



<u>Decision Ref:</u>	2021-0136
<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 a mortgage loan account held by the Complainant with the Provider. The mortgage loan account which is the subject of the complaint was secured on two Buy to Let (“BTL”) properties held by the Complainant.

The loan amount was €390,000 and the term was 20 years. The Mortgage Loan Offer signed on **26 July 2006** outlined that the loan type was “*Interest combo – interest only first five years*” and the interest rate was “*3.90% discount tracker variable for first two years and ECB plus 1.25% for remainder of term.*”

An Agreement to Amend Mortgage Loan Offer Letter was signed on **4 July 2013** which provided for a 9-month period of interest only repayments.

The Complainant’s Case

The Complainant details that the mortgage loan account ending **4226** which is the subject of this dispute was a commercial loan which related to an investment property. He outlines that the mortgage loan account ending **4226** “*was interest only and was due to move to capital and interest in 2013. Another loan account No [ending] 0437 was also to move from interest only at the same time and as rents were greatly reduced there was no way that we could pay capital and interest on both accounts. Both loan accounts had been on Tracker Mortgages.*”

The Complainant outlines that in **2013** *"...we had been getting correspondence from [the Provider] and I requested to meet with someone - of course I wanted to meet a Manager and not someone in their Credit Department but I was told by our business Relationship Manager that [the Provider] had no Managers that would meet with me".* He states that *"...a lot of verbal correspondence occurred between our Relationship Manager [Redacted] at the time and ourselves and he informed me that he had no influence on the decisions of [the Provider] all he could do is provide them with whatever information they required and make recommendations on our behalf."* He further submits that *"By not providing us with a Manager of [the Provider] to speak to regarding [the Complainant's] application ... can only be regarded as failing in their duty of care."*

The Complainant further details that *"It must be remembered that this time the Bank were putting all their customers under considerable pressure and [the Complainant] received two phone calls to his mobile phone regarding the matter which really upset him as he never spoke to the person before and he never in his life had got such calls from the Bank in the past."* He states that *"making phonecalls to a customer's mobile phone can only be described as pressure when the customer never even met the person making the calls."* He further states that *"By making a phone call to a personal mobile during working hours while we were engaging with the Bank was not necessary and can only be regarded as intimidation."*

The Complainant submits that he was requested to complete a Standard Financial Statement (SFS) which he completed and submitted to his Relationship Manager who he states also dealt with the Complainant's *"commercial business"*. He states that *"We provided to our Relationship Manager yearly Audited Accounts and regular monthly accounts and would have reasonably assumed that this was supplied by our Relationship Manager to [the Provider], if required. I had at all times mentioned our business connection and it is my contention that the Bank were negligent in not considering our commercial business. The Bank was well aware of the business connection at all times"*.

He further submits *"I had always stated that the entire connection need to be looked at. The Provider has admitted that this was not done. I was of the opinion at all times that this information was given by our Relationship Manager to [the Provider]. Whether the Relationship Manager did not provide the information or whether [the Provider] did not request details of the Company accounts, they are both Agents of the Provider and therefore the Provider had the relevant information about the Company accounts in its possession at all times and failed to consider it."*

The Complainant asserts therefore that the Provider *“did not consider our commercial business therefore did not make a proper assessment on our application to stay on our tracker mortgage”*.

The Complainant submits that in **2013** *“the Credit Department in [the Provider] were under huge pressure and taking a long time to make decisions on credit requests.”* He outlines that by the time the Provider considered his forbearance request, the reduced repayment arrangement on the mortgage account was due to expire and roll onto capital and interest payments. He states that *“The effect of this meant that our current account attaching to the rental income would go over its limit when the Bank would start applying capital and interest. All of this happened at a time when both [the Complainant and his wife] were trying to run a business in the downturn. [The Complainant] felt that we needed a break so we went to [Location] to visit family. When the Bank came back to us with their refusal for forbearance [sic] and required capital and interest on both loans and told us that we would be taken off the tracker mortgages [the Complainant’s wife] was so stressed ... that [she] told [the Complainant] to sign the documents.”*

The Complainant is seeking;

- (a) that his mortgage loan account be restored to the tracker rate of ECB + 1.25% from **June 2013**;
- (b) that he is compensated for all interest overpaid since **June 2013** while his mortgage loan account operated on a higher variable rate; and
- (c) an apology from the Provider for failing to meaningfully engage with him when he was under financial pressure in **2013**.

The Provider’s Case

The Provider submits that by way of Mortgage Loan Offer Letter dated **25 July 2006** the Provider agreed to advance a mortgage loan facility to the Complainant in the sum of €390,000 over a term of 20 years, secured over two separate investment properties. The Provider details that the Offer Letter provided for an initial interest only period of 5 years with principal and interest payments to apply thereafter, and the interest rate applicable was a tracker interest rate of ECB + 1.25% which was discounted to ECB + 1.15% for the first 24 months. The Provider states that the Complainant signed and accepted the Offer Letter on **26 July 2006** and the loan facility was drawn down on **25 August 2006**.

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

- The Complainant completed a **Standard Financial Statement (SFS)** dated **14 September 2011** seeking forbearance due to a *"drop in rent received"*.
- On **6 December 2011**, the Complainant signed a **Mortgage Form of Authorisation (MFA)** dated **24 November 2011** which extended the initial interest only period for 6 months.
- The Complainant completed a further SFS on **4 April 2012** seeking an alternative repayment arrangement (ARA) because of *"property value down, rents down, property not let"*.
- On **9 May 2011**, the Complainant signed a MFA Application for Reduced Repayments dated **4 May 2012** which provided for reduced repayments of €1,024.00 for a period of 12 months.

The Provider submits that the Complainant's mortgage loan account was due to commence capital and interest repayments in **May 2013** in accordance with the MFA signed and accepted by the Complainant on **9 May 2012**. It states that the Provider wrote to the Complainant on **19 March 2013** to advise him that the interest only repayments were due to end in **May 2013**.

The Provider submits that the Complainant completed a SFS dated **11 April 2013** seeking a further alternative repayment arrangement and the reason for this request was *"Buy-to-Let Rent down"*. The Provider states that it assessed his financial circumstances and on **13 May 2013** issued the Complainant an **Agreement to Amend Mortgage Loan Offer Letter** which provided for 6 months of reduced repayments of €1,200 per month, subject to the Provider's Buy-to-Let Pricing Policy.

The Provider states that it telephoned the Complainant on **28 May 2013** for an update regarding the Agreement to Amend Mortgage Loan Offer and the Complainant advised that he was unable to discuss and to contact his wife. It submits that in **June 2013**, the Complainant advised an appeal would be lodged in relation to the alternative repayment arrangement offered as he did not want to accept the Provider's Buy-to-Let Pricing Policy.

The Provider states that it wrote to the Complainant on **19 June 2013** stating that the Complainant had failed to accept the Agreement to Amend Mortgage Loan Offer within the required timeframe. It also states that on **19 June 2013**, the Complainant's wife emailed the Provider to seek 9 months' interest only repayments on the mortgage account.

The Provider details that it received a call from the Complainant on **25 June 2013** who passed the call to his wife *“who advised that she was unhappy about the manner in which the Provider was dealing with the mortgage loan account and advised they were going on holiday and that no further capital and interest payments were to be paid on the Mortgage Loan Account.”*

The Provider submits that also on **25 June 2013** it received a Letter of Authority from the Complainant authorising the Complainant’s wife to engage with the Provider on his behalf.

The Provider submits that it issued the Complainant a revised **Agreement to Amend Mortgage Loan Offer Letter** on **27 June 2013** which provided for a 9-month period of interest only repayments subject to the Provider’s Buy-to-Let Variable rate which would vary in accordance with **Condition 6(a)** of the mortgage loan. The Provider details that the Complainant signed the Agreement to Amend Mortgage Loan Offer Letter on **4 July 2013**, the agreement was implemented on **10 July 2013**, and the mortgage loan account has remained on the BTL variable rate to date.

The Provider states that it *“did not refuse to meet with the Complainant”* between **April 2013** and **July 2013**. It states that the Provider’s Credit Department *“are not a customer facing department and does not meet directly with customers. This is designed to ensure that credit decisions are not tainted with irrelevant considerations or biases when making their assessments. In turn, this ensures the effectiveness of the Credit Department in maintaining an objective, commercial and prudent approach to its business. Instead, the Provider has an Arrears Support Unit (ASU) which is comprised of specialists in dealing with mortgage loan accounts in arrears/pre-arrears and the processes surrounding issues which arise on a case by case basis.”* The Provider details that the Complainant’s personal business relationship manager was assigned to liaise with him. It states that it is *“clear”* from the telephone recording on **28 May 2013** that the Complainant wanted all of his mortgage loan accounts and business accounts to be dealt with through his Relationship Manager and not the ASU.

The Provider submits that the Complainant’s **Standard Financial Statement** dated **11 April 2013** indicated that the Complainant’s personal liabilities were €1,049,920.50 with repayments of €9,863.00 per month, and the Complainant was noted as being a director of a company and as operating a commercial property loan with his two children which is the property from which the company operates its business. The Provider states that *“no documentation is provided relating to the commercial loan accounts regarding rents received and/or outgoing”* related to the company, and therefore the Complainant’s commercial loan accounts were not considered when assessing the Complainant’s financial situation. It states that the Provider can only assess the SFS and supporting documentation that has been submitted by the Complainant.

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The Provider submits that it has reviewed all recorded telephone calls within its possession between **April – July 2013** and its records indicate that one call was made to the Complainant's personal mobile on **28 May 2013**.

The Provider states that this was from the Provider's Arrears Support Unit and the purpose of this call was to follow up on the Agreement to Amend Mortgage Loan Offer dated **13 May 2013**. The Provider states that it is satisfied that the call was made and conducted in a professional manner. It states that it would apologise for any upset its calls may have caused the Complainant as it was not the Provider's intent to do so. It submits that the nature of these calls is going to be difficult as they deal with the financial difficulties being experienced by the Complainant, however, the Provider is satisfied that the Complainant was not spoken to in a manner which could be perceived as being "*threatening*" and the Complainant did not express any upset, distress or grievance on this call.

The Provider submits that there is "*no evidence that the Provider acted aggressively and used tactics to force the Complainant to accept the rate amendment*" or that he "*was deprived of his own free will*" when he entered into the ARA with the Provider in **July 2013**. The Provider states that the Complainant approached the Provider in **April 2013** enquiring about the possibility of alternative repayment arrangements as he was experiencing financial difficulty. The Provider states that the Complainant appealed the Provider's offer of **May 2013** and advised that he wanted 9 months' interest only payments and also advised that he was going on holiday on **1 July 2013**. It submits that the Complainant was "*initially aggrieved*" that he did not receive the forbearance he wanted, notwithstanding his own acceptance of his inability to meet the impending capital and interest repayments. It states however that the Complainant signed and accepted the revised Agreement to Amend Mortgage Loan Offer dated **27 June 2013** while he was on holiday on **4 July 2013**. The Provider states that the Complainant did receive independent legal advice before signing the Agreement to Amend Mortgage Loan Offer and by signing the offer he acknowledged his acceptance of the terms and conditions contained within, including the removal of the tracker interest rate.

The Provider submits that the **Agreement to Amend Mortgage Loan Offer Letter** set out clearly the effects of accepting the Agreement and the ending of the tracker interest rate if accepted. It states it is satisfied that it did not recklessly, negligently or deliberately mislead the Complainant as to the real or perceived advantages or disadvantages of any product or service, and it sought information from the Complainant relevant to the product requested (extension of the term and reduced repayments) and made a full disclosure to the Complainant of all relevant material information in a way that sought to inform the Complainant.

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The Provider submits that it made a commercial decision to implement a new pricing policy for non-CCMA Buy-to-Let Tracker customers in **late 2012** for customers seeking any change to their existing repayment terms and conditions.

It states that *“As part of a financial review, if a change of terms and conditions is deemed appropriate (e.g. Interest Only), the Buy-To-Let Tracker customer will be offered a new Standard Variable Interest Rate mortgage for the life of the loan, which is initially priced at 1% above what they are currently paying on their tracker mortgage”* and the *“tracker status of the loan ends completely on taking up of new amendments to the terms and conditions”*.

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

The Provider refers to **Chapter 2** of the **Consumer Protection Code 2012 (“CPC 2012”)** and states that it has acted *“honestly, fairly and professionally”* and *“with due skill, care and diligence in the best interest of its customers.”* The Provider outlines that it is satisfied that it has acted fairly with respect to the offer of a new arrangement with the Complainant in **June 2013**, with reference to the **CPC 2012**. It refers to **Chapter 6** of the **CPC 2012** and in particular **provisions 6.9** and **6.10**. It further refers to **Chapter 8** and in particular **provision 8.3**. The Provider further states that it has complied with **provisions 3.40** and **3.44** of the **CPC 2012**.

The Provider details that on **9 June 2017**, the Complainant signed and accepted a further Agreement to Amend Mortgage Loan Offer dated **29 May 2017** which provided for reduced repayments of €1,054.00 for a period of 12 months.

It states that on **27 June 2017**, the Provider received a cheque in the sum of €129,911.87 following the sale of one of the Buy-to-Let properties which was lodged to the mortgage loan account, leaving a balance of €30,743.58.

The Complaints for Adjudication

The complaints for adjudication are:

- (a) the Provider failed in its duty of care by refusing to meet with the Complainant;

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- (b) the Provider was aggressive and used bullying tactics to “force” the Complainant off his tracker interest rate;
- (c) the Provider failed to give proper consideration to the Complainant’s ability to repay the mortgage through his company as Director; and
- (d) the Provider exerted “huge pressure” on the Complainant to accept the Provider’s **Agreement to Amend Mortgage Loan Offer in July 2013.**

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 **08 April 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, the Complainant made a further submission through his nominated representative by e-mail to this Office dated **9 April 2021**, a copy of which was transmitted to the Provider for its consideration.

The Provider has not made any further submission.

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Having considered the Complainant's additional submission and all the submissions and evidence furnished to this Office, I set out below my final determination

At the outset, it is important to point out the jurisdiction of this Office in complaints regarding alternative repayment arrangements (ARA). This Office can investigate the procedures undertaken by the Provider regarding the alternative repayment arrangement 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 ascertain if the Provider did act inappropriately it is necessary to review and set out the relevant provisions of the Complainant's mortgage loan documentation and to consider the Provider's interactions with the Complainant in **2013** in relation to the alternative repayment arrangements proposed and offered.

The Provider issued a **Mortgage Loan Offer Letter** to the Complainant dated **25 July 2006**, which provided for an advance of €390,000 over a term of 20 years.

Part 1 – The Statutory Loan Details of the Loan Offer, sets out the following;

“1. Amount of credit advanced:	€390,000.00	
2. Period of Agreement:	20 years	
3. Number of Repayment Instalments	Instalment Type	4. Amount of each Instalment
24 (interest only)	2 yr Discount tracker 3.90%	€1,267.50
36 (interest only)	Investment tracker 4.0%	€1,300.00
180	Investment tracker 4.0%	€2,882.19”

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

11. “Type of Loan:	Interest combo – interest only first five years
12. Interest Rate:	3.90% discount tracker variable for first two years 1.25% for remainder term.

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...”

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

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

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

“4. Repayment

(a) *Unless otherwise stated herein or agreed by the Bank in writing, the repayment of the Loan shall be by monthly instalments in arrears by direct debit and the Borrower must effect and maintain a suitable direct debit mandate with the Borrower’s bank or other financial institution. For an annuity, or other repayment loan, repayments shall be comprised of principal and interest and any other amounts payable and for an endowment loan shall compromise of interest and such other amounts only.*

The due dates for repayment of the Loan are those dates that are from time to time set by the Bank. The amounts of such repayments and the due dates for payment thereof shall be determined by the Bank at its absolute discretion.

(b) *In the event of any repayment not being paid on the due dates or any of them, or of any breach of the Conditions of the Loan or any of the covenants or conditions contained in any of the security documents referred to in clause 2(a), the Bank may demand an early repayment of the principal and accrued interest or otherwise alter the Conditions of the Loan.*

(c) *If so agreed in writing by the Bank, the Loan may be repaid in 10 or 11 payments in any year of the term and such payments (unless the Bank at its absolute discretion permits an extension of the term) shall be of such amounts as will discharge the liability of the Borrower during that year for the Loan.*

(d) *The Bank may at its absolute discretion, and with the consent of the Borrower, vary any payment of principal, interest or any other amounts payable in respect of the loan.”*

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

“11. Special Conditions

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...

Special Clauses

For the first five 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 waived. At the end of the above period, repayments shall comprise of principal and interest and any other amounts fully payable 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 monies payable as the Lender shall advise the borrower in writing.

The interest rate applicable to the loan is a variable interest rate and may vary upwards or downwards.

The interest rate shall be no more than 1.25% 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 the 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 Investment Variable Rate. For the first two years a discount rate of ECB + 1.15% will apply."

I note that the **Acceptance and Consents** section of the **Mortgage Loan Offer** was signed by the Complainant on **26 July 2006** on the following terms;

"I confirm that I have read and fully understand the Consumer Credit Act notices, set out above, and the 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 **Mortgage Loan Offer** provided for an initial discounted tracker interest rate of ECB + 1.15% which would apply to the mortgage loan for a period of 24 months, and thereafter a tracker interest rate of ECB + 1.25% for the remaining term of the loan. The **Special Conditions** provided that the repayments would be interest only for the first 5 years of the term of the loan. The Complainant accepted the Mortgage Loan Offer, having confirmed that he had read and fully understood the Loan Offer.

I note that on **15 August 2008** the Complainant signed a **Mortgage Form of Authorisation (MFA)** selecting the tracker variable interest rate of 5.50% (ECB + 1.25%). The **mortgage loan statement** shows that the rate of 5.50% was applied to the mortgage loan account on **25 August 2008**.

I note from the **mortgage loan statement** that the initial interest only repayment period on the mortgage account expired on **26 September 2011** and the monthly payment increased at that time from €893.42 to €2,647.15.

The **Standard Financial Statement** signed by the Complainant on **14 September 2011**, details as follows;

<i>Total Monthly Income (B11)</i>	€2,207.21
<i>Less Total Monthly Expenditure (C38)</i>	€3,317.00
<i>Sub- Total (G1 minus G2)</i>	-€1,109.79
<i>Less Mortgage Repayments Due (D1)</i>	-
<i>Less Other Monthly Debt Due (D22)</i>	€1,542.76
<i>Total Surplus/Deficit (subtract G4 and G5 from G3)</i>	€432.97

The *“Reason(s) for review/arrears”* is stated as *“Drop in Rent Received”*.

The Complainant’s wife wrote to the Provider by letter dated **14 September 2011** which details as follows;

“As I told you the Standard Financial Statement (SFS) does not appear to cover our situation where we want to remain interest only because simply our rent roll is down and there is no point on us going on capital and interest as simply we could not meet the repayments.

I have given figures based on the present situation but going forward we see things getting worse.

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From this year on all our Section 23 relief will have run out, some of the properties we will not be able to rent especially [Buy-to-Let Property] as all the properties around it is run down and there are so many properties on the market that people will not want to rent, they are getting stricter at enforcing all of these extra charges ie PRT and the annual €200 on each property. Up to this we thought it was €90 per house for the PRT but it is €90 per unit and with flats they change regularly. At present the account may be in credit but sometimes I leave it and pay a few bills together ie the Insurance is now due and that is over €4k. We gave a reduction to one of our tenants in order to retain him but rather than changing the Lease we said we would give him as per centage back each year which is €2,200.

I enclose the (SFS) that I have had [Complainant] complete – it at least shows that we cannot afford to pay anything extra towards the properties as he took a wage cut in the last few years and he dropped a little further to allow me take a small wage of circa €5k per year which was more tax efficient.

I would be grateful if you could please come back to me with approval of same.”

The Provider’s internal notes furnished in evidence detail as follows;

30 September 2011	<i>“SFS received and logged.”</i>
15 November 2011	<p><i>“SFS assessed by CSU. Exposure: [Provider] E1,057,319.</i></p> <p><i>...</i></p> <p><i>New REQUEST: Extension of interest only on [mortgage account ending] 4226. Had 5 years I/O from d/down which expired 25/08/2011.</i></p> <p><i>...</i></p> <p><i>REASON FOR ARREARS/REVIEW: Borrowers are struggling due to reducing rent and increasing costs of maintaining/owning a BTL.PREV APPROVALS: None.</i></p> <p><i>REPAYMENT RECORD: No missed payments or arrears on either account (PRE DEFAULT).</i></p> <p><i>...</i></p> <p><i>CAPACITY: A massive shortfall is evident from figures above, however he has made two C&I rep[ayment]s since it converted from I/O.</i></p> <p><i>...</i></p>

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	<p><i>May need to consider a provision further down the line if borrower is unable to reduce debt level as he has indicated that he only sees things getting worse. Has unencumbered PDH in [location] also. Not looking for security at present.</i></p> <p><i>RECOMMENDATION: 6 months interest only from November 2011 on XXXXX4226 with condition that ...every effort is made to dispose of assets(s) during the forbearance period to reduce debt level as it is not sustainable>>.</i></p> <p><i>..."</i></p>
18 November 2011	<p><i>"DECISION: Signed off by [redacted] As recommended on account XXXX4226.</i></p> <p><i>..."</i></p>

A **Mortgage Form of Authorisation Application For Change to Interest Only Loan** dated **24 November 2011** was signed by the Complainant on **6 December 2011**. The form outlined as follows;

"I wish to apply to change the terms and conditions of my Mortgage Loan (the "Loan") so that I make repayments of INTEREST ONLY for a period of 6 months (the "Agreed Period")."

I note from the **mortgage loan statement** that interest only repayments of €721.50 were made between **December 2011** and **April 2012**.

The **Standard Financial Statement** signed by the Complainant on **4 April 2012** details as follows;

<i>Total Monthly Income (B11)</i>	€1,928.10
<i>Less Total Monthly Expenditure (C38)</i>	€2,756.00
<i>Sub- Total (G1 minus G2)</i>	-827.90
<i>Less Mortgage Repayments Due (D1)</i>	-
<i>Less Other Monthly Debt Due (D22)</i>	€1,707.76
<i>Total Surplus/Deficit (subtract G4 and G5 from G3)</i>	-2,535.66

The *"Reason(s) for review/arrears"* stated as follows;

- *"Property value down*
- *Rents down*
- *Property not let"*

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An undated document enclosed with the SFS detailed as follows;

“Management accounts for the first 8 months of the current year (May to Dec 2011) show turnover of €3,239k and a loss of €7k after depr and interest of €49k. This ytd turnover annualises to €4,858k – an increase of 9% on y/e 4/11

...

Managing costs is now imperative to enable [Complainant] to increase his drawings and commence repaying capital off his personal debts. But this is not expected to happen for at least 12months.

...”

The Complainant’s wife wrote to the Provider by letter dated **4 April 2012**. This letter detailed as follows;

“I have enclosed the Standard Financial Statement (SFS) completed. The form does not appear to be suitable for investment properties where clearly rents are down and more expenses are now incurred due to the Private Residential charge, household charge and registration of each tenant charge.

The way things are at the moment there is no way we would be able to pay capital and interest on any of the properties until matters turn around in the economy. Our house in [Location] had not been let since last November and it is very hard to let property down there as there is so much property now available to rent due to people requiring the money. One of the flats in [Location] has also been vacant for a long period of time and as it is all social welfare people we have in their [sic] the amount social welfare are now paying towards rent is down substantially.

I know you will be passing this on to another department so I would be grateful if you could recommend getting approval for at least a year as I do not see the sense in filling in these forms again in 6 months time where I know there will be little or no change in the property situation.”

The Provider’s internal notes provided in evidence on the following dates detail as follows;

11 April 2012	<i>“Met with [the Complainant] as part of annual review of all facilities. He has requested a continuation interest only on his mortgage account due to lack of repayment capacity. SFS sent to ASU today with supporting docs”</i>
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<p>26 April 2012</p>	<p><i>“Financial Summary: Total [Provider] Exposure: Ä1,059,971 ... Total Debt: Ä1,385,136 ... Case Summary: 6 BTLs held with [Provider]. About to move into Challenged Portfolio. Business turnover has increased 9% and [Complainant] has also reduced staff costs which should result in increased profitability and income. Possibility of taking unencumbered PDH has been discussed but Repayment Capacity Analysis: Customer lives in unencumbered PDH.</i></p> <p>...</p> <p><i>Takes net income Ä1,788pm from business, although this is set to increase as outlined above. Living expenses per SFS are Ä2,756, although some figures would appear to be high. Assuming that income from business can fully cover living expenses, full rental income of Ä4,220pm should be available to go towards BTL debt repayments. Taking 10% of rents to cover expenses/overheads leaves Ä3.8k available for mortgage repayments, which should mean interest plus Ä900 is available. Note that [third party Provider] car loan repayments of Ä1,542pm will be cleared next month. This should also be available to assist meeting living expenses and debt.</i></p> <p>...</p> <p><i>Recommendation/Decision: Interest plus Ä300pm on ref. XXXX4226; interest plus Ä600pm on XXXX0437; both for 12 months to allow customer time to dispose of some of the properties and reduced overall debt. Unless there is a big turnaround in the business, it’s difficult to see how this debt is sustainable in the medium term. Would insist that loan revert to full C&I repayments in 12 months time – B[usiness] M[anager] to ensure this is made clear to the customer.</i></p> <p>...”</p>
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A **Mortgage Form Authorisation** dated **4 May 2011** was signed by the Complainant on **9 May 2012** which provided for a 12-month period of reduced payments of €1,024.00 per month on the mortgage loan account.

I note from the **mortgage loan statement** that the reduced repayments of €1,024.00 applied to the mortgage account between **May 2012** and **April 2013**.

The Provider has submitted that it introduced a new policy in **late 2012** in relation to BTL tracker customers.

/Cont’d...

The Provider details the policy as follows;

“On [late] 2012, a new pricing policy was implemented for non CCMA Buy to Let (BTL) Tracker Customers seeking any change to their existing repayment terms and conditions. This policy was implemented following engagement in early ... 2012 by the Provider with the Central Bank of Ireland and operates as a commercial decision for supporting and restructuring non-CCMA investment property loans.

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 Tracker customers who do not amend their terms and conditions, and continue on their existing tracker rate. Exclusions from the policy applied for capitalisation of arrears, customers who had agreed consensual asset disposal due to financial distress or those customers entering a personal insolvency arrangement. In 2014, exclusions were expanded to include customers with sales at shortfall/residual debt.”

A further **Standard Financial Statement** was signed by the Complainant on **11 April 2013** and details as follows;

<i>Total Monthly Income (B11)</i>	€6,141.21
<i>Less Total Monthly Expenditure (C38)</i>	€4,217.00
<i>Sub- Total (G1 minus G2)</i>	€1,924.41
<i>Less Mortgage Repayments Due (D1)</i>	
<i>Less Other Monthly Debt Due (D22)</i>	€6,111.76
<i>Total Surplus/Deficit (subtract G4 and G5 from G3)</i>	€4,187.55

The “Reason(s) for review/arrears” is stated as “Buy-to-Let – Rent Down”.

/Cont’d...

The Provider's internal note dated **07 May 2013** details as follows;

*"...Decision for Non CCMA ref. [account number] *DO NOT ACTION UNTIL FURTHER [Provider's system] INSTRUCTION FROM PRICING UNIT* This is a Buy to Let mortgage, please issue amended MFA inclusive of 1% Interest amendment. New rate is 3%. WeÈve (sic.) agreed reduced repayments of Å 1,200 pm for 6 months on this account Ì starting from May 2013 ..."*

The Provider has submitted that an **Agreement to Amend Mortgage Loan Offer** dated **13 May 2013** issued to the Complainant which provided for a 6-month period of reduced repayments of €1,200 per month. A copy of this document has not been provided in evidence. However, it does not appear to be disputed between the parties that the Complainant did not sign or accept this offer.

I note that a representative of the Provider contacted the Complainant on **28 May 2013**. I have considered the audio recording of this telephone call provided in evidence, which includes the following exchanges;

Provider: *"I'm phoning from the Arrears Support Unit, I need to discuss your mortgages, are you ok to proceed?"*

Complainant: *"Ah, well I don't deal with them, my wife deals with all of that, so do you want to ring her?"*

Provider: *"OK, because this mortgage, Mr [Complainant], is in your name only so we would only be able to discuss it with you."*

Complainant: *"Well, I'm out on the road at the moment so I can't discuss it. Can you give me your number and I'll ring you back?"*

Provider: *"Yeah, do you have a pen there?"*

Complainant: *"Just hold on one second and I'll get one."*

Provider: *"OK"*

Complainant: *"Yeah go ahead"*

Provider: *"The number is [redacted]"*

Complainant: *"Now, tell me what's this about did you say?"*

Provider: *"I was just calling in relation to the letters that were issued on both your mortgages"*

Complainant: *"Well, there could be a bit of cross [inaudible] on this, we have, we have an appointment to meet our ... relationship manager next week about all of this, it's all interconnected with our business..."*

Provider: *"OK, so, do you know what date next week?"*

Complainant: *"It's next... next Thursday week actually"*

Provider: *"Next Thursday week, ok"*

/Cont'd...

Complainant: *"We're supposed to meet with [Redacted] and, what's the other fella's name ... anyway whatever his name is, it doesn't matter, we've an appointment next Thursday week, they're coming out to us ... there's a lot of intertwining in between different companies and, you know"*

Provider: *"OK, well I was just calling you for an update on that so what I'll do is I'll monitor your accounts for an update from that meeting and might give you a call then"*

Complainant: *"Well, they'll probably contact you because we do all our dealings through them, we don't deal necessarily with [Provider] only, we do all our business through [Provider] and it's all intertwined... I'm sure he'll brief you about what's happening"*

Provider: *"OK"*

Complainant: *"...That letter only came out to us last week didn't it?"*

Provider: *"Yeah, it would have been issued on the 13th I think so you probably would have got it last week sometime."*

Complainant: *"OK, talk to you soon"*

Provider: *"Thanks very much, bye"*

Having considered the content of the audio recording furnished in evidence, I cannot accept the Complainant's submission that this telephone call from the Provider *"can only be regarded as intimidation."* On the contrary I am of the view that both the Complainant and the Provider's representative remained courteous in demeanour during the course of this telephone call. It is not apparent to me from the audio recording provided that the Complainant was in any way upset or distressed by this telephone call, as has been submitted.

The Complainant's wife emailed the Provider's relationship manager on **19 June 2013** as follows;

"Further to my telephone conversation with you earlier [the Complainant] and myself find it very upsetting that the Bank should take such an aggressive attitude to part of our business that is not operating the way it should be through no fault of our own. We also find it difficult to understand why the arm of the Bank called [the Provider] will not engage with the customer and send out letters with nobodys name to it yet the Bank are advertising in the media that the Bank are here to meet with its customers in order to come to some kind of workable resolution.

[Provider's representative] and yourself up to recently were our Accounts Managers and we have always had a good relationship with you both. The rental properties are now managed by [the Provider] and now we have nobody to deal with – we find this totally unacceptable.

/Cont'd...

At our recent meeting I had acknowledged that we could not pay the capital and interest on the loans relating to the properties but as our Company is now operating quite well and making a profit I put a proposition to you both which I felt would work ie that in 9 months time when most of the leasing of the equipment to the Company would be paid off we could start paying back the Directors loans in [the Complainant's] name which in turn would mean that he could pay capital and interest on the properties. We felt that this was a reasonable proposition and you have now confirmed to me that the Bank has rejected it – I was of the opinion that the Banks were to accept reasonable propositions. Assuming that this would be accepted there were a number of capital expenses that I did not highlight to both yourself and [Provider's representative] as I felt if we got until next year on the interest only loans I could have put the capital expenditure through the current account – thus I never mentioned them to you. I now find a situation that despite the fact that [the Provider] gave us weeks to accept their new proposal they have commenced charging capital and interest before the expiry of the 5 weeks. I assumed that this would be resolved before the 5 weeks and we would have been left on interest only. The letters that we have been getting from the Bank have also added to the confusion ie

Account [ending] 4226

Letter dated 8th May 2013 from [Provider] confirming repayment would be €1,024.00 from 9/5/2013

Letter 13th May 2013 from [Provider] suggesting new repayment of €1,200

Letter dated 20th May 2013 from [Provider's branch] confirming actual repayment is €2,684.83 falling due on 25/5/2013.

Letter dated 20th May 2013 from [Provider's branch] confirming next repayment due on or after 19/5/2013 is €557.34

...

You can understand my sheer frustration with above and my annoyance that the capital and interest payments were taken out of the account prior to the acceptance of any agreement or clarity as to what we would be paying on both accounts going forward.

/Cont'd...

As mentioned to you above I did not set out the capital expenditure to you for the following reasons :-

Firstly they were only recent necessary capital expenditure and

Secondly I felt if we were giving the interest only tracker rate that we had been on we could have stayed within our overdraft limit.

The capital expenditure is as follows:-

- 1. [Buy to Let property 1] is an old house and because of this unforeseen expenses can occur from time to time. I have an Invoice from our builder dated 15th March which I have not paid for €5,221.00 ...*
- 2. We had a huge problem letting [Buy to Let property 2] and it was unoccupied for a lot of last year ... we needed to ... put a stove in for heating as this was the aspect of the house that prevented letting. This has involved a capital expenditure of €4k for the heating and redecoration of the house is €2k ...*
- 3. All expenses relating to the properties have gone up with the extra costs of property tax now applicable”*

The Provider wrote to the Complainant on **19 June 2013** as follows;

“I refer to our previous letter of 13/05/2013 where we offered you an alternative repayment arrangement in relation to your mortgage, which to date you have not taken up. I would like to remind you that this arrangement was offered following a detailed assessment of your case, in which we concluded that this was the most appropriate way of managing your current situation.

If you have not already done so, I urge you to discuss this matter further with your local [Provider’s] Branch Mortgage Advisor, who can explain our decision in more detail and assist you with a further review of your financial position, or any other option that might be appropriate. While we will continue to support you in any way possible, we strongly recommend that you also get independent financial and legal advice.

I am obliged to inform you of other options open to you, the implications for you and our rights in each case. These options and other important information are set out in an appendix to this letter.

/Cont’d...

We remain committed to working with you through any repayment difficulties you may experience, and encourage you to contact your local [Provider's] Branch Mortgage Advisor and continue to work with us to achieve a satisfactory long term outcome."

The Provider's internal notes show that it wrote to the Complainant on **19 June 2013** as follows;

"I refer to your recent complaint regarding the proposed increase in interest rates on the above accounts, and the issue regarding the signing of documentation from [the Provider], that [the Complainant's wife] notified me of in person on 06/06/2013, and with further details by email on 11/06/2013. Having completed my investigation into this matter I can now give you a full response.

[The Provider's] Non CCMA Buy To Let Tracker customers seeking a new arrangement to their terms and conditions, will only be offered it on a variable rate mortgage, initially priced at 1.00% above what they are currently paying on their tracker mortgage... Unfortunately there are no exceptions to this pricing policy and as such any amendment to existing terms and conditions will result in this price change...

Should you wish to stay on your existing terms and conditions, as set out in your mortgage loan agreement, you will of course retain the existing tracker rate.

The signing of the documentation with the name 'Manager' on it is due to the fact that a large team of staff are assigned directly to the accounts within [the Provider], and not one specific staff member or manager.

There are contact numbers on the correspondence for these teams, and any member of staff can deal with queries relating to the correspondence. I have asked the department to look into putting a team leader's/manager's name on the correspondence in future, to allow customers ask for someone in particular.

As our mortgage department have given their response on these matters, under the Central Bank of Ireland's Consumer Protection Code, I am required to advise you that you do have the right to refer your complaint to the Financial Services Ombudsman if you are not satisfied with the outcome to your complaint. This is a free, independent office that investigates unresolved complaints against financial institutions."

/Cont'd...

The Complainant wrote to the Provider by letter dated **25 June 2013** as follows;

"I would be grateful if you could add my wife [Redacted] as a person who can negotiation [sic.] and deal with any matters regarding the operation of the above two accounts on my behalf."

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

"Appeal received Request for 9 months interest only received as per telecon with [Redacted]... 9 months interest only on both accounts to revert to C & I repayments after this time"

I have considered the audio recording of the telephone call between the Provider and the Complainant's wife on **25 June 2013** provided in evidence, which includes the following exchanges;

Complainant: "...Even since the financial agreement that was sent in circumstances had changed, but I had nobody to discuss this with in [the Provider], who was I dealing with in [the Provider], there seems to be nobody in there I can speak to. The problem is that we're getting all kinds of letters... in the end I had to email [the relationship manager] with the whole thing... can I not go in and meet with somebody like you know, like the way its advertised on television. We're going on holidays this weekend and I don't want our overdraft to be going over because capital and interest has been put to the account, this has been going on for weeks and nobody in the bank has been able to talk to us ... at this stage I am going to complain and bring this further... it's really not good enough at this stage that no one will talk to me at all... Also [the Complainant] has got a phone call from some girl... Nobody is around to talk to me and nobody is around to take up our file and look at the information when it's given. If they can't deal with it now can they at least tell us until we come back from holidays that they're not going to be putting capital and interest through on the account. And I require an urgent answer to this because this is totally unacceptable at this stage... But I can't get anyone from [the Provider] to talk to us"

Provider: "Ok you're looking at talking regarding the decision that was made on the account?"

Complainant: "Yes because things have changed, and I have set out these, but because I have nobody to send them to in [the Provider] I'm sending them to [the relationship manager], I mean I can forward you on my email last Wednesday the 19th of the sixth..."

/Cont'd...

we're going on holidays this week, I need at least this dealt with and that capital and interest isn't put through on the account if somebody in there hasn't the time to properly look at my account"

Provider: *"According to the account there it's already gone back on capital and interest"*

Complainant: *"Exactly! It is gone back on capital and interest... this is exactly my problem..."*

Provider: *"Just bear with me now one moment-"*

Complainant: *"Hang on a second, I think it's been looked at... We've received an approval for 9 months interest only on those accounts... OK... I'm sorry I got so frustrated to be honest with you. That's obviously, it's going back on 9 months interest only..."*

I accept that the Provider's internal note dated **25 June 2013** is an accurate reflection of this call and details as follows;

"[Complainant] passed call to wife [Redacted] to discuss, cust unhappy waiting for decision on accounts as cust sent in appeal ... cust recieved [sic] email while on call re offers, cust ok with offers, advised forms will issue for customers to sign and return"

The Provider's internal note dated **27 June 2013** details as follows;

"[Relationship manager] wanted to know if mfa had been issued yet and if not how could he get them issued today as cust is going overseas"

The Provider wrote to the Complainant by letter dated **27 June 2013** which details as follows;

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

We have considered all aspects of your case including;

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

/Cont'd...

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

We strongly recommend that you get independent financial and legal advice to help you decide whether to accept our offer of an alternative repayment arrangement.

...

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 repay the mortgage over the remaining term of the loan. These repayments are likely to be higher than the repayment instalments set out in the initial version of your mortgage loan offer letter.*
- *You agree to pay the repayment instalments for the alternative repayment arrangements 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 agreement, we may report that to the ICB. Such a report could make it more difficult getting a new home/business loan.*
- *The life assurance policy you have in place to cover the mortgage 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.*

/Cont'd...

- *You will lose the present tracker variable rate for the remaining term of the mortgage.*

..."

An **Agreement to Amend Mortgage Loan Offer Letter** dated **27 June 2013** was enclosed with the letter issued to the Complainant. I note that **Section A** of the form details as follows;

"SECTION A: WHAT THIS FORM DOES

Alternative Repayment Arrangement

Interest Only

What you pay in each instalment

- 1.1 *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 length of the Agreed Period

- 1.1.1 *The "Agreed Period" means the period of 9 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 1.750% per annum at present to a **BTL Variable** rate. The BTL Variable Rate will apply for the remaining term of the Loan (except for periods in which you and we agree in writing to fix the interest rate for the Loan). At present this BTL Variable rate is 2.750% per annum.*

/Cont'd...

Section B of the form details as follows;

“SECTION B: FURTHER TERMS AND CONDITIONS OF THIS FORM

B.1 ANY COMMITMENT TO A TRACKER RATE ENDS

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

...

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

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

/Cont'd...

B.8 Special Conditions

...

The following Special Conditions apply to you. Some of these may set out thing we require before this form comes into effect (and, if so, this form will not be effective unless and until you meet these requirements in a form and content satisfactory to us).

It is recommended that you prioritise a review of your current monthly discretionary spending patterns, for example lifestyle expenses, etc. We strongly recommend that you contact all other lenders to renegotiate/refinance your existing short term debt repayments.

...

B.10 About Your Acceptance of this Form

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

..."

Section C of the form provides as follows;

"SECTION C: LEGAL NOTICES

(PLEASE READ THESE CAREFULLY)

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

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

- a) *We estimate you are now obliged to pay us monthly instalments of €2,881.86 each and that the total cost to you of the Loan would be €45,458.99. 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;*

/Cont'd...

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 €854.90 each during the Agreed Period and of €854.90 each thereafter. The total cost of the Loan would be €138,854.19. These estimates are based on the rate of interest and other terms (for example, your reduced payment obligations during the Agreed Period) provided for in this form. The increase in the cost of the Loan is because (i) the interest rate offered in this form is higher than your present tracker interest rate; and (ii) the Loan principal will not be repaid as quickly as set out in the initial version of your Mortgage Loan Offer Letter.*
- c) Each estimate (i) assumes you met your payment obligations to us in full and in time; (ii) is indicative only, for example, the amounts you pay in regular instalments may differ because of future changes in interest rates; (iii) assumes you make 12 monthly payments each year even if you have another arrangement with us; and (iv) includes arrears, even if arrears are not being capitalised as part of this agreement.*

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

The Complainant, in his post Preliminary Decision submissions dated **09 April 2021**, submits that “*there was lack of communication between [their] Relationship Manager and Mortgage Service Centre and ultimately, as [they] could not meet with the people making the decisions, [they] feel [their] Relationship Manager did not properly represent [them] in putting the case forward that the [Complainant’s company], which [the Complainant] was the main shareholder, should have been taken into account when a[ss]essing his repayment capacity.*” It is important for the Complainant to understand that the Provider offered the Complainant an alternative repayment arrangement by way of **Agreement to Amend Mortgage Loan Offer Letter** dated **27 June 2013** on foot of its assessment of the Complainant’s financial circumstances and the information contained in the **Standard Financial Statement** completed by the Complainant on **11 April 2013**. The **Standard Financial Statement** indicated that the Complainant was a director of a company and was operating a commercial property loan with his children which is the property from which the company operates its business.

/Cont’d...

It was a matter for the Complainant to provide up to date and accurate information and supporting documentation in relation to any other commercial loan accounts and income and outgoings to the Provider when he submitted his **Standard Financial Statement**.

The Complainant signed the **Acceptance of the Agreement to Amend Mortgage Loan Offer Letter** on **4 July 2013** on the following terms;

“By signing this form:-

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

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

The Complainant signed and accepted the **Agreement to Amend Mortgage Loan Offer Letter**, having ticked the box to confirm that he had received independent legal advice on the agreement and that he agreed to be bound by the terms and conditions of the agreement. The Complainant, in his post Preliminary Decision submissions dated **09 April 2021**, submits that he was *“under huge pressure at the time in running a business and may not have properly read all the correspondence that was been throwing at us at the time [..]”*. In this regard, it is important for the Complainant to understand that the Provider was only permitted to alter the terms of his mortgage loan agreement with his consent. I note that the Complainant confirmed that he received independent legal advice in relation the contents of the **Agreement to Amend Mortgage Loan Offer Letter** therefore if it was the case that the Complainant was not happy with the terms of that agreement, including the amendment to the interest rate, the Complainant could have decided not to accept the offer made by the Provider.

/Cont'd...

It is important for the Complainant to be aware that he at all times remained obliged to comply with the terms and conditions of the original **Mortgage Loan Offer Letter**, which was signed and accepted by him, that is, to make the repayments on the mortgage loan. At that time the agreement was entered into with the Complainant in **July 2013** the mortgage loan account was not in arrears.

The Complainant, in his post Preliminary Decision submission dated **09 April 2021**, further asserts that the *“Banks at the time put a lot of pressure on its customers and I can confirm that we felt every bit of the pressure at the time and I know we signed certain things that we probably should not have signed”*. Whilst I accept that the Complainant may have felt that he had no choice but to accept the agreement offered by the Provider in circumstances where he was unable to make the full capital and interest payment, there is no evidence to suggest that any *“pressure”* was placed on the Complainant to enter into the arrangement in **July 2013**.

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

The Provider, in accordance with its Buy-to-Let pricing policy offered a standard variable rate which I understand was to start at 1% above the current tracker interest rate on the Complainant’s mortgage loan which is the subject of this complaint. In the circumstances of this particular complaint, it appears that the Provider offered a rate of 2.75%. I note that the **Agreement to Amend Mortgage Loan Offer Letter** dated **27 June 2013** refers to the tracker interest rate applicable to the loan as being 1.75%. The loading of 1% was added to the tracker interest rate of ECB + 1.75%, and a variable interest rate of 2.75% was offered by the Provider to the Complainant.

I accept that the Complainant did not want to give up the entitlement to the tracker interest rate, however the Complainant was seeking to agree an alternative arrangement with the Provider on a mortgage that was not secured on his principal private residence. The Provider made an offer to the Complainant to provide interest only repayments for a period of 9 months on condition that a variable rate of 2.75% would apply to the mortgage loan. It was a matter for the Complainant to decide whether to accept that arrangement on offer by the Provider.

Provision 6.9 of the **CPC 2012**, outlines as follows;

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

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

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

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

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

The appropriate information and warnings under **provision 6.9** of the **CPC 2012** were contained in the **Agreement to Amend Mortgage Loan Offer Letter**. The mortgage loan was not a private dwelling house mortgage loan.

Therefore, I have not been furnished with any evidence to support the Complainant’s contention that there was an inappropriate removal of a tracker rate of interest from the Complainant’s mortgage loan account by the Provider in **July 2013**.

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An **Agreement to Amend Mortgage Loan Offer Letter** dated **29 May 2017** was signed and accepted by the Complainant on **9 June 2017** which provided for 12 months of reduced monthly repayments of €1,054.00.

The **Special Conditions** outline as follows;

“ ...

2.1 Borrower agrees to sell property

By signing this Form the Borrower acknowledges that it will be necessary for the Borrower to sell the property(ies) [property address] and to apply the proceeds towards repayment of the Loan; and that the alternative repayment arrangement does not remove that necessity. The Borrower agrees to sell the property(ies) specified above on terms and at a time satisfactory to the Lender in its absolute discretion but (in any event) before the end of the alternative repayment arrangement.”

I note that the Complainant’s solicitor wrote to the Provider by letter dated **13 September 2017** as follows;

“ ...

Following completion of the sale today, we enclose herewith cheque in the sum of €130, 179.17 as per the enclosed account and copy invoices.

...”

The **mortgage loan statement** shows that on **20 September 2017** a part redemption payment of €130,179.17 was made to the mortgage loan account, which reduced the mortgage balance to €30,743.58.

The Provider’s internal notes on the following dates detail as follows;

3 October 2017	<i>“Email sent to [Complainant’s wife] advising signed & dated letter required in order to convert [account ending 4226] back to C&I repayments as fixed repayment set up for 12 months from June 17. Adv also that we cannot amalgamate loan balances due to different interest rate, terms etc and that both accounts will remain separate. Monitor for response.”</i>
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<p>25 October 2017</p>	<p><i>“Email received from [Complainant’s wife] querying why [account ending 4226] has not reverted to C&I repayments following the sale of the security and lump sum reduction. Liaised with credit who confirmed that this fixed repayment schedule was agreed in previous DM in an attempt to reduce to further reduce shortfall balance and ARA will remain in place until June 2018 as originally agreed. Affordability was evident based on borrowers income. Adv borrower I will need to submit new forbearance if required. Monitor for updates.”</i></p>
<p>27 October 2017</p>	<p><i>“Email sent to borrower to confirm that repayments have been converted to C&I on [account ending 4226] as requested and advised of new repayment amount. Monitor for updates.”</i></p>

It appears from the Provider’s internal notes that the Complainants sought a further interest only repayment period on the mortgage loan account in **November 2018**, which was declined by the Provider. The Provider’s internal note of **29 November 2018** details as follows;

“Email received from borrower with responses to queries raised by credit. Borrowers are requesting to extend I.O on a/c XXXX4226 for 1 year to complete matters re [security property]...”

The Provider’s internal notes on the following dates detail as follows;

<p>8 January 2019</p>	<p><i>“Called borrower, security completed. I adv that proposal has been declined by credit. As per last DM loan I[s] unsustainable and sale of other assets required to reduce [Provider’s] liabilities to an affordable level. Confirmed loan will continue billing at C&I. [Complainant’s wife] to discuss with [Complainant] and revert. I confirmed if they are agreeable to selling BTL in [Address] to provide documentary evidence and I will seek reduced repay t[o] facilitate same however no guarantee this will be approved...”</i></p>
<p>16 January 2019</p>	<p><i>“Email from borrower querying if she can appeal the decision and seeking extension on previous ARA for 6 months as they cannot afford C&I repayments”</i></p>

The Provider's internal notes show that the Complainant's wife emailed the Provider on **29 January 2019** as follows;

"Hi [redacted] I note today that the Bank has charged capital and interest on the loan account. This is still under appeal through our Manager [redacted] who manages our business affairs. I would have thought when something is under appeal that this should not happen."

The Provider's internal note of **29 January 2019**, details as follows;

"Called [Complainant's wife] to discuss email below. Security completed. I adv that credit have stated she must sell other assets to reduce [Provider's] liabilities to an affordable level. No further FB will be agreed based on the sale of [property address] only. She must consider a sale of one of the other properties held on this loan if she cannot step up to full C&I. If she is agreeable to only selling one properties she must evidence capacity to meet C&I after sale proceeds have been applied. Borrower requested I send same in writing. Agreed to send"

The Complainant, in his post Preliminary Decision submission dated **09 April 2021**, states that I have not commented on *"the fact that within a number of month[s] that the Bank were happy to accept that [the Complainant] could pay capital and interest on the above loan when nothing really changed in [their] financial position"*. While it is unclear as to the exact period of time that the Complainant is referring to, I have carefully considered the **Agreement to Amend Mortgage Loan Offer Letters** dated **27 June 2013** and **29 May 2017** that were signed and accepted by the Complainant. The **Agreement to Amend Mortgage Loan Offer Letter** dated **27 June 2013** clearly provided for interest only repayments for an agreed period of 9 months only while the **Agreement to Amend Mortgage Loan Offer Letter** dated **29 May 2017** provided for reduced payments for an agreed period of 12 months. Therefore, after the agreed periods in respect of each agreement ended, the Complainant was obliged to re-commence making full capital and interest repayments to his mortgage loan in accordance with the terms and conditions of the original **Mortgage Loan Offer Letter**. It is important for the Complainant to understand that the Provider was under no obligation to agree to any further period of forbearance in circumstances where the mortgage loan was proving to be unsustainable.

Having considered the evidence, I cannot accept that as has been asserted by the Complainant there was an inappropriate removal of a tracker rate of interest from the Complainant's mortgage loan account by the Provider in **July 2013**. The Complainant was offered a 9-month period of interest only repayments to the mortgage loan.

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The Provider was willing to accede to the Complainant's request for forbearance and the Complainant agreed to change the interest rate applicable to the mortgage loan from a tracker interest rate to a variable interest rate of 2.75%. The Provider issued an offer to the Complainant to this effect in the form of the **Agreement to Amend Mortgage Loan Offer Letter**, which contained the appropriate warnings under the **CPC 2012**, about moving from a tracker interest rate to a variable interest rate. The Complainant accepted the **Agreement to Amend Mortgage Loan Offer Letter** on **4 July 2013**.

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

Conclusion

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

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

10 May 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.