



<b><u>Decision Ref:</u></b>	2021-0282
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Tracker Mortgage
<b><u>Conduct(s) complained of:</u></b>	Failure to offer a tracker rate throughout the life of the mortgage Delayed or inadequate communication Dissatisfaction with customer service
<b><u>Outcome:</u></b>	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 private dwelling home.

The loan amount was €305,000 and the term of the loan is 35 years. The **Letter of Approval** dated **21 August 2006** detailed that the loan type was "3 Year Fixed Rate Home Loan".

**The Complainant's Case**

The Complainant states that during the application period for his mortgage loan in **2006** the Provider "did not furnish me with full information or options in relation to all mortgage products or interest rates available at the time that I took out my mortgage". He further submits that he "was not aware of the tracker mortgage product" and that "nobody explained to me what type of product this was".

The Complainant states that he availed of the services of a mortgage broker "which is no longer in existence". He submits that "I raised my inquiries with [the broker] ... which demonstrates my attempts to obtain the relevant information."

The Complainant submits that the Broker informed him that when *“you get a discount variable you can switch to a tracker variable or any of the fixed rates”*.

The Complainant submits the correspondence he received from the Provider in **2006** *“does not evidence anywhere that [the Provider] clearly outlined all the mortgage products or rates available”*. He contends that on that basis the Provider *“did not observe the relevant regulatory/transparency requirements as they existed at that time”*.

The Complainant submits he was *“initially offered a 1 year fixed rate loan which I then changed to a three year fixed rate option until 2009”*. The initial interest rate applicable to the Complainant’s mortgage loan was a three-year fixed interest rate of 4.69%.

The Complainant submits that the initial three-year fixed rate term expired in **September 2009** and the Provider sent him a letter on **4 September 2009** outlining the available interest rate options. He states that the interest rate options outlined in the letter were so *“exorbitant”* that he did not select any of the options provided in this letter, which resulted in his mortgage loan account defaulting to a *“penal”* tracker mortgage rate of ECB + 3.25% at the end of the fixed interest rate period. He states that *“this additional margin was never explained to me, nor has this margin substantially changed during the lifetime of my mortgage”*. The Complainant states he is *“still paying way and above the rate on the other mortgages linked to the ECB”* and that consequently he is paying *“a much higher rate than the average tracker mortgage rate”*.

The Complainant submits by **2013** he had fallen into arrears on his mortgage payments due to *“substantial reductions in my salary due to the public sector pay cuts and a significant reduction in amount of mortgage interest relief”* he was receiving.

The Complainant submits on **13 March 2013** he hand-delivered a completed **Standard Financial Statement (SFS)** to a branch of the Provider. He submits that he received no response, and in subsequent telephone calls to the Provider, he was informed that the Provider’s Arrears Support Unit did not receive the document and that he had to re-submit the SFS. The Complainant states that he re-submitted the SFS to the Provider’s branch and met with the branch manager *“who was very apathetic in his dealings with me”*. The Complainant submits that this was *“a constant experience for me in my dealings with the Provider] and in general there was a lack of communication between the different departments there and an un-coordinated approach”*.

The Complainant submits that he wrote a letter to the Provider dated **1 July 2013** *“highlighting my inability to make the level of repayments being demanded”*. He states that his *“appeal was filed in July and the appeals unit upheld the decision to refuse my request for restructuring.”*

He details that the Provider then offered him a *“part capital part interest arrangement”* on **10 September 2013**. He details that he *“filed a letter of appeal”* on **24 September 2013**.

The Complainant submits that in his appeal he raised concerns relating to the *“large balloon payment totalling €149,770.57 that would be payable at the end of the mortgage terms, at which point I would be aged 67”*. He states that the Provider’s response to this was that *“this was calculated based on current interest rates and repayments”*. The Complainant submits he did not accept the part capital part interest rate arrangement and instead *“endeavoured to clear my arrears”*.

The Complainant submits that the Provider sent him a letter dated **5 February 2014** *“looking for lodgement of an alternative signed re-structuring agreement stating that the deadline for the submission of same was overdue and that if I did not communicate with them any further on this option that they would conclude that I had decided not to enter into the alternative repayment arrangement”*. He further submits that the letter stated that *“I was now outside the Mortgage Arrears Resolutions Process (MARP) and that I was required to pay the outstanding arrears”*.

The Complainant submits that he replied to this letter dated **13 February 2014** referencing his previous attempts *“to engage with the bank on this issue and the lack of explanation as to why my request for a restructured mortgage was turned down”*. He states that he asked the Provider to investigate *“the initial requests made by me and my subsequent complaints made, including the miscalculation of my superannuation contributions as part of my disposable income; my complaint in relation to the bank’s flat refusal to my request, and my appeals made. There was no detailed response to my appeal, instead there was a constant lack of engagement from the bank”*.

The Complainant submits that he received letters from the Provider dated **20 February 2014** and **13 March 2014** stated that it was investigating these issues and would be in touch. He states that *“in the meantime, the interest rate heretofore mentioned was still being applied to my mortgage payments”*.

The Complainant submits the Provider wrote a letter to him dated **8 April 2014** stating that he was offered the part capital and part interest arrangement in **September 2013** as the Provider *“felt no material changes to circumstances had occurred that no other offers were considered or made”*.

The Complainant further submits he received *“an aggressive phone call while at work”* on **20 August 2014**. He details that on this call he explained his financial circumstances and what he was able to repay and was told by the Provider representative that *“this wasn’t good enough”*.

The Complainant states that as of **July 2015** he had cleared his arrears but his mortgage loan account remains on the tracker interest rate of ECB + 3.25%.

The Complainant submits that *“this ordeal”* has had an effect on his health. He details that *“The stress of the mortgage arrears and my dealings with [the Provider] resulted in me seeking assistance from my doctor. My doctor subsequently referred me to a [hospital] in November 2013. I was diagnosed as [a condition] which is aggravated by situations of stress and anxiety.”*

The Complainant wants a *“more manageable”* interest rate to be applied to his mortgage loan account.

### **The Provider’s Case**

The Provider submits that tracker interest rates were on offer to new and existing customers when the Complainant’s broker submitted the Complainant’s mortgage loan application in **June 2006**. It details that *“as the loan application was made by an independent intermediary, the Bank did not engage with the Complainant in respect of his chosen rate type of his loan”*. It submits that *“in such circumstances, the issue of financial advice and completion of the mortgage application are handled independently by the broker who also assists the applicants with all the available loan options to best suit their financial needs”*.

The Provider submits the Complainant, through his Broker, *“applied for a home loan and had particularly asked to be placed on the Bank’s 3 Year Fixed Rate after the Bank had issued a loan offer to him containing a 1 Year Fixed Rate”*. It states that, having assessed the Complainant’s application, the Provider determined that the *“3 Year Fixed rate home loan for which he applied was within the Bank’s affordability criteria”*.

The Provider outlines that the Complainant's Letter of Approval dated **21 August 2006** provided for a loan amount of €305,000 over a term of 35 years, with a 3-year fixed interest rate of 4.69%. It refers to **Special Condition A** and **General Mortgage Loan Approval Condition 5** as the relevant provisions which outline the interest rate option applicable on expiry of the fixed rate period in **2009**.

The Provider details that *"the fixed rate period of the Complainant's mortgage loan account commenced on 26 September 2006 and was due to expire on 26 September 2009"*.

The Provider submits that on **4 September 2009**, approximately 20 days prior to the fixed rate maturity date, it issued an options letter and form to the Complainant. It submits that *"While there was no contractual entitlement to a tracker, in line with Bank practice at the time a tracker of 4.25% was included in the interest rate offered."* The Provider submits in the options letter also stated that *"in the absence of an instruction the account would default to the tracker rate. As the Complainant had not provided instruction to the Bank the mortgage defaulted to the tracker rate of 4.25% (ECB +3.25%)."*

The Provider submits that it introduced a policy in **mid-2006** of including *"a tracker rate option in its maturity options letters sent to its existing customers prior to expiry of a period of a fixed rate of interest although the loan contract did not specify an entitlement to be offered a tracker rate at maturity"*. It states that this initiative was taken against the backdrop of the competitive mortgage market at the time. It details that from **late 2006**, the options letters also 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 interest rate. The Provider states that it was not, and is not, contractually obliged to offer the Complainant a tracker rate at the expiry of a fixed rate period.

The Provider submits that it increased the tracker interest rate to ECB + 3.25% in **late August 2009**. The Provider submits that when calculating the margin to be applied and offered to the Complainant upon the expiry of the fixed rate period, that *"The bank was entitled to exercise its discretion, and make a commercial decision based on a number of factors"* such as the bank's cost of funds, the cost of credit risk associated with lending, and the bank's competitive position. It states that *"as is well known, there was a significant level of turmoil in the Irish and international financial markets over the course of 2008 and 2009, giving rise to serious funding difficulties for all banks. As a result the cost of both wholesale funding and deposit funding increased significantly which increased the bank's cost of funds. This was further exacerbated by deteriorating economic conditions and in particular, the rapid rise of unemployment rates in Ireland led to rising levels of loan arrears and, in turn, increased impairment provisioning which increased the cost of risk."*

The Provider submits that it does not accept the Complainant's assessment of the alternative repayment arrangement it proposed to the Complainant in **May 2013**. It states the Complainant submitted a Standard Financial Statement to the Provider when he applied for assessment to get assistance with his mortgage repayments as there was a concern with his ability to meet his financial commitment for the mortgage account.

It states that the Complainant *"was requesting the Bank to review the account with a view to an alternative long term treatment"* as *"he was under pressure and it would not be long before he would start to struggle with the repayments"*.

The Provider submits that having assessed the information provided in the Complainant's Standard Financial Statement dated **22 May 2013** in order to determine the Complainant's then repayment capacity, the Provider *"issued correspondence to the Complainant to advise that the Bank's sustainability and affordability tests determined that it was unable to give an alternative repayment arrangement to the Complainant as the assessment outcome indicated that there was sufficient income and affordability for the scheduled mortgage repayment already in place."*

The Provider details that on **1 July 2013** the Complainant appealed this outcome, and his appeal was reviewed by the Appeals Board on **27 July 2013** and no new alternative repayment schedule for the Complainant was found as the examination showed there was evidence of capacity to repay the mortgage. It states that it informed the Complainant of this outcome on **6 August 2013**.

The Provider details that in circumstances where a mortgage account holder is unable to meet full capital and interest payments but can demonstrate the ability to pay more than interest only, the account can be converted to the option of Part Capital and Interest arrangement. It states that under the terms of this arrangement a bullet payment is required at the end of the arrangement to discharge the outstanding capital balance. It states that *"This was a long term treatment plan suited for the Complainant who was finding it difficult to meet the full capital and interest payments, but could also afford more than an interest only option, and according to his estimation he could afford the monthly sum of €1075.00 at that time."*

The Provider states that a re-assessment of the SFS was undertaken in **September 2013** and the Provider offered the Complainant a part capital and interest restructure agreement on **10 September 2013** which provided for a monthly repayment of €1,075.00 *"as requested by the Complainant"* but which would result in an unpaid capital amount due of €149,000 at the end of the mortgage term. The Provider states that the Complainant did not accept the treatment offered.

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The Provider states that *“In consideration of the time between the original SFS being submitted (May 2013) and the restructure agreement offered in September 2013, the Bank would like to offer the Complainant an ex-gratia payment of €250.00.”*

The Provider submits it is satisfied that it *“acted appropriately for the Complainant in arrears”* and *“was compliant with Consumer Protection Code and the Code of Conduct on Mortgage Arrears in its transaction and engagement with the Complainant and acted fairly and professionally in seeking to achieve the best possible outcome for him.”*

### **The Complaints for Adjudication**

The conduct complained of is as follows;

- (a) When the Complainant applied for the mortgage with the Provider in **2006**, he was not offered or informed about the availability of a tracker mortgage interest rate.
- (b) When the fixed rate period ended in **September 2009**, the Provider placed the Complainant’s mortgage loan account on a tracker mortgage interest rate with a high margin of ECB + 3.25%.
- (c) The Provider was unwilling to engage with the Complainant in relation to options to address the arrears on his mortgage loan account in **2013**, and the only alternative repayment arrangement offered would have resulted in an outstanding mortgage balance of €149,770.57 at the end of the mortgage term.

### **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.

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

A Preliminary Decision was issued to the parties on 28 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.

Before dealing with the substance of the complaint, I note that the application for the mortgage loan was submitted by the Complainant to the Provider through a third party broker. As this complaint is made against the respondent Provider only, it is the conduct of this Provider, and not the broker, which will be investigated and dealt with in this Decision. The Complainant was informed of the parameters of the investigation by this Office, by letter dated **16 April 2019**, which outlined as follows;

*“In the interests of clarity, the complaint that you are maintaining under this complaint reference number is against [the Provider] and this office will not be investigating any conduct of the named Broker in the course of investigating and adjudicating on this complaint.”*

Therefore, the conduct of the third party Broker engaged by the Complainant, does not form part of this investigation and decision for the reasons set out above.

It is also 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.

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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 determine the complaint, it is necessary to review and set out the relevant provisions of the Complainant's mortgage loan documentation. It is also necessary to consider the details of certain interactions between the Complainant and the Provider between **2006** and **2013**.

An **application for credit** was signed by Complainant on **23 June 2006** which detailed that the loan amount required was €305,000. There was no reference to interest rate options on the form.

I note from the evidence that the Complainant emailed his Broker on **28 June 2006** at 14:32pm, which details as follows:

*"Do you have any idea what the repayments are likely to be on EUR300,000 gross/net of mortgage interest relief."*

The Broker sent a reply dated **28 June 2006** at 15:36pm as follows:

*"300,000 over 35 years ... on a discount variable year for fist [sic] year @ 3.44% will be 1,230 per month  
300,000 over 35 years with [Provider] on a Tracker variable @ 3.85% will be 1,302 per month  
300,000 over 35 years with [Provider] on a 1 year fixed @ 3.95% will be 1,320 per month  
300,000 over 35 years with [Provider] on a 2 year fixed @ 4.39% will be 1,398 per month  
300,000 over 35 years with [Provider] on a 3 year fixed @ 4.69% will be 1,455 per month"*

The Complainant replied by email dated **29 June 2006** at 10:46am, as follows;

*"...*

*Would you have any explanatory literature explaining what each of these mortgage options mean.*

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*For example, the first option (with repayments of EUR1,230) what happens after the first year discount variable? What rate kicks in?"*

The Broker responded to this email, dated **29 June 2006** at 11:52, which details as follows:

“...  
When you get the dicount [sic] variable, you can switch to Tracker Variable or any of the fixed rates. The rates will be whatever they are at the time”

The Provider's **Approval in Principle** dated **4 July 2006** has been provided in evidence. I note that the section titled “Rate” was left blank.

The Provider has submitted into evidence a copy of a published marketing document entitled **Lending Interest Rates**, which is noted being “effective from the start of business on the 30<sup>th</sup> June 2006”.

This document outlines as follows;

<b>“Repayment Home Loans</b>	<b>RATE</b>	<b>APR</b>
...		
<b>Tracker Mortgage (Home Loan and Residential Investment Property)</b>		
Loan Amount of €0 - €99,999	4.10%	4.2%
Loan Amount of €100,000 - €249,999	4.00%	4.1%
Loan Amount of €250,000 - €749,999	3.85%	3.9%
Loan Amount of €750,000 or more	3.65%	3.7%”

I note that tracker interest rates were on offer generally by the Provider when the Complainant applied for the mortgage loans in **June 2006**. The **Lending Interest Rates** document was published by the Provider at the time and it clearly outlined the types of interest rates that were available for different types of mortgage loans, including tracker rates. In circumstances where the Complainant was engaging with a Broker with respect to the mortgage loan application, I accept that there was no requirement for the Provider to communicate directly to the Complainant at that time.

Furthermore, nothing in the evidence submitted indicates that if a mortgage application was submitted by the Complainant selecting a tracker interest rate loan as his preference whether it would have resulted in the Provider acceding to that request and issuing a Letter of Offer on that basis.

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There was no obligation on the Provider, contractual or otherwise to give the Complainant the option of a tracker interest rate on his mortgage loan when he made his application to the Provider. There is also nothing to suggest that any request was submitted by the Complainant seeking the application of a tracker interest rate to the mortgage loan.

The Provider issued a **Letter of Approval** dated **18 July 2006** to the Complainant which details as follows:

<i>Loan Type:</i>	<i>1 Year Fixed Rate Home Loan</i>
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*“Purchase Price/Estimated Value: EUR 345,000.00  
Loan Amount: EUR 305,000.00  
Interest Rate: 3.95%  
Term: 35 year(s)”*

It does not appear from the evidence before me that the Letter of Approval dated **18 July 2006** was signed or accepted by the Complainant.

An **Amendment Request Form** dated **21 August 2006** has been submitted in evidence which details as follows;

*“I/We wish to amend the following details of my [Provider] loan:  
To 3 yr Fixed Rate 4.69%”*

An amended **Letter of Approval** dated **21 August 2006** was subsequently issued to the Complainant, which details as follows;

<i>Loan Type:</i>	<i>3 Year Fixed Rate Home Loan</i>
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*“Purchase Price/Estimated Value: EUR 345,000.00  
Loan Amount: EUR 305,000.00  
Interest Rate: 4.69%  
Term: 35 year(s)”*

The **Special Conditions** to the **Letter of Approval** dated **21 August 2009** detail:

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

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**General Condition 5** of the **General Mortgage Loan Approval Conditions** attaching to the Letter of Approval detail as follows;

***“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 Provider] 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.”*

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 Complainant signed the **Acceptance of Loan Offer Letter** dated **15 September 2006** on the following terms;

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

- i. Letter of Approval*
- ii. the General Mortgage Loan Approval conditions*
- iii. the [Provider] Mortgage Conditions”*

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

The mortgage loan account was drawn down on **26 September 2006**.

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It is clear to me that the Letter of Approval envisaged a three-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.

It is important for the Complainant to understand that in order for him to have a contractual right to a tracker interest rate, or indeed to a specific tracker interest rate margin, on his mortgage loan at the end of the fixed interest rate period in **September 2009**, that right would need to be specifically outlined in the mortgage loan documentation. However, no such right was contained in the **Letter of Approval** dated **21 August 2006**. The Complainant accepted the Letter of Approval on **15 September 2006**, having confirmed that the terms and conditions of the Loan Offer had been explained to him by his solicitor.

Prior to the expiry of three-year fixed interest rate period, the Provider wrote to the Complainants by letter dated **4 September 2009** which details as follows:

*"I am writing to remind you that the current rate option on your mortgage account will end on **26 Sep 2009**.*

*Please find attached the current options available to you.*

*We recommend that you consider your options carefully before making your selection. If you chose 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. These options may or may not include a tracker option and if included, may have a higher percentage margin over the ECB rate than that applying to your loan prior to the fixed rate period. Therefore at the end of the fixed rate period, our rates, in respect of any product options, 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 **26 Sep 2009**, the interest rate will be the Tracker Variable Rate\*. We value your business highly at [the Provider] so if you have any questions regarding your options, please contacted our dedicated mortgage team on [number]. They will be happy to help you."*

The enclosed **rate options form** detailed as follows;

*"Current options available:*

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You may only select one option.

...

		Monthly Repayment EUR
--- Tracker Variable Rate*	- Currently: 4.2500%	1446.23
--- LTV Variable Rate**	- Currently: 3.6500%	1342.96
--- 2 Year Fixed Rate	- Currently: 5.2500%	1626.95
--- 5 Year Fixed Rate	- Currently: 5.7500%	1721.08
--- 7 Year Fixed Rate	- Currently: 6.1000%	1788.38
--- 10 Year Fixed Rate	- Currently: 6.1000%	1788.38

...

- 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 3.2500% over the European Central Bank Refinancing Rate (the "ECB Rate"). See over the page for more details on Tracker Mortgage Loans.

..."

The reverse of the rate options form contained the same text as **General Condition 5.3 of General Mortgage Loan Approval Conditions** (as extracted above) under the heading "**Fixed Rate Loans**". Under the heading "**Tracker Mortgage Loans**" the reverse of the rate options form contained the following;

"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 the 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.

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4. *If more than one Tracker Mortgage Loan exists on the property, these loans cannot be added together to get a different interest rate over the ECB rate.*

The Complainant has submitted that he had a telephone conversation with the Provider in or around the time of the expiry of the initial three-year fixed rate period in **August/September 2009**. The Provider has submitted that *“Due to the nature and age of the technology of the Bank’s call recording in use with the [Name] call centre in 2009, the Bank regrets that it is not possible to try to locate a call made during the period August/September 2009.”* This is disappointing.

In any event I note that the Complainant did not return the **rate options form** electing to apply an interest rate and consequently the mortgage loan account switched to the tracker interest rate of 4.25% (ECB + 3.25%).

The Provider has summarised its policy in relation to tracker rates at the time, as follows;

*“... on [mid] 2006, the Bank introduced a policy of 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. In the absence of a customer selection, the variable rate was applied to the mortgage. The Bank also provided in options letters issued from [late] 2006 that, in default of selection of one of the offered options, the loan would default to the tracker rate of interest on maturity of the fixed rate period.”*

The Provider has submitted into evidence a copy of a published marketing document entitled **Lending Interest Rates**, which is noted being *“effective from the start of business on the 31st August 2009”*. This document outlines as follows;

***“Home Loan Rates for Existing Business***

....

***LTV Tracker Maturity Rate for existing Home Loans Maturing where applicable***

...

	<b><i>RATE</i></b>	<b><i>APR</i></b>
<i>Tracker Rate LTV &lt; 80%</i>	4.25%	4.3%
<i>Tracker Rate LTV &gt; 80%</i>	4.25%	4.3%

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Having considered the evidence before me, including the mortgage loan documentation, it is my view that that the Complainant did not have a contractual entitlement to a tracker interest rate at the end of the fixed rate period in **September 2009**. It appears that the Provider, in line with its own policy at the time, offered the Complainant a tracker interest rate.

The Complainant is unhappy with the tracker interest rate and margin of ECB + 3.25% he was offered in **September 2009**. The evidence shows that the tracker interest rate that the Provider had available for home loans for existing business in **September 2009** was 4.25% (ECB + 3.25%) and that was the tracker interest rate that was offered to the Complainant for their mortgage loan. It was within the Provider's commercial discretion to set this rate.

The reverse side of the options form 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 Complainant ought to have been aware that, in circumstances where he opted for the tracker interest rate, the percentage of 3.25% would not be exceeded during the term of the loan and the ECB rate would fluctuate in accordance with the European Central Bank.

The Provider wrote to the Complainant on **25 September 2009** as follows:

*"I wish to advise you that in accordance with the terms of your loan, the rate of interest has been amended to a tracker rate currently 4.25% (ECB + max 3.25%)."*

An undated **Standard Financial Statement ("SFS")** has been submitted in evidence by the Complainant, which detailed the "*Reason (s) for Review/Arrears: pay cuts and very high interest rate*".

The section titled **Household Expenditure (Monthly)**, details as follows:

*"Steps you have already taken to reduce monthly expenditure:  
Gave up smoking in 2012*

*Savings already achieved:  
Used to pay for property management fee*

/Cont'd...

Steps you propose to take to reduce monthly expenditure:  
No future cuts possible

Savings you expect to achieve:  
None”

The **Financial Statement Summary** section details as follows:

“Total Net Monthly Income	2453.34	
Less Total Monthly Expenditure	(1,197.86)	
Sub – Total	<hr/> 1255.34	
Less Mortgage Repayments Being Paid	(1,288.53)	
Total (Surplus/Deficit)	<hr/> -33.04	DEFICIT”

It is not clear to me from the evidence before me, whether the Provider received this SFS or whether any assessment of this SFS was carried out.

A further **Standard Financial Statement (“SFS”)** signed by the Complainant on **7 May 2013** has been submitted into evidence. In response to “Reason (s) for Review/Arrears” it states “Customer not yet in arrears”.

Under the **Financial Statement Summary** section it details as follows;

“Total Net Monthly Income	2,453.34	
Less Total Monthly Expenditure	1,259.26	
Sub – Total	<hr/> 1,194.08	
Less Mortgage Repayments Being Paid	1,288.53	
Total (Surplus/Deficit)	<hr/> -94.45	DEFICIT”

Under the section **Branch Use Only** it details as follows;

“Other relevant Information

/Cont’d...

*[Complainant] is currently up to date with his mortgage payments. He is requesting that the bank review his mortgage facility with regard to a long term treatment. Although he is up to date he is under pressure to meet the monthly repayments. He feels that it will not be long before he will start to struggle to meet the full repayment, As the term on the facility has 28 years remaining, he is not in a position to extend the term. He is requesting that the facility is reviewed by the ASU to see if there are any options available to him. [Employee name]*

*Signed: [Employee name]*

*Date: 22/05/2013"*

The Provider's internal **Assessment Notes** dated **30 May 2013**, detail as follows;

...	...	Note
<i>[Redacted]</i>	<i>Decline 10.06</i>	<i>No treatment</i>

**INCOME**

*Net Income as per SFS: 3311.40*

*Deficit On SFS: 763.61*

*...*

*Reason for Request: Reduced Earnings*

**BRIEF BACKGROUND**

*Struggling with payments. Employed, no dependents, single.*

*Employers Name & Length of Service:*

*Expenditure i.e. how does it compare to Average Figure (Give reason for any variance): Expenditure is within range.*

*..."*

The Provider's internal note dated **30 May 2013**, details as follows;

*"sent sfs for sign off".*

The Provider's internal note dated **10 June 2013** details as follows:

*"No treatment being offered, declining request, loan to remain on full C&1 payments...Residual income at 2052, show affordability for the full bill at 1323..."*

The Provider wrote a letter to the Complainant dated **10 June 2013**, which details as follows:

*"Your recent request for a restructure on your [Provider] mortgage together with your completed Standard Financial Statement has now been fully assessed by our Arrears Support Unit.*

*We are unable to offer an alternative repayment arrangement at this time. The reason for this decision is as follows:*

- *SFS Indicates Affordability for a higher repayment amount than proposed*

*As part of our Mortgage Arrears Resolution Process (MARP), you have a right to appeal this decision.*

*..."*

The Complainant wrote a letter to the Provider dated **1 July 2013** stating;

*"...I wish to appeal the decision made regarding my request for a mortgage revision. I am currently paying 54% of my net monthly salary towards my mortgage repayments and this is not sustainable."*

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

<b>1 July 2013</b>	<i>"adv of appeals process. [Complainant] feels [h]is income has been overstated."</i>
<b>2 July 2013</b>	<i>"Appeal letter received at crd. Email sent to ASU"</i>
<b>31 Jul 2013</b>	<i>"... he is still awaiting result of appeal"</i>
<b>6 Aug 2013</b>	<i>"...can lodge 1075 towards account and that is all...Advised that the restructure was declined due to affordability so another SFS would not be accepted. Advised to lodge what he can and we would review in a months time and see if his situation has changed..."</i>

/Cont'd...

The Provider wrote to the Complainant on **6 August 2013** as follows;

“ ...

*I regret to inform you that the Appeals Board has declined your appeal and upheld the decision of the Arrears Management Unit (AMU).*

*The AMU is unable to offer an alternative repayment arrangement at this time as your completed Standard Financial Statement indicates affordability for the full billing amount in respect of the above mortgage account.*

...”

The Provider phoned the Complainant on **10 September 2013**. This call included the following exchanges:

**Provider:** *“I’ve just been asking to look at your case after you appealed it there and I’ve put the qualifying income down at ... 2676 as per your bank statements... that would be taking TRS away of 1204 each month”*

**Complainant:** *“Okay”*

**Provider:** *“That would work out as 45% of net disposable income. Is that okay with yourself to put in place?”*

**Complainant:** *“I’ve had an assessment done before and was given a figure of 1075”*

**Provider:** *“1075?”*

**Complainant:** *“Yeah, that’s what I’m repaying... now, I got nothing in writing to support but I think it was based on my apartment being worth 180,000 euro its actually not worth that...but that’s the figure I got initially from the section in [the Provider] that does the assessments”*

**Provider:** *“Okay, because the previous one back in June was declined and it was to revert to full pay”*

**Complainant:** *“Yeah, how was that 2600 salary arrived at”*

**Provider:** *“That’s the net income that’s actually going into your bank account”*

**Complainant:** *“eh no, I don’t think so ... I’ll just go into it, I have one in front of me, think it’s about 1200 euro”*

**Provider:** *“That’s per month?”*

**Complainant:** *“Yeah, well that’s a fortnight so 2400 ... 1226 so that’s...”*

**Provider:** *“Going back previous to that which was ... 1226. Yeah, multiplied by 26, divided by 12”*

**Complainant:** *“Or you multiply by 2 you get 2443.3”*

**Provider:** *“Yeah, we actually do calculations over 12 months multiplied by that, that’s why it’s working out as that”*

/Cont’d...



**Complainant:** "So 1226... Multiplied that by what?"

**Provider:** "Multiplied that by 26 ... And divided by 12"

**Complainant:** "Right, it should come to the same thing should it not?"

**Provider:** "...that's how we work it out for it by the year by getting the average of it all and I do see a slight reduction it's from ... its only €4 in the difference overall. We see if it makes a difference overall ... difference of €30, I'll get the calculator and see how that works out..."

**Complainant:** "... Yeah as I say [Redacted], the 1075 came from your department"

**Provider:** "But when was that?"

**Complainant:** "That was around March..."

**Provider:** "The criteria has actually changed dramatically since then especially with the Central Bank changing it, we would have had short term treatments in place ... it's good to look over the history and see what was applied then"

**Complainant:** "... As I said March, I left it into the branch and I think it was lost as I had to chase it, chase it and when I went to the branch, I had a copy and that was photocopied again so I think the original was lost in the branch and then so it went forward for an assessment and that was turned down in June and got the appeal start of August as I say I was given the figure of 1075 back in March eh I think from someone pretty senior in the department himself looked at it"

**Provider:** "...I mean the first notes I have on your account, on this system is from 30<sup>th</sup> of May, the SFS was sent for sign off, that would be to be sent to the queue to be looked out and there's nothing there until..."

**Complainant:** "Yeah, yeah. Can I ring you back [Redacted] or?"

**Provider:** "Unfortunately, I don't actually have a direct line here so"

**Complainant:** "Right 'cause as I say 1075 came, was given to me, I didn't pick it out of the air...and as I say I was even told it was based off eh the apartment evaluation"

**Provider:** "Actually I can see where 1075 was... they were taking income at 2453"

**Complainant:** "... yeah...that to me makes sense, I get paid fortnightly 1226 so monthly I get 2400 eh and so I think just playing with figures dividing... by multiplying by 26 divided by 12 so like my multi salary is I see is 2400"

**Provider:** "The balloon payment is quite high ... Now, that would be re-assessed in three years' time or if your circumstances change again, it would be assessed then you know what I mean if your circumstances and if you were actually earning more and then actually started paying off the balloon payment..."

**Complainant:** "...What's a balloon payment?"

**Provider:** "On the 1075, whole payment itself that is actually part capital, part interest so you'll be paying capital on portion of the loan and interest only on the balloon part which is 149,771 so that's where the bill of 1075 comes from."

**Complainant:** "Right and is there an issue there?"

/Cont'd...

**Provider:** *"No, there's no issue at all, it would be re-assessed again in 3 years' time ...So, what I can do is I can send out the docs and approve it on that basis ...read through them and send back to us within 30 days. And the Bank also contributes 250 towards independent financial adviser if you wish to avail of it... it's a one time offer so if you avail of it before, you won't be able to again and eh I mean as you said that would be more a restructure and affordable option for yourself"*

**Complainant:** *"...yeah, the 1075? Yeah even 1075 is quite tight but I could probably stretch to that yeah. And why would I need the adviser [Redacted]?"*

**Provider:** *"It's more so you know that proportion of the mortgage there that's actually going to be put aside and be paying interest only on it, what it will cost you in the long term more so than anything else, so it is part of the option there"*

**Complainant:** *"Okay... I don't need to take up that offer, do I?"*

**Provider:** *"But on documentation we are, will be sending out to you, will need you to return that to us within 30 days..."*

**Complainant:** *"Yes okay, no problem and this is the offer of 1075 a month yeah?"*

**Provider:** *"The balloon payment of 149,771 and the mortgage bill will be 1075 now that's not including the TRS, that's TRS so if the TRS is will at 75 then bill will be 1000. Alright?"*

**Complainant:** *"Okay"*

The Provider wrote to the Complainant by letter dated **10 September 2013** enclosing a **Restructure Agreement: Part Capital and Interest Arrangement**. The letter detailed as follows;

*"Based on our assessment of the information that you provided to us in your Standard Financial Statement, we are pleased to confirm that a Part Capital and Interest Arrangement has been identified as the most appropriate restructure for your account.*

...

*If you choose to accept this Offer, your mortgage will be restructured. This option allows you to pay the full interest on your mortgage as well as making part capital repayments towards your mortgage balance. Your mortgage term may be extended. At the end of the mortgage term, the outstanding mortgage balance will be due.*

...

What this will mean for your account

Total Balance Owing (including arrears if any)	€276,064.22
Interest Rate	3.75%
...	...
Monthly Repayment Amount	€1,074.67
Amount outstanding at end of Mortgage Term	€149,770.57

..."

The enclosed **Restructure Agreement: Part Capital and Interest Agreement** detailed:

<i>Without Restructure Agreement</i>		<i>With Restructure Agreement</i>	
<i>Full</i>	<i>336 X</i>	<i>Part Capital</i>	<i>336 X €1,074.67 =</i>
<i>€1,323.54=€444,709.44</i>		<i>€361,089.12</i>	
<i>Payments</i>		<i>And Interest Payments</i>	
<i>Arrears</i>		<i>Unpaid Capital due at Maturity</i>	
<i>€520.26</i>		<i>€149,770.57</i>	
<i>Final</i>		<i>Final Payment</i>	
<i>€1,328.24</i>		<i>€1,075.75</i>	
<i>Total Payable</i>		<i>Total Payable</i>	
<i>€446,557.94</i>		<i>€511,935.44</i>	
<i>Overall Mortgage Balance Owed</i>		<i>Overall Mortgage Balance Owed</i>	
<i>(€276,064.22)</i>		<i>(€276,064.22)</i>	
<i>Cost of Credit</i>		<i>Cost of Credit</i>	
<i>€170,493.72</i>		<i>€235,871.22</i>	
		<i>Change to Cost of Credit</i>	
		<i>€65,377.50</i>	

The Complainant wrote to the Provider on **21 September 2013** stating:

*"I wish to appeal the offer of a Part Capital and Interest Arrangement. I am struggling to make repayments as is, and this suggested solution, for the sake of reduced repayments of €170 per month would impose on me an outstanding balance of €149,770.57 at the age of sixty seven.*

...

*The proposed offer of €1,075 is the maximum amount I can afford to pay and after paying this for another twenty eight years, I will still owe the value of the*

/Cont'd...

*apartment ... This current offer does nothing to assist me, leaving me with a crippling outstanding balance after many years of hardship and stressful struggling to make repayments.*

*The best solution is a split mortgage which would maintain some incentive for me to continue making these demanding repayments. Alternatively it would be preferable to have the apartment sold which would only serve to crystallise your loss and both sides lose out."*

The Provider wrote to the Complainant on **25 September 2013** as follows;

*"I refer to your recent communication to this office. May I thank you for taking the time to bring this matter to our attention.*

*I am presently investigating the matter and will be in contact with you as soon as possible.  
..."*

The Provider phoned the Complainant on **16 October 2013**. This call included the following exchanges:

**Provider:** *"Look, I'm just giving you a quick call in relation to the appeal letter you sent into us and suppose the subsequent offer there of a part capital, part interest at a €1075 a month [Complainant]. Just eh a couple of things there struck me when I was going through your letter and SFS. Just to let you know the offer itself did not include any TRS so offer would be €1000 a month as you have TRS of €75 a month. The next thing I would say to [you] there is a number of issues raised in your letter ... and the SFS you filled in. I don't think you've done yourself any favours [Complainant] – it looks like to me, that you have underestimated your expenditure a good bit so..."*

**Complainant:** *"I may have, like I did that last February and things have gotten very tight for me now I say. There's a few things going on, the car and what not like... I was told I was not allowed to submit a revised one unless my circumstances changed so..."*

**Provider:** *"Well, I mean you can if I send you out one as part of your appeal, you can of course – just what, what would be affordable for you [Complainant], what are you looking to pay or?"*

**Complainant:** *"Well probably 1075 and then the tax relief, but like interest only is no good to me ... As I said in my letter, it's leaving me with an outstanding balance of 150,000 at the age of 67. I have no way of repaying that so I'm just a tenant for [the Provider] and like I'm running repairs ... I think my apartment was built in 2002*

/Cont'd...

*and I bought it second hand in 2006 so I say all the faults are all inherited from the previous owner and they're all thirteen, eleven years old now ...my parents, I suppose I didn't account for that in my financial statement, my parents were feeding me until the New Year ...started buying stuff for myself ... so that wasn't reflected in the financial statement. As I say split mortgage would be beneficial all around..."*

**Provider:** *"How much do you think you can afford [Complainant] – what were you looking for? It doesn't say in the letter ... the 1075 you can't pay that... what payment works for you?"*

**Complainant:** *"... it's just, it's not of any benefit coming out with 150,000 outstanding in capital..."*

**Provider:** *"Look, I accept that, that's definitely a valid point [Complainant] ... see the thing at the moment is like I said you haven't done yourself any favours filling out that form ... the income you've calculated just under two and a half grand a month ...2450 and you've put expenditure at €1259 a month or and €1260..."*

*really we would have averages for people that would be allowable for someone in your circumstances, they would be allowed €1870 which is an increase of €500 in expenditure for you ...look for example if you were to increase your expenditure by €300 from €1260 to €1553, there is the possibility of putting a split mortgage in place on the account of around €8000 a month... And we would have to warehouse 100,000 of the loan if you might want to increase expenditure by €200 a month, you could put in place a split mortgage of €900 a month then warehouse 90,000 of the loan and you kinda get where I'm coming from now do you?"*

**Complainant:** *"Yeah, yeah exactly I can"*

**Provider:** *"For example, if you were to say your expenditure was only €100 more a month, we would take 90% of that and that would reflect the mortgage payment of around €985 a month and they would warehouse around 70,000 of the loan at 0% interest so the best bet for you would be to probably complete another one [Complainant] and let it reflect your..."*

**Complainant:** *"Yeah, like I was probably...it's probably ironic, I'm an accountant but like I didn't take in account say my parents were feeding me, my mum gives me money towards clothes, like I don't go out so"*

**Provider:** *"It's very hard to know what's going to come up month to month and really they're looking for ... it means usually more sorta reflective with people with families and kids and everything, you can put a lot of stuff in but it's tough..."*

**Complainant:** *"Yeah, yeah, exactly..."*

**Provider:** *"...the minimum expenditure on split mortgage would be expenditure of €1460 a month and payment of just under €900 a month then you have insurance paid on top of that then TRS on top of that again so it will come in under €1000 so look I'll send you out another standard financial statement [Complainant] and you*



*just literally increase the expenditure by what you had in the last one by 200 quid... do you think you can afford that, 900 a month?..."*

**Complainant:** *"... I can, I think the 1075"*

**Provider:** *"...or reduce it further?"*

**Complainant:** *"No, I think I can..."*

**Provider:** *"If expenditure was €1400 a month, you'd be parking 90,000 or 30% of the loan at the end of the term of the loan, the 90,000 would still be there so you would've paid any interest on it and I mean you would be saving a fortune on interest ..."*

**Complainant:** *"Yeah, yeah I might win the lotto or something ... that's brilliant [Redacted]"*

**Provider:** *"...28 years time something would have to change for you, can't keep cutting your wages forever so look I'll send you a new form alright please [Complainant] and take it to your local branch...the income is fine, just change the expenditure and then re-submit it and we'll get that approved for you."*

**Complainant:** *"Should I address it to you personally [Redacted]?"*

**Provider:** *"Just send it to the branch and they'll send it up to us here..."*

I note that the Provider wrote to the Complainant on **21 October 2013** stating;

*"Our Asset Management Unit (AMU) has reviewed your appeal and I understand you have discussed the matter with [Redacted] of the AMU on the 16<sup>th</sup> October 2013.*

*I note from [sic] telephone conversation that you have been advised to complete a new Standard Financial Statement (SFS) due to a change in your circumstances."*

The Provider wrote to the Complainant in relation to the arrears on his mortgage account on **29 October 2013**.

I note that an undated and unsigned **Standard Financial Statement** was submitted to the Provider. The Complainant states that he submitted the SFS on **25 November 2013** and the Provider submits that it was received on **11 December 2013**.

The **Financial Statement Summary** section details as follows:

<i>"Total Net Monthly Income</i>	<i>2639.09</i>
<i>Less Total Monthly Expenditure</i>	<i>(1,540.45)</i>

/Cont'd...



<i>Sub – Total</i>	<u>1098.64</u>	
<i>Less Mortgage Repayments Being Paid</i>	<u>(1,075.00)</u>	
 <i>Total (Surplus/Deficit)</i>	 <b>23.64</b>	 <i>SURPLUS”</i>

I note that the Provider wrote to the Complainant on **27 January 2014** in relation to arrears of €673.93 on the mortgage loan account.

It does not appear from the evidence that the Provider reverted to the Complainant in respect of the SFS submitted by him in **November 2013**. The Complainant emailed the Provider on **30 January 2014**, as follows:

*“...  
I would be grateful if you would arrange for a formal written reply to be issued in response to my letter of 21<sup>st</sup> September 2013. I completed a revised Financial Statement of Means which I submitted on Monday 25<sup>th</sup> November.*

*I subsequently phoned on Monday 30<sup>th</sup> December and Monday 20<sup>th</sup> January, to date, I still have had no response. I am very disappointed by this as my original submitted Financial Statement contained flawed determined my Statutory deducted pension as disposable income and I had to ring several times and go through an Appeals process to finally extract this information.*

*I await your response.”*

The Provider’s internal note dated **31 January 2014** details;

*“cust called in earlier and made lp got cut off while on hold to Asu so called back. Cust is waiting outcome from his SFS that we recd on 12/12/2013 ... Sfs was declined and sent back to brcon 16/12 by [redacted] (did not inform cust of this) spoke to ASU and they said that [branch] should have contacted customer re reason...*

*...*

*Sfs declined on 16/12 and since has heard nothing from [location] branch. Emailed branch to contact customer”.*

The Provider wrote a letter to the Complainant dated **5 February 2014**, which details:

/Cont’d...

“ ...

*The deadline for submission for signed Alternative Repayment Arrangement document 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.*

*We are obliged to advise you of the following: -*

*As you have not accepted this offer within agreed timeline, you are now considered outside the Mortgage Arrears Resolution Process (MARP). Your account will no longer benefit from the protection of the MARP and you are required to pay any outstanding arrears.”*

The Provider's internal email correspondence on the following dates details as follows;

<b>06 February 2014, 14:06</b>	<i>“We have received the below email from [the Complainant]. I note the customer was speaking with you on the 30/12/13 regarding the outcome of SFS and asked for a written response. [The Complainant] then contacted my colleague on 20/01/14 as he had not received the letter. An email was sent you asking can the letter be resent. Can you confirm the letter has been issued?”</i>
<b>06 February 2014, 14:12</b>	<i>“There was no letter to be sent out as I confirmed with [Name Redacted], manager of the [underwriter] who made the decision, there was no material change since the previous sfs so the decision still stands and email was sent to the [Location] branch to contact the customer as this would be normal procedure when an sfs is declined.”</i>

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

*“...I have now submitted two financial statements as requested by [the Provider].*

*On neither occasion has anyone attempted to explain to me why my request for a restructured mortgage has been turned down.*

...

*It was only through my continued perseverance and unwillingness to be brushed off that I learnt that [the Provider's] calculation of my disposable income was flawed taking into account, as it did, my Superannuation contributions. I was appalled at*

/Cont'd...

*this as I would have thought that there would be some element of oversight of my application. Even on appeal, it would appear that no real review took place as it would have been evident that [the Provider] was incorrectly determining my disposable income.*

*I wrote to you on 21 September 2013 and I have had no response to this letter. I was simply asked to fill in another financial statement which I submitted on 25<sup>th</sup> November 2013.*

...

*I don't understand [the Provider's] reluctance to engage with me, it is deeply frustrating and causing me stress.*

..."

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

*"Further to my recent correspondence, I wish to advise that I am still investigating the matter and will be in contact with you as soon as my investigations are complete.*

..."

The Provider's internal note dated **04 April 2014**, details as follows;

" ...

**Description:** *[Name Redacted] has reviewed assessment of customer's SFS. She confirmed we did not add back in customer's superannuation contribution – pension in our calculation of his income. We only added back in credit union payments as these are not compulsory payments. [Name Redacted] also confirmed that income used by ASU in assessment is same as figure customer entered on SDS – therefore agreeing with this figure.*

*[Name Redacted] noted re balloon figure at end of PC&I that this may seem high to customer but this is because mortgage is in an early stage meaning most of the monthly repayments are going towards interest, as the term progresses less interest will be due and more principal reduced by the monthly repayments."*

The Provider's internal email correspondence on the following dates details as follows;

/Cont'd...

<b>07 April 2014, 17:26</b>	<i>"Sorry I am just responding to this customer's complaint now. Your note on the 804 screen 30/12/2013 state customer wants this in writing – did you advise him you would not be providing this? Did you follow up with branch re contacting the customer?"</i>
<b>08 April 2014, 09:34</b>	<i>"I advised [Name Redacted] from [Redacted] that we wouldn't be issuing a written response to the customer. I will image same now. Apologies for that. I have no record of following up with the branch but the original email from the Underwriter is on imaging."</i>

I note that the Provider issued a **Final Response letter** to the Complainant on **8 April 2014** detailing that:

“...

*I understand you are unhappy with the response you have received regarding your Standard Financial Statement (SFS) submissions. You believe [the Provider] has incorrectly included your superannuation contributions when calculating your income. Further you state you have contacted the Bank on a number of occasions seeking information on your SFS assessment and have received no reply.*

...

*I wish to confirm the superannuation contributions were not added into the calculation of your net income. Documentation detailing the terms of the restructure offer were also issued to you on the 10<sup>th</sup> September 2013.”*

...

*The new Standard Financial Statement (SFS) was received by the ASU on 11<sup>th</sup> December 2013. I can confirm the case was re-assessed by the ASU however it was noted there was no material change since the previous SFS ... As a result no alternative offer was issued. [Redacted] of the Arrears Support Unit advised you on 30<sup>th</sup> December 2013 that the previous Part Capital & Interest Arrangement would still be applicable in this case. I note you requested confirmation of this in writing and I regret that this was not provided to you. Please note it is not Bank Policy to issue a response in writing in respect of a re-submitted SFS where the decision has not changed since the previous SFS.*

*I note your comments that you made a number of phone calls and sent an email to the Bank to which you received no response. I would like to offer our sincere*

/Cont'd...

*apologies for the difficulties you have experienced in this regard and assure you that this does not reflect the high standards of service we set ourselves. This has been highlighted as an area requiring improvement with the relevant departments.  
..."*

I note that the Provider has accepted that following its assessment of the Standard Financial Statement submitted by the Complainant on **11 December 2013**, there was a failure on the Provider's part to inform the Complainant in a timely manner that no alternative offer would be issued to him on the basis that there was no material change to his financial circumstances. It appears to me that this arose due to inefficient communications between the Provider's Arrears Support Unit and the Provider's branch. While this is disappointing, it does not appear to me that this affected the outcome of the assessment.

I appreciate that the Complainant was unhappy with the terms of the Restructure Agreement. However, it remains the case that the Complainant 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. Agreeing to renegotiate the terms of the mortgage gave the Provider the opportunity to introduce different terms to the agreement. It is important for the Complainant to understand that there was no obligation on the Provider to offer the Complainant other alternative repayment arrangements, or indeed to offer the Complainant any form of forbearance on his mortgage loan at the time. Until the new terms were agreed, the original terms continued to apply.

It is clear from the evidence that the Complainant was aware of the consequences of accepting/signing the agreement. If the Complainant was not happy with the terms of the **Restructure Agreement: Part Capital and Interest Arrangement** including the balloon payment of €149,770.57 at the end of the mortgage term, the Complainant could have, and did decide, not to accept the offer made by the Provider.

The Provider made an offer to the Complainant to make reduced part capital and interest repayments on the mortgage account on condition that a balloon payment of €149,770.57 would be owed at the end of the mortgage term. 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.

The Provider wrote to the Complainant again on **28 April 2014** in relation to arrears of €1,082.16 on the mortgage loan account.

/Cont'd...

On **20 August 2014** the Provider telephoned the Complainant. The call contained the following exchanges:

**Provider:** *"the reason for my call there today [Complainant] is the arrears on your mortgage account of €1609.40, do you have any update? I see you were due to go to a standard financial statement meeting there at the branch..."*

**Complainant:** *"No, I should be in a position [Redacted] I will be moving jobs shortly and there will be a pay increase so hopefully I will be able to reduce that going forward...I should be able to clear it in time as well..."*

**Provider:** *"Okay will there be a viable plan to be in place regarding these arrears?"*

**Complainant:** *"Oh yeah, yeah"*

**Provider:** *"What would your proposal be to have it cleared up?... Keep in mind I would need specific times and amounts in order to set a viable plan there"*

**Complainant:** *"As I say once I get my first pay cheque, I'll should know my net payments are but I don't envision it going past the year anyway. It should be cleared within a year I say."*

**Provider:** *"We would need this cleared up a bit sooner [Complainant] in order to have a viable plan...what would be the maximum you could pay off this account today to bring these arrears down?"*

**Complainant:** *"I have nothing at the moment [Redacted] ... I won't be paid until October"*

**Provider:** *"I just need to advise you there [Complainant] that the account is currently is travelling down the collection process here with [Provider] and the arrears balance will affect your credit rating with [Provider]...if it does go beyond a certain number of days it will be passed over to a separate collection agency here in [Provider] then from there could go in an illegal status. I understand that it's not the biggest arrears balance but just the process is the process there so we will need to put a plan in place in order to get this cleared off as soon as possible and stop that from happening... Will I tell you what the longest payment plan I could set up for you would be?"*

**Complainant:** *"... well I don't see this as being an issue if I'm honest with you [Redacted] as I say I've been lucky enough to get a new job so that will be taking care of that... it won't... go on for too much as I say that was [Provider's] view that interest, I wrote to yourselves last September saying that it was a very poor offer and eh it shouldn't go on for too much longer now."*

**Provider:** *"Okay well without the payment plan being put in place there will continue down the collection process..."*

**Complainant:** *"Yeah, yeah as I say by October, November, I'll have a better idea where I stand and then I will be able to make a movement on clearing the deficit."*

**Provider:** *"Yeah I see but by October, November it would have been passed to that later collection department..."*

**Complainant:** *"There's nothing I can do at the moment [Redacted] if I'm honest."*

/Cont'd...



**Provider:** "There's no payment you can make towards this?"

**Complainant:** "Not at all, I have nothing in my account at the moment...I have a few expenses there over last month or two and that's me out, so as I say, I have no money over..."

**Provider:** "[inaudible] meet someone in the branch to go over your financial statement?"

**Complainant:** "I have a few times [Redacted]...because I'm able to make repayments even though I'm clearly not and...as I say I have to rely on handouts... there's nothing more I can do at the moment"

**Provider:** "I understand [Complainant] but as it stands here today ...I appreciate you taking the phone call alright but without a payment plan it will go down as refusal to engage in the arrears with the bank and continue down the collection route."

**Complainant:** "Say 6 months then like hopefully be 1300 a month repayments soon enough... so that will be 1300...eh so yeah 6 months, maybe even less as I say I don't know until I get my first few pay checks and I get the net pay into my hand but I'm expecting a substantial pay rise..."

**Provider:** "I think going in to meet with someone in branch would be a decent enough option there...I know you said you been in with someone before but if any financial situation changes, a meeting there would be to your advantage alright..."

**Complainant:** "Well as I say I'm starting in September. I've been told I won't be paid until October, I've been told I won't be paid until October so I'll be working back period so can we talk again in October? I'll be starting 8 September..."

**Provider:** "Okay [Complainant], look I'm going to say the info you gave me there...Are you going to be okay to make your payments going forward there of €1196 a month then?"

**Complainant:** "I'll be making I think 1075 next month and then ...August and September are going to be tough then after I'm hoping to be clearing the deficit as soon as possible. I'll be getting a substantive pay rise as I said..."

**Provider:** "Yup, I think meeting here would definitely be to your advantage there [Complainant]. Is there any way I could convince you at all, to get in to have a meeting with a financial adviser at all? I know you been through it before but any change in circumstances at all it would be good to get in..."

**Complainant:** "Well as I say I haven't had the pay... I haven't had the change in circumstances yet..."

**Provider:** "Yeah I understand it's definitely something new there anyway...I think going in for this meeting would benefit you."

**Complainant:** "How do you see that [Redacted]?"

**Provider:** "Well any sort of going into a meeting with someone in the Bank shows you're contributing and shows you're engaging with the Bank but on top of that then as well then if there is something they can do for you, something there that's changed in the meantime, they might be able to help you out..."

/Cont'd...

**Complainant:** *"I've gotten nothing so far from bank [Redacted] ... I've put in writing and written and gone in and met and no one has expanded on 'no' basically... I've gotten a ridiculous offer of interest only with a big balloon payment eh but as I say I've been lucky enough to find in this current climate a job with more money so I will be clearing it"*

**Provider:** *"Alright [Complainant], I'll leave a note here on the account anyway...I do need again to finish on this here now that the account will continue down the collection route process of arrears balance will affect your credit rating to [Provider] and it is going down here as not engaging on Bank's front without a plan being put in place so as soon as ..."*

**Complainant:** *"What plans do you envision?"*

**Provider:** *"Well, the plan would have to be proposed by you [Complainant], the longest I can stretch this out is six months period so it would be..."*

**Complainant:** *"Well as I say six months would probably be sufficient to clear it"*

**Provider:** *"I would need that first payment this month though, it wouldn't be..."*

**Complainant:** *"No, no as I said I don't have it to hand"*

**Provider:** *"Okay [Complainant], look I've explained everything to you there today and I've made you aware of the situation so thanks for taking the call."*

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

- **28 July 2014**
- **28 October 2014**
- **26 January 2015**

It appears from the Complainant's **Mortgage Statement Transaction History** that the arrears on the mortgage account had been cleared by him as of **2016**.

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

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

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

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

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

*This information must include the following:*

8.6

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

...

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

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

/Cont’d...

I have considered the arrears correspondence that has been furnished to this office. Having considered the evidence, I accept that the Provider issued arrears correspondence to the Complainant in accordance with its obligations under the **CPC** in circumstances where arrears were accruing at the time.

I am of the view that in its engagements with the Complainant, the Provider complied with its obligations under provision **8.3 of the CPC 2012** and sought to agree an approach with the Complainant to assist him and prevent further arrears from accruing on the mortgage loan accounts.

It is clear that the Complainant's mortgage loan documentation did not provide for a tracker interest rate entitlement at the end of the fixed interest rate period. **General Condition 5.4** in the **General Mortgage Loan Approval Conditions** provided that either party would have the "option" of converting the loan to a variable rate loan following a fixed rate period. Accordingly, there was no contractual or other obligation on the Provider to offer the Complainant a tracker interest rate on his mortgage loan account at the end of the fixed interest rate period in **September 2009** or at any other time. The Provider did offer the Complainants a tracker interest rate of ECB + 3.25% in **September 2009** as a matter of policy despite not being obliged to do so. The tracker interest rate was applied in circumstances where the Complainant did not return the signed **options form** selecting a different rate.

Having regard to the evidence that has been provided to me, I cannot accept that, as has been asserted by the Complainant, that his "request for a restructured mortgage was turned down". The Complainant was seeking forbearance in respect of the mortgage loan account. The Provider offered the Complainant a restructuring of his mortgage which would allow him to pay the full interest on his mortgage as well as making part capital repayments towards his mortgage balance, and the end of the mortgage term, the outstanding mortgage balance would be due.

The Provider issued an offer to the Complainant to this effect in the form of the **Part Capital and Interest Arrangement Offer**. The Provider was entitled to exercise its commercial discretion in offering this alternative repayment arrangement. However, the Complainant chose not to accept the Provider's offer of **10 September 2013**.

The Provider has submitted that "In consideration of the time between the original SFS being submitted (May 2013) and the restructure agreement offered in September 2013, the Bank would like to offer the Complainant an ex-gratia payment of €250.00." I understand that this offer remains open to the Complainant to accept.

/Cont'd...

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

**Conclusion**

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

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



**GER DEERING  
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

20 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.