



<u>Decision Ref:</u>	2021-0157
<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 Complainants with the Provider. The mortgage loan that is the subject of this complaint is secured on the Complainants' buy-to-let property.

The Letter of Offer detailed that the loan amount was €152,000 and the term of the loan was 24 years. The Letter of Offer, which was signed and accepted by the Complainants on **27 May 2008**, provided for interest only repayments for the first three years of the loan, followed by capital and interest repayments. In particular, the Letter of Offer provided for a fixed interest rate of 5.25% to apply for a three year period and for a tracker variable interest rate to apply on expiry of the fixed rate period.

The Complainants' Case

The Complainants detail that in **1990**, the First Complainant required serious medical treatment and as a result of this treatment, they were unable to acquire life assurance.

The Complainants detail that in **2008**, they had the opportunity to purchase a property "*as a pension plan*". The Complainants detail that they applied and drew down a mortgage with the Provider for the sum of €190,000 in **2008** and also put "*upwards of €40,000.00*" of their savings into the purchase of the property. The Complainants outline that they "*took out a tracker Mortgage with [the Provider]*".

The Complainants submit that *“all was going well and we never missed any of our Mortgage Repayments”* until **2012** when their *“situation changed”*. The Complainants explain that in **2012**, the First Complainant’s *“health had deteriorated and that he had developed [serious medical issue].”* The Complainants outline that the First Complainant *“was no longer in a position to carry on working as he previously had done”* due to the nature of his work, in which he was self-employed. They further submit that, at this time, both of their children were attending college and *“it wasn’t easy for us financially”*.

The Complainants submit that *“at this stage [they] asked to go on “Interest only” and also requested that we did not want to loose[sic] our Tracker Mortgage”*. The Complainants outline that they were granted the interest only repayments as requested, and retained their tracker rate mortgage in **2012**. They detail that they liaised with a branch of the Provider and found the employee who they were dealing with to be *“very understanding and sympatethic[sic]”*.

They submit that *“the term of the Interest Only expired in 2014 and we requested again that we be left on Interest only and again on the same terms that we would not loose[sic] our Tracker and this was done as we thought.”* The Complainants note that they were dealing with a particular branch of the Provider the staff of which were *“very sympatethic[sic] to our plight”* and indicated that they would do all they could to facilitate the Complainants.

The Complainants detail that in **2015**, they requested interest only repayments again on the same terms so that they would not lose their tracker interest rate. The Complainants detail that this time they were dealing with an employee of the Provider over the telephone and contend that the Provider’s employee was *“...very rude and just had no understanding of our situation whatsoever”*. The Second Complainant details that she found this experience *“most upsetting”* because the employee *“basically told me that I couldn’t keep on interest only and that I should sell the property”*. The Second Complainant details that she explained to the employee that she would not be able to get the price of the mortgage for the house and details she *“was actually reduced to tears on the phone and begged to be let have another term of Interest only”*. The Second Complainant states that she also explained the situation regarding keeping their tracker mortgage. The Complainants detail that this employee acted in a *“very unprofessional manner”*.

The Complainants submit that in **2016**, they spoke with an employee in a particular branch of the Provider in respect of their financial issues *“and she said to put everything down in writing and she would send it on to Head Office to have it sorted”*. The Complainants detail that they sent a letter to the Provider as advised dated **10 July 2016** but *“never received a response”* until the Complainants contacted the Provider again on **25 April 2017**.

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In **November 2016**, the Complainants detail that the First Complainant had serious medical treatment which was successful and the First Complainant commenced working again.

The Complainants contend that the Provider took advantage of their situation by removing their tracker mortgage. They submit that although they *“signed whatever paperwork was sent out to us without seeking legal advice”*, they are very strongly of the view that they *“were bullied into it”*.

They outline that *“at no stage did we ever fall into arrears with our mortgage payments they were always made on time”*. The Complainants submit that they *“still feel that our situation at the time was used by [the Provider] as a get out clause to take the tracker mortgage from us”*.

The Complainants further detail that upon a review of the Provider’s formal response to this office together with the accompanying documents which were sent to them by way of letter dated **22 July 2019**, they identified a number of instances of incorrect information about them contained in the Provider’s notes, some of which was incorrect medical information which they found *“extremely upsetting”*.

The Complainants are seeking to have the tracker interest rate applied to their mortgage loan account.

The Provider’s Case

The Provider submits that the Complainants’ mortgage loan was drawn down on **13 June 2008** pursuant to a **Mortgage Loan Offer Letter** dated **22 May 2008**, which was signed and accepted by the Complainants on **27 May 2008** (the “Loan Offer”). The Loan Offer provided for a three-year fixed interest rate of 5.25% and a loan amount of €152,000 repayable over 24 years. The Provider states that the Loan Offer envisaged a three-year fixed rate period followed by a tracker interest rate. It further details that the loan was interest only for an initial period of three years, with capital and interest repayments commencing at the end of the interest only period.

The Provider submits that the Complainants signed and accepted a **Mortgage Form of Authorisation** (“MFA”) on **09 June 2011** applying a tracker interest rate of ECB+1.5% to the mortgage loan account.

The Provider further submits that the Complainants signed and accepted a **MFA** on **15 November 2012** applying 3 months interest only repayments to their mortgage loan account, and details that this was implemented on **01 December 2012**.

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It submits that on **26 November 2012**, it introduced a new buy-to-let pricing policy (the "BTL Pricing Policy") for *"non CCMA Buy to Let (BTL) Tracker Customers seeking any change to their existing repayment terms and conditions."* The Provider details that this was a *"commercial decision for supporting and restructuring non-CCMA investment property loans"*. The Provider submits that *"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"*. It further submits that *"the tracker status of the loan ends completely on taking up of new amendments to the terms and conditions"*. The Provider details that there were exclusions from the BTL Pricing Policy for capitalisation of arrears, customers who had agreed consensual asset disposal due to financial distress or customers entering a personal insolvency arrangement.

The Provider submits that as part of the implementation of the BTL Pricing Policy, it put in place a *"temporary exclusion"* for cases where there was evidence that it had *"communicated to a customer prior to 26 November 2012 that their tracker product/irate may be retained (up to close of business on 14 December 2012)"*.

The Provider details that the Complainants submitted a standard financial statement ("SFS") for further forbearance on **20 November 2012** which was assessed in or around **26 November 2012**. The Provider outlines that it therefore considered that this application for forbearance fell under its temporary exclusion of the BTL Pricing Policy. The Provider submits that, in such circumstances, it did not include a provision for the removal of the tracker interest rate when it issued a further **MFA** to the Complainants dated **03 December 2012**. It outlines that the Complainants signed and accepted that **MFA** on **10 January 2013** to apply a 12-month interest only repayment period to their mortgage loan account.

The Provider outlines that the Complainants first informed the Provider on **15 November 2013** that they would encounter issues with repayments once the interest only repayment period expired. It details that it sent a **SFS** to the Complainants on **24 December 2013** *"in order to facilitate a meeting between the Provider and the Complainants to seek to agree an approach to their impending financial difficulty on reverting to full capital and interest repayments"*.

The Provider details that the Complainants' mortgage loan account was due to commence on capital and interest repayments on **07 February 2014**. The Provider notes that when it informed the Complainants that the interest only period was due to expire, *"the Complainants advised the Provider that they were not in a position to meet the increased repayments"*.

It details that the *“second named Complainant subsequently met with the Provider in February 2014 to discuss potential options for alternative repayment arrangements.”* The Provider submits that it informed the Second Complainant of an offer of interest only repayments pursuant to the Provider’s BTL Pricing Policy as outlined above. It states that its interactions with the Complainants *“clearly evidence that the Provider sought to agree an approach with the Complainant to resolve the Complainants financial difficulties”*.

The Provider outlines that it *“assessed the Complainants financial circumstances in response to the Complainant[s]’ request for a continuation of interest only due to “medical conditions” of the First Named Complainant and consequential impact on the Complainants repayment capacity”*. The Provider details that it issued an **Agreement to Amend Mortgage Loan Offer Letter** dated **28 February 2014** to the Complainants outlining that it had *“carefully assessed their mortgage loan”* and offered the Complainants a further interest only repayment period for 18 months. The Provider details that the documentation that issued to the Complainants made it clear that, if they accepted this offer, the current tracker interest rate applicable to their mortgage loan account would convert to a new interest rate in line with the Provider’s BTL Pricing Policy. The Provider relies on **Section B.1** of the **Agreement to Amend Mortgage Loan Offer Letter** where *“the Complainants were made aware of the fact that in agreeing to this term of forbearance, they would lose the tracker rate they were on at the time, and move to a “BTL Variable Rate”, then priced at 2.75%”*. The Provider submits that the Complainants signed and accepted the **Agreement to Amend Mortgage Loan Offer Letter** on **15 March 2014** and an interest only repayment period of 18 months was implemented as of **15 April 2014** to the mortgage loan account.

The Provider asserts that it is satisfied that it acted fairly in its discussions with the Complainants whereby it offered an alternative repayment arrangement to the Complainants in **February 2014** and complied with its obligations under the **Consumer Protection Code 2012** (the “CPC 2012”). The Provider refers to **Chapter 6** and **Chapter 8** of the **CPC 2012** and in particular **provisions 6.9** and **6.10**. The Provider submits that the **Agreement to Amend Mortgage Loan Offer Letter** contained *“the requisite legal notices to include warnings, indicative comparisons and details of the advantages and disadvantages”*. The Provider further submits that it afforded the Complainants five weeks to consider the Provider’s proposal.

The Provider submits that it was open to *“the Complainants to accept or reject Provider’s offer”* and an alternative repayment arrangement could only be implemented by agreement between both the Complainants and the Provider.

The Provider relies on **General Condition 4(d)** of the Loan Offer signed and accepted by the Complainants on **27 May 2008** in this regard which provides that any proposed variation of the terms of the loan is *“with the consent of the borrower”*. The Provider states that if the Complainants rejected the forbearance offered *“the mortgage loan account would have remained on a tracker rate”*. It details that *“it provided sufficient advice to the Complainants to seek independent advice and the importance of same”*. The Provider relies on the Acceptance part of the **Agreement to Amend Mortgage Loan Offer Letter** dated **28 February 2014** to support this contention.

The Provider details that the Complainants subsequently signed and accepted a further **MFA** on **08 October 2015** applying a 12-month interest only repayment period to their mortgage loan account which was implemented on **15 November 2015** but backdated to **15 October 2015**. The Provider contends that this **MFA** expressly stated that the *“BTL Variable Rate”* remained in force.

In response to the Complainants’ submission that they never received a response to their letter dated **10 July 2016**, the Provider details that it received the letter on **23 August 2016**. The Provider notes that the letter set out the Complainants’ personal circumstances at the time and they sought a further interest only repayment period for 12 months. The Provider details that a call was made to the Complainants on **23 August 2016** advising them that their letter had been received, and that in order to progress their request, a **SFS** would need to be submitted by them. The Provider details that the Complainants duly submitted a **SFS** which was assessed by the Provider. The Provider states that it subsequently issued a **MFA** to the Complainants on **26 August 2016**. The Provider outlines that the Complainants signed and accepted the **MFA** on **27 August 2016** which applied a 12-month interest only repayment period to their mortgage loan account. The Provider submits that *“[t]here was no offer made by the Provider to restore the tracker rate as that had been removed with the consent of the Complainants in the MFA dated 28 February 2014”* and therefore *“the BTL Variable Rate remained in force”*.

The Provider outlines that the Complainants signed and accepted a further **MFA** on **24 October 2017** which extended the mortgage term by a period of 10 years. The Provider details that this was implemented on **17 November 2017** and the term of the mortgage loan was extended until **15 July 2042**. The Provider contends that this **MFA** also expressly stated that the *“BTL Variable Rate”* remained in force.

The Provider *“entirely refutes that it “bullied” the Complainants in seeking to resolve their financial issues”*. It submits that *“it provided a number of significant periods of forbearance to the Complainants”*. The Provider submits that *“this was not (and could not be) a unilateral decision taken by the Provider”*.

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The Provider contends that it is unfair to characterise its conduct *“in regards dealing with the Complainants’ financial issues as “bullying”*”.

The Provider outlines that the Complainants’ mortgage loan account is still active and remains on the BTL variable interest rate.

The Complaint for Adjudication

The complaint for adjudication is that the Provider acted inappropriately by removing the tracker rate of interest from the Complainants’ mortgage loan account in **February 2014**.

Decision

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

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

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

A Preliminary Decision was issued to the parties on 28 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.

In the absence of additional submissions from the parties, within the period permitted, I set out below my final determination.

At the outset, it is important to point out the jurisdiction of this Office in complaints regarding arrears handling.

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

In order to ascertain if the Provider acted inappropriately by removing the tracker rate of interest from the Complainants' mortgage loan account in **February 2014**, it is necessary to review and set out the relevant provisions of the Complainants' mortgage loan documentation and to consider the interactions between the Provider and the Complainants between **2012** and **2014** in relation to the forbearance measures offered by the Provider.

The Provider issued a **Mortgage Loan Offer Letter** to the Complainants dated **22 May 2008** (the "Loan Offer"), which provided for an advance of €152,000 over a term of 24 years.

Part 1 – The Statutory Loan Details of the Loan Offer details as follows;

1. "Amount of Credit advanced:	€152,000
2. Period of Agreement:	24 Years
3. Number of Repayment Instalments	4. Amount of each Instalment
36	€662.11
252	€1,016.17"
Instalment Type	
Fixed at 5.250%	
Variable at 5.500%	

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

11. "Type of Loan:	Interest Combo
12. Interest Rate:	5.250% Fixed"

Part 4 – The Special Conditions of the Loan Offer details as follows;

"...

(a) The following Special Conditions apply to the Loan:

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...

(ii) *The following special condition concerning interest shall apply:- 1. The interest rate applicable to the Loan is a fixed rate and is fixed for the period set out in Part 1 of this Offer Letter. At the end of the fixed rate period the Lender shall have sole discretion to provide any further or subsequent fixed rate period. If the Lender does not provide such a further or subsequent fixed rate period or if the Lender offers the Borrower a choice of interest rate at the end of any fixed rate period and the Borrower fails to exercise that choice then in either case, the interest rate applicable to the Loan will be a tracker variable interest rate, this may vary upwards or downwards and the following will apply:*

a) The interest rate applicable to the Loan shall be 1.50% (“the Margin”) above the European Central Bank Main Refinancing Operations Minimum Bid Rate (“Repo Rate”) for the term of the loan, unless the circumstances set out in paragraph b) below apply. b) In the event that the Repo Rate is certified by the Lender to be inappropriate as the base funding rate for the Loan by reason of the prevailing conditions on the market for inter-bank lending, or for any other reason, the interest rate on the Loan payable by the Borrower shall be the Margin above the 1 month Euro Inter Bank Offered Rate (EURIBOR) or such other funding rate as may be appropriate for such time as the Lender shall determine to be appropriate c) Notification shall be given to the Borrower of any variation in interest rate in accordance with General Condition 6(b) of this Offer Letter. d) For so long only as the interest rate is the Margin above the Repo Rate, variations in the 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.

...

(iv) For the first 3 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 as 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.”

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General Condition 4 of Part 5 – The General Conditions of the Loan Offer 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.”*

General Conditions 6 and 7 of Part 5 – The General Conditions of the Loan Offer details as follows;

“6. Variable Interest Rates

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- a) *Subject to clause 6 (c), at all times when a variable interest rate applies to the Loan the interest rate chargeable will vary at the Lender's discretion upwards or downwards. If at any time a variable rate of interest applies, repayments in excess of those agreed may be made at any time during the term of the Loan without penalty.*
- b) *The Lender shall give notice to the Borrower of any variation of the interest rate applicable to the Loan, either by notice in writing served on the Borrower in accordance with clause 1 (c) above, or by advertisement published in at least one national daily newspaper. Such notice or advertisement shall state the varied interest rate and the date from which the varied interest rate will be charged.*
- c) *Notwithstanding anything else provided in this Offer Letter, the varied applicable interest rate shall never, in any circumstances, be less than 0.1% over one month's money at the Euro Inter Bank Offered Rate (EURIBOR).*

7. Fixed Interest Rates

- (a) *The Lender may at its absolute discretion permit the Borrower to avail of a fixed interest rate in respect of all or any part of the Loan. In the case of a fixed rate loan, the interest rate shall, subject to these Conditions, be fixed from the date of draw down for the fixed period stated in this Offer Letter. **The fixed rate of Interest set out in this Offer Letter is the fixed rate which would apply were the Loan drawn down today. There is no guarantee that the fixed rate so stated will be available when the Loan is in fact drawn down. The actual fixed rate that shall apply shall be the Lender's fixed rate available for the fixed period selected by the Borrower at the date of draw down.***
- (b) *The Lender shall have sole discretion to provide any further or subsequent fixed rate period. If the Lender does not provide such a further or subsequent fixed rate period or if the Lender offers the Borrower a choice of interest rate at the end of any fixed rate period and the Borrower fails to exercise that choice, then in either case the interest rate applicable to the Loan will be a variable interest rate.*
...”

The bottom of **page 3** of the Loan Offer 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.”

I note that the Complainants signed an **Acceptance of the Loan Offer** on **27 May 2008** 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.”

It is clear to me that the Loan Offer envisaged a three-year fixed rate of 5.25% to be followed by a tracker interest rate of ECB +1.50%. Further, the Loan Offer provided for an interest only repayment period for the first three years of the term of the loan followed by full capital and interest repayments.

I note that the initial interest only repayment period on the Complainants’ mortgage loan account was due to expire on **13 June 2011**, as was the three-year fixed interest rate period.

Prior to the expiry of the fixed rate period, I note that the Provider issued a **Mortgage Form of Authorisation** (“MFA”) dated **16 May 2011** to the Complainants offering various interest rates that they could choose from, asset out below:

Selected Rate	Description	Rate
<input checked="" type="checkbox"/>	TRACKER VARIABLE ECB+1.50%INV	2.750%
<input type="checkbox"/>	Existing Variable LTV Rate BTL	4.600%
<input type="checkbox"/>	2 Year Fixed BTL	5.750%
<input type="checkbox"/>	3 Year Fixed BTL	5.800%
<input type="checkbox"/>	5 Year Fixed BTL	6.200%

I note that the Complainants selected the "TRACKER VARIABLE ECB +1.50%INV" rate of 2.75% and signed the MFA on **09 June 2011**.

The Provider's internal notes dated **10 October 2012** detail the following;

"[Second Complainant] approached branch – [First Complainant] is ill and due for [serious medical procedure] in coming weeks – [Second Complainant] works part-time – [number redacted] children - education fees. BTL property in [property location] – tenant has moved out so no rental income at present. Wants support over coming months while she seeks new tenant. 3 months int only being offered as customers have not availed of this before."

A further internal note dated **10 October 2012** details the following;

"Advised customers that they are entering the MARP process".

A third internal note dated **10 October 2012** details the following;

"Issue MFA for 3 months Interest only forbearance – BTL property, tenant moved out, cant[sic] afford full repayment, [First Complainant] due for [serious medical procedure] in coming weeks. Being referred to mortgage support unit [location] for follow up meeting. SFS and supporting documentation to be returned to branch by Friday, 19/10/2012."

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I note from the Provider's internal notes that it appears that a meeting was held between the Provider and the Complainants on **02 November 2012**, the Provider's internal notes dated **02 November 2012** detail as follows;

"Meeting held between [redacted] and [Second Complainant] in [particular branch] (2) Reason for financial difficulties: Tenant has moved out and [First Complainant] due to have [serious medical procedure]. (3) BTL Non CCMA. (4). First time to avail of forbearance and 3 month forbearance. (5) Max amount customer can afford is E270.56pm breakdown as follows. Account number [ending 3014] E270.56 Interest only. Start Date: 01/12/2012 End Date 01/02/2013 Inclusive. (5) 5 Fields not completed on [system] as non CCMA Approval Recommended pending rec of SFS and supporting docs [redacted] AM [Region]"

I note from the Provider's internal notes dated **05 November 2011** that *"Forbearance approved as recommended pending full assessment of SFS"*.

The Complainants' **bank statements** have been submitted in evidence and show that a direct debit of €759.72 was taken from the mortgage loan account on **01 November 2012** and on **07 November 2012** the direct debit came back as *"First Unpaid DD"* in the amount of €759.72.

I note that a letter dated **07 November 2012** issued from the Provider to the Complainants regarding the unpaid direct debit, detailing as follows;

"...

We note that the most recent payment due on your mortgage account number [ending 3014] was not paid in full on the due date.

If you have already cleared the arrears, made an alternative arrangement with us or are currently in discussion with us to bring your account up to date, please disregard this letter. If you have not yet been in touch with us in relation to your arrears, it is important that you make contact as soon as possible."

I further note that the Provider's internal notes dated **09 November 2012** detail the following outgoing call to the Second Complainant;

"[Provider] Phoned [Second Complainant] for update on SFS. She has it nearly completed and will return to me next wk. [First Complainant] is in hospital and more serious than originally thought. [Employee] in [Location] Branch was to apply for 3 mnts forbearance which would have taken effect for nov payment.

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Unfortunately this did not happen and nov payment was debited leaving it o/d. This pay was retd [sic] by branch with answer not yet due as [Second Complainant] need dd for life cover to be paid. She is aware of this and I will chat her about this payment when we meet. diary for a week to await rec of sfs”.

It appears from the Complainants’ bank statements, together with the Provider’s internal notes that a 3-month forbearance arrangement was to apply to the mortgage loan account from **November 2012**, and this appears to have been mistakenly not implemented, leaving the Complainants’ **November 2012** mortgage repayment unpaid.

The Provider issued a further **MFA** dated **07 November 2012** to the Complainants detailing 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 3 months (the “Agreed Period”). The Lender estimates the interest only repayment amount will be €271.02 per month”.

The Complainants signed and accepted this **MFA** on **15 November 2012**. I note from the bank statements that the 3-month interest only repayment period applied to the Complainants’ mortgage loan account from **01 December 2012** on which date a repayment of €271.02 was made.

The Provider’s internal notes dated **19 November 2012** detail that *“SFS and supporting docs being forwarded to ASU today. Not input on [system] as non CCMA”.*

I note that on **20 November 2012**, the Provider’s internal notes detail that *“SFS form received and logged”*. A further note on **20 November 2012** details as follows;

“SFS received. AS400 Updated. ICB obtained. Not on [system] as is a NON CCMA case.

As per SFS reason for arrears is upcoming surgery + no tenant currently in property – PRO Prof Inv-Vacant Props, had already been input in AS400. Have updated phone contact on [internal notes system]. SFS passed to ASU for assessment. See scanned documents.

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I am disappointed to note that a copy of the **SFS** submitted by the Complainants to the Provider in or around **20 November 2012** has not been provided in evidence to this office, nor has the Provider offered any explanation for not providing this document in evidence.

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

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

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

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

The Complainants’ mortgage loan was incepted in **2008** for a term of **24 years** and the Provider purportedly received the SFS completed by the Complainants in **November 2012**. The Provider is obliged to retain that documentation on file for six years from the date the relationship with the mortgage holder ends. It appears that the mortgage loan account remains presently active with the Provider. It is therefore unclear to me why this documentation has not been furnished by the Provider. This is most disappointing.

I note that the Provider’s internal notes system contains a number of entries dated **26 November 2012**, detailing the following;

“SFS:... Non CCMA... Married . Aged [ages redacted] ..[number redacted] dependants aged [ages redacted] in College...[Provider] customers Grade 2M.

/Cont’d...

[Second Complainant] works part-time but is actively looking for more work/ she also has started [activity redacted]. She is also hoping to get part-time job over xmas in local [redacted]l. PDH with [Different Provider] o/s A72.5k/online. [First Complainant] self employed [Profession]. CONTD

...

Reason for Forbearance: [First Complainant] has Up Coming [serious medical procedure] in [date redacted]/ [serious medical procedure] % is only able to do small jobs earning approx. A500pm & Prop. Not rented. [Second Complainant] is trying hard to pay mtgs. She has requested [Second Provider] I/O on PDH while [First Complainant] will be recuperating[sic] from [serious medical procedure]/4months.Also are negotiating with [Third Provider] for reduced repayments...

...

[Redacted] requested we do I/O for 12 mths due to the situation as prop. Is rentable expected rent 350pm, & recuperates[sic]. I discussed with [redacted] that the Interest Rate will increase by 1% to Tracker Rate increase/ Variable. We discussed Term Extension by 10 yrs leaving customers aged [redacted], is still unaffordable @ A409pm/ extending the term to 2042 which would leave a Residual balance of A86,636/ percentage60%. Options Link @Term Extension & Split Mtg./ repayment A486pm extended to 2042 Income between them: [First Complainant] A500pm, [Second Complainant] A585pm, Job seekers A315pm Total A1400pm. Total Expenditure/ PDH & Ril/ Expenses: A3,756pm CONTD

...

Deficit A2,356pm, Nam [redacted] says when all is restructured & prop. let they will be able to afford the I/O. Approved the I/O for 12 months due to [First Complainants'] health & awaiting prop. To be rented. No Ars or previous forbearance.

As apparently he is a well known [profession] for his work he will be able to return to work in the future after surgery. He is also a Local [Political Party] [redacted position].

...

Contd Has [number and genders of children redacted]: One studying [course name redacted] in [Named University] & whilst [gender redacted] is on a 'Grant' has still a lot of expenses, also this course does not allow [gender redacted] to take a part time position as is demanding, other [child's gender redacted] working."

/Cont'd...

The Provider's internal notes appear to discuss the content of the Complainants' **SFS** submitted in or around **20 November 2012**.

I note that the Provider has indicated that on **26 November 2012**, it introduced a new **BTL Pricing Policy** for *"non CCMA Buy to Let (BTL) Tracker Customers seeking any change to their existing repayment terms and conditions."*

The Provider has indicated the following with respect to its BTL 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. Changes to 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."

I note that the Provider has further indicated that that the Complainants' request for interest only period in **November 2012** fell into a *"temporary exclusion"*. It outlines that *"as part of its implementation of the BTL pricing policy, the Provider put in place a temporary exclusion for cases where there was evidence that the Provider had communicated to a customer prior to 26 November 2012 that their tracker product/rate may be retained (up to close of business on 14 December 2012.)"*. I accept that the implementation of this BTL Pricing Policy was within the Provider's commercial discretion, and also accept the Provider's explanation as to why it was not applied to the Complainants' request for forbearance in **November 2012**.

The Provider issued the Complainants a further **MFA** dated **03 December 2012** detailing 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 12 months (the "Agreed Period"). The Lender estimates the interest only repayment amount will be €271.46 per month".

/Cont'd...

This **MFA** was signed and accepted by the Complainants on **10 January 2013**, applying an interest only repayment period for 12 months. It appears to me that the **MFA** signed on **10 January 2013** also fell into the Provider's temporary exclusion for the application of its BTL Pricing Policy.

I note that the Provider's internal notes dated **07 November 2013** detail that the Provider contacted the Second Complainant and arranged a further call to establish "*if cust can meet c+I pymts of 773.47. need to est if property rented and if Income covers mortgage. no arrears on account. Note in diary to call*".

The Provider's internal notes dated **14 November 2013** detail the following call between the Second Complainant and the Provider;

"IBC from [Second Complainant], responding to VM, adv cust of notes, cust adv that they will be looking to extend the i/o f/b come Feb as her husband is unable to work presently due to his health conditions. Cust adv that the property is rented and is being put toward the mortgage. Adv cust to contact us bk again in Dec to follow up getting the f/b extended."

The Provider's internal notes dated **31 December 2013** detail as follows;

"[First Complainant] called [Provider] back. She said her husband is gone for surgery and she was returning call from outside hosp. [Employee] asked if she recd sfs for completion and she said they did not. [Employee] asked her to check post when she goes home and asked to give me a call 3/1. Cust v happy with that and [Employee] agreed to email her sfs if still not recd by 3/1".

The Complainants completed a further **SFS** that was signed on **30 January 2014**. The Complainants detailed that their total monthly income was **€2,307.53** and their monthly household expenditure totalled **€2,186**.

The Complainants have detailed that €450.00 of their monthly income comes from the BTL property the subject of their mortgage loan and noted that;

"Rental Property – being used to pay mortgage & Insurances – nothing used towards personal spending".

Therefore, it would appear to me that the Complainants' total monthly income for their monthly household expenditure less this rental income was **€1,857.53**, leaving a monthly deficit of **€328.47**.

/Cont'd...

In addition, the Complainants indicated in “Section D: Your Current Monthly Debt Payments” of the **SFS** that they were also making monthly payments of **€499.95** in relation to mortgage repayments on their primary dwelling house and their BTL property together with monthly payments of €174.48 in relation to house insurance and mortgage protection insurance. The Complainants indicated in the **SFS** that the reason they are seeking forbearance is “*medical conditions*”.

The Provider’s internal notes dated **14 February 2014** details as follows;

“Branch SFS Chkfst Note 1: NAM met [Second Complainant] in [Provider branch location] – [First Complainant] not in attendance. 1/2. Custs have BTL on which they have FB – IO at present. PDH mortgage with [another Provider] also an IO at present. [First Complainant] had to curtail his work ([occupation redacted]) for the last couple of years- due to ill health and indeed he is due another procedure in early [date redacted]. He is receiving Disability Benefit while [the Second Complainant] continues to work for [redacted] [address location]. They have requested a further (+last)”

“Branch SFS chkfst Note 2/ Contd –IO period to allow them deal with the outcome of [First Complainant’s] imminent procedure. They presently use all rental income (E450pm) in meeting the present BTL IO reps together with [Provider] premium E133pm & other BTL household exps relating thereto. 3. No STD to speak off – CU debt clf since last FB request. 4. [Second Complainant] is suffering from [medical condition] at present and has been restricted from working during his treatment – he is to undergo further assessment/ procedure in early [date redacted] although prognosis is not good for him being able to return to work soon.”

“Branch SFS Chkfst Note 3: Application for further FB period is to allow family deal with Immediate medical concerns.

5. Hopefully [First Complainant] will in time be able to return to work and thus be in a position to generate a similar level of earnings to previous times – [employee redacted] has suggested to [Second Complainant] that we should be able to look at a Term Extens/ Split Mortgage option if needs require.”

The Provider’s internal notes dated **14 February 2014** detail as follows;

“...They have requested a further (+ last)... IO period to allow them to deal with the outcome of [First Complainants medical procedure].

/Cont’d...

They presently use all rental income (E450pm) in meeting the present VTL IO reps together with [Provider] premium E133pm & other BTL household expenses relating thereto..."

The Provider's internal notes dated **21 February 2014** detail as follows;

"...

****Recommendation***: NONE CCMA loan [ending 3014] 18 months Interest only. [Provider] pricing policy of 1% loading to apply...*

Instruction to Fulfilment: NON CCMA account no [ending 3014]: Please issue MFA for: Interest Only. FB period: 18 months. Instruction sent to pricing unit for 1% loading & loss of tracker to annuity.

...

[Employee] contacted [First Complainant] on mob [redacted number] to confirm details of DM + IO period 18mos – Advised MFA to issue and return – effective from rep date in March – given that the next monthly rep is due 28/2 – [First Complainant] advised unable to meet E755 normal rep flg – despite bal of E3k + in CA – have advised that she needs to contact ASU to see if they can assist".

It is evident from the above internal notes that the Complainants required an alternative repayment arrangement and that the Provider's BTL Pricing Policy was intended to be applied to the alternative repayment arrangement offered to the Complainants.

The Provider wrote to the Complainants by letter dated **28 February 2014** which detailed as follows;

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

We have considered all aspects of your case including:

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

/Cont'd...

e) *Your previous repayment history.*

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

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

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

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

- Your loan capacity may not be repaid as quickly as is provided for in your initial mortgage loan offer letter.*
- It is possible that you may owe us more at the end of the alternative repayment arrangement than you owe us now.*
- The total cost of the credit is likely to be higher than outlined in the initial version of your mortgage loan offer letter.*
- Where the alternative repayment arrangement lasts for an agreed period only, once that period ends, we will recalculate your repayment instalments and they will have to be enough to ensure you repayment the mortgage over the remaining term of the loan. These repayments are likely to be higher than the repayment instalments set out in the initial version of your mortgage loan offer letter.*
- You agree to pay the repayment instalments for the alternative repayment arrangement set out in the form of Agreement and acknowledge that if the interest rate on the Loan increases, these repayments will increase accordingly.*
- We may record the alternative repayment arrangement with the Irish Credit Bureau (ICB). If you break the terms of the alternative repayment arrangement, we may report that to the ICB. Such a report could make it more difficult for you to get credit from us or other financial institutions, for example, you may have difficulty getting a new home/business loan.*

/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.”*

An **Agreement to Amend Mortgage Loan Offer Letter** dated **28 February 2014** was enclosed with the letter that issued to the Complainant. I note that **Section A** of the **Agreement to Amend Mortgage Loan Offer Letter** 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 18 months starting from the date we put the alternative repayment arrangement into effect.*

What Happens when the Agreed Period Ends

- 1.2** *When the Agreed Period ends you will have to repay the Loan over the rest of the period of the Loan. The amount of the Loan then to be repaid will include all of the principal and other sums which you did not pay during the Agreed Period (and which you would have been obliged to pay if this form did not come into force).*

- 1.3 *We will calculate the repayment instalments that you have to pay when the Agreed Period ends. You agree to pay these repayment instalments in full as they are calculated by us. The terms and conditions of the Mortgage Loan Offer Letter which provide for repayment of the Loan on an annuity basis will operate after the Agreed Period by reference to the amount you then owe under the Loan.”*

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.*

Section B of the Agreement to Amend Mortgage Loan Offer Letter 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.”

...

/Cont’d...

“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.

...

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 Agreement to Amend Mortgage Loan Offer Letter 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 €767.66 each and that the total cost to you of the Loan would be €24,681.45. 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 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 €331.47 each during the Agreed Period and of €893.45 each thereafter. The total cost of the Loan would be €42,365.40. 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.

It is clear that the **Agreement to Amend Mortgage Loan Offer Letter** offered the Complainants interest only repayments on the mortgage loan for a period of 18 months, subject to the BTL variable rate of 2.750%.

The Complainants signed and accepted the **Acceptance** of the **Agreement to Amend Mortgage Loan Offer Letter** dated **15 March 2014** on the following terms;

“By signing this form:-

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

/Cont’d...

(4) PLEASE TICK AT LEAST ONE OF THE FOLLOWING BOXES:

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

The Complainants signed and accepted the **Agreement to Amend Mortgage Loan Offer Letter**, having ticked both of the boxes to confirm that they had not received independent legal advice or independent financial advice on the agreement because they *"have sufficient appreciation of financial and legal matters"* and that they agreed to be bound by the terms and conditions of the agreement. It is clear from the evidence that the Complainants were aware, or ought to have been aware of the consequences of accepting/signing the agreement and if the Complainants were not happy with the terms of the **Agreement to Amend Mortgage Loan Offer Letter**, including the amendment to the interest rate from the tracker interest rate to the variable interest rate, the Complainants could have decided not to accept the offer made by the Provider. It is important for the Complainants to be aware that by signing the **Agreement to Amend Mortgage Loan Offer Letter**, they confirmed that they understood that they would *"not be contractually entitled to go back onto a tracker interest rate in the future"*.

I note that the Complainants contend that *"the term of the Interest Only expired in 2014 and we requested again that we be left on Interest only and again on the same terms that we would not loose[sic] our Tracker and this was done as we thought"* and are of the view that the Provider took advantage of their situation by removing their tracker mortgage. They submit that although they *"signed whatever paperwork was sent out to us without seeking legal advice"*, they are very strongly of the view that they *"were bullied into it"*.

It is important for the Complainants to understand that they were seeking to vary the terms of their mortgage loan with the Provider by seeking forbearance on the loan. It was within the Provider's discretion to decide whether or not to accede to that request 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 Complainants forbearance on their mortgage loan at the time.

/Cont'd...

The Provider, in accordance with its BTL Pricing Policy offered a standard variable rate which was to start at 1% above the current tracker interest rate on the Complainants' mortgage loan which is the subject of this complaint. In the circumstances of this particular complaint, it appears that the Provider offered a variable rate of 2.75%. I note that the **Agreement to Amend Mortgage Loan Offer Letter** dated **28 February 2014** 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 + 1.50%, and a variable interest rate of 2.75% was offered by the Provider to the Complainants.

I accept that the Complainants may not have wanted to give up the entitlement to the tracker interest rate, however, the Complainants were seeking to agree an alternative repayment arrangement with the Provider on a mortgage that was not secured on their principal private residence. The Provider made an offer to the Complainants to make interest only repayments for 18 months on their mortgage account subject to the BTL variable rate applying for the remaining term of the loan. While I accept that the Complainants were in a difficult position, it was nonetheless a matter for the Complainants to decide whether to accept that arrangement on offer by the Provider.

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:

/Cont'd...

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."

I accept that the appropriate information and warnings under **provision 6.9** of the **CPC 2012** were contained in the **Agreement to Amend Mortgage Loan Offer Letter**.

It appears from the Provider's internal letter history provided in evidence that it issued a **Product Switch Letter** to the Complainants on **21 March 2014**. Again, I am disappointed to note that a copy of this letter has not been furnished in evidence by the Provider. Nonetheless, it is not in dispute that the Complainants received this letter. I note from the **bank statements** provided that there appears to have been a "Rate Change to 2.750" on the Complainants' mortgage loan account on **21 March 2014**.

The Provider's internal notes dated **19 May 2015** detail the following;

****rollers btl [Complainants] cust adv will not be able to met full c/i payments in sept he is nto[sic] and in ill health and has not received letter yet will discuss with his wife and put a plan in place"*

The Provider's internal notes dated **28 August 2015** detail the following;

****IBC** [Employee] service desk (Staff ID: [Redacted]), [Complainants] cust adv currently on long-term IO and due to roll off 21.09 adv unable to step up as husband waiting on [serious medical procedure] unable to return to work, cust agreed to complete SFS OTP on 3/09 @ 10.30 am with [redacted] adv of 4 key areas cust previously completed SFS end of 2013 adv situation has got worse, requested to be sent email of blank SFS [redacted], cust adv looking for IO again conf property is a BTL and currently been rented no s/f rent covers mortg and mortg protection, conf dates ok g/f, cust aware of C & C of missed p/ments".*

The Provider's internal notes dated **04 September 2015** detail the following:

****SFS Phone Team** OBC x 1 SC to [redacted phone number]...Assisted cust. In completing SFS OTP. Asked cust. For consent to record sensitive information on computer. Advised re right to seek independent financial & Legal Advice. Advised re right rights to appeal CCMA. Advised re DD, dates & Freq. Adv re restructuring STD. Advised SFS need to be returned with support docs within 20 days..."*

/Cont'd...

The Complainants submitted a further **SFS** dated **14 September 2015** which detailed that they had a monthly deficit of **€504.24**.

The Provider's internal notes dated **14 September 2015** detail the following;

"Signed SFS received along with Payslip for [Complainant]."

The Provider wrote to the Complainants by letter dated **29 September 2015** and provided the same information as contained in the letter issued on **28 February 2014**, as set out above.

I note that the Provider issued the Complainants a further **MFA** dated **29 September 2015** detailing 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 12 months (the "Agreed Period"). The Lender estimates the interest only repayment amount will be €330.28 per month"

The **Acknowledgement and Agreement** section of the **MFA** was signed and accepted by the Complainants on **08 October 2015** and details as follows;

"Please read this Form carefully before you sign it. We strongly recommend that you get independent legal and/or financial advice about it.

[...]

I acknowledge and accept the following conditions and agree to be bound by them:

[...]

5. I acknowledge that the Lender advises me to get independent legal and/or financial advice about this Form.

[...]

Special Conditions

The alternative repayment arrangement period will commence from 15/10/2015 for a period of 12 months."

/Cont'd...

The Complainants sent a letter to the Provider dated **10 July 2016** detailing the following;

“...

The term of Interest Only expired and in 2014 we requested again that we be left on interest only. We got it done again this time and continued on Interest only again.

In 2015 again I had to request Interest Only again because of our circumstances, however this time I was dealing with somebody over the phone and to be totally honest I found the experience very upsetting...The situation was reviewed. Paperwork was sent out to us and we signed same (without Legal Advice) unfortunately at the time I did not realise that we were losing[sic] the Tracker Rate and to be totally honest I was just glad to get Interest Only that I did noting[sic] about it. I feel very hard done by I requested that we would not loose[sic] our Tracker but and I feel that we were taken advantage of because of our situation and that we were left with no option but to sign the paperwork.

Our situation is that [First Complainant] is to have surgery in the next two months as the [medical condition discussion]. We have been advised that once the surgery has been performed that [First Complainant] will be unable to do anything for at least six months. We are therefore now asking for Interest only and that strong consideration would be given to have the loss of the tracker mortgage be reinstated”.

I note from this letter that the Complainants are of the mistaken view that their tracker interest rate was removed when they applied a 12-month interest only alternative repayment arrangement in **October 2015**. As set out above, the Complainants’ tracker interest rate was removed in **February 2014** when the Complainants signed and accepted an **Agreement to Amend Mortgage Loan Offer Letter**. In doing so, the Complainants agreed to change the interest rate applicable to their mortgage loan account from a tracker interest rate to a variable interest rate for the remaining term of the loan.

I note the Complainants’ submissions that they were “*taken advantage of*” by the Provider to accept the alternative repayment arrangement on offer in **October 2015**.

While I accept that the Complainants were in a difficult position given the change in their personal circumstances, it was nonetheless a matter for the Complainants to decide whether to accept the alternative repayment arrangements on offer by the Provider.

/Cont’d...

As outlined above, the Complainants did not receive independent legal advice or independent financial advice in relation to the **Agreement to Amend Mortgage Loan Offer Letter** because they “*have sufficient appreciation of financial and legal matters*”. Similarly, the Complainants chose not to seek independent legal advice or independent financial advice in relation to the **MFA dated 29 September 2015** despite the Provider strongly recommending that the Complainants do so.

I note that the Provider issued the Complainants a letter dated **26 August 2016** detailing that it was in a position to offer the Complainants a further alternative repayment arrangement. The Provider enclosed an **Agreement to Amend Mortgage Loan Offer Letter** dated **26 August 2016** which detailed as follows;

SECTION A: WHAT THIS FORM DOES

1. THE ALTERNATIVE REPAYMENT ARRANGEMENT (ARA) IS AS FOLLOWS:

1.1. The Borrower and Lender agree that:

1.1.1. The Borrower will pay Interest Only for 12 months (the “Interest Only Period”). The Lender estimates that the repayments of interest only will be €330.33 each month during the Interest Only Period. The actual amount of the repayment instalments may differ (for example, if the interest rate changes).

1.1.2. After the preceding Interest Only Period, the Borrower will be obliged to repay the Loan on a capital and interest repayment basis over the rest of the period of the Loan so that the Loan is repaid by 15/07/2032 (the “Maturity Date”). The Loan balance is estimated to be €143,813.10 and will include all of the principal (capital), interest and other sums which the Borrower did not pay (and which the Borrower would have been obliged to pay if this Form did not come into force). The Lender estimates the new repayment amount will be €984.43 each month. The actual amount of the Loan balance and repayment instalments may differ (for example if the interest rate changes).

The Complainants signed and accepted this **Agreement to Amend Mortgage Loan Offer Letter** on **27 August 2016**.

I note that the Complainants wrote to the Provider by way of letter dated **25 April 2017** detailing the following;

“We are writing to you in connection with the above Mortgage and in particular to our letter of the 10th July 2016 and to date we have never received a response in relation to our query in relation to losing[sic] the TrackerMortgage[sic] on same and having it reinstated.

At this time we are advising you that if we donot[sic] received confirmation regarding the reinstatement of the Tracker with 28 days from today’s date that we will be left with no optionbut[sic] to refer same to the Ombudsman for consideration.”

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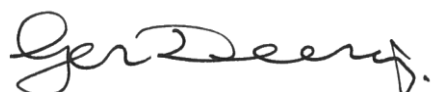
While I accept that the Complainants did not want to give up the entitlement to the tracker interest rate of ECB + 0.95% on their mortgage loan, the reality of the situation at that time in **February 2014** was that the Complainants were unfortunately unable to make the repayments required in accordance with the original terms of the loan. As a result they were seeking to agree an alternative repayment arrangement and it was a matter for them to decide whether to accept the alternative arrangement on offer by the Provider. The Provider offered the Complainants an interest only repayment period on their mortgage loan account for a period of 18 months on the condition that the Complainants agreed to change the interest rate applicable to the mortgage loan from a tracker interest rate to a BTL variable interest rate. The Provider issued an offer to the Complainants to this effect on the mortgage loan in the form of the **Agreement to Amend Mortgage Loan Offer Letter**, which contained the appropriate warnings in compliance with the **CPC 2012**, about moving from a tracker interest rate to a variable interest rate. The consequences of accepting the offer and the appropriate information was provided to the Complainants in the documentation that issued to the Complainants on **28 February 2014**. The Complainants accepted the **Agreement to Amend Mortgage Loan Offer Letter** with respect to the mortgage loan. If the Complainants were not happy with the terms of the **Agreement to Amend Mortgage Loan Offer Letter**, including the amendment to the interest rate, the Complainants could have decided not to accept the offer made by the Provider. Therefore, having considered the circumstances of this case, the evidence does not support the assertion that there was an inappropriate removal of a tracker rate of interest from the Complainants' mortgage loan account by the Provider in **February 2014**.

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

Conclusion

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

The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.



GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

20 May 2021

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

(a) ensures that—

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

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

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

