



<u>Decision Ref:</u>	2021-0166
<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 Failure to offer a tracker rate at point of sale
<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 that is the subject of this complaint was secured on a property the Complainant intended to let.

The loan amount was €66,500 and the term of the loan is 20 years. The particulars of the Loan Offer Letter dated **03 January 2008** detailed that the loan type was “*Interest Combo*” and that the interest type was “*4.990% Fixed*”.

The mortgage loan account was redeemed on **10 May 2017** following the sale of the security property.

The Complainant’s Case

The Complainant submits that he was approved a tracker mortgage with the Provider in **2008** to build a house. He outlines that he initially drew down a portion of the loan and commenced the building works.

The Complainant states that subsequently the *“financial crash happened and [the Provider] refused to let me draw down the rest of the money because of the crash. [T]his put me in a bad position to finish the house off.”*

The Complainant submits that he *“asked about drawing down remaining monies to finish off the house”* and was advised by the Provider that *“under no circumstances was the [Provider], willing to give me or anybody else money as they were instructed so by Head Office, and there was no point instructing my solicitor to drawdown the final monies.”*

The Complainant details that the mortgage was on an initial five-year interest only repayment period, and *“when this finished [the Provider] bullied me and took me off my tracker mortgage”*.

The Complainant details that he requested to extend the interest only repayment period in **2013** and was informed by the Provider that he *“would be able to get an extension of an interest only mor[t]gage but had to come off the tracker mor[t]gage. I repeatedly told them that I couldn’t afford capital and interest payments due to the fact that I was trying to finish off the house out of my wages, because [the Provider] previously reneged to keep to their end of the mor[t]gage end, because of the financial crash and put me under huge financial pressure.”*

The Complainant submits that *“[the Provider] keep insisting that I did have a choice regarding whether or not to accept or reject the alternative repayment arrangements in 2013. I would like them to produce the alternatives that [the Provider] offered to me instead of removing me from my tracker mortgage. I met with [a representative of the Provider] at 8pm, after bank hours in [Location] for a very rushed and unexplained meeting and rushed through all the forms and got me to sign. The professional manner that [the Provider] have said happened, did not occur.”*

The Complainant further submits that he *“didn’t have a choice in this matter as I was struggling to service the part mortgage that [the Provider] gave me, as they withheld the final drawdown so that the house couldn’t be finished.”*

The Complainant details that he *“was having problems trying to get the house finished and forced to sell it”*. He outlines that *“I never missed a monthly payment, I was late once by a week with 1 payment and [the Provider] rang me to tell me to sort it out or they would take control of the property sell it and give me any money left after they were paid. [T]he bank knew this property was for sale and forced me on to repayment mortgage, which I appealed to no satisfaction.”*

The Complainant submits that *"I find it funny to imagine that [the Provider] wasn't [aware] of my financial difficulties when I was banking with them for y[ea]rs and operating on an overdraft facility, after paying off previous term loans with [the Provider]."*

Upon receiving a phone call from [the Provider] after my first late mor[t]gage payment, I was told that I would be placed under mor[t]gage protection and that the house would be sold from under me. The caller was very aggressive and intimidating. That was when I made my mind up to sell the house and get away from [the Provider]."

The Complainant further submits that the Provider *"could clearly see that I was in financial difficulties from [his] statements, knowing I had to finish the house out of my wages."*

The Complainant submits that the Provider issued him a letter on **7 April 2015** stating that the mortgage was *"affordable"* although the Provider's internal notes two weeks prior to this states that his mortgage *"was unsustainable and to be placed into protection."* He states that *"This letter was not signed and I phoned to speak to person who had written it and was told it didn't concern me and that the letter was final and affordable."*

The Complainant submits that the Provider *"clearly knew that they had bullied me off the tracker mortgage and insisted on capital and interest payments for a house that was on the market for sale."* He states that the Provider's behaviour has *"caused unknown stress in the way this matter has been dealt with"*.

The Complainant is seeking compensation.

The Provider's Case

The Provider outlines that by **Loan Offer Letter** dated **03 January 2008**, signed and accepted by the Complainant on **16 February 2008**, the Provider agreed to advance the amount of €75,000 to the Complainant over a term of 20 years. It states that the Offer Letter provided that a fixed interest rate of 4.99% would apply for the first 24 months of the loan and the remainder of the term would be subject to an investment tracker variable rate of ECB + 1.35%. It further details that the Loan Offer provided for an initial 5 years of interest only repayments, thereafter reverting to capital and interest repayments.

The Provider states that the Complainant drew down an initial amount of €66,500 on **12 March 2008** and that no further drawdowns were made on this mortgage account. The Provider states that it *"has no record of any further drawdown request by the Complainant outside of March 2008. The Provider also points out that the Complainant has provided no evidence to support his assertion that he ever requested a further draw down of funds, or that the Provider refused the draw down of further funds."*

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The Provider states that in any event it is clear from **General Condition 9(c)** of the **Loan Offer** that the loan must be drawn down within 6 months of the Offer Letter and that the Provider has, in its absolute discretion, the ability to permit the drawdown of any further funds following the expiry of that 6 months period.

The Provider submits that the Complainant has not given any specific date in which he sought to draw down the balance of the loan. It states that pursuant to **General Condition 9(c)**, the latest that the balance of the mortgage loan could have been drawn down is **July 2008**, being six months after the date of the Offer Letter. It outlines that the Complainant chose not to do so and the Provider holds no record of a drawdown request by the Complainant outside of **March 2008**.

The Provider *“entirely refutes”* that it *“bullied”* the Complainant into amending the interest rate applicable to the mortgage loan account. It states that the evidence *“clearly shows that it sought to engage fully with the Complainant when he advised the Provider that he anticipated financial difficulties going forward from interest only payments.”* It further submits that *“the Complainant consented to the removal of the tracker rate of interest. This was not (and could not be) a unilateral decision taken by the Provider”*.

The Provider details that the Complainant had the *“benefit”* of making interest only repayments from drawdown. It states that it was only upon the imminent rollover that the Complainant contacted the Provider to advise of his potential difficulties that may arise from that rollover.

The Provider has outlined the following interactions with the Complainant:

- The Complainant advised the Provider on **15 February 2013** that he wished to avail of a further interest period as he felt that paying capital and interest repayments on a property that was going to be sold didn't *“make sense”*. He advised the Provider that the property was for sale and was never rented out. The Provider states that it advised the Complainant of its Buy to Let pricing policy and he *“understood this”*.
- The Provider sent the Complainant a **Standard Financial Statement** on **21 February 2013** for completion *“in an effort to seek to agree an approach to his impending financial difficulty”*.

- The Provider states that it telephoned the Complainant on **01 March 2013** to assist in the completion of the **Standard Financial Statement** and he was again advised on this call of the Provider's Buy to Let Pricing Policy should an alternative repayment arrangement be offered, *"of which the Complainant understood and stated he would have no choice but to accept it as he was unable to return to full capital and interest repayments."*
- The Provider outlines that it met with the Complainant on **04 March 2013** *"to discuss his financial circumstances"* and the Complainant *"advised that he intended to sell the security property and he would clear the mortgage with the sale proceeds and he wished to purchase his father's primary residence to release some funds for his father and to fund his wedding to his partner."*
- After this the Complainant submitted the **Standard Financial Statement** together with supporting documentation.
- The Provider had a further meeting with the Complainant on **05 March 2013** during which *"the Complainant advised the Provider that the security property was on the market internationally and that he intended to advertise it locally within the following two (2) months."*

The Provider submits that the Complainant had always expressed the intention of selling the security property in any dealings with the Provider from **February 2013** onwards, being the initial date of contact by the Complainant in respect of seeking forbearance. The Provider states that at this juncture *"there had never been arrears on the mortgage loan account, nor had any concerns been raised on the mortgage loan account until this point."* It submits that in those circumstances *"the Provider cannot reasonably have been said to be on any notice of concerns around financial difficulties which would, as alleged by the Complainant, lead to a suggestion that the security property be sold."* It details that on the contrary, it appears that the security property was already on the market prior to the initial contact on **15 February 2013** as the Standard Financial Statement dated **4 March 2013** states that the reason for the review was *"selling property"*. The Provider submits that the Complainant's proposal to sell the property *"has been consistent throughout his multiple applications for forbearance on this mortgage loan account."*

The Provider details that the mortgage loan account reverted to full interest and capital repayments on **12 March 2013**.

The Provider details that it assessed the Complainant's request for forbearance and based its assessment on the Complainant's full circumstances, including his personal circumstances, his overall indebtedness; the information provided in the SFS, his current repayment capacity and his previous repayment history. The Provider submits that it is not in a position to provide specific details on internal policies and criteria applied in assessments such as this due to commercial and market sensitivities. It submits that on a full assessment of the Complainant's Standard Financial Statement the Provider concluded that it was willing to offer interest only forbearance for a period of 12 months, subject to the Provider's Buy-to-Let Pricing Policy.

On **03 May 2013**, the Provider states that it contacted the Complainant and advised of the Provider's offer of interest only payments for a period of 12 months, conditioned on the Provider's Buy-to-Let pricing policy. It submits that the Complainant "*advised that he was happy with the Provider's decision*".

The Provider states that the **Agreement to Amend Mortgage Loan Offer** was subsequently issued on **2 May 2013** and was signed and accepted by the Complainant on **13 May 2013**. It details that the Agreement provided for interest only payments for a period of 12 months and further converted the tracker interest rate of ECB + 1.35% to a Buy to Let Variable Rate, which was 3.1% at the date of the Agreement. The Provider outlines that at that time the mortgage loan was not in arrears.

The Provider states that the above interactions clearly evidence that the Provider sought to agree an approach with the Complainant to resolve the Complainant's financial difficulties and the Complainant's circumstances were carefully considered when offering him an alternative repayment arrangement. It states that the Complainant was at all times aware of the consequences of declining the Agreement, that is, that his payments would step up to capital and interest repayments.

The Provider states that the Agreement "*set out in very clear terms the effect of the change*" and the front page of the document advised the Complainant "*to seek independent financial and legal before accepting any offer and/or signing the document.*" It states that the Complainant confirmed when returning the document, that he had not received independent legal or financial advice and he was satisfied to sign it without such advice. It submits that the Complainant had stated that he had sufficient appreciation of financial and legal matters and by his own admission, understood the implications of the Agreement. The Provider states that the "*Complainant was thus apprised of all his options and the consequence of the accepting the Provider's offer.*"

The Provider outlines that the Complainant's *"indebtedness to the Provider arises on foot of a binding written loan agreement freely entered into by him with the Provider."* It details that whilst the Provider will consider proposals put forward by a customer, the Provider *"is under no obligation to offer a specific alternative repayment arrangement requested by a customer, unless it is deemed appropriate and sustainable."*

The Provider submits that it is *"imperative"* when accepting the terms of such an Agreement *"that a customer is satisfied and fully aware of the full implications of their commitment in respect of such a transaction. Such Agreements to amend the terms of an original loan offer are legally binding documents. The Provider strongly recommended that the Complainant get independent financial and legal advice to help him decide whether to accept the Provider's offers of alternative repayment arrangements."*

The Provider further submits that the Agreement *"sets out the advantages and disadvantages of the interest rates on offer, including tracker rate mortgages."* It submits that in the Provider's view *"a reasonable offer was made in response to a request to renegotiate the terms of contract pursuant to the Offer Letter which the Complainant by his own account could not meet the repayments. At all times leading up to the offer, the Provider clearly and unambiguously set out the new terms and implications for the Complainant, in particular the interest rates."*

The Provider further states that **General Condition 4(d)** of the **Offer Letter** expressly provides that any proposed variation in the terms of the loan is *"with the consent of the borrower"*. It submits that it *"is entirely a matter for the borrower to accept the amended terms as offered."* The Provider states that *"It cannot be said that the Complainant was "forced" to accept the Providers offer. It was always open to him to reject it and to avail of another method to address his financial issues. He did not do so. There is nothing to [suggest] an element of coercion, undue influence or an improvident bargain here."*

The Provider submits that in **late 2012** it made a commercial decision to implement a new 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 *"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."* It further states that the Standard Variable 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 continue on their existing tracker interest rates.” Buy to Let tracker customers who do not amend their terms and conditions can continue on their existing tracker rate.

The Provider states that exclusions from the Buy to Let pricing 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”* and *“were expanded to include customers with sales at shortfall/residual debt”*.

The Provider submits that the Agreement issued to the Complainant on **2 May 2013** was subject to its Buy to Let pricing policy and it was open to the Complainant to accept or reject the Agreement. It states that an amended repayment arrangement can only be implemented when both parties have agreed to the terms. It details that the Agreement reflects the requirements of the **Consumer Protection Code 2012** by containing the requisite legal notices to include warnings, indicative comparisons and details of the advantages and disadvantages. It outlines that the Agreement further afforded the Complainant five weeks to consider the Provider’s offer. It submits therefore that the Provider *“has been wholly compliant with its requirements under the Consumer Protection Code 2012.”* The Provider states that the Complainant chose to accept the Agreement, to include the removal of the tracker interest rate and interest only payments for a period of 12 months.

The Provider also notes that the Complainant’s mortgage loan is not subject to the **Code of Conduct on Mortgage Arrears** and therefore, does not attract the protections afforded to mortgages secured by a borrower’s primary residence.

The Provider details that it contacted the Complainant on **29 January 2014** to advise of the imminent expiry of the 12-month interest only period. It outlines that the Complainant reiterated his intention to sell the property and that *“he would require a further period of interest only repayments”*. The Provider submits that it again engaged fully with the Complainant in order to seek to resolve any anticipated arrears by the Complainant upon the expiry of the interest only period in **May 2014**. It outlines that the Complainant subsequently completed and submitted a further **Standard Financial Statement (SFS)**. It notes that the mortgage was not in arrears at this time either.

The Provider submits that on a full assessment of the Complainant’s SFS in **June 2014**, the Provider concluded that it would decline the request for further forbearance in circumstances where the mortgage was considered sustainable due to the equity in assets held by the Complainant in another country.

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It details that on **23 June 2014**, the Complainant was advised of this decision and the right to appeal. It submits that it wrote to the Complainant on **26 June 2014** advising that the Provider concluded that an alternative repayment arrangement was not appropriate or suitable for the Complainant because he had enough income to meet capital and interest repayments. It states that it has no record of an appeal of this decision being lodged by the Complainant.

The Provider submits that the Complainant contacted the Provider again on **26 March 2015** as he intended to sell the property and in the meantime was looking for interest only repayments. The Provider details that it again sought to engage fully with the Complainant and issued a SFS to the Complainant for completion on **26 March 2015**. It details that after a full assessment, the Provider concluded that the mortgage was unsustainable and declined the request for further forbearance. It details that it advised the Complainant of its conclusion and the declination of the request for further forbearance and advised the Complainant of his right to appeal and right to seek independent financial and legal advice. The Provider submits that the Complainant contacted the Provider by phone on **10 April 2015**, advising that *“he was no longer in financial difficulties, and did not require any further substantive engagement in all the circumstances as outlined above.”*

The Provider outlines that it received correspondence from the Complainant’s representative on **16 March 2016**, requesting the release of title deeds as the Complainant was *“desirous”* to sell the property. It details that it received further correspondence from the Complainant’s representative dated **13 July 2017** advising the Provider that the security property had been sold and the mortgage had been discharged in full. The Provider submits that the sale of the property *“was clearly the Complainant’s personal decision, and was not driven by any pressurisation on the part of the Provider”*.

The Provider submits that the mortgage loan account was redeemed on **10 May 2017**, further to the sale of the security property. It outlines that the balance at the date of redemption was €55,114.63.

The Provider submits that it *“has acted appropriately in the arrears handling of the mortgage loan account”* with reference to the **Consumer Protection Code 2012**. It refers to its obligations under Provision 8.3, Chapter 8 of the Consumer Protection Code 2012. It outlines that in compliance with Provision 8.4 it issued “Unpaid Letters” to the Complainant on **1 October 2015**, **9 October 2015** and **4 March 2015** in response to failed payments in or around these dates and it is satisfied that these letters were issued in accordance with its obligations under Provision 8.4, 8.6, 8.8 and 8.9 of the Consumer Protection Code 2012.

The Provider submits that it *“is satisfied that it has acted honestly, fairly and professionally in the best interests of its customers”* and that *“it has acted with due skill, care and diligence in the best of interest of its customers.”* It submits that in **2013** at *“all times leading up to the offer and therein the Provider made no effort to conceal the interest rate adjustment or the implications for the Complainant.”*

The Provider submits that it *“is satisfied that it did not recklessly, negligently or deliberately mislead the Complainant as to the real or perceived advantages or disadvantages of any product or service.”* It submits that it sought all the relevant information from the Complainant and it *“made a full disclosure to the Complainant of all relevant material information in a way that sought to inform the Complainant.”*

The Complaint for Adjudication

The complaint for adjudication is that the Provider inappropriately removed the tracker interest rate from the Complainant’s mortgage loan account in **May 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.

Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished do 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 are sufficient to enable a Decision to be made in this complaint without the necessity for holding an Oral Hearing.

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

A Preliminary Decision was issued to the parties on **14 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.

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Following the issue of my Preliminary Decision, the Complainant made a post Preliminary Decision submission dated **19 April 2021**.

A copy of the Complainant's additional submission was exchanged with the Provider.

The Provider has not made any further submission.

Following the consideration of the Complainant's additional submission, I set out below my final determination.

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

In order to adjudicate on this complaint, it is necessary to review and set out the relevant provisions of the Complainant's mortgage loan documentation, and to consider the interactions between the Complainants and the Provider between **2013** and **2014**.

The Provider issued a **Mortgage Loan Offer Letter** to the Complainant dated **03 January 2008**, which provided for an advance of €75,000 over a term of 20 years.

Part 1 - The Statutory Loan Details of the Mortgage Loan Offer outlined as follows:

1.	<i>Amount of Credit Advanced:</i>		€75,000
2.	<i>Period of Agreement:</i>		20 Years
3.	<i>Number of Repayment Instalments</i>	<i>Instalment Type</i>	4. <i>Amount of each Instalment</i>
	24	Fixed at 4.990%	€310.59
	36	Variable at 5.350%	€332.90
	180	Variable at 5.350%	€605.91

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Part 2 – The Additional Loan Details outlined as follows:

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|------|--|----------------|
| 11. | Type of Loan (e.g. Annuity or Endowment): | Interest Combo |
| 12. | Interest Rate and whether Fixed or Variable: | 4.990% Fixed |
| ...” | | |

Part 4 – The Special Conditions details as follows;

“1(a) The following Special Conditions apply to the Loan;

...

(ii) 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 the Lender offers the Borrower a choice of interest rate at the end of any fixed rate period and the Borrower can exercise that choice then in either case, in accordance with general condition 7(b) of the Offer Letter, the interest rate applicable to the Loan will be a variable interest rate.

This variable interest rate may vary upwards or downwards. The interest rate shall be no more than 1.35% above the European Central Bank Main Refinancing 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 in the European Central Bank. Notification shall be given to the Borrower of any variation in interest rates in accordance with General Condition 6(b) of this Offer letter. In the event that, or at any time the Repo rates is certified Lender to be unavailable for any reason the interest rate applicable to the Loan shall be the prevailing Home Loan Variable Rate.

(iii) The Loan will issue in stages in line with the approved Architect’s/Engineer’s/Surveyor’s Report and the following conditions apply: (a) Title to the Property must pass to the Borrower on the first stage payment (b) To draw down each stage, the Borrower’s Solicitor is required to furnish the Lender with their Cheque Requisition form, AND a Property Report Certificate (from an Architect/Engineer/Surveyor acceptable to the Lender). (c) The final 5% of the Loan will be retained until the Lender has been furnished and is satisfied with its Property Report Certificate from the supervising Architect/Engineer/Surveyor AND a final valuation from a valuer acceptable to the Lender.

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(iv) For the first 5 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 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 moneys payable as the Lender shall advise the Borrower in writing.”

At the bottom of the **Special Conditions** 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.”

Part 5 - General Conditions, detail 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.*

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- (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 Bank at its absolute discretion permits an extension of the term) shall be of such amounts as will discharge the liability of the Borrower during the year for that Loan.*
- (d) *The 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.*

...

6. Variable Interest Rates

- (a) *Subject to clause 6(c), at all times when a variable interest rate applies to the Loan the interest rate chargeable will vary at the 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 0.5% 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 increase, subject to these Conditions, be fixed from the date of draw down for the fixed period stated in this Offer Letter.*

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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.*

....

9. Drawdown

...

- (a) *All and any Conditions Precedent (in Part 3) must be complied with to the Lender's satisfaction prior to drawdown of the Loan. It is the responsibility of the Borrower and the Borrower's agents to ensure that all Conditions are complied with.*

- (b) ...

- (c) *All and any Conditions Precedent (in Part 3) must be complied with in full to the Lender's satisfaction within two months from the date hereof. The Loan must be drawn down within 6 months from the date hereof. The Lender may, at its absolute discretion, extend either or both periods.*

..."

The Complainant signed the **Borrower's Acceptance and Consents** on **16 February 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".

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It is clear that the mortgage loan offer envisaged an initial fixed interest rate of 4.99% for 24 months and thereafter in accordance with **Special Condition 1(a)** the Provider had the discretion to offer a further fixed rate period. If the Provider did not offer a further fixed period or if the Provider offered a choice of interest rates and the Complainant failed to exercise a choice, then the interest rate applicable to the loan would be a variable interest rate of no more than 1.35% above the European Central Bank Main Refinancing Rate (“Repo Rate”) for the 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 Letter of Offer, having confirmed that he had read and fully understood the Loan Offer.

The **mortgage loan statement** shows that the sum of €66,500 was drawn down on **13 March 2008**.

The Complainant has submitted that the Provider subsequently “*refused*” to allow him to draw down the remainder of the loan. It appears to me that the remainder of the loan would have been a sum of €8,500. I have not been provided with any evidence which shows either that the Complainant requested at any stage to draw down the remainder of the loan, or that the Provider refused any such request.

In the Complainant’s post Preliminary Decision submission of **19 April 2021**, he submitted as follows:

“I am a disappointed to learn that you have rejected my case with [the Provider], and what i find most disturbing is the fact you think its lawful for a high street bank to act in this manner. They say they have no records of me requesting final draw down on monies to finish off house and rent it out when i gave you the name of the manager that refused to let me apply to draw it down. I signed in to a mortgage contract with [the Provider], they broke the contract by not fulfilling the drawdown and then taking me off tracker mor[t]gage as what both parties signed up to. If this is the kind of practice that you mr Deering think is normal proc[e]dure then there was n[o]t much point in going to ombudsman for a fair hearing”.

I believe that both parties to this complaint have received a fair hearing. I can only arrive at my decisions based on the evidence available to me. It remains the case that no evidence has been provided to me which supports the Complainant’s submission that he requested to draw down the remainder of the loan and that the Provider refused this request. Nor has the Complainant provided details of when the request was purportedly made.

/Cont’d...

Based on the evidence before me I cannot accept the Complainant's submission that the Provider "*broke the contract by not fulfilling the drawdown*". As I stated in my Preliminary Decision, it is clear from **General Condition 9(c)** that the loan must be drawn down within six months from the date of the Loan Offer Letter unless the Provider in its absolute discretion decided to extend this period. It does not appear from the evidence before me that this was done.

The initial five-year interest only repayment period was due to expire in **March 2013**. The Provider's internal notes on the following dates state as follows:

11 February 2013	<i>"...Purpose of call to adv cust a/c reverting to full repays of about 428.14 from 12/03 onwards. Need to est if cust can meet this repay and also adv of new pricing policy re tracker cust if necessary."</i>
15 February 2013	<i>"...Cust adv that property was for sale and has never been rented./ He said prop was only finished last year due to Bank not giving him rest of the money? He adv will be looking for ext of I/O as feels paying C&I repays on prop that is going to be sold doesn't make sense. Req meeting in [Location] branch to discuss a/c. I adv any forb offered would be on an aalt [sic] variable rate at increase of 1%. Cust took note."</i>
1 March 2013	<i>"... I discussed BTL 1% increase & he said he has no choice but to accept that : at the moment, he is unable to move to full payts @ 428 PM..."</i>
4 March 2013	<i>"... Just to confirm that he DOES want I/O. Security property currently on market internationally and intending to advertise it locally within the next 2 months."</i>

The Complainant completed and signed the **Standard Financial Statement (SFS)** on **4 March 2013** which detailed that the "*Reason for Review/Arrears*" was "*Selling property*". It further outlined that the Complainant's total monthly income was detailed as £2,000 / €2,350 and his total monthly expenditure was detailed as £1,890 / €2,223.

The section titled **Summary of Discussion with Customers** outlined as follows:

"[Complainant] originally from [County] went to [Country] 25 yrs ago & built up a considerable property portfolio.

...

/Cont'd...

Intention with security property: he was going to rent it out. However now intends to sell it and with proceeds: clear mtge, bu[y] his [family member's] house (located beside his own PDH) to release some funds for [family member] ..."

The section titled **Branch Recommendations/Rationale** details:

*"No previous forb[earance].
Has come off 5 Yr I/O.
Is absolutely determined to sell property and it is on the market. Proof included with Docs.
Meanwhile he is looking for I/O 12 mths.
If possible please backdate to include March 31 repayt.
I recommend I/O 12 months with 1% rate increase followed by (IF necessary / if delay in selling property TE with full C + I)"*

I note from the **mortgage loan statement** that on **2 April 2013** the initial 5-year interest only period expired and the full capital and interest repayment of €430.70 was paid by the Complainant.

The Provider's internal note of **23 April 2013** states:

"NAM requests 12 months I/O and FB backdated to March. Good track record and strong asset position both in Ireland and [Country]. Property to be sold and is on the market. Low LTV. Term extension possible which should be pursued if not sold within this term. ASU recommendation 12 months interest only to allow sale to progress. [Provider] pricing policy to apply. Backdating not appropriate given timescales and payment has already been covered – to run from April..."

The Provider's internal notes of **24 April 2013** details:

"...Kindly issue AALOO removing the account off tracker rate of 2.1% to a new variable rate of 3.1% to the customers..."

The Provider issued an **Agreement to Amend Your Mortgage Loan Offer Letter** dated **02 May 2013** to the Complainant which outlined as follows;

"This is an important legal document. It will amend the terms and conditions that apply to your mortgage loan. This form is divided into Sections A and E. You need to read each section carefully. We strongly recommend you get independent legal or financial advice before you sign it."

/Cont'd...

Section A of the form states as follows;

“SECTION A: WHAT THIS FORM DOES

1. 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 12 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 principle 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 provided 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.”

2. 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 2.10% 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 3.10% per annum.”

...

/Cont’d...

SECTION B: THE 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” movement in the ECB rate. The word “tracker” and phrases containing that word are used with that meaning in this form.

B.2 The interest Rate shown in Section A

- 2.1 Any interest rate shown in Section A applies on the date of this form. Generally, we apply the new rate within 10 days after we receive this form from you correctly accepted.*
- 2.2 Any variable rate shown in Section A can change up or down before you accept this form or before we apply the variable rate to your Loan. If that happens we will write to tell you.*
- 2.3 Any fixed rate shown in Section A is the fixed rate we provide for the fixed rate period (shown in Section A) on the date of this form. That rate may change before you accept this form or before we apply the fixed rate to your Loan. If that happens we will write to tell you.*

B.3 Arrears (if there are any)

This clause applies only if both (a) your Loan is in arrears; and (b) we have not agreed to capitalise the arrears.

/Cont'd...

We will continue to charge interest (including the additional interest that applies to overdue payments on arrears as provided for in the Mortgage Loan Offer Letter until they are cleared in full. You need to plan how to pay arrears and interest on arrears (for example, by making payments in addition to those set out in Section A). If you can afford to repay any of the arrears or pay interest on arrears during the Agreed Period, we strongly recommend you do so.

B.4. If your Financial Circumstances change/ where you wish to pay more

4.1 If your financial position materially changes (for example, if your income increases or decreases or you are given or inherit money or property), you agree to tell us and give us any additional information we reasonably require. You agree this could trigger a review under Clause B.5.

4.2 If you can afford to pay more than the alternative repayment arrangement requires you to pay, we strongly encourage you to do that as it will reduce the overall cost to you of the Loan and will mean you repay your Loan faster (if you wish to pay more at any time, please contact us so we can make the necessary arrangements).

...

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 shown in Section A says so (if it does say so, the term of the Loan is extended to 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 of 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.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.

10.2 If you complete and return this form to us after the Acceptance Period has ended, we will have no obligation to put it into effect (and we will be entitled to treat the form as void and of no effect.)

10.3 If you complete and return this form to us before the Acceptance Period has ended, you will be waiving (e.g. giving up) your right to wait until the end of the Acceptance Period to consider this form.

10.4 This form contains important information comparing (1) the costs of remain in on your tracker rate or moving to the rate provided for in this form, and (2) the advantages and disadvantages of tracker rates and interest rates or the type provided for in this form."

Section C of the forms contained indicative comparisons of the cost of the tracker rate and the variable rate and details of the advantages and disadvantages of the tracker rate and other rates.

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 €430.70 each and that the total cost to you of the Loan would be €10,869.24. 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 €170.81 each during the Agreed Period and of €490.01 thereafter. The total cost of the Loan would be €17,271.05. 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 your Loan payments monthly even if you have another arrangement with us.”

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

The **Acceptance** section of the form was signed by the Complainant on **13 March 2013** on the following terms;

“By signing this form :-

- (1) I confirm I understand both the form and the information given to me in the letter that the Lender sent to me with this form;*
- (2) I accept and agree to be bound by the terms and conditions of the form;*
- (3) 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.

/Cont’d...

___ *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 ticked the third option confirming that he had not received independent or financial advice in relation to the form and that he agreed to be bound by the terms and conditions of the agreement. It is clear from the evidence that the Complainant was aware, or ought to have been aware of the consequences of accepting/signing the agreement. If the Complainant was not happy with the terms of the **Agreement to Amend Mortgage Loan Offer Letter**, including the amendment to the interest rate from the tracker interest rate to the variable interest rate, the Complainant could have decided not to accept the offer made by the Provider.

In his post Preliminary Decision submission of **19 April 2021**, the Complainant submitted:

[the Provider] has broken the contract i signed with them and i am not going to let this go, they put me in a very bad position with stress and worded it to suit them selves [sic]. I will take this further i will even go as far as europe with it. The way i was treated by this bank was not good banking practise [sic].

If i had broken my part of the contract they would have taken my house and sold it as i was told but when they break the contract its ok we are bigger than him. I thought i would get a fair hearing from ombudsman as they are supposed to be indepent [sic] body upon this decision i have my doubts."

Again, I would point out that this complaint has been dealt with in a fair and independent manner. The Complainant has provided no evidence whatever to support his assertion that the Provider has "broken the contract" with the Complainant. On the contrary, it was the Complainant who was unable fulfil the contract due to his inability to service the repayments required within the original terms of the loan contract. I accept that the Complainant was in some difficulty at this time. Nonetheless, it is important for the Complainant to understand that he was seeking to vary the terms of his 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 Complainant forbearance on his mortgage loan at the time.

/Cont'd...

I have been provided with no evidence to support the assertion that the Provider acted in a manner contrary to “good banking practise [sic]” as has been suggested by the Complainant in his post Preliminary Decision submission.

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 variable rate of 3.1%. I note that the **Agreement to Amend Mortgage Loan Offer Letter** refers to the tracker interest rate applicable to the loan as being 2.1%. The loading of 1% was added to the tracker interest rate of ECB + 1.35% and a variable interest rate of 3.1% 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 of ECB + 1.35%, 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 make interest only repayments for 12 months on the mortgage account on condition that a variable rate of 3.1% would apply to the mortgage loan. While I accept that the Complainant was in a difficult position, it was nonetheless a matter for the Complainant to decide whether 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 continues 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.

The Complainant has submitted that he was not offered any "alternatives" by the Provider other than "removing me from my tracker mortgage". I accept that the Complainant did not want to give up the entitlement to the tracker interest rate of ECB + 1.35% on the mortgage loan, however, the reality of the situation at that time in **May 2013**, was that the Complainant could not service the repayments required within the original term of the loan.

As outlined above, the Complainant was seeking to agree an alternative arrangement and it was a matter for him to decide whether to accept the arrangement on offer by the Provider. The consequences of accepting the offer and the appropriate information was provided to the Complainant in the Offer Letter. If the Complainant was not happy with the terms of the **Agreements to Amend Mortgage Loan Offer Letter**, including the amendment to the interest rate, the Complainant could have decided not to accept the offer made by the Provider.

Therefore there is no evidence before me which supports the Complainant's contention that there was an inappropriate removal of a tracker rate of interest from his mortgage loan account or that he was "bullied" by the Provider in **May 2013**.

The **mortgage loan statement** shows that on **16 May 2013** the 12-month interest only arrangement on the Buy-to-Let Variable rate of 3.1% was applied to the mortgage loan account under the **Agreement to Amend Your Mortgage Loan Offer Letter**.

/Cont'd...

I note that the Complainant completed and signed a further **Standard Financial Statement** (SFS) on **31 March 2014**. The copy furnished in evidence is illegible in parts, which is disappointing. It appears to outline that the Complainant's total monthly income was detailed as £1,916 and his total monthly expenditure was detailed as £1,937.

The Complainant has detailed in the SFS *"I want to keep interest [sic] only at 170 pm on the mortgage for 12 more months to allow me to sell my property in [Foreign city]."*

The section titled **Branch Recommendations/Rationale** details:

"Cust is requesting continuance of I/O for 12 months to allow him sell [property located abroad] ... Regardless he intends to sell [Provider] BTL in [Location] and will be clearing mortgage in full.

He stated the mortgage will go into arrears unless he reverts back to I/O as he is finding it hard to make ends meet. Has the costs of travelling home to his parents/Irish interests on a bi monthly basis / plus insurances & some utilities on Irish PDH/BTL in addition to those on his PDH in [Country]."

The Provider's internal notes dated **19 June 2014** details;

"...

1 – Decline affordable correspondence to issue to BWR

2 – Mthly surplus evident from SFS provided

3 - Prev 12 mths FB was provided to facilitate the sale of the Irish BTL... this did not happen + BRW now adv this property requires refurbishment of kitchen before he looks to sell

...

BWR provided self assessed [Country] property rental summary for 2013. Total rent E78995 after tax and deductions profit = E33010 ... less E6324 income tax = E26686 pa / 12 mths = E2223 pm

-this does not match what he disclosed on SFS ... also includes a pencilled in reduction of E8775 which BRW says is tax but no other explanation given

...

/Cont'd...

Noted BWR holds unencumbered [Country] based properties...recommend sell these assets if unable to step up to full C+I repmts

...

affordability is evident from SFS + [Country] based asset disposal is available ... if BWR unable to step up to full C+I move to MRT to seek sale of Irish BTL"

The Provider wrote to the Complainant by letter dated **26 June 2014** as follows:

"We have been considering whether an alternative repayment arrangement (ARA) would be suitable for your mortgage loan.

We have now completed an assessment of your full circumstances. We have concluded that an ARA is not appropriate or suitable for you because:

You have enough income, savings or assets at your disposal that will enable you to pay your normal mortgage instalments of capital and interest in full and to clear your arrears (if any).

..."

The Provider's internal note of **15 July 2014** states:

"...Customer rang as has received Decline affordable letter today see previous note

– wants it logged he only wants 12months I/O & can't figure out how this decision was arrived at. Customer was very unhappy & has requested it be looked at ag[a]in will send in letter of appeal..."

The Provider's internal note of **26 March 2015** states:

"...cust is stating he is struggling with the mortgage and is looking to sell the property but in the meantime is looking to go on i/o. Does not want to go into arrs, acc currently utd, Cust has prev completed SFS form in the past 18 months just needs to update it, adv his circumstances have not changed, Booked cust in for 2.30 today..."

I note that the Complainant completed and signed a further **Standard Financial Statement (SFS)** on an unspecified date which stated that the "Reason for Review/Arrears" was "Property for Sale".

/Cont'd...

It further outlined that the Complainant's total monthly income was detailed as €3,218.30, his total monthly expenditure was detailed as €2,632.32 and his total monthly debt payments were detailed as €940.05, leaving a monthly deficit of €354.07.

The section titled **Branch Recommendations/Rationale** details:

"Recommending IO for 12 mths to allow the property to sell. LTV APROX 30%"

The Provider's internal note of **31 March 2015** states:

"...

Given that BWR sought FB to sell property previously which never materialised, and is seeking it once again, would look to implement LT solution now to avoid further reviews and to allow the BRW time to sell the property when suits them best."

The Provider's internal note of **1 April 2015** details:

"Reviewed agree with assessors decision to decline FB. Based on the financial information provided there is no sustainable arrangement evident. Unable to identify any step up in reps to enable the mtg to return to annuity basis while it is not rented. Considering overall level of indebtedness borrower needs to dispose of assets, operating a monthly deficit in excess of 2kpm. Equity in all properties. Management of the case to move to MRT to progress asset disposal. Borrower has been unsuccessful in selling the property himself..."

The Provider wrote to the Complainant by letter dated **7 April 2015** as follows;

"We have been considering whether an alternative repayment arrangement (ARA) would be suitable for your mortgage loan.

We have now completed an assessment of your full circumstances and we have decided not to offer you an ARA because your mortgage loan is not sustainable.

For a mortgage to be sustainable, you have to be able to meet all of your mortgage repayments in full and on time so that the mortgage loan is repaid in full over the life of the mortgage.

It is unlikely based on our assessment of your circumstances, that you will be able to repay the mortgage loan in full over its life. We do not believe any ARA we offer will change that position..."

/Cont'd...

The Provider's internal note dated **10 April 2015** states:

"...[Complainant] advised there was some misunderstanding that his is able to make full monthly repayments and was never an issue. [Complainant] advised that house was not finished and he finished property with his own funds. He only spoke with auctioneer yesterday regarding property. [Complainant] stated that income stated on SFS was incorrect and queried I/O as an option while selling house but has confirmed monthly repayments of C&I will continue and he is not in difficulty."

The Provider's internal note dated **16 April 2015** details:

"returned [Complainant] call. He advised he receive decline letter ... however is insistant [sic] that he is still able to make full C&I payments and wanted to clarify that."

I note that the Provider issued the following letters to the Complainant in relation to unpaid direct debits;

- on **1 October 2015** in relation to arrears of €488.05 on the mortgage loan account.
- on **9 October 2015** in relation to arrears of €488.05 on the mortgage loan account.

The Provider's internal notes on the following dates detail:

12 October 2015	<i>"...missed DD ... cust did not know it had missed until he was home from [Country] this weekend. c/a is being closed and is in process of opening new euros c/a, cust wanted to make man[ual] pmt with card in sterling. adv'd that needs to be in euros ... adv'd of ASU opening hours ... cust will call in then"</i>
16 October 2015	<i>"Mortgage deemed unsustainable and mortgage now in arrears 1 month. Borrower advised on call 12/10 that he was setting up new account and will make payment by Saturday. Monitor for payment ... if payments not made then account to be allocated out..."</i>
16 October 2015	<i>"...cust was in branch. Issue with paying prev with [country] VDC. Cust had his Irish VDC with him"</i>

The Complainant has submitted that *"Upon receiving a phone call from [the Provider] after my first late mor[t]gage payment, I was told that I would be placed under mor[t]gage protection and that the house would be sold from under me.*

/Cont'd...

The caller was very aggressive and intimidating. That was when I made my mind up to sell the house and get away from [the Provider]."

It appears from the evidence that it was the Complainant's stated intention from **February 2013** onwards, to sell the security property. This is somewhat at odds with his submission that he decided to sell the property in or around **October 2015** when he first missed a mortgage repayment.

The Provider wrote to the Complainant on **4 May 2016** in relation to arrears of €488.05 on the mortgage loan account.

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

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

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

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

The Provider's internal note of **27 March 2017** states "*Redemption Quote requested*".

The Provider's internal note of **5 May 2017** states "*...Cust adv prop is sold.*"

I note from the mortgage loan statement that a redemption payment of €55,114.63 was made on **11 May 2017** and the account was closed on **8 June 2017**.

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 **May 2013**.

/Cont'd...

The Provider offered the Complainant interest only repayments on his mortgage loan account for a period of 12 months, on the condition that the Complainant agreed to change the interest rate applicable to the mortgage loan from a tracker interest rate to a Buy-to-Let variable interest rate. The Provider issued an offer to the Complainant 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 Complainant accepted the **Agreement to Amend Mortgage Loan Offer Letter** with respect to the mortgage loan.

For the reasons set out 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**

26 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.

/Cont'd...

