as follows;

8.6 *“Where an account remains in **arrears** 31 calendar days after the arrears first arose, a **regulated entity** must within three **business days** inform the **personal consumer** and any guarantor of the loan, on paper or on another **durable medium**, of the status of the account. This information must include the following:*

- a) the date the account fell into **arrears**;*
- b) the number and total amount of repayments (including partial repayments) missed (this information is not required for credit card accounts);*
- c) the amount of the **arrears** to date;*
- d) the interest rate applicable to the **arrears**;*
- e) details of any **charges** in relation to the **arrears** that may be applied;*
- f) the importance of the **personal consumer** engaging with the regulated entity in order to address the **arrears**;*
- g) relevant contact points;*
- h) the consequences of continued non-payment, including where relevant, sharing of data relating to the **consumer’s arrears** with the Irish Credit Bureau or any other credit reference agency;*
- i) if relevant, any impact of the non-payment on other accounts held by the **personal consumer** with that **regulated entity** including the potential for off-setting of accounts, where there is a possibility that this may occur under existing terms and conditions; and j) a statement that the **personal consumer** may wish to seek assistance from MABS and contact details for the MABS National Helpline and the link to the MABS website.*

...

8.8 *Where the **arrears** persist, an updated version of the information required in Provision 8.6 must be provided to the **personal consumer**, on paper or on another **durable medium**, every three months.”*

Under **Provision 8** of the **CPC 2012** the Provider is obliged to issue correspondence to customers in arrears.

/Cont’d...

I have considered the significant volume of arrears correspondence that has been furnished to this office. 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 am of the view that in its engagements with the Complainant, the Provider complied with its obligations under **provision 8.3 of the CPC 2012** and sought to agree an approach with the Complainant to assist her and prevent further arrears from accruing on the mortgage loan accounts.

Having regard to the evidence that has been provided to me, I cannot accept that, as has been asserted by the Complainant, the Provider inappropriately sought to remove the tracker rate arrangement from the Complainant's mortgage loan accounts in **October 2014**. The Complainant was seeking a further interest only period in respect of the mortgage loan accounts in an effort to facilitate the sale of the property which was secured on the mortgage loan account ending **2812**. The Provider was willing to accede to the request to provide a further period of interest only in respect of both mortgage loan accounts on the condition that the Complainant agreed to change the interest rate applicable to the mortgage loans from a tracker interest rate of 0.80% (ECB + 0.75%) to a variable interest rate of 1.80%. The mortgage loan was not secured on the Complainant's principal Private Residence.

The Provider issued an offer to the Complainant to this effect in the form of the two **Agreement to Amend Mortgage Loan Offer Letters**, which contained the appropriate warnings under the **CPC 2012**, relating to moving from a tracker interest rate to a variable interest rate. The Provider was entitled to exercise its commercial discretion in offering an alternative repayment arrangement that altered the interest rate of the mortgage loan agreements. However, the Complainant chose not to accept the Provider's offers of **29 October 2014**.

For the reasons set out 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

27 April 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.