



<u>Decision Ref:</u>	2021-0310
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Tracker Mortgage
<u>Conduct(s) complained of:</u>	Failure to offer a tracker rate throughout the life of the mortgage
<u>Outcome:</u>	Rejected

**LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

The complaint relates to a mortgage loan account held by the Complainants with the Provider. The mortgage loan account is secured on a Buy to Let (“BTL”) property held by the Complainants.

The Mortgage Loan Offer Letter which was signed on **13 March 2006** outlined the Loan Type as *“Interest only for first 7 years, Annuity thereafter”*. The loan amount was €908,000 and the term of the loan was 300 months.

An Agreement to Amend Mortgage Loan Offer Letter was signed by the Complainants on **22 April 2014** which reduced the repayment instalments to €1,750.00 for a period of 60 months.

The Complainants’ Case

The Complainants outline that they drew down their mortgage loan account on an initial 84-month interest only period on a tracker variable rate of ECB + 0.95% (3.7%) in **June 2006**.

The Complainants submit that **Special Condition 11** in their loan agreement, is not like the general conditions relied on by the Provider as it relates *“specifically to this loan account.”*

They state that **Special Condition 11** states that the tracker rate was for the *“life of their loan”*.

They further submit that *“nowhere in the loan offer does it state that the tracker ECB +0.95% rate is dependent on payment of full capital and interest repayments”*. They submit that **Section 4(a), Part 3** *“does not specify that ‘full’ capital and interest repayments were required”*.

The Complainants detail that they received correspondence from the Provider in **June 2013** to confirm that the initial 7-year interest only period was due to expire in **September 2013** and that their repayments would increase *“from the current interest only repayment of €1099.82 to a revised capital and interest repayment of €4,719.44.”* They submit that they *“were unable to afford the proposed repayments and immediately took steps to complete a standard financial statement and engage with [the Provider] regarding the matter.”*

The Complainants submit that they requested a further 12-month interest only period on **15 August 2013** but were advised by the Provider that the only options available were *“either to meet full capital and interest repayments or enter into a revised repayment arrangement resulting in the loss of their Tracker rate.”* They outline that they were advised that there *“are no exceptions to the Buy-to Let pricing policy.”*

The Complainants outline that they had a meeting with the Provider on **10 September 2013** to discuss their financial situation. They state that they were advised in this meeting that if they could not *“meet full capital and interest repayments, [the Provider] will withdraw their tracker facility.”*

The Complainants outline that the Provider contacted them on **19 September 2013** and advised that their request for a further 12-months interest only would only be approved if it was subject to the Buy-to-Let pricing policy. They submit that the Provider also rejected their proposal to pay €1,600.00 for 12 months. They detail that they had increased their repayments to €1,600.00 per month *“which includes full interest payment and at an additional €500 reducing the capital portion of their loan.”* They submit that the Provider did not outline why this proposal was unacceptable, other than to refer to its Buy-to-Let pricing policy. The Complainants detail that they wrote to the Provider on **21 September 2013** requesting the Provider to reconsider their proposal.

The Complainants submit that the Provider issued them an **Agreement to Amend Mortgage Loan Offer** on **21 November 2013** which provided for reduced repayments of €1,669.69 for an initial 12 months, reverting to capital and interest repayments of €5,375.41 at the end of this period. The offer further provided that that their tracker rate of ECB + 0.95% would be converted to a BTL variable rate of 2.20%.

The Complainants submit that the Provider's offer "*represents appalling advice which will only benefit the Bank and certainly does not comply with the letter and spirit of the Consumer Protection Code*". They outline that they responded to the Provider on **19 December 2013** declining the offer and setting out their "*proposed exit strategy in the future.*"

The Complainants detail that they received a "*legal proceedings threat letter*" from the Provider on **05 February 2014**. They submit that "*it is clear that [the Complainants] were in fact threatened with legal proceedings at every opportunity, throughout our negotiations with [the Provider].*" They refer to the Provider's letters dated **02 December 2013, 09 January 2014, 30 January 2014** and **05 February 2014**.

The Complainants states that they submitted a final proposal to the Provider on **06 February 2014** "*to increase repayments from €1,600 per month to €2,000 per month and request a longer term solution.*" They submit that their proposal was rejected and they were "*advised that any such arrangement will be based on the variable rate*".

The Complainants detail that the Provider made a new proposal to the Complainants on **12 March 2014** offering the Complainants fixed repayments of €1,750.00 for a period of 60 months and capitalisation of the arrears following 6 months of €1,750.00 repayments.

The Complainants submit that they were issued with a further **Agreement to Amend Mortgage Loan Offer** on **21 March 2014** which offered revised loan repayments of €1,750.00 for 60 months, with the repayments reverting to €6,846.18 when this period ended, and the conversion of the tracker rate to the BTL variable rate.

The Complainants submit that they "*find it ironic that at the beginning of negotiations in September 2013 interest only payments [were] not an option, however, 6 months on [the Provider] are offering an alternative repayment arrangement which equates to little more than interest only payments per month after the loss of [the Complainants'] tracker rate.*"

The Complainants submit that they were "*backed in to a corner with no option but to accept an arrangement that is completely unsuitable to their circumstances and will result in the loss of their Tracker rate.*"

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The Complainants outline that they signed the **Agreement to Amend Mortgage Loan Offer** dated **21 March 2014** as *“they were almost €20,000 in arrears and receiving letters threatening legal action from [the Provider]. They felt they were bullied and [had] no option but to agree.”*

The Complainants submit that the Provider’s Buy-to-Let pricing policy *“was based wholly on an improper motive and the Bank’s sole purpose was to remove struggling customers from their existing Tracker facilities, at all costs.”* They state that there *“was no reason for the Bank to insist that [the Complainants] change the terms and conditions of their loan.”* They submit that the policy *“this is very sharp practice and does not meet the spirit of the Consumer Protection Code.”* The Complainants assert that the Provider did not act in their *“best interest”* and did not comply with the **Consumer Protection Code 2012**, specifically **Section 2.1** and **Section 2.2**.

The Complainants assert that the Provider *“did not act appropriately in removing [the Complainants’] Tracker rate.”* They want the tracker rate to be restored to their mortgage loan account *“as per the special condition of their loan offer.”*

The Provider’s Case

The Provider outlines that the Complainants’ Loan Offer Letter dated **11 July 2006** provided that the mortgage loan repayments would comprise an initial interest only period of 7 years, reverting to capital and interest repayments thereafter. It relies on **General Condition 4 (a)** and **4 (b)** of the Offer Letter to support this. The Provider states that the Complainants’ *“indebtedness to the Provider arises on foot of a binding written loan agreement freely entered into by them with the Provider”*.

The Provider outlines the following interactions with the Complainants:

- The Provider issued a letter to the Complainants on **10 June 2013**, detailing that the interest only period was due to expire at the end of **September 2013**.
- The Complainants contacted the Provider on **17 June 2013** *“to advise of their concern that they would be unable to make the full capital and interest repayments upon the reversion to same in **September 2013**.”* The Provider issued the Complainants with a **Standard Financial Statement**.
- The Complainants sent in a completed Standard Financial Statement on **02 July 2013**.
- The First Complainant contacted the Provider on **07 August 2013** and *“advised that he might look at disposing of an investment property in [property location]. Advised that he could not afford Capital and Interest repayments, and wished to put an alternative repayment arrangement in place for 12 months.”*

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The Provider submits that it *“advised [the] First Named Complainant of BTL pricing policy, to which the First Named Complainant stated he could not afford to have the mortgage loan account removed from tracker rate.”*

- The First Complainant contacted the Provider on **14 August 2013** and *“advised that he cannot accept the implications of the Providers Buy-to-Let pricing policy, and was upset at same”*. The Provider advised the Complainants that there were no exceptions to the pricing policy and that if there was no Alternative Repayment Arrangement in place in **September 2013**, the repayments would revert to the full capital and interest repayments. The Complainants told the Provider that they were seeking legal advice and would revert in due course.
- On **15 August 2013** the First Complainant requested interest only repayments for 12 months subject to a tracker interest rate. The Provider outlines that it advised the Complainants that there were no exceptions to the Buy to let pricing policy.
- The Provider sent the Complainants an email on **19 August 2013** outlining that discussions to organise a suitable alternative repayment arrangement had yet to be entered into and it was awaiting a suitable proposal from the Complainants.
- The Provider issued the Complainants an interest only rollover letter on **09 September 2013**.
- The First Complainant contacted the Provider on **17 September 2013** and *“advised that he will not be able to afford full capital and interest payments when first payment falls due on 1 October 2013.”* The Provider details that it advised the Complainants *“to pay max payment available until decision is made regarding his SFS.”*
- The Provider contacted the Complainants’ representative on **19 September 2013** outlining that an arrangement was not currently in place as the Complainants did not want to accept an arrangement where the interest rate would be changed from a tracker rate. It outlines that the Complainants’ representative scheduled a meeting to discuss the Complainants’ financial situation.
- The Provider had the meeting with the Complainants on **24 September 2013**. It states that they *“again refused to engage in further discussion where any offer accepted would result in the loss of a tracker rate.”* The Provider outlines that the Complainants enquired what would happen if they continued to pay the same instalments without agreeing to a new arrangement. It submits that it *“advised that if this happens and the mortgage loan account goes into arrears, the Provider will need to review its options but it may result in a Receiver being appointed and initiation of judgement proceedings.”*
- The Provider received a lodgement of €1,600.00 from the Complainants to be paid against the outstanding mortgage balance on **01 October 2013**. It details that this was not the full capital and interest repayment due and on **07 October 2013**, the mortgage loan account entered into arrears.

- The Provider contacted the Complainants on **19 November 2013** to advise that it rejected the Complainants' proposal of repayments of €1,600.00 for 12 months subject to a tracker rate, and instead offered the Complainants' 12 months' interest only repayments subject to the Buy to Let pricing policy. It details that the Complainants rejected this proposal and the Provider advised them that if no alternative repayment arrangement was agreed upon, it would have to review its position and consider appointing a receiver.

The Provider submits that it issued the Complainants an **Agreement to Amend Mortgage Loan Offer Letter** on **21 November 2013** offering the Complainants 12 month's interest only payments subject to the Buy to let pricing policy. It details that as the Complainants did not return the **Agreement to Amend Mortgage Loan Offer Letter** within the requested 5 weeks, the Agreement was deemed to be declined.

The Provider outlines that the Complainants re-entered into negotiations in **January 2014** and *"the Provider engaged fully with the Complainants"*.

The Provider details that a legal proceedings threat letter was issued to the Complainants on **05 February 2014**. It submits that the Provider *"is obliged to inform its customers of the potential of legal proceedings arising where that customer is failing to meet its repayment obligations pursuant to the original Offer Letter signed and accepted by that customer."* It outlines that it was required to send this letter as the Complainants had entered into arrears and failed to meet their repayment obligations since **October 2013**. It details that this warning was detailed in the appendix of letters issued to the Complainants from **07 October 2013**.

The Provider submits that the Complainants continued to make repayments of €1,600.00 *"which fell significantly short of the full capital and interest repayments they were obliged to pay"*. It outlines that it received correspondence from the Complainants proposing an increase in repayments to €2,000.00 from **February 2014** onwards and advised *"that [they] would like a long term solution maintaining [their] tracker rate and that under no circumstances will [they] relinquish same."*

The Provider submits that it issued correspondence on **10 February 2014** to the Complainants outlining that any proposal for an **Alternative Repayment Arrangement** must be subject to the Buy to Let pricing policy and *"if arrears continue to increase, the Provider will be left with no option but to initiate possession proceedings."* It submits that it received correspondence from the Complainants on **20 February 2014** detailing that they would only consider the removal of the tracker rate *"if arrears are capitalised and ICB rating is not affected."*

The Provider submits that it *“advised that it could look at an arrangement but it would be based on net rents, which would equate to approx. €2,280.00 per month”* and further advised that *“ICB cannot be reversed”* as full repayments were not made.

The Provider details that it considered the Complainants’ proposals in full and that they *“were primarily rejected on account of the Complainants’ refusal to allow the BTL pricing policy to be applied to any forbearance they would accept.”* The Provider submits that acceptance of any of the Complainants’ proposals, is at the commercial discretion of the Provider. It submits that *“the Provider is under no obligation to offer the Complainants a specific alternative repayment arrangement requested by them unless it is deemed appropriate and sustainable.”*

The Provider issued the Complainants an **Agreement to Amend Mortgage Loan Offer Letter** on **21 March 2014**, offering the Complainants 60 months’ fixed repayments of €1,750.00, to be capitalised following 6 months repayment of €1,750.00, subject to the Buy to Let pricing policy. It submits that *“it was open to the Complainants to accept or reject the Provider’s offer.”* It outlines that the Complainants chose to sign and accept the **Agreement to Amend Mortgage Loan Offer Letter** on **21 March 2014**.

The Provider details that the **Agreement to Amend Mortgage Loan Offer Letter** was *“wholly compliant”* with the **Consumer Protection Code 2012**, *“containing the requisite legal notices to include warnings, indicative comparisons and details of the advantage and disadvantages.”* It outlines that the Complainants were afforded 5 weeks to consider the Provider’s offer.

The Provider does not accept the Complainants’ submission that they signed and accepted the Agreement under duress. It states that *“this was not (and could not be) a unilateral decision taken by the Provider”*. It submits that the Complainants *“had the full benefit of a financial advisor for the purposes of negotiation and independent advice.”* In addition, the Provider does not accept that it gave *“appalling advice”* to the Complainants. It submits that *“it is under no circumstances the function of the Provider to provide advice on the visibility or not of a particular offer of forbearance for its customers.”* It states that this is the duty of a legal or financial advisor. The Provider details that there was no indication that the Complainants signed and accepted the Agreement against the advice of their financial advisors. It relies on **Condition 4(d)** of the Loan Offer and states that an amendment to the mortgage loan terms and conditions could not be completed without the consent of the borrower.

The Provider details that it introduced a new pricing policy in **late 2012** which applied to non-CCMA Buy to Let (“BTL”) Tracker customers seeking any change to their existing repayment terms and conditions. It outlines that this was *“a commercial decision”* and *“reflects the increased cost and risk attaching to existing Non CCMA Buy to Let Tracker Mortgages loans.”* It details that when BTL tracker customers sought an amendment to their loan repayment terms and conditions they were *“offered a new Standard Variable Interest Rate mortgage for the life of the loan, which is initially priced at 1% above what they are currently paying on their tracker mortgage.”*

The Provider does not accept the Complainants’ submission that there was no provision in their Loan Offer that detailed that the tracker rate was subject to capital and interest repayments. The Provider submits that *“it is not the tracker rate that is subject to full capital and interest repayments.”* It outlines that *“the repayment type”* is subject to **General Condition 4(a)** of the Loan Offer. It details that as the Complainants advised that they were unable to meet the repayments as per the Mortgage Loan Offer *“this was a clear request by the Complainants to the Provider for an amended repayment schedule and the Provider has a clear right to exercise its commercial discretion when amending loan terms.”* The Provider submits that it utilised this commercial discretion to amend the applicable interest rate.

The Provider further submits that the Complainants’ mortgage loan account was not subject to the **Code of Conduct on Mortgage Arrears** and as a result did *“not attract the protections afforded to mortgages secured by a borrower’s primary residence.”* It submits that it *“acted fairly in seeking to resolve the arrears.”* It further details that it complied with the **Consumer Protection Code 2012** in its interactions with the Complainants and *“continuously engaged with the Complainants with a view to dealing with the arrears anticipated by the Complainants when they reverted to full capital and interest repayments in October 2013.”* It submits that it complied with **Chapter 2** of the **Consumer Protection Code 2012** and has acted fairly and professionally in the best interests of its customers.

The Provider outlines that the arrears were at €21,728.57 on **29 October 2014**, the date of capitalisation. It submits that the capitalisation of arrears was *“on foot of the Complainants having made payments in accordance with their obligations under the Agreement to Amend Mortgage Offer Letter, signed by the Complainants on 22 April 2014.”*

The Complaint for Adjudication

The conduct complained of is that the Provider inappropriately removed the tracker interest rate from the Complainants’ mortgage loan account in **March 2014**.

Decision

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

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

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

A Preliminary Decision was issued to the parties on **07 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.

Following the issue of my Preliminary Decision, the Complainants made a further submission by way of e-mail to this office on **05 August 2021**, a copy of which was exchanged with the Provider for its consideration.

The Provider confirmed by way of e-mail to this office dated **09 August 2021** that it had no further submission to make.

Having considered the Complainants' additional submission and all of the submissions and evidence furnished to this Office by both parties, I set out below my final determination.

I note at the outset that in their post Preliminary Decision submission of **5 August 2021**, the Complainants submit as follows:

“You state – ‘The conduct complained of is that the Provider inappropriately removed the tracker interest rate from the Complainant’s [sic] mortgage loan account in March 2014’

While this is correct, other matters raised within our complaint were not included in this section for adjudication. We expressed our opinion that the bank used improper motive in removing our clients from their tracker rate and we also complained that our clients were discriminated against as they benefited from a competitive rate from the outset of their mortgage. Variable or fixed rate BTL customers were not targeted in the same aggressive manner, however, these matters do not appear to have been considered as part of the complaint

...

*As part of your Preliminary Decision you state the following;
‘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’*

During the course of this investigation we specifically outlined our concerns that our clients were discriminated against as tracker buy to let interest only customers. We also expressed our concerns regarding the motive behind [the Provider’s] interaction with our clients under their buy-to-let policy, which came into effect in 2012.

...

We confirmed that we felt [the Provider] acted with ‘improper motive’ in their approach to negotiations with our clients simply because they were availing of a competitive tracker rate.

...

The lender confirms ‘On [late] 2012, a new pricing policy was implemented for non CCMA Buy to Let (BTL) Tracker Customers seeking any change to their existing repayment terms and conditions. Was this pricing policy extended to all BTL customers including Fixed & Variable Customers? and if not – why not?’

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For the avoidance of doubt, I do not accept that the matters outlined above in the Complainants' post Preliminary Decision submission were not adequately considered and addressed in my Preliminary Decision of **7 July 2021**.

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

In order to ascertain if the Provider did act inappropriately, it is necessary to review and set out the relevant provisions of the Complainants' mortgage loan documentation and to consider the Provider's interactions with the Complainants between **2013** and **2014** in relation to the arrears on the mortgage loan account and the possible alternative repayment arrangements proposed and offered.

The Provider issued a **Mortgage Loan Offer Letter** to the Complainants dated **11 July 2006**, which provided for an advance of €908,000 over a term of 25 years.

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

<i>“3. Number of Repayment Instalments</i>	<i>Instalment Type</i>	<i>4. Amount of each Instalment</i>
<i>84</i>	<i>Interest only payments at 3.70% Tracker Variable Rate</i>	<i>€2,799.67</i>
<i>216</i>	<i>Capital & interest repayments at 3.70% Tracker Variable Rate”</i>	<i>€5,758.78</i>

The Loan Offer outlines that the loan type is *“Interest only for first 7 years, Annuity thereafter”* and the interest rate is *“3.70% ECB Tracker Variable Rate (see special conditions section 11”*.

The **Part 3 – The General and Special Conditions** of the **Mortgage Loan Offer Letter** details as follows;

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“4. Repayment

- (a) *Unless otherwise stated herein or agreed by the Bank in writing, the repayment of the Loan shall be by monthly instalments in arrears by direct debit and the Borrower must effect and maintain a suitable direct debit mandate with the Borrower’s bank or other financial institution. For an annuity, or other repayment loan, repayments shall be comprised of principal and interest and any other accounts payable and for an endowment loan shall comprise of interest and such other amounts only. The due dates for repayment of the Loan are those dates that are from time to time set by the Bank. The amounts of such repayments and the due dates for payment thereof shall be determined by the Bank at its absolute discretion.*
- (b) *In the event of any repayment not being paid on the due dates or any of them, or of any breach of the Conditions of the Loan or any of the covenants or conditions contained in any of the security documents referred to in clause 2(a), the Bank may demand an early repayment of the principal and accrued interest or otherwise alter the Conditions of the Loan.*
- (c) *If so agreed in writing by the Bank, the Loan may be repaid in 10 or 11 payments in any year of the term and such payments (unless the Bank at its absolute discretion permits an extension of the term) shall be of such amounts as will discharge the liability of the Borrower during that year for the Loan.*
- (d) *The Bank may at its absolute discretion, and with the consent of the Borrower, vary any payment of principal, interest or any other amounts payable in respect of the Loan.”*

Special Condition 11 of the **General and Special Conditions** details as follows;

“ ...

Interest rate

- ***The interest rate quoted for this facility is the Bank’s Investment tracker variable rate, currently 3.70% per annum. The interest rate applicable to the Loan is a variable interest rate and may vary upwards or downwards. The interest rate shall be no more than 0.95% above the European Central Bank Main Refinancing Operations Minimum bid rate (“Repo Rate”) for the term of the Loan. Variation in interest rates shall be implemented by the lender not later than close of business on the 5th working day following a change in the Repo rate by the European central Bank. Notification shall be given to the Borrower of any variation in interest rate in accordance with General Condition 6 (b) of this offer letter.***

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In the event that, or at any time, the Repo rate is certified by the Lender to be unavailable for any reason the interest rate applicable to the loan shall be the prevailing investment Variable rate."

I note that the Complainant signed an **Acceptance of the Loan Offer** on **13 July 2006** on the following terms;

"1. I confirm that I have read and fully understand the Consumer Credit Act notices, set out above, and the terms and conditions contained in this Offer Letter and I confirm that I accept this Offer Letter on such terms and conditions."

It is clear to me that the Loan Offer Letter envisaged a tracker variable interest rate of ECB + 0.95% for the term of the loan. The **Special Conditions** provided that the repayments would be interest only for the first 7 years of the term of the loan. The Complainants accepted the Letter of Offer, having confirmed that they had read and fully understood the Loan Offer.

I note that the initial interest only repayment period on the mortgage account was due to expire in **September 2013**.

The Provider's internal note of **14 June 2013** details:

"... cust calling as coming off i/o in sept, and advised will not be able to afford full repayments, confirmed rental properties, advised cust would need to arrange meeting with NAM and complete SFS, cust asked for meeting in [redacted]"

The Provider's internal note on **06 August 2013** details as follows:

"... Spoke to [First Complainant] regarding SFS & docs returned ... he advised he cannot return to C&I repayments in Sept so is looking to put an arrangement in place for 12 months. Advised of BTL repricing policy if FB is offered & he stated that he cannot afford to have the account removed from the tracker rate. He requested a meeting on 15th August as he is not in the country at present."

The Provider emailed the Complainants on **19 August 2013** as follows:

"As requested I will outline what we had discussed last week in the following email. Your account is due to revert to Capital & Interest repayment ...

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As discussed, if you feel that you are not in a position to meet full Capital & Interest repayments and wish the Bank to provide you with a further revised repayment arrangement, the Bank is willing and ready to discuss that with you with a view to reaching an agreement.

However as discussed, under the Bank's pricing policy any amendment to the repayment terms and conditions of the original mortgage loan will include a condition moving the mortgage loan from the present tracker rate of interest (currently 1.45%) to a variable rate of interest (initially at 1% above your existing tracker rate)."

The Provider's internal note of the meeting between the Provider and the Complainants on **23 September 2013** outlines:

"[Provider representative] outlined the conditions around the Bank's new pricing policy and that C&I repayments are due to commence in October 2013. [Provider representative] advised that as discussed on numerous occasions, any further forbearance or amendments to the repayment terms and conditions of the account would result in their Tracker Rate reverting to a new Variable Rate mortgage and being priced at 1% above what they are currently paying on their Tracker Rate. It will initially be priced at 1% above the current interest rate of 1.45% i.e. 2.45%. [Complainant's representative] asked was this discounted for any length of time which [Provider representative] replied it was not, she explained that this Variable Rate will be at the discretion of the Bank and can be increased/ decreased over the life of the mortgage. [Complainant's representative] referred to a copy of the original offer letter and asked where it stated that it was to revert to C&I repayments after 7 years which [Provider representative] pointed to the first page & the special conditions where it is marked.

...

[Complainant's representative] advised that his client will not be signing a new offer letter which will mean the rate is removed from an existing tracker rate. He then asked what the outcome would be if he continued to pay what he is currently paying without signing up to an arrangement. [Provider representatives] advised that if this happens and the account goes into arrears, the Bank will need to review its options but it may result in a receiver being appointed and the Bank commencing judgement proceedings."

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The Complainants wrote to the Provider on **1 October 2013** as follows:

"I refer to my meeting on Tuesday 10 September 2013 with both your colleague [Redacted] and yourself and wish to express my disappointment at the outcome of this meeting.

I am reviewing the options available to me and in the meantime I have cancelled my direct debit mandate and enclose a cheque to the value of €1,600. This represents my usual interest only repayment of €1,099.82 along with some capital repayment. ..."

The Complainants' mortgage loan account entered into arrears on **7 October 2013**. I note from the **mortgage loan statement** that the capital and interest repayment due was €4,776.36.

The Complainants wrote to the Provider on **10 October 2013** as follows:

"...

Having reviewed my letter of offer I would like to draw your attention to special condition 11 (interest rate) where it clearly states that the interest rate shall be no more than 0.95% above the European Central Bank main refinancing operation minimum bid rate ("repo rate") for the term of the loan.

There is nothing in the letter of offer which states the interest rate will be higher if I am not in a position to service the full capital and interest repayment.

As mentioned during our meeting I am in a position to make a reduced capital and interest repayment of €1,600 per month which represents an increase of almost 50% on my previous interest only repayment.

In light of this I would be grateful if you would reconsider your position and allow me to maintain my Tracker facility of ECB plus 0.95%."

The Provider wrote to the Complainants on **1 November 2013** in relation to the arrears on the mortgage loan account.

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The Provider issued a letter to the Complainants on **04 November 2013** which details:

"I have received cheques for €1,600 & €93.54 today and they will be applied to the respective amounts. I am writing in response to your letter dated 10th October 2013 requesting an extension of Interest Only repayments on the existing tracker rate for the above account number. Any amendments to the repayment schedule as set out in your letter of loan offer dated 11th July 2006 will result in the discontinuation of your tracker rate.

I have sent your proposal to our Credit Department for review. As you are not in a position to meet your scheduled Capital & Interest repayments, the Bank will consider all aspects of your case and offer, where possible, an alternative repayment arrangement. Any alternative repayment arrangement will be subject to the Bank's pricing policy as set out above."

The Provider's internal document titled "*Highest risk/arrears summary sheet*" dated **31 October 2013** outlines as follows in the "*Recommendation*" section:

"...

Decline bwrs proposal to pay €1,600 per month ... and remain on existing tracker rate.

Recommend we approve I/O Repayments of €1,860 per month ... for 12 months from November 2013 – October 2014 in order to allow bwrs time to complete necessary renovations to all properties.

Rate to be loaded by 1% as per BTL pricing policy.

...

Capital & Interest repayments of €4,776 p/m are not affordable so asset disposal is the obvious choice here. Bwrs have advised their preference is to hold on to properties to allow them time to increase in value and look at asset disposal in the future.

..."

The Provider issued an **Agreement to Amend the Mortgage Loan Offer Letter** to the Complainants on **21 November 2013** which offered the Complainants interest only repayments for a period of 12 months, reverting to capital and interest repayments at the end of this period. The Agreement also provided for the conversion of the tracker rate of 1.20% to a BTL variable rate of 2.20%.

The Provider wrote to the Complainants again on **2 December 2013** in relation to the arrears of €11,027.89 on the mortgage account. The letter outlined:

“ ...

The number of missed mortgage repayments is at a serious level. It is vital you co-operate with us in addressing your mortgage arrears. If you choose not to co-operate with us in addressing your arrears, we will classify you as non-cooperating. This has serious consequences for you including legal proceedings which can commence immediately for repossession of the property.

...”

The Complainant sent the Provider a letter dated **19 December 2013** which stated:

“Having received financial advice regarding your alternative repayment arrangement dated 21st November 2013 I feel that this agreement is not in my best interest.

By agreeing to this restructure I am firstly giving up my Tracker rate and moving to a BTL variable rate which can move at any time decided by the bank. In addition interest only repayments have only been extended by 12 months which is only a temporary measure at the end of the period my repayments will be even higher estimated by you at €5,375.41 and the cost of credit is approx €100,000 more than my original loan agreement.

Overall this proposal offered is not in my favour and I will be in a worse situation on expiry of the agreement. I don't see this as an acceptable solution and certainly do not wish to give up my Tracker rate as I outlined in our first meeting.

In addition I note the proposed new repayment is €1,666.69 per month at BTL rate of 2.20%. As you can see I am currently repaying €1,600 per month, surely it is best advice that I stay on my Tracker facility which means that I am meeting my full interest repayment along with some capital being paid off the balance rather than paying a higher BTL rate on an interest only basis and no capital reduction each

/Cont'd...

month, where this rate can change at any stage. Surely this does not represent best advice from your organisation."

The Provider issued the Complainants a letter dated **09 January 2014** advising that the date for the acceptance of the **Agreement to Amend the Mortgage Loan Offer Letter** dated **21 November 2013** had passed.

The Provider wrote to the Complainants again on **30 January 2014** in relation to the arrears of €12,503.06 on the mortgage account.

The Provider issued the Complainants a **Legal Proceedings Threat Letter** dated **05 February 2014** in relation to the arrears of €12,578.23 on the mortgage account.

The letter stated:

"The arrears above remain outstanding on your account despite our attempts to agree an alternative repayment arrangement with you.

Please contact us immediately, or you will leave us with no option but to place your account in the hands of our Solicitors to initiate Possession Proceedings. Under the terms of your Mortgage Contract, you may be liable for any costs incurred.

Your property is at risk if you do not keep up payments on your mortgage and we would emphasise that we are always willing to discuss any special difficulties giving rise to these arrears."

The **mortgage loan statements** show that the Complainants were not meeting the capital and interest repayments due and were instead repaying €1,600.00 per month.

The Complainants sent the Provider a letter dated **06 February 2014** which stated:

"...

It is my intention to increase my repayment to €2,000 per month from February which represents 71.4% of my rental income. I am not in a position at present to increase the repayment any further as I need to attend to the following expenditure over the coming weeks ...

I hope to be in a position to possibly increase my repayment again over the coming months.

/Cont'd...

Once again I would ask you review my account with a view to offering me a longer term solution that allows me to maintain my Tracker Rate Facility, as previously stated under no circumstances will I relinquish my Tracker Rate. Perhaps a warehousing type arrangement that is being offered by other institutions might be a suitable arrangement for both of us."

The Provider's internal document dated **8 February 2014** details:

*"...
Approval to Call in Debt when account reaches >90PD as borrowers are not cooperating...
...
Borrowers have advised in writing that they will not take up any offer that will affect their tracker rate ... Borrowers are refusing to accept any repayment arrangement that will result in the discontinuation of the tracker rate. On that basis, it leaves the Bank with no alternative than to CID and appoint receiver over properties to sell within 12 months.
..."*

The Provider responded to the Complainants' letter by email dated **10 February 2014** as follows:

*"...
As discussed, if the Capital & Interest repayments cannot be met and an alternative repayment arrangement is sought, any such arrangement will be based on a variable rate. This is non-negotiable.

If the arrears continue to increase, the Bank will be left with no option but to call in the debt on the account in default and place the account in the hands of our Solicitors to initiate Possession Proceedings. A letter to this effect issued on 5th February 2014."*

The Provider's **Decision Memorandum** document dated **15 February 2014** provided in evidence stated:

*"...
DECISION:*

- [XXX] 7411 - Decline request for fixed repayment €1,600 per month without re-pricing however approve 12 Months Interest Only ...*

/Cont'd...

COMMENTS:

- *Borrowers request to pay fixed repayments of €1,600 per month to account XXXX4711 without re-pricing applying is declined as it is outside of Policy.*
...
- *If borrower unwilling to accept re-pricing, and in the absence of agreed repayments, Bank will seek to enforce its rights and will take any action deemed necessary up to and including appointment of receiver here.*
..."

The Provider's "Highest risk/arrears summary sheet" dated **25 February 2014** details as follows in the "Recommendation" section:

"1) Approval to offer fixed payments of €1,750 p/m for 60 months for account [XXXX]7411 only

2) Approval to capitalise arrears on account [XXXX]7411 as payments have been met each month.

Rate to be loaded by 1% as per BTL pricing policy.
..."

I accept that there was no obligation on the Provider to accept the proposals submitted by the Complainants in **October 2013** or in **February 2014**, as it was entitled to seek repayment in full of the outstanding monies due on the mortgage loan account in accordance with the mortgage contract. In accordance with **General Condition 4(a)** the obligation was on the Complainants to maintain the repayments on the mortgage loan and the Complainants were not doing so.

The Provider has submitted in evidence a "Decision Memorandum" dated **12 March 2014** which details:

"...

- *[XXX]7411- Agree with Case Manager Recommendation i.e. Approve €1.75k pm fixed payments for 5 years. Rate to be loaded by 1% and move to variable. However only capitalise arrears after 6 mths of €1.75k pm repayments rec'd and 1 full months C & I rec'd on a/c [account number]*

...

/Cont'd...

- *Customer needs to seriously consider selling some of [Provider] held properties during the 5 yrs of this arrangement.
..."*

The Provider issued an **Agreement to Amend Mortgage Loan Offer Letter** dated **21 March 2014** to the Complainants.

Section A of the form details as follows;

***"SECTION A: WHAT THIS FORM DOES
Alternative Repayment Arrangement
Reduced Regular Instalment***

What you pay in each instalment

1.1 If you accept this form you are to pay an amount equal to the greater of the following amounts in each regular repayment instalment during the Agreed Period:-

- (i) *€1,750.00 (the "reduced regular instalment"); or*
- (ii) *Interest due for payment on the Loan if the amount of interest due for payment is greater than the reduced regular instalment (that is possible for example, because of a rise in interest rates.)*

The Length of the Agreed Period

1.1.1 The "Agreed Period" means the period of 60 months starting from the date we put the alternative repayment arrangement into effect.

...

Conversion from Tracker Rate to New Interest Rate Type

Tracker to BTL Variable

This form converts the interest we charge on the Loan from a tracker rate which is 1.200% per annum at present to a **BTL Variable** rate. The BTL Variable Rate will apply for the remaining term of the Loan (except for periods in which you and we agree in writing to fix the interest rate for the Loan). At present this BTL Variable rate is 2.200% per annum".

/Cont'd...

Section B of the form details as follows;

“SECTION B: FURTHER TERMS AND CONDITIONS OF THIS FORM

B.1 ANY COMMITMENT TO A TRACKER RATE ENDS

Any commitment or obligation in your Mortgage Loan Offer Letter or otherwise to provide you with a tracker variable rate for the Loan, now or in the future, will end once you complete and return this form.

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

...

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

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

...

/Cont’d...

B.10 About Your Acceptance of this Form

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

Section C of the form provides as follows;

**“SECTION C: LEGAL NOTICES
(PLEASE READ THESE CAREFULLY)”**

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

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

- a) We estimate you are now obliged to pay us monthly instalments of €4,774.66 each and that the total cost to you of the Loan would be €99,504.71. This estimate (i) is based on the tracker interest rate and the terms and conditions that apply to the Loan before you accept this form; but (ii) assumes you pay instalments of principal and interest on a normal annuity basis (for example, this estimate takes no account of any alternative repayment arrangement we may have entered into with you before we sent you this form.)
- b) If you accept this form, we estimate you will be obliged to pay monthly instalments of €1,750.00 each during the Agreed Period and €6,846.18 each thereafter. The total cost of the Loan would be €230,824.63. These estimates are based on the rate of interest and other terms (for example, your reduced payment obligations during the Agreed Period) provided for in this form. The increase in the cost of the Loan is because (i) the interest rate offered in this form is higher than your present tracker interest rate; and (ii) the Loan principal will not be repaid as quickly as set out in the initial version of your Mortgage Loan Offer Letter.
- c) Each estimate (i) assumes you met your payment obligations to us in full and in time; (ii) is indicative only, for example, the amounts you pay in regular instalments may differ because of future changes in interest rates;

/Cont’d...

(iii) assumes you make 12 monthly payments each year even if you have another arrangement with us; and (iv) includes arrears, even if arrears are not being capitalised as part of this agreement.

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

The Complainants signed the **Acceptance of the Agreement to Amend Mortgage Loan Offer Letter** on **22 April 2014** on the following terms;

“By signing this form:-

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

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

It is clear that the Agreement to Amend Mortgage Loan Offer Letter offered the Complainants reduced repayments of €1,750.00 on the mortgage loan for a period of 60 months, subject to the BTL variable rate of 2.20%.

The Complainants signed and accepted the **Agreement to Amend Mortgage Loan Offer Letter**, having ticked the boxes to confirm that they had received independent financial advice on the agreement and that they agreed to be bound by the terms and conditions of the agreement. It is clear from the evidence that the Complainants were aware, or ought to have been aware of the consequences of accepting/signing the agreement.

/Cont’d...

While the Complainants were in a very difficult position, it remains the case that if the Complainants were not happy with the terms of the **Agreement to Amend Mortgage Loan Offer Letter**, including the amendment to the interest rate, the Complainants could have decided not to accept the offer made by the Provider.

The Complainants have submitted that there “*was no reason for the Bank to insist that [the Complainants] change the terms and conditions of their loan.*” I appreciate that the Complainants did not want to give up their entitlement to a tracker interest rate. However, it is important to note that it was the Complainants who were seeking to vary the terms of their mortgage loan with the Provider by seeking forbearance on the loan. The Provider could not have varied them without the Complainants’ consent. 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. The Complainants have submitted that they wanted to enter into an arrangement which allowed them to make reduced repayments and retain the tracker interest rate. It is important for the Complainants to understand that there was no obligation on the Provider to offer the Complainants any alternative repayment arrangements, or indeed to offer the Complainants any form of forbearance on their mortgage loan at the time. Until the new terms were agreed, the original terms continued to apply.

The Provider, in accordance with its Buy-to-let Pricing policy offered a standard variable rate which I understand was to start at 1% above the current tracker interest rate on the Complainants’ mortgage loan which is the subject of this complaint.

In the circumstances of this particular complaint, it appears that the Provider offered a variable rate of 2.20%. I note that the **Agreement to Amend Mortgage Loan Offer Letter** refers to the tracker interest rate applicable to the loan as being 1.20%. The loading of 1% was added to the tracker interest rate of ECB + 0.95%, and a variable interest rate of 2.20% was offered by the Provider to the Complainants.

In their post Preliminary Decision submission of **5 August 2021**, the Complainants have submitted:

“The Bank state – ‘the pricing policy reflects the increase cost and risk attaching to existing Non CCMA Buy to Let Tracker Mortgage Loans’

What were these increased costs and risks other than the bank were losing money having incorrectly guaranteed competitive tracker margins into the future.

/Cont’d...

The Bank made a significant error offering specific tracker margins 'for the life of the loan'. Ultimately this was not the Customers error, but unfortunately Tracker interest rate customers are now paying the price. Variable and fixed rate customers were not treated in the same manner, indicating there was improper motive and discrimination against Tracker rate customers.

...

It is clear that the new Buy-to-Let pricing policy introduced in 2012, was a structured plan which would unravel and override our clients loan approval issued years previously in 2006. The Buy-to-Let pricing policy does not appear to have been extended to BTL Interest only Variable or fixed rate customers. Surely, this conduct is completely unfair and unjust and appears to be completely discriminatory against Tracker interest rate customers as a whole.

...

We expected that your office would consider and challenge [the Provider's] motive in relation to their Buy-to-Let pricing policy. The policy discriminates Tracker interest only BTL customers only, who appear to have limited options following their initial interest only period..."

In relation to the Complainants' assertion that the Complainants "were discriminated against as tracker buy to let interest only customers", it is important for the Complainants to understand that the Complainants' mortgage loan is governed by the terms and conditions of the Complainants' mortgage loan documentation. In adjudicating on this complaint, it is not relevant to consider the entitlements (contractual or otherwise) of other "Variable and fixed rate customers" or any other customers who hold mortgage loans with the Provider.

The Complainants are of the view that the Provider should have applied its Buy to Let pricing policy "to all BTL customers including Fixed & Variable Customers". It is important for the Complainants to understand that the Provider was free to exercise its commercial discretion in implementing a new pricing policy for non-CCMA Buy to Let customers in **late 2012** providing for such terms and conditions for tracker customers that it considered appropriate. This was a commercial decision that the Provider was entitled to make. The FSPO does not impinge on the commercial discretion of Providers. This means that it is for a Provider to determine what factors are relevant to it in taking a commercial decision.

/Cont'd...

For the avoidance of doubt, as no evidence has been furnished to support the assertion, I do not accept that the Provider “*used improper motive in removing*” the tracker rate from the Complainants’ mortgage loan account. Nor do I accept that the Provider “*targeted*” the Complainants in an “*aggressive manner*”.

I accept that the Complainants did not want to give up the entitlement to the tracker interest rate and were in very difficult circumstances. However, the Complainants were seeking to agree an alternative arrangement with the Provider on a mortgage that was not secured on their principal private residence. The Provider made an offer to the Complainants to make reduced repayments for 60 months on the mortgage account on condition that a variable rate of 2.20% would apply to the mortgage loan. While I accept that the Complainants were in a difficult position, it was nonetheless a matter for the Complainants to decide whether to accept that arrangement on offer by the Provider.

In their post Preliminary Decision submission dated **5 August 2021** the Complainants themselves have submitted that “*we accept that [the Complainants] ultimately signed an agreement to amend their original mortgage terms and conditions.*”

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

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

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

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

/Cont’d...

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

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

I note that the appropriate information and warnings under **provision 6.9** of the **CPC 2012** were contained in the **Agreement to Amend Mortgage Loan Offer Letter**. The mortgage loan was not a Private Dwelling House mortgage loan.

Therefore I cannot accept that as has been alleged by the Complainants that there was an *"inappropriate removal"* of a tracker rate of interest from the Complainants' mortgage loan account by the Provider in **March 2014**. I accept that the Complainants did not want to give up the entitlement to the tracker interest rate of ECB + 0.95% on the mortgage loan, however, the reality of the situation at that time in **March 2014**, was that the Complainants could not service the repayments required within the original term of the loan.

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

The Provider wrote to the Complainants on **30 April 2014** in relation to the arrears of €19,978.57 on the mortgage account. The letter detailed *"If you have already cleared the arrears or have made an alternative repayment arrangement with us please disregard this letter."*

The Provider's **Decision Memorandum** dated **15 May 2014** details:

"...

Once agreed repayments met for the next 4 months Case Manager to issue capitalisation MFA on account [XXXX]7411.

..."

/Cont'd...

The Provider wrote to the Complainants on **15 October 2014** as follows:

“ ...

We have reviewed your mortgage loan and we have now decided to capitalise your arrears and allow you to pay reduced instalments on your mortgage loan for a period of 54 months.

...”

The Complainants signed an **Agreement to Amend your Mortgage Loan Offer Letter Reduced Regular Instalments** on **23 October 2014** which provided for reduced repayments of €1,750.00 for a period of 54 months. They both ticked the box confirming they had received independent financial advice on the form.

The Complainants have submitted that they were *“threatened with legal proceedings at every opportunity, throughout our negotiations with [the Provider].”*

Provision 8.3 of the CPC 2012, outlines as follows;

“Where an amount 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.”

In their post Preliminary Decision submission dated **5 August 2021** the Complainants have submitted:

“Throughout your Preliminary Decision, you outline in detail the arrears handling of [the Complainants’] mortgage account. The dates in question begin in September 2013 when the initial interest only period came to an end, until [the Complainants] signed an alternative repayment arrangement on 22nd April 2014. I note that you have come to the conclusion that the lender acted within the parameters of the Consumer Protection Code 2012 in relation to the arrears handling on this account and we accept that our clients ultimately signed an agreement to amend their original mortgage terms and conditions”

As outlined in my Preliminary Decision, I have considered the arrears correspondence detailing the Complainants and Provider’s proposals that has been furnished to this office. I remain of the view that in its engagements with the Complainants, the Provider complied with its obligations under **provision 8.3 of the CPC 2012** and sought to agree an approach with the Complainant to resolve the arrears.

/Cont’d...

In their post Preliminary Decision submission dated **5 August 2021** the Complainants have further submitted:

“...the other aspects of our complaint in particular around the matter of improper motive and discrimination towards Tracker Customers which was raised time and time again throughout the investigation, are not mentioned within your Preliminary Decision.

...

...it appears to be acceptable for a lender to introduce a specific pricing policy some 6 years post loan assessment and agreement, when they also have the benefit of hindsight in relation to the value of Tracker interest rates...

Surely, this conduct is completely unfair and unjust and appears to be completely discriminatory against Tracker interest rate customers who otherwise had secured competitive tracker margins for the life of their loan.”

I must reiterate to the Complainants that this Office does not have jurisdiction to 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. Having considered the evidence before me, I do not accept in the circumstances of this particular complaint, that the Provider behaved in a manner that was unreasonable, unjust, oppressive or improperly discriminatory towards the Complainants within the meaning of **Section 60 (2) of the Financial Services and Pensions Ombudsman Act 2017**.

In **March 2014** the Provider offered the Complainants reduced repayments on their mortgage loan account for a period of 60 months, on the condition that the Complainants agreed to change the interest rate applicable to the mortgage loan from a tracker interest rate to a Buy-to-Let variable interest rate. The Provider issued an offer to the Complainants to this effect on the mortgage loan in the form of the **Agreement to Amend Mortgage Loan Offer Letter**, which contained the appropriate warnings in compliance with the **CPC 2012**, about moving from a tracker interest rate to a variable interest rate. The Complainants accepted the **Agreement to Amend Mortgage Loan Offer Letter** with respect to the mortgage loan.

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

/Cont'd...

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

8 September 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.