



<u>Decision Ref:</u>	2021-0272
<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 Dissatisfaction with customer service Maladministration
<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 the Complainant's Residential Investment Property.

The Letter of Approval detailed that the loan amount was €340,000 and the term was 25 years. The Letter of Approval which was signed on **16 June 2006** outlined the loan type as "*Further Advance One Year Residential Investment Loan (Interest Only)*".

The Complainant's Case

The Complainant submits that in **May 2006**, the Provider sanctioned his "Buy-to-Let" mortgage loan facility under account ending **2267**. He contends that the Provider "*failed to advise*" him at the time that "*the facility was being approved even though it was outside policy*" and that this exception to its policy was "*signed off by three officials*". The Complainant submits that he only discovered that the approval of his loan facility was "*outside policy*" when he made a data access request to the Provider in or around **2015**.

The Complainant contends that as neither he nor his solicitor were made aware that his loan offer had been approved outside of the Provider's policy, he finds it difficult to understand how he could have raised a concern about this prior to his acceptance of the loan offer as the Provider has suggested.

The Complainant details that in **July 2007**, his mortgage loan account ending **2267** was drawn down on a *"Further Advance One Year Residential Investment Loan (Interest Only)"* at a rate of 4.69%.

The Complainant outlines that in **2008**, the Provider offered him the option to transfer the mortgage loan account ending **2267** to a tracker interest rate. He details that he accepted this offer in writing on **26 June 2008**, but *"subsequently changed my mind and [the Provider] put the BTL on a fixed rate"*. The Complainant contends that the Provider *"never highlighted the potential implications of such as [sic] decision and in particular that a Tracker rate might not be available in the future."*

The Complainant submits that he approached the Provider in **May 2014** to request a restructured repayment arrangement for mortgage loan account ending **2276**. He states that while this mortgage loan account was not yet in arrears, he anticipated that he would be unable to meet the repayments. He details that the Provider proposed *"that I agree to put my residential mortgage in arrears in order to maintain Interest payments on this BTL mortgage"*. He submits that *"following my objections"* the Provider offered, and he agreed to, an alternative short-term arrangement for account ending **2267** which did *"not involve or impact"* on his residential mortgage (loan account ending **6344**).

The Complainant asserts however the Provider's *"administration of this short term alternative arrangement was unprofessional and included writing to me in respect of my residential mortgage stating that it was in arrears and threatening legal proceedings"* which the Complainant submits was *"totally inaccurate and inappropriate"*.

The Complainant submits that the short-term arrangement was due to be reviewed in **January 2015** and that he contacted the Provider in advance of this. He states that he submitted a **Standard Financial Statement** in **November 2014** and a further letter to the Provider on **19 May 2015**.

The Complainant submits that he did not receive any response until he contacted the Provider on **8 June 2015** by telephone. The Complainant contends that he was informed by the Provider's representative that his application for a restructure for the account ending **2267** had been declined based on the Provider's policy that if a customer holds in excess of €5,000.00 in savings, a restructuring arrangement cannot be offered, and that the Provider

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branch should have informed him of this. He details that the Provider's representative could not explain why he had not received a written response from the Provider regarding his request.

The Complainant outlines that on **15 October 2015**, the Provider wrote to him declining his request for an alternative repayment arrangement on mortgage loan account ending **2267**. He details he issued a letter of complaint to the Provider on **07 August 2015** and received a response from the Provider on **24 December 2015** which did "*not adequately respond to [his] complaint*". The Complainant details that he issued several further letters and an email, and on **07 March 2016** the Provider issued him with a further response. The Complainant submits that in his view this response confirms that the Provider "*failed to General Principles of the Consumer Protection Code 2006 & 2012*". The Complainant contends that although the Provider "*made numerous apologies in its letter*" it maintained that its policy was that no alternative repayment arrangements could be offered as the Complainant had more than €5,000 in savings.

The Complainant details that in **May 2016** he was offered an alternative repayment arrangement on the mortgage loan account. The Complainant contends that in such circumstances, there is "*clearly a conflict*" in the Provider's position from **December 2015** to **March 2016**. In that regard, the Complainant contends that the Provider has failed to adhere to "*the General Principles of the Consumer Protection Codes*".

The Complainant submits that the Provider has failed to adhere to the General Principles of the Consumer Protection Code 2006 and 2012, in particular:

- (i) Has failed to act "*honestly, fairly, professionally in the best interest of its customers*"
- (ii) Has failed to act with "*due skill, care and diligence in the best interest of its customers*"
- (iii) Has failed to make "*full disclosure of all relevant material in a way that seeks to inform the customer*".

The Complainant is seeking the following:

- (a) Mortgage loan account ending **2267** is transferred to a tracker interest rate and a refund of the interest overpaid from **July 2008**;
- (b) That the Provider write off arrears of €9,479.72 that arose on mortgage loan account ending **2267**, between **January 2015** and **May 2016** due to the Provider's delay and its failure to offer the Complainant an alternative arrangement;
- (c) Compensation due to the distress and inconvenience caused by the Provider; and
- (d) An acknowledgment by the Provider of its failure and an apology.

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The Provider's Case

The Provider details that it received a completed **Application for Credit** from the Complainant dated **01 April 2006** for a Residential Investment Mortgage (Interest Only) in the sum of €340,000.00 for a term of 25 years.

The Provider outlines that mortgage applications are assessed based on the Provider's lending criteria such as income, repayment capacity, level of existing borrowing and account history. It states that when assessing a customer's mortgage application, its **Credit Policy** allows for exceptions to its standard lending criteria "*based on the overall assessment of the risk*" and in certain instances, the Provider may approve "*a level of flexibility in relation to certain policy criteria*". It outlines that during the assessment of the Complainant's credit application, it was noted that "*on one calculation of the net income available for repayment, the repayments were at 50.4%. However, as this was an interest only loan, the repayments were to be at 37.3% at loan draw down and this, together with other aspects of the assessment, were acceptable within the credit policy.*"

The Provider details that following a detailed assessment of the Complainant's credit application it was satisfied to approve the mortgage loan facility. The Provider submits that it approved the loan application with "*probity and integrity*" and that it did not deviate from its Credit Policy when making the assessment.

The Provider details that it issued a Letter of Approval for mortgage loan account ending **2267** on **16 June 2006** which was accepted by the Complainant on **05 July 2007** with the benefit of independent legal advice and he confirmed that his solicitor had fully explained the terms and conditions of the loan to him. It details that the Letter of Approval provided for a loan amount of €340,000 on an initial 1-year fixed interest rate on an interest only basis over a term of 25 years.

The Provider details that the terms and conditions provided that the Complainant or the Provider could apply a variable rate at the end of any fixed rate period. It relies on **Special Condition F** and **General Mortgage Loan Approval Condition 5** of the Complainant's Mortgage Loan Agreement, which it submits indicates what interest rate would be applicable on the expiry of the fixed rate period. The Provider states that the Letter of Approval did not contain an entitlement to a tracker interest rate at the expiry of a fixed rate period nor at any time during the term of the loan.

The Provider details that the Complainant drew down mortgage loan account ending **2267** on **13 July 2007** in the amount of €340,000 on a 1-year fixed interest rate of 4.69%, with this fixed interest rate due to expire on **13 July 2008**.

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The Provider details that its procedure is that twenty days prior to the expiry of any fixed rate period, it offers customers a list of available interest rate options, which include a default rate should the customer not indicate a preferred option.

The Provider details that from **mid-2006**, these rate options letters automatically included the option of a tracker interest rate for certain existing customers who did not have a contractual entitlement to a tracker interest rate on the expiry of a fixed rate period. The Provider further submits that from **mid-2006** to **mid-2009**, these rate options letters stated that in the absence of a customer selection, the listed tracker variable rate was the rate which would be applied to the mortgage as the default rate. The Provider detailed that all fixed rate maturity letters issued from the end of **mid-2008** and subsequently contained a warning stating that the option of a tracker rate may not be available at the end of any fixed rate period in the future.

The Provider submits that on or around **23 June 2008**, it issued the Complainant with a rate options letter and form with a list of the then current available interest rates, which included a tracker interest rate, a standard variable rate and fixed rate options. The Provider outlines that it offered the Complainant the option of a tracker interest rate, although the Complainant did not have a contractual entitlement to a tracker interest rate. The Provider details that all fixed rate maturity letters that issued from **May 2008** onwards contained a warning indicating that at *"the end of the fixed rate period we will send you a list of the product options available to you which may or may not include a tracker option"*.

The Provider outlines that the Complainant signed and accepted the rate options form on **26 June 2008** selecting the tracker interest rate of 5.35% (ECB + 1.35%). The Provider submits that on **04 July 2008**, the Complainant emailed the Provider and indicated that he *"inadvertently picked a variable option"* and requested to amend his choice to the two-year fixed interest rate of 5.80%. The Provider details that the two-year fixed interest rate was applied to the account ending **2267** on **11 July 2008**. It states that this mortgage loan account never operated on a tracker interest rate and that the Complainant was advised in the correspondence issued in **June 2008** that a tracker option may not be available in the future. The Provider submits that in **January** and **February 2009**, the Complainant contacted its mortgage operations department regarding *"an early exit from the fixed rate period"*.

The Provider details that the Complainant paid a fixed rate exit fee of €2,780.25 and sent a letter to the Provider seeking details as to what his *"new repayment will be at variable rate"*. The Provider details that on **25 February 2009**, it amended the Complainant's account ending **2267** to a variable rate of 4.65% effective from **01 February 2009** until **13 February 2009** when the variable rate changed to 4.15%.

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The Provider submits that it wrote to the Complainant on **25 February 2009** to confirm that his mortgage loan account ending **2267** had been amended as he requested.

The Provider details that as the Complainant switched from his fixed rate early in **February 2009**, there was no fixed rate expiry in **July 2010**. The Provider submits that on **05 July 2010**, the Complainant, who was then an employee of the Provider, emailed it requesting to switch the mortgage loan account from the then variable rate of 4.95% to the Provider's fixed rate of 5.35%.

The Provider details that it issued the Complainant with a rate options form on **05 July 2010**, offering him a 2-year fixed rate of 5.35% or the LTV variable rate of 4.95%. The Provider details that the Complainant signed the rate options form on **10 July 2010** indicating his acceptance of the 2-year fixed rate of 5.35%. It details that this rate applied to the mortgage loan account ending **2267** from **13 July 2010**.

The Provider details that prior to the expiry of the Complainant's 2-year fixed rate period on **13 July 2012**, it issued a rate options letter and form to the Complainant. The Provider details that it switched the mortgage loan account ending **2267** to the Provider's variable rate on **12 July 2012**.

The Provider details that that the Complainant completed a **Standard Financial Statement** ("SFS") dated **16 April 2014** in which he indicated that he was unable to make full interest only repayments on his investment property. The Provider outlines that following an assessment of the SFS it recommended a 6-month partial moratorium on the Complainant's home loan account ending **6344**. It outlines that this was on the basis that account ending **6344** was on an interest only rate of 5.64% and "*in the long run, it would be more costly for the Complainant as opposed to the home loan on which the interest rate was a staff preferential rate of 3%*" and therefore more cost effective. The Provider outlines that it believed under this arrangement, the Complainant's monthly repayments would "*be better aligned with what he could afford to pay each month*".

The Provider states that it issued a letter to the Complainant dated **10 June 2014** which outlined the advantages and disadvantages of the moratorium arrangement, and which also explained what the Complainant was required to do to comply with the conditions in the attached 'Moratorium Conditions'. It details that this letter reminded the Complainant that he had 30 days from the date of the letter to accept the **Restructure Agreement**. The Provider details that on **01 July 2014**, it issued a further letter to the Complainant reminding him that he had 10 days remaining of the original 30 days to accept the Restructure Agreement.

The Provider submits that it did not receive the signed Alternative Repayment Arrangement documents within the 30-day period, and in line with Central Bank of Ireland guidelines, it wrote to the Complainant on **14 July 2014** noting that it had not received them.

It details that as the Complainant did not accept its forbearance offer, the Provider's letter informed him of the possible consequences of not accepting the offer, as the Provider was obliged to do under **Provision 47** of the **Code of Conduct on Mortgage Arrears**. The Provider details that this letter included information that as the Complainant had "*not accepted this Offer within the agreed timeline, [the Complainant] are now considered outside the Mortgage Arrears Resolution process (MARP) ... Legal proceedings may commence three months from the date of this letter or eight months from the date the arrears arose on your account, whichever is later.*" The Provider outlines that the Complainant was afforded the right to appeal its decision in its letter.

The Provider refutes the Complainant's submission that arrears of €9,479.72 arose on mortgage loan account ending **2267** due to a delay on the Provider's behalf and a failure of the Provider to offer the Complainant an alternative repayment arrangement. It states that following a meeting between the Complainant and the Provider in **June 2014**, the Provider agreed to offer the Complainant a moratorium on his mortgage account ending **2267** for a period of 6 months. It states that on **13 June 2014** the account was in arrears of €1,636.96. It states that the moratorium resulted in a reduction in his monthly repayments to €1,000.00 per month for 6 months. The Provider details that it received the signed restructure agreement dated **24 July 2014**, and it accordingly amended the monthly repayments for the agreed period of 6 months commencing from **28 August 2014**.

The Provider details that the Complainant submitted a further SFS dated **04 December 2014** and following "*an in depth assessment of the Complainant's income and expenditure*" it concluded that the Complainant had the repayment capacity to make full capital and interest repayments on his mortgage loan account.

The Provider outlines that there was ongoing regular communication between it and the Complainant between **January 2015** and **May 2016** in relation to mortgage loan account ending **2267** and his other mortgage loan accounts. The Provider outlines that on **02 January 2015** it wrote to the Complainant advising that the temporary moratorium was due to expire on **28 January 2015** and his account would then automatically switch back to full repayments. The Provider outlines that its Arrears Support Unit ("ASU") received a further SFS from the Complainant dated **19 March 2015**, which was returned to the Branch on **27 March 2015** as further documentation was required.

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The Provider details that it received an amended SFS dated **30 March 2015** and concluded that as per Provider policy it would not consider the account for a restructure as the Complainant held a deposit of more than €5,000.

The Provider submits that on **19 May 2015**, it issued a letter to the Complainant confirming that it consented to the release of a property that the Complainant held jointly with his ex-wife (the "Property"), subject to certain conditions which included a capital reduction of €28,372.07 being lodged to mortgage loan account ending **2267**.

The Provider details that on **08 June 2015**, the ASU tried to contact the Complainant by telephone to update him on the outcome of the SFS assessment and to "*address issues raised by the Complainant in his correspondence to the Bank dated 19 May 2015*". The Provider submits that the ASU used the telephone number provided in the Complainant's SFS, but it appears that this telephone number was incorrect, and the telephone calls were unsuccessful. The Provider outlines that the Complainant contacted the ASU on **08 June 2015** by way of telephone and was advised that his request for the long-term treatment of his mortgage was declined by the Provider.

The Provider acknowledges that the Complainant did not receive a formal response to the submission of his Standard Financial Statements. The Provider details that it announced in **February 2015** that it had put in place a Mortgage Redress Programme to address the situation where it failed to inform certain customers the consequences of their decision to break from a fixed rate or discounted tracker rate early. The Provider details that during this review, and upon acknowledgment from the Mortgage Redress team that mortgage loan account ending **2267** was not affected, the ASU continued the assessment in the Complainant's request for a long-term treatment on mortgage loan account ending **2267**.

The Provider details that it accepts that it failed to respond to the Complainant's correspondence within a reasonable time period and in its response to this office dated **30 July 2019**, in acknowledgement of its shortcomings offered the Complainant a goodwill gesture of €500.00 in respect of this.

The Provider outlines that on **15 October 2015**, it wrote to the Complainant advising that it was unable to offer him an alternative repayment arrangement at this time on the basis that his SFS "*indicated affordability to repay the full contractual monthly bill and your outstanding arrears without the need for an Alternative Repayment Arrangement.*"

The Provider details that negotiations for the sale of the Property were continuing at this time and on **11 March 2016**, the Provider agreed to release the Property subject to certain conditions, including that the surplus from the sale proceeds be lodged to mortgage loan account ending **2267**.

The Provider details that it agreed to an alternative repayment arrangement on mortgage loan account in **June 2016** resulting in arrears of €7,059.23 being capitalised and term being extended by 22 months. The Provider details that under the terms of the agreement, mortgage loan account ending **2267** was split on **06 September 2016**.

The Provider contends that it is satisfied that it acted in accordance with the provisions of the **Consumer Protection Codes 2006** and **2012**, apart from one delay in responding to the Complainant during communications regarding a proposed restructuring arrangement, for which the Provider has apologised and for which it is willing to make a reasonable goodwill gesture of €500.00 in recognition of its shortcomings. The Provider outlines that it at all times acted "*honestly, fairly and reasonably*" in respect of its dealings regarding mortgage loan account ending **2267**, apart from the one instance referenced above. The Provider outlines that at all times during the communications regarding a proposed restructuring arrangement, it acted "*with due skill, care and diligence in the best interest of its customer.*" In addition, the Provider outlines that it made full disclosure of all relevant information to the Complainant in a way that sought to inform him.

The Provider details that the Complainant's mortgage loan account was sold to a third party regulated financial entity on **04 February 2019**.

The Complaints for Adjudication

The complaints for adjudication are:

- (a) the Provider failed to advise the Complainant in **May 2006** that the mortgage facility had been approved even though it was outside of the Provider's credit policy;
- (b) the Provider failed to inform the Complainant of the implications of switching from a tracker rate to a fixed rate in **July 2008**, in that, the option of a tracker rate would not be available to him in the future;

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- (c) the Provider acted in an “*unprofessional*” manner by issuing the Complainant with correspondence detailing that loan account **6344** was in arrears and threatening to issue legal proceedings in circumstances where this was factually inaccurate in **May 2014**; and
- (d) the Provider caused delays in processing his request for a restructure between **January 2015** and **May 2016**, which led to arrears accumulating on his mortgage loan account.

Decision

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

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

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

A Preliminary Decision was issued to the parties ON 9 July 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.

In order to determine this complaint, it is necessary to review and set out the relevant provisions of the Complainants’ loan documentation. It is also necessary to consider the details of certain interactions between the Complainants and the Provider between **2006** and **2015**.

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At the outset, it is important to point out that this Office will not interfere with the commercial discretion of a financial service provider with respect to a decision to accept or reject a consumer's application for credit, or investigate the details of any re-negotiation of the commercial terms of a mortgage, 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**.

The Complainant has submitted into this office a copy of his **Application for Credit** to the Provider dated **01 April 2006** for a Residential Investment Mortgage (interest only) in the amount of €340,000.00 for a term of 25 years.

The Complainant has submitted into evidence an internal document of the Provider entitled "**Communication Override Form**". This document is dated **12 May 2006**, and details the following:

"Account number [ending 2267] ...

...

Override decision

Loan Approved: EUR340,000 + 186,000 (Total 1,192,971)

Property Value: EUR330,000 + 300,000

Loan To Value: 83% with [illegible] charge

IN ADDITION TO THE STANDARD TERMS & CONDITIONS, THIS APPROVAL IS SUBJECT TO...

- 1. Payment by Internal S.O./D.D.*
- 2. Satisfactory valuation*
- 3. Clean ICB showing no underlying borrowings.*
- 4. Up to date payslip confirming income as per nets*
- 5. Independent confirmation of rental income of 1200 per month*
- 6. We recommend that the applicants take life cover however we note that the property is a RIP cross charge with another RIP property and therefore subject to signing the appropriate waiver they may waive life cover if they wish*

...

THIS OVERRIDE IS BEING GRANTED FOR ITEM(S) AS REQUESTED BY YOU TOGETHER WITH YOUR RECCOMENDATION. PLEASE ENSURE THAT THE REMAINDER OF THE FILE COMPLIES WITH CREDIT POLICY.

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Reason(s) for Approval:

Note outside policy at 50.4% for [Complainant] – Surplus 2558. LTV on RIPS 83%. PDH is 73%. I was happy to approve this for [Complainant] but [redacted] has been tied into application as a Guarantor as she is joint owner of the cross charge property. Note for [redacted] Overall LTV on properties in her own name are 67% (Note 26% based on interest only repayments on the RIPS). Joint [illegible] are within policy at 41.2%. Long established staff members.

...

Authorised By [Redacted]

Countersigned By: [Redacted]/[Redacted]"

It is important for the Complainant to be aware that the Provider was under no obligation to offer him any mortgage or any particular type of mortgage in **2006**. It was a matter for the Provider to decide firstly, if it was willing to offer the Complainant any borrowings at the time and secondly, how that offer would be structured. It was a matter of the Provider's commercial discretion whether to accede to the loan application. The Provider was within its rights to approve the application in circumstances where it was of the view that an exception to its standard lending criteria was acceptable "*based on the overall assessment of the risk*". I accept that the decision whether to approve the application for a loan is a matter which falls within the commercial discretion of the Provider.

This office will not interfere with a financial service provider's commercial discretion in the form of a decision to accept or reject a consumer's application for credit, other than to ensure that the Provider complies with relevant codes/regulations and does not treat the applicant unfairly or in a manner that is unreasonable, unjust, oppressive or improperly discriminatory. I have no evidence that the Provider's conduct was unreasonable, unjust, oppressive or improperly discriminatory.

The **Letter of Approval** for mortgage loan account ending **2267** dated **16 June 2006** details as follows;

<i>"Loan Type:</i>	<i>Further Advance One Year Fixed Residential Investment Loan (Interest Only)</i>
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<i>Purchase Price / Estimated Value:</i>	<i>€ 330,000.00</i>
<i>Loan Amount:</i>	<i>€ 340,000.00</i>
<i>Interest Rate:</i>	<i>3.78%</i>
<i>Term:</i>	<i>25 year(s)"</i>

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The **Special Conditions** to the Letter of Approval detail as follows;

“Special Conditions

A. *[THE PROVIDER] WILL ACCEPT MONTHLY REPAYMENTS, AS SET OUT IN THE LETTER OF APPROVAL, REPRESENTING REPAYMENT OF INTEREST ONLY (AS MAY BE VARIED FROM TIME TO TIME AND INCLUDING INSURANCE PREMIUMS WHERE APPLICABLE) FOR THE FIRST THREE YEARS FROM THE DATE OF CHEQUE ISSUE OR SUCH OTHER PERIOD AS [THE PROVIDER] MAY DECIDE.*

...

B. *THE PRINCIPAL AND INTEREST WILL, IN SUCH CIRCUMSTANCES, BE REPAYED UNDER A PAYMENT SCHEDULE BASED ON THE AMOUNT OF THE LOAN OUTSTANDING AT THE DATE OF REVIEW, THE REMAINING TERM OF THE LOAN AND THE INTEREST RATE APPLICABLE AT THAT TIME AND AS MAY BE VARIED FROM TIME TO TIME THEREAFTER.*

...

F. *GENERAL MORTGAGE LOAN APPROVAL CONDITION 5 “CONDITIONS RELATING TO FIXED RATE LOANS” APPLIES IN THIS CASE. THE INTEREST RATE SPECIFIED ABOVE MAY VARY BEFORE THE DATE OF COMPLETION OF THE MORTGAGE.”*

General Condition 5 of the **General Mortgage Loan Approval Conditions** outline;

“CONDITIONS RELATING TO FIXED RATE LOANS

5.1 The interest rate applicable to this advance shall be fixed from the date of the advance for the period as specified on the Letter of Approval, and thereafter will not be changed at intervals of less than one year.

5.2 The interest rate specified in the Letter of Approval may vary before the date of completion of the Mortgage.

...

5.4 Notwithstanding Clause 5.1 [the Providers] and the applicant shall each have the option at the end of each fixed rate period to convert to a variable rate loan agreement which will carry no such redemption fee.”

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The **General Mortgage Loan Approval Conditions** also outline;

IF THE LOAN IS A VARIABLE RATE LOAN THE FOLLOWING APPLIES:

“THE PAYMENT RATES ON THIS HOUSING LOAN MAY BE ADJUSTED BY THE LENDER FROM TIME TO TIME.”

The **Acceptance of Loan Offer** was signed by the Complainant and witnessed by a solicitor on **05 July 2007**. The Acceptance of Loan Offer states as follows:

“1. I/we the undersigned accept the within offer on the terms and conditions set out in

- i. Letter of Approval*
- ii. the General Mortgage Loan Approval Condition*
- iii. [the Provider’s] Mortgage Conditions.*

copies of the above which I/we have received, and agree to mortgage the property to [the Provider] as security for the mortgage loan.

...

4. My/our Solicitor has fully explained the said terms and conditions to me/us.”

It is clear to me that the Letter of Approval envisaged a one-year fixed interest rate and thereafter a variable interest rate. The variable rate in this case made no reference to varying in accordance with variations in the ECB refinancing rate, rather it was a variable rate which could be adjusted by the Provider. The Complainant accepted the Letter of Offer, having confirmed that the Loan Offer had been explained to him by his solicitor.

The **mortgage loan statement** shows that the mortgage was drawn down on **13 July 2008**.

The Provider has submitted that in or around **23 June 2008** it automatically issued a rate options letter and form to the Complainant *“with a list of the then current available interest rates, including a tracker interest rate, a standard variable rate and fixed rate options.”* I am disappointed to note that a copy of the letter that purportedly issued to the Complainant in or around **23 June 2008** has not been furnished in evidence to this office. Furthermore, it is disappointing that the Provider has failed to offer a satisfactory explanation to this office as to why it does not hold a copy of this documentation in its records, save that *“it was generated automatically”*.

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Provision 49 of the Consumer Protection Code 2006 (which was fully effective from 01 July 2007) and **Provision 11.4 and 11.5 of the Consumer Protection Code 2012**, outline as follows;

“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.*

Details of individual transactions must be retained for 6 years after the date of the transaction. All other records required under a) to h), above, must be retained for 6 years from the date the relationship ends. Consumer records are not required to be kept in a single location but must be complete and readily accessible.”

The Complainants’ mortgage loan was incepted for a term of **25 years** commencing from **July 2007** and the options letter purportedly issued in **June 2008**. It is understood that the mortgage account was sold to a third party regulated financial entity on **04 February 2019**. As such, it appears to me that the Provider is obliged to retain that documentation on file for six years from the date the relationship with the mortgage holder ended. However, it is unclear to this office, in the absence of a proper explanation, why this documentation has not been held by the Provider.

In any event, I accept that an options letter and form was issued to the Complainant in or around **23 June 2008** in circumstances where the Complainant completed and returned the options form enclosed with the letter.

The Provider has provided in evidence a copy of a *“Sample letter”* issued to the Complainant at this time. The template letter outlines as follows;

“I am writing to remind you that the current rate option on your mortgage account will end on [redacted]

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Please find attached the current options available to you, including our competitive tracker variable rate.

If we do not receive a written instruction from you in relation to the above or on or before the [redacted], we will automatically default your loan to the tracker variable rate.

We value your business highly at [the Provider] so if you have any questions regarding your options, please contact our dedicated mortgage team on [number]. They will be happy to help you."

I note that a second template letter has also been provided in evidence, which details;

"We recommend that you consider your options carefully before choosing to fix your mortgage.

If you are currently on a tracker rate mortgage with a price promise please note that our current margin commitment to you will expire if you convert to a fixed rate. At the end of the fixed rate period we will send you a list of the product options available to you which may or may not include a tracker option. Our rates at that time could be higher or lower than our current rates depending on market factors and as a consequence you may incur higher interest over the term of the loan."

I am disappointed that the Provider has furnished two different template letters in evidence without any explanation as to why.

Notwithstanding this, a copy of the **rate options form** that was signed by the Complainant on **26 June 2008** has been provided in evidence and details as follows:

"Current options available:

You may only select one option

...

		Monthly	
		Repayment	...
--- Tracker variable rate	- Currently: 5.35%	1525.08	...
	(ECB + maximum 1.3500%)*		
---Standard variable rate	- Currently: 5.69%	1618.86	...
---2 year fixed rate	- Currently; 5.80%	1649.20	...
---3 year fixed rate	- Currently; 5.65%	1607.82	...

/Cont'd...

...

- *We work out the monthly repayments above based on the amount you have left to pay at the date of this letter. They include the monthly or yearly insurance of EUR 25.63. The repayments above do not include your Tax Relief at Source (TRS) deduction, which is currently EUR 0.00. Please note that this deduction may change as the interest rate changes. The figures above are only estimates of your revised monthly repayment and may change. We will send you details of your actual repayment in due course.*

- *Please note, if you choose a fixed rate, the standard fixed-rate conditions will apply (see over the page).*

- **The interest rate that applies to this Tracker Mortgage Loan will never be more than 1.3500% over the European Central Bank Refinancing Rate (the "ECB Rate"). See over the page for further details on Tracker Mortgage Loans.**

The overleaf of the rate options form detailed as follows:

"FIXED RATE LOANS

Wherever repayment of a loan in full or in part is made before the expiration of the Fixed Rate Period the applicant shall, in addition to all sums payable, as a condition of and at the time of such repayment, pay whichever is the lesser of the following two sums:

- (a) A sum equal to on half of the amount of interest calculated on a reducing balance basis which would have been payable on the principal sum desired to be repaid, for the remainder of the Fixed rate Period, or*
- (b) A sum equal to [the Provider's] estimate of the loss (if any) occasioned by such early repayment, calculated as the difference between on one hand the total amount of interest (calculated on a reducing balance basis) which the applicant would have paid on the principal sum being repaid to the end of the Fixed Rate Period at the fixed rate of interest, and on the other hand the sum (if lower) which [the Provider] could earn on a similar principal sum to that being repaid if [the Provider] loaned such a sum to a Borrower at its then current New Business Fixed rate with a maturity date next nearest to the end of the Fixed rate Period of the loan, or part thereof being repaid.*

...

/Cont'd...

TRACKER MORTGAGE LOANS

- 1. The interest rate applicable to Tracker Mortgage Loans is made up of the European Central Bank Refinancing Rate ("the ECB Rate") plus a percentage over the ECB Rate. The amount of the percentage over ECB Rate will depend on the amount of the loan and that percentage will not be exceeded during the term of the loan.*
- 2. The ECB rate may be increased or decreased from time to time by the European Central Bank (ECB). We will apply all increases or decreases within one month from the date announced by the ECB as the effective date.*
- 3. If we cannot use the ECB Rate for this loan, we will use another reference rate or calculation that is fair and reasonable.*
- 4. If more than one Tracker Mortgage Loan exists on the property, these loans cannot be added together to get a different rate over the ECB rate."*

The Complainant signed the options form on **26 June 2008** and selected the tracker variable rate of ECB + 1.35%. The options form is stamped as received by the Provider on **27 June 2008**.

I note that the fixed interest rate period was due to expire on **13 July 2008**.

An email from the Complainant to the Provider dated **04 July 2008** at **12:16pm** details:

"...

As I mentioned in our recent conversation, I received a letter from the Bank outlining various interest rate options that would apply on this mortgage loan account when the current fixed rate expires on 13th July 2008. I returned the options letter but inadvertently picked a variable option.

Can you amend my option to the two year fixed rate of 5.8%

Thanks for your help"

The Provider's employees sent an internal email on **4 July 2008** at **14:12pm**, which the Complainant was copied on as a recipient. It detailed:

"This request is approved at 5.80% fixed for 2 years"

/Cont'd...

A further internal email sent on **07 July 2008** detailing:

"Hi [Provider employee]/[Complainant],

Account has been primed to 2 year fixed rate interest only

[Complainant]

Would you have a copy of your options letter that you could re request that the 2 year fixed rate be applied?

If not I will arrange a new contract to go out to you for signing"

It does not appear to me from the evidence provided that a further **rate options form** or other documentation was signed by the Complainant in or around **7 July 2008** in order to apply the 2-year fixed interest rate of 5.80%.

Nonetheless the **mortgage loan statement** shows that the 2-year fixed interest rate of 5.80% was applied to the mortgage loan account on **11 July 2008**.

The Provider has summarised its policy in relation to the tracker rate offering as follows;

"...on [mid] 2006, the Bank introduced a policy offering a tracker rate of interest to its existing customers who were maturing from a period of a fixed rate of interest although their loan contract did not specify an entitlement to be offered a tracker rate at maturity (this initiative was taken against the backdrop of the competitive mortgage market at that time). Therefore, a Tracker mortgage rate was included in the list of options in the automated options letter issued to a customer in the month prior to the date of maturity of the fixed rate period. Between [mid] 2006 and [mid] 2006 while the options letter included the offer of a tracker interest rate, in the absence of a customer selection, the variable rate was applied to the mortgage as the default interest rate. From [late] 2006 until [mid] 2009, in the absence of a customer selection the tracker interest rate was applied to the mortgage as the default interest rate."

Having considered the mortgage loan documentation, it is my view that that the Complainant did not have a contractual or other entitlement to a tracker interest rate at the end of the fixed rate period which applied from **July 2007** to **July 2008**. It appears that the Provider, in line with its own policy at the time, offered the Complainants a tracker interest rate of 5.35% (ECB + 1.35%).

/Cont'd...

The reverse side of the options form which the Complainant signed on **26 June 2008**, contained detail about the tracker interest rate offering, such that the Complainant could have made an informed decision as to which interest rate to choose at the time. The Provider had set out in a clear and comprehensible manner that the interest rate applicable to a tracker mortgage loan is made up of *“the European Central Bank Refinancing Rate (“the ECB Rate”) plus a percentage over the ECB Rate”*. As such, the Complainants ought to have been aware that, in circumstances where they opted for the tracker interest rate, the percentage of 1.35% would not be exceeded during the term of the loan and the ECB rate would fluctuate in accordance with the European Central Bank. There was no obligation on the Provider to advise the Complainant that he should seek independent advice with respect to the rate options made available to him by the Provider at the time. I further note that the Provider had indicated in the letter that enclosed the options form that he could contact the Provider if he had any questions regarding the options. The Complainant did contact the Provider on **4 July 2008** to request to apply the two-year fixed interest rate instead of the tracker variable rate.

The Complainant of his own volition decided not to choose the option of a tracker interest rate of ECB + 1.35% (5.35%) at the time and instead selected the higher two-year fixed interest rate offered (5.80%). The rate options form clearly outlined that the options outlined were the *“current options available”* and that if the Complainant chose a *“fixed rate, the standard fixed-rate conditions will apply”*. The variable rate, in the Complainant’s mortgage loan documentation, made no reference to varying in accordance with variations in the ECB refinancing rate, rather it was a variable rate which could be adjusted by the Provider.

The Provider’s internal email dated **20 January 2009** details:

“...

Customer is looking into going variable if possible. What would penalty be and new rate and repayment if he did.”

The Provider’s internal email dated **22 January 2009** details:

“...

The penalty is €2780.25 this is valid for 20days

The customer could avail if the LTV variable rate of 4.65% which will reduce by .50% on the 13th Feb”

/Cont’d...

The Complainant wrote to the Provider dated **04 February 2008**, detailing:

“ ...

I wish to withdraw from my fixed rate on mortgage account [ending] 2267.

Please send me details of the fixed rate penalty if any, any forms that require signing etc and finally what my new repayment will be at variable rate.”

It appears that the date of **04 February 2008** on the letter was a typographical error on the Complainant's part. The letter is stamped received by the Provider on **6 February 2009** and on **9 February 2009**.

The Complainant sent an email to the Provider dated **12 February 2009** stating:

“ ...

Further to our phone conversation earlier today

I sent a letter to Mortgage Services on 4th February 2009 confirming that I wished to transfer from fixed to variable rate.

When I queried why I had not received a response I was advised by Mortgage Services today that this facility was no longer available.

However as I responded within 20 days as specified in the Banks E Mail (copy attached) I believe that the Bank should allow this transfer.

Can you look into this”

The Provider's internal email dated **13 February 2009** states:

“Subject: FW: [Account ending] 2267 – [Complainant] RIP Mortgage

[Employee name], apologies but I meant to send this to you yesterday – its one of the FREF's for a staff member”

The Provider sent an email to the Complainant dated **19 February 2009** stating:

“[Complainant] I will arrange the switch for you but I need to be in funds for the fee before I can do this...”

/Cont'd...

The Provider wrote to the Complainant by letter dated **25 February 2009**, detailing:

“ ...

I refer to your recent query in relation to the above numbered mortgage account which has been passed to me for attention.

We have now amended your mortgage as follows :

**Product Type : Variable Rate – lo Rip Loan
Term remaining: 281 Months
Due date: 13/03/2009
New repayment: €1,189.66
*Balance outstanding €337,418.01
**Loan type: Interest Only
Interest rate 4.15%”

A further letter from the Provider to the Complainant dated **26 February 2009**, details;

“ ...

I am writing to you with regard to the above numbered mortgage account.

We have now amended your mortgage as follows :

**Product Type : Variable Rate – lo Rip Loan
Term remaining: 281 Months
Due date: 13/03/2009
New repayment: €1,189.66
*Balance outstanding €337,455.94
**Loan type: Interest Only
Interest rate 4.15%”

I note that Complainant emailed the Provider dated **05 July 2010** as follows:

“ ...

I want to transfer from RIP variable of 4.95% to the two year fixed rate of 5.35% on AC No [ending 2267]

/Cont'd...

How do I arrange this?"

The Provider sent an email to the Complainant on **05 July 2010** detailing:

"I have ordered a fixed rate options letter today.

You must tick and sign this back into us along with €100 fee to amend same"

The Provider sent a letter dated **05 July 2010** to the Complainant, detailing:

"...

You recently contacted us about the mortgage account shown above.

I am attaching a list of our current rate options. Please note that the fixed rates are valid for 7 days. Please tick the rate you would like and return it, signed to [Provider address].

...

We recommend that you consider your options carefully before choosing a rate. If you are currently on a tracker rate mortgage with a price promise that our current margin commitment to you may expire, if you convert to a fixed rate. At the end of the fixed rate period we will send you a list of the product options available to you which may or may not include a tracker option. Our rates at that time could be higher or lower than our current rates depending on market factors and as a consequence you may incur higher interest over the term of the loan.

Please note that if you apply to switch to a different mortgage repayment type for a limited period and the Bank has agreed to such a change, e.g. from a fixed rate to a variable rate or vice versa, your interest rate may not revert to that applicable prior to the change and that any commitment on your part to a future interest rate or percentage margin which may have been specified in the Special Conditions of your Mortgage may no longer apply.

We strongly suggest you consult your financial or legal advisor before making a decision in this matter."

/Cont'd...

A copy of the **rate options form** that was signed by the Complainant on **10 July 2010** has been provided in evidence and details as follows:

“Current options available:

Please tick the option you want below. You may only pick one option and everyone signed up to the mortgage must sign.

...

		<i>Monthly</i>	
		<i>Repayment</i>	<i>...</i>
<i>LTV variable Rate **</i>	<i>Currently 4.95</i>	<i>1,393.32</i>	<i>...</i>
<i>2 Year Fixed Rate</i>	<i>Currently 5.35</i>	<i>1,500.01</i>	<i>...</i>
<i>...”</i>			

The Complainant signed the rate options form on **10 July 2010** and selected the two-year fixed rate of 5.35%.

The Provider wrote to the Complainant by letter dated **22 June 2012** as follows:

“ ...

I am writing to you to remind you that the current rate option on your mortgage account will end on 13 Jul 2012.

Please find attached the current options available to you.

We recommend that you consider your options carefully before making your selection. If you choose a fixed rate, then at the end of the fixed rate period we will send you a list of the product options available to you. Our rates at that time could be higher or lower than our current rates depending on market factors and as a consequence you may incur higher interest over the term of the loan.

*If we do not receive a written instruction from you in relation to the above on or before the 13 Jul 2012, the interest rate on your mortgage will be the LTV Variable Rate **.*

We strongly suggest you consult your financial or legal advisor before making a decision regarding mortgage options.

...”

/Cont'd...

The letter enclosed a **rate options form** detailing the following:

Current Rate and repayment 5.35 % €1,562.77

Please tick the option you want below. You may only pick one option and everyone signed up to the mortgage must sign below.

Account Number [REDACTED] 267

Option		Monthly Repayment ~ (EUR)	Office Use	✓
LTV Variable Rate **	CURRENTLY 5.99%	1,676.44	D-EDRVOB	
2 Year Fixed Rate	CURRENTLY 7.35%	2,049.09	O-EDR2IR	
5 Year Fixed Rate	CURRENTLY 8.85%	2,460.10	O-EDRIR5	

It does not appear from the evidence before me that the Complainant completed or returned the rate options form.

I note that the Provider issued a letter to the Complainant dated **13 July 2012**, detailing:

“ ...

I wish to advise you that in accordance with the terms of your loan, the rate of interest has been amended to a LTV Variable Rate currently 5.990 %.”

As outlined above the Complainant did not have a contractual or other entitlement to a tracker interest rate on the mortgage loan account and accordingly there was no contractual or other obligation on the Provider to offer the Complainant a tracker interest rate on the mortgage loan account at the end of the fixed interest rate periods in **July 2010** or in **July 2012**.

The Provider has submitted that the Complainant submitted a completed **Standard Financial Statement** dated **16 April 2014**. It is disappointing that the Provider did not submit a copy of the **Standard Financial Statement** in evidence.

The Provider's internal note dated **26 May 2014** details:

"I have reviewed [Complainant's] accounts and am recommending a 6 month partial moratorium @ 779pm on his home loan account [ending] 6334 for the following reasons: [Complainant] is requesting a reduced repayment on his I/O BTL facility, [ending] 2267, @ 1000pm which is a reduction of 640pm from the normal repayment however I would not be willing to sanction this reduction as it is already on I/O and is on an interest rate of 5.64% so any reduction here would send the account into arrears and would ultimately cost the borrower a lot more in the long run due to the interest rate on the account.

...

As already outlined, I am not willing to sanction the treatment on the I/O facility and due to the fact that the other rental loan is held jointly with his ex-partner, I am also not looking at offer[ing] the restructure on that facility. The reduction in his home loan is most suitable for the borrower also due to the lower rate @ 3% and full repayments should resume across all 4 accounts in 6 months' time..."

I note that the Provider wrote to the Complainant by letter dated **10 June 2014** enclosing a **Moratorium Restructure Agreement** in respect of his mortgage loan account ending **6334**, which is not the subject of this complaint. The letter details:

"...

Mortgage Account Number: [ending] 6334

...

Current Interest Rate: 3.00%

...

Moratorium Offer

Based on our assessment of the information that you provided to us in your Standard Financial Statement, we are pleased to confirm that a Moratorium has been identified as the most appropriate restructure 'Offer' for your account.

In considering the information you provided on your Standard Financial Statement, our assessment indicates that a short term restructure is the most appropriate for your current circumstances.

/Cont'd...

Under this arrangement your monthly repayments will be better aligned with what you can afford to repay each month. We believe this Offer will help you to get back on track with your mortgage repayments and. Most importantly, help you to remain in the home.

...

How your Moratorium will work

If you accept this offer, the changes to your mortgage account will be as follows:

<i>Temporary Repayment Amount:</i>	<i>€779.00</i>
<i>Moratorium Term (length):</i>	<i>6 months</i>
<i>*Repayment Amount after the Moratorium Term will be approximately: €1,189.23</i>	

**The figure includes insurance & TRS where applicable.*

...

If you do not accept this Offer: *You will be asked to pay all your outstanding arrears and return to your original contractual monthly repayments. If you are not in a position to do this the only other options available to you will involve selling your property. In all cases where your property is sold, and where the sale proceeds are not enough to repay the loan and all costs, ALL parties to the mortgage will be liable for the shortfall.*

The Complainant wrote to the Provider on **13 June 2014** as follows;

“RE: RIP Mortgage No [ending] 2267

...

I have been struggling to meet the repayments on this RIP mortgage over the last considerable period due to a shortfall between the rental income of €950 per month ... and the mortgage repayment of €1636.96 per month. However having exhausted my savings I can no longer afford to meet the full mortgage repayment and so I contacted the Bank at the end of April, before the account went into arrears, completed a SFS and submitted an application to restructure this RIP mortgage.

/Cont'd...

*I did not request a restructure on the mortgage on my family home ([ending] 6334)
... The mortgage repayment on my family home is not and has never been in
arrears. I did not request nor do I require a restructure on the mortgage account in
respect of my family home and I reject any implication to the contrary.*

...

*What is the Banks response to my request for a restructure on my RIP mortgage no
[ending] 2267?*

..."

The Provider wrote to the Complainant on **25 June 2014** stating that it *"would be happy to arrange a face to face meeting to discuss your current mortgage difficulties"*.

The Provider's internal email dated **26 June 2014** details:

"...

From an underwriting point of view:

- *Current repayments due across all facilities €4,349.76pm*
- *Rental income is €1,3821.30pm along with [Complainant's] ex-partner's contribution of €300pm so total €2,121.30pm*
- *[Complainant's] earned income amounts to €3,911.67pm ...*
- *[Complainant's] expenditure is €1,487pm ...*
- *This leaves [Complainant] with €2,424pm residual income to service repayments to the mortgages, when combined with the rental income it gives a total of €4,545.30pm which shows affordability to service full repayments across all accounts*
- *...*
- *[Complainant] requested a reduced repayment of €1,000pm on one of his BTL facilities which was billing €1,650pm at I/O of 5.8%*
- *[Complainant] was offered this reduction of €650pm to allow him time off to pay off the holiday fund and full payments to resume but on his HL facility at a rate of 3.00% to minimise the cost to [Complainant] and to ensure the BTL facility did not go into arrears*
- *..."*

/Cont'd...

The Provider wrote to the Complainant on **01 July 2014**, detailing the following:

“ ...

Re: Mortgage Account: [ending] 6334

...

We refer to our recent communications outlining what we believe is the most appropriate sustainable solution to your mortgage difficulties, given your current financial circumstances. We are writing to remind you that 10 days remain of your original 30 day period to accept your Restructure Agreement. Please disregard this letter if our correspondence has crossed in the post and (i) you have already returned your signed Restructure Agreement, (ii) if you have appealed our decision or (iii) you have spoken to us about alternative arrangements.

If you have not already returned your signed Restructure Agreement we urge you to return it as soon as possible.

...”

The Provider’s internal email dated **02 July 2014** titled “[Complainant] Summary” details:

“ ...

I have met with [the Complainant].

I explained the rationale behind the decision and that we are not prepared to offer a split loan on the BTL at this time. This is based on potential increased repayment capacity with particular reference to the holiday fund loan.

In our discussion it was put forward by [the Complainant] that he needs to discuss with the tenant a further increase in rent and potentially a new lease. He explained that he can’t currently afford the I/O payment and that this may not change.

However in light of our discussions around the tenant, the potential increase in rent and the holiday fund payment I am agreeable to a 6 month temporary arrangement for €1,000 per month for 6 months on the BTL.

This will then be reviewed further at that time with a view to return to full I/O payments if affordable.

/Cont’d...

Note all other expenditure within range.”

The Provider wrote to the Complainant by letter dated **2 July 2014** enclosing a **Restructure Agreement: Moratorium in** relation to the mortgage account ending **2267**, as follows;

“Mortgage Account Number: [ending] 2267

...

Current Interest Rate: 5.80%

...

Buy to Let ('BTL') Moratorium Offer

Based on our assessment of the information that you provided to us, we are pleased to confirm that a Moratorium has been identified as the most appropriate restructure 'Offer' for your account.

...

How your Moratorium will work

If you accept this offer, the changes to your mortgage account will be as follows:

<i>Temporary Repayment Amount €1,000.00</i>
<i>Moratorium Term (length): 6 months</i>
<i>*Repayment Amount after the Moratorium Term will be approximately: €1,1646.13</i>

**The figure includes insurance & TRS where applicable.*

...

If you do not accept this Offer: *You will be asked to pay all your outstanding arrears and return to your original contractual monthly repayments. If you are not in a position to do this the only other options available to you will involve selling your property. In all cases where your property is sold, and where the sale proceeds are not enough to repay the loan and all costs, ALL parties to the mortgage will be liable for the shortfall.*

/Cont'd...

The enclosed **Restructure Agreement: Moratorium** outlined:

Restructure Agreement: Moratorium			
This form must be signed, dated and returned before the Moratorium can be applied.			
Collections Department	Account number	990 [REDACTED]	€1580.11
Last Instalment (includes insurance where applicable)	€1,627.27	Insurance Amount	€0.00
Current Capital Balance ⁵ (excludes arrears)	€336,676.78	Current Arrears Balance ²	€3,217.07
Current Term Remaining	216 months	Current Interest rate	5.80%
Today's interest rate is used in all calculations below. (The numbers over certain entries refer to the corresponding Notes below).			
During the Moratorium, we will bill your Mortgage Account for a fixed amount.			
That means that each month we will bill your Mortgage Account:	€1,000.00		
The Moratorium will be applied to your account for a period of:	6 months		
After the Moratorium your new instalment will be approximately: (includes insurance & TRS if applicable)	€1,646.13		
Without Restructure Agreement ³		With Restructure Agreement ⁴	
Full Payments ¹	216 X €1,627.27 = €351,490.32	Amended Payments ¹	6 X €1,000.00 = €6,000.00
Arrears ²	€3,217.07	Full Payments ¹	210 X €1,646.13 = €345,687.30
Capital to be repaid	€338,304.05	Arrears ²	€3,217.07
Total Repayable¹	€693,011.44	Capital to be repaid	€342,226.70
Overall Mortgage Balance Owed ⁵	(€339,893.85)	Total Repayable¹	€697,131.07
Cost of Credit	€353,117.59	Overall Mortgage Balance Owed ⁵	(€339,893.85)
		Cost of Credit	€357,237.22
		Change in Cost of Credit⁶	€4,119.63
Notes:			

The Provider sent a further letter to the Complainant dated **14 July 2014**, stating:

"Mortgage Account Number: [ending] 6334

...

Urgent: We have not received your signed Restructure Agreement

...

We refer to our recent communications and note that we have not received your signed alternative repayment arrangement documents. If you are considering this Offer or have posted the documentation, please call us immediately on [phone number].

The deadline for the submission for your signed Alternative Repayment Arrangement is now overdue and if you don't contact us, we will take the view that you have decided not to enter into an Alternative Repayment Arrangement.

/Cont'd...

We are obliged to advise you of the following:-

As you have not accepted this Offer within the agreed timeline, you are now considered outside the Mortgage Arrears Resolution Process (MARP). Your account will no longer benefit from the protection of MARP and you are required to pay any outstanding arrears and return to your original contractual monthly repayments. MARP is the name given to the CCMA (Code of Protection on Mortgage Arrears) to the process on how banks deal with customers in or at risk of mortgage arrears. Should your circumstances improve at any time in the future you must inform us with delay. A copy of your most recent Standard Financial Statement is available on request.

Legal proceedings may commence three months from the date of this letter or eight months from the date the arrears arose on your account, whichever date is the later. We want to avoid legal action, please talk to us now about the other options available to you.

Other options:

1. Trading Down

The option to trade down means selling the above property, repaying your mortgage including outstanding arrears (if any) to [Provider] in full and then purchasing another property at a lower price. This may enable you to reduce your mortgage, resulting in more affordable monthly repayments. You should note that we will make every effort to assist you with finance to purchase a new property within your existing affordability. You should also bear in mind that you will incur other costs relating to the sale of your home and the purchase of a new property such as solicitor fees, auctioneer fees, advertising and stamp duty.

2. Voluntary Sale

You may consider that the best option for you is to sell your property. Selling your property will enable you to use the proceeds from the sale to clear your outstanding arrears (if any) and repay, or significantly reduce your mortgage balance.

3. Voluntary surrender

If you decide to surrender the property, you should contact us on the number below for information on the voluntary sale process.

/Cont'd...

If you do surrender the property, the Bank will take it into possession and then place the property on the open market for sale. The Bank's agent will endeavour to obtain the best possible sale price for the property on the open market for sale. We will use the proceeds of the sale to clear your mortgage arrears (if any) and to repay or reduce your outstanding mortgage balance.

4. Mortgage to Rent

*The Mortgage To Rent option is a State assisted scheme where you agree to sell your property to an Approved Housing Body allows you to remain in your property, as a tenant paying rent to the Approved Housing Body. **Full suitability for this option is subject to set criteria under the scheme.***

...

*It is important that you **seek independent advice** in relation to the options **above***

Your rights

You have the right to appeal the bank's decision on the alternative repayment arrangement offered and if you wish to do so you must make the appeal in writing setting out the grounds for the appeal and this to [address] no later than 22 business days from the date of this letter."

The Complainant wrote to the Provider on **17 July 2014** as follows:

"...

I am extremely annoyed at the content of your letter.

In the first instance this account is not and has never been in arrears. Accordingly your threat of potential legal proceedings is inappropriate and offensive.

Secondly having advised the bank in April that I was having difficulties meeting the repayment on one of my BTL mortgage accounts ([ending] 2267), I subsequently wrote to [Provider employee] on 13th June 2014, met him on 2nd July 2014 and agreed a moratorium in respect of the BTL mortgage.

..."

/Cont'd...

The Provider's internal note of **22 July 2014** details:

"Confirming that the bank originally made an offer to the borrower in May of a STT. The borrower then subsequently held a meeting with [Provider employee] and an alternative offer was made to the borrower on 02/07/2014 for a STT on a different account. Normal procedure was followed in issuing a decline to the customer as the original offer that was issued to him was not accepted. There is an obligation on the bank to issue out the decline letter to the customer ... and to inform them of the consequences of not accepting the offer. It is to ensure that if the account was to go down the legal route in the future, the bank has followed all relevant procedures and supplied the customers with all of the documentation as required under CCMA"

Provision 47 of the **Code of Conduct on Mortgage Arrears** details as follows;

"If a borrower is not willing to enter into an alternative repayment arrangement offered by the lender, the lender must inform the borrower on paper or another durable medium of the following:

- a) *Other options available to the borrower, such as voluntary surrender, trading down, mortgage to rent or voluntary sale, and the implications of these for the borrower and the borrower's mortgage loan account, including;*
 - (i) *An estimate of the associated costs or charges where known and, where these are not known, a list of the associated costs or charges;*
 - (ii) *The requirement to repay outstanding arrears,*
 - (iii) *The anticipated impact on the borrower's credit rating, and*
 - (iv) *The importance of seeking independent advice in relation to these options;*
- b) *The borrower's right to appeal the lender's decision on the alternative repayment arrangement to the Appeals Board;*
- c) *That the borrower is now outside the MARP and that the protections of the MARP no longer apply;*

/Cont'd...

- d) *That legal proceedings may commence three months from the date the letter is issued or eight months from the date the arrears arose, whichever date is later, and that, irrespective of how the property is repossessed and disposed of, the borrower remains liable for the outstanding debt, including any accrued interest, charges, legal, selling and other related costs, if this is the case;*
- e) *That the borrower should notify the lender if his/her circumstances improve;*
- f) *The importance of seeking independent legal and/or financial advice;*
- g) *The borrower's right to consult with a Personal Insolvency Practitioner;*
- h) *The address of any website operated by the Insolvency Service of Ireland which provides information to borrowers on the processes under the Personal Insolvency Act 2012; and*
- i) *That a copy of the most recent standard financial statement completed by the borrower is available on request."*

Having considered the evidence, I accept that the Provider issued correspondence to the Complainant in accordance with its obligations under the **CCMA** in circumstances where the Complainant did not wish to accept the alternative repayment arrangement offered in respect of his mortgage loan account ending **6634**.

It does not appear from the evidence that the Complainant signed or accepted the restructure agreement in respect of his mortgage loan account ending **6334**.

The Complainant has submitted that the Provider proposed "*that I agree to put my residential mortgage in arrears in order to maintain Interest payments on this BTL mortgage*". The Complainant was seeking to agree an alternative arrangement with the Provider on mortgage account ending **2667** which was not secured on his principal private residence. The Provider instead made an offer to the Complainant to make reduced payments for six months on the mortgage account ending **6334** which was secured on his primary residence. While I accept that the Complainant was in a difficult position, it was nonetheless a matter for the Complainant to decide whether or not to accept that arrangement on offer by the Provider.

If the Complainant was not happy with the terms of the restructure agreement offered in respect of the account ending **6334**, the Complainant could have, and did decide not to accept the offer made by the Provider. It is important for the Complainant to understand that he was seeking to vary the terms of his mortgage loans with the Provider by seeking forbearance on the loans in **2014**.

It was within the Provider's discretion to decide whether or not to accede to that request and in doing so, whether the Provider wished to introduce any different terms to the agreements. There was no obligation on the Provider to offer the Complainant forbearance on the mortgage loans at the time.

I note that the Provider subsequently offered the Complainant a **Restructure Agreement: Moratorium** in respect of his mortgage loan account ending **2267** which was signed by the Complainant on **24 July 2014**.

The Provider wrote to the Complainant by letter dated **30 July 2014** in relation to account ending **2267** detailing:

"...

As per your recent request, I can confirm that we have amended your monthly repayments for the agreed period of 6 month(s) commencing from 28/08/2014. As a result, your amended monthly repayment will be €1,000.000. This repayment amount does not include any additional arrangement that may be in place if your account is in arrears.

As you have entered into this alternative payment arrangement you may pay more interest over the term of your mortgage. It is therefore important that you contact [the Provider] immediately should your circumstances change."

The 6-month repayment moratorium on mortgage loan account ending **2267** was applied from **28 August 2014**.

I note that the Provider wrote to the Complainant by letter dated **02 January 2015**, detailing the following:

"Mortgage Account Number: [ending] 2267

...

/Cont'd...

I refer to the above numbered mortgage account and your current restructure agreement. Please note that this temporary arrangement is due to expire on 28/01/2015 and after this date:

- *If your mortgage account is on a short term restructure agreement your account will automatically switch back to full repayments.*
- *If your mortgage account is on a trial period for a long term restructure agreement, your documents will be issued of the trial period terms have been maintained. Where the trial period terms are not maintained your mortgage account will revert back to full repayments.*

If you require further assistance with making your monthly payments, please contact our dedicated team in the Arrears Support Unit on [redacted] who will be pleased to talk you through the process.”

The Complainant wrote to the Provider on **3 March 2015** as follows;

“...the Bank agreed a reduced repayment of €1000 per month with a review after six months i.e. in January 2015.

*As my financial situation had dis-improved during the six month period I submitted an updated SFS in November 2014 and requested the account be reviewed to see if a long term solution could be proposed by the Bank.
...”*

The Provider’s internal note of **27 April 2015** details:

“We have received an SFS in our work queue for the above customer. Unfortunately we are unable to complete our assessment as the customer has over 5000 in savings a long term treatment wont be offered if savings are over 5000.”

The Provider’s internal note of **14 May 2015** details:

“Branch received confirmation from MRT that the restructure request was declined. Customer contacted the branch on the 13/05/2015 requesting update. I contacted [Provider employee] in ASU on the 14/05/2014 & he advised me that the customer had not been written to re the decline. He will follow up same to ensure that the customer has been advised.”

/Cont’d...

The Complainant wrote to the Provider on **19 May 2015** stating:

“ ...

I was made redundant by [the Provider] in [late] 2014 and regrettably am still unemployed.

I submitted an updated SFS on 4th December 2014, in advance of the short term treatment expiring in January 2015, requesting a long term solution. I received no response to this request.

I completed a further SFS and submitted it on 18th March 2015 requesting that the facility be restructured, part capital & interest with the repayment equal to the monthly rent received with the balance frozen until such time as property prices recovered and the property could be sold.

...

I am requesting

- 1. An explanation as to why ASU did not respond to my requests dated 4th December 2014 and 18th March 2015*
- 2. A response to my request for a long term solution in respect of this BTL mortgage facility”*

The Provider’s internal note dated **8 June 2015** details:

“[Complainant] called ...I advised that we have received his letter dated the 19th and attempted to call him in regards same however his phone number listed was invalid ... I advised that ... the sfs was declined back to the branch due to funds in his c/a over 5k. Advised as per part of our internal procedure we don’t asses[s] a/c’s with this level of funds as funds should be used to pay towards the mortgage repayments...”

I note that the Complainant submitted further correspondence to the Provider on **7 August 2015, 16 February 2016** and **2 March 2016** outlining that he was not satisfied with the Provider’s delay in responding to his complaints.

/Cont’d...

I note that the Provider wrote to the Complainant on **2 June 2016** as follows;

“Mortgage Account Number: [ending] 2267

...

Current Interest Rate: 5.80%

...

Following our recent assessment of your case I can confirm that [the Provider] have approved you for a Split Mortgage. This offer is based on the information that you provided to us in the Financial Assessment that you recently engaged with.

With a Split Mortgage, essentially your mortgage is split into two accounts: a Main Mortgage Account, and a Warehouse Account.

If you accept this offer:

- *You will be placed on a temporary repayment arrangement for 1 months at your prevailing mortgage interest rate. The bank will set your monthly repayments to €1,200.00.*

...

- *Assuming all payments are met in full and on time throughout the temporary repayment arrangement your arrears (if any) will be added to your outstanding loan balance and your mortgage term may be extended ... Your mortgage balance will then be split into two accounts – a Main Mortgage Account of approximately €201,862.81 and a Warehouse Account of approximately €145,830.24.*

- *Payments of partial capital & interest will be required on your Main Mortgage Account at a rate of 5.80%.*

- *Payments of interest only will be required on the Warehouse Account at a rate of 1.50%.*

...”

It appears that the Complainant signed and accepted a Split Mortgage agreement on **13 June 2016**.

/Cont’d...

I have been furnished with no evidence that the Provider acted in a matter that was unreasonable, unjust, oppressive or improperly discriminatory in accepting the Complainant's application for credit. The Provider was entitled to approve the application for credit in circumstances where it was of the view that the security being offered by the Complainant was adequate. This is a matter of commercial discretion.

Having considered the mortgage loan documentation, it is my view that that the Complainant did not have a contractual or other entitlement to a tracker interest rate at the end of any fixed rate period, including the end of the fixed rate period which ended in **July 2008**.

The fact that the Provider had offered the Complainant a tracker interest rate on the mortgage loan in **July 2008**, which he ultimately opted not to accept, did not oblige the Provider to offer a tracker interest rate at a later point in time. By **July 2010**, the Provider was no longer offering tracker interest rates at the end of fixed interest rate periods, and the Complainant did not have a contractual entitlement to be offered a tracker interest rate.

I am of the view that in its engagements with the Complainant, the Provider complied with its obligations under the **CPC 2012** and the **CCMA** and sought to agree an approach with the Complainant to assist him and prevent further arrears from accruing on the Complainant's mortgage loan accounts. I accept that the Provider could have been clearer in its communication of the declination of the Complainant's application for further forbearance in **2015**. In this regard I note that the Provider has acknowledged that the Complainant did not receive a timely response to the submission of his **Standard Financial Statements** in **December 2014** and **March 2015**.

In its response to this office dated **30 July 2019** the Provider offered the Complainant a goodwill gesture of €500.00 in acknowledgement of its shortcomings. I understand that this offer remains open to the Complainant to accept.

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

Conclusion

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

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



GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

10 August 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.