



<u>Decision Ref:</u>	2021-0531
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Tracker Mortgage
<u>Conduct(s) complained of:</u>	Failure to offer a tracker rate throughout the life of the mortgage
<u>Outcome:</u>	Rejected

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

This complaint relates to two mortgage loan accounts held by the Complainants with the Provider. Both mortgage loan accounts were secured on the Complainants' buy-to-let properties.

The first mortgage loan account ending **9316** was for a loan in the amount of €340,000 and the term of the loan was 20 years. The **Mortgage Loan Offer Letter** dated **04 December 2003** detailed the interest rate as a fixed interest rate of 2.69% for a period of 12 months, after which the interest rate would move to a standard variable rate. This mortgage loan account was redeemed on **13 July 2015**.

The second mortgage loan account ending **7151** was for a loan in the amount of €315,000 and the term of the loan was 15 years. The **Mortgage Loan Offer Letter** dated **10 August 2007** detailed the interest rate as a fixed interest rate of 4.79% for a period of 24 months, after which the interest rate would move to a tracker interest rate of the ECB + 0.95%. This mortgage loan account was redeemed on **29 January 2015**.

The Complainants' Case

The Complainants submit that both of their mortgage loan accounts (ending **9316** and **7151**) *“were tracker mortgages from the beginning until [the Provider] FORCED”* them to sign a new agreement *“under duress”*.

The Complainants detail that both mortgage loan accounts related to buy-to-let properties which became vacant for a period of time during the recession which resulted in the rental payments being much lower than the repayments due on the mortgage loans *“as the rental market weakened at a rapid pace”*. The Complainants state however that they never defaulted on their mortgage loan repayments.

The Complainants submit that in *“late 2009, early 2011”* the two properties were vacant for several months and costs began to escalate which resulted in the Complainants borrowing money from family and friends to maintain mortgage repayments on both mortgage loan accounts.

The First Complainant submits that *“the stress as it mounted began to take its tolls on my family, my business and my health”* and *“started receiving letters regularly from [the Provider] regarding the mortgages even though they were being repaid and of course I did not ignore them but met with them”*.

The Complainants submit that they were in contact with the Provider and were informed that they would be in a stronger position if they had *“defaulted on the loans and made no repayments, then it would be much easier for them to negotiate!”*.

The First Complainant submits that in **2012** he had numerous meetings with an agent of the Provider who was aware that he was receiving medical treatment at the time. The First Complainant outlines that at one particular meeting with an agent of the Provider, he was told *“there was only one way the bank could help us and that was to come out of the tracker mortgage to a different type temporarily and the bank could then give me a period of grace”*. The First Complainant submits that the agent of the Provider commented that *“[p]eople needed to pay for the banks problem”*. The First Complainant states that this agent of the Provider agreed *“in principal of 6 months interest free on condition that I signed a document to restructure out of the tracker mortgages”* and enter *“a new agreement”*. The First Complainant maintains that the agent of the Provider *“kept reiterating that it would be best for my business to also to keep its credit rating especially when I was trying to build it back up and get myself off the ground again”*.

The First Complainant submits at this time he suffered with his health and the breakdown of his marriage due to *“the pressures we were under”* and holds the Provider *“responsible for the stress and pressure that caused the breakup of my family unit for those years”*. The First Complainant outlines that the pressure which the Provider has not addressed, *“was created through conversations with specific members of their teams”*. He further contends that the Provider has failed to acknowledge, *“through this clinical view, the physical, mental and emotional suffering that was caused to me through their coercion”*.

The Complainants are seeking the following:

- (a) Compensation to cover the financial loss incurred by the overcharging of interest rates; and
- (b) Reimburse the Complainants with the difference between the tracker interest rate repayments and the variable interest rate repayments from **August 2013** which the Complainants estimate at € 11,141.21 (€4,540.98 in respect of mortgage loan account ending **7151** and €6,600.23 in respect of mortgage loan account ending **9316**).

The Provider’s Case

The Provider outlines that the Complainants drew down on mortgage loan account ending **9316** on **18 December 2003**. The Provider details that the **Mortgage Loan Offer Letter** dated **4 December 2003** provided for a loan in the sum of €340,000.00 on a fixed interest rate of 2.69% for a period of 12 months after which the interest rate would move to the standard variable for the remaining 19 years.

The Provider submits that the Complainants’ mortgage account loan ending **9316** rolled to a standard variable rate of 3.60% on **20 December 2004**. The Provider further submits that the mortgage loan account switched to a tracker interest rate of ECB +1.10% on foot of a **Mortgage Form of Authorisation** signed by the Complainants on **21 December 2004**.

On **2 August 2007**, the Provider details that a reduction in the interest rate was agreed and the interest rate was amended to ECB + 0.95%. The Provider outlines that between **27 July 2010** and **13 July 2015**, when the mortgage loan account was fully redeemed, the Complainants signed and accepted a number of **Mortgage Forms of Authorisation** to change between interest only payments and capital and interest repayments.

The Provider outlines that the Complainants drew down on mortgage loan account ending **7151** on **21 September 2007**. The Provider details that the **Mortgage Loan Offer Letter** dated **10 August 2007** provided for a loan in the sum of €315,000.00 on a fixed interest rate of 4.79% for a period of 24 months after which the interest rate would convert to a tracker interest rate of ECB + 0.95%. The Provider submits that the Complainants' mortgage loan account ending **7151** rolled to a tracker interest rate of ECB + 0.95% on **21 September 2009**. The Provider outlines that between **27 July 2010** and **29 January 2015**, when the mortgage loan account was fully redeemed, the Complainants signed and accepted a number of **Mortgage Forms of Authorisation** to change between interest only payments and capital and interest repayments.

The Provider submits the following in relation to **both mortgage loan accounts**:

- The Provider outlines that from **2010** to **2013**, the Complainants signed multiple **Mortgage Forms of Authorisation** to change to interest only repayment for 6-month periods.
- The Provider contends that the Complainants had expressed an intention to sell the buy-to-let properties the subject of both mortgage loans from **17 November 2011** onwards.
- In **late 2012**, the Provider states that it implemented a new pricing policy for 'Buy-to-Let' mortgage loans for tracker interest rate customers seeking to change their existing terms and conditions of mortgage loan repayment. The Provider submits *"the tracker status of the loan ends completely on taking up of amendments to the terms and conditions"* and *"customers who do not amend their terms and conditions continue on their existing tracker interest rate"*.
- The Provider submits it issued **Agreements to Amend Mortgage Loan Offer Letters** to the Complainants on **2 August 2013** which *"clearly and unambiguously set out the new terms for the Complainants, in particular, the conversion from a tracker rate of interest to a new rate of interest"*.
- The Provider submits these offers were subject to its 'Buy-To-Let' pricing policy which the Complainants were informed of by way of **Agreement to Amend Mortgage Loan Offer Letters** dated **9 January 2013**. The Provider submits that the *"the BTL pricing policy is applied to reflect the increase in risk associated with the restructuring of a mortgage loan."*

The Provider submits that the Complainants could have remained on the tracker interest rate pursuant to the terms of the **Mortgage Loan Offer Letter** dated **10 August 2007** but *"instead requested to renegotiate the terms, which they could have accepted or rejected"*.

The Provider notes that the Complainants accepted the terms of the **Agreement to Amend Mortgage Loan Offer Letters** *“which provided for 12 months interest only repayments, thereafter reverting to capital and interest”* on both mortgage loan accounts.

The Provider submits that the Complainants *“have provided no evidence to suggest that their financial difficulties can be attributed to the interest rate amendment on their mortgage loan accounts post August 2013”*.

The Provider states that *“the evidence clearly states that it sought to engage fully with the Complainants when the Complainants approached the Provider seeking forbearance on their mortgage loan accounts”*.

The Provider submits that it *“refutes the contention that the Complainants were forced to sign the Agreements of 2 August 2013”* and *“is satisfied that it did not act recklessly, negligently or deliberately mislead the Complainants as to the real or perceived advantages or disadvantages of any product or service.”*

The Provider further submits that it is free to renegotiate the terms of a mortgage loan where the Code of Conduct on Mortgage Arrears does not apply in a manner it deems fit *“except where the borrowers are personal consumers and the relinquishing of a tracker is at issue, the Provider must then comply with certain provisions of the Consumer Protection Code 2012”*. The Provider submits that it is satisfied that it complied with the **Consumer Protection Code 2012** in its dealing with the Complainants.

The Complaint for Adjudication

The complaint for adjudication is that the Provider incorrectly removed a tracker interest rate from the Complainants’ mortgage loan accounts in **August 2013**.

Decision

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The 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.

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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 25 November 2021, outlining my preliminary determination in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

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

In order to consider this complaint, it is necessary to review and set out the relevant provisions of the Complainants' mortgage loan documentation and to consider certain interactions between the Provider and the Complainants in and around **2013**.

I will now consider the mortgage loan documents in relation both mortgage loan accounts in turn.

Mortgage account loan ending 9316

The Provider issued **Mortgage Loan Offer Letter** dated **4 December 2003** to the Complainants in respect of mortgage loan account ending **9316** which details as follows:

"Part 1 – The Statutory Loan Details

1.	<i>Amount of Credit Advanced</i>	<i>€340,000</i>
2.	<i>Period of Agreement</i>	<i>240 months</i>
3.	<i>Number of Repayment Instalments</i>	<i>240</i>
4.	<i>Amount of Each Instalment:</i>	<i>12 @ 2.69% (Fixed) €1,832.30</i> <i>228 @ 4.10% (Variable) €2,064.45</i>

....

/Cont'd...

Part 2 - The Additional Loan Details of the Loan Offer Letter outlines as follows;

- | | |
|--|----------------|
| 11. "Type of Loan (e.g. Annuity or Endowment): | Annuity |
| 12. Interest Rate & whether Fixed or Variable: | 2.69% % Fixed" |

Condition 4 of Part 3 – The General and Special Conditions of the Mortgage Loan Offer Letter details as follows:

"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 amounts payable and for an endowment loan shall comprise of interest and such other amounts only. The due dates for repayment of the Loan are those dates that are from time to time set by the Lender. The amounts of such repayments and the due dates for payment thereof shall be determined by the Lender at its absolute discretion.*
- (b) *In the event of any repayment not being paid on the due dates or any of them, or of any breach of the Conditions of the Loan or any of the covenants or conditions contained in any of the security documents referred to in clause 2(a), the Lender may demand an early repayment of the principal and accrued interest or otherwise alter the Conditions of the Loan.*
- (c) *If so agreed in writing by the 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 the year for that 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 amount payable in respect of the Loan."*

/Cont'd...

I note that the **Acceptance and Consents** section of the **Mortgage Loan Offer Letter** was signed by the Complainants on **8 December 2003** on the following terms:

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

It is clear to me that the **Mortgage Loan Offer Letter** envisaged an initial fixed interest rate of 2.69% for 12 months with a variable interest rate of 4.10% to apply for the remaining term of the loan. The Complainants accepted the **Mortgage Loan Offer Letter**, having confirmed that they had read and fully understood the terms and conditions of the loan offer. I note from the **mortgage loan account statements** furnished in evidence that the mortgage loan was drawn down on **18 December 2003**.

While I have not been provided with any documentation signed by the Complainants prior to the expiry of the fixed interest rate period in **December 2004**, I understand that the Complainants elected to switch from a standard variable rate of 3.60% to a tracker interest rate of ECB + 1.10% on **20 December 2004**. It is disappointing that I have not been provided with the form that was signed by the Complainants to authorise this amendment however this is not in dispute between the parties.

The tracker interest rate that applied to the Complainant’s mortgage loan account decreased to ECB + 0.95% on **3 August 2007**, as agreed by the Provider. Again, I have not been provided with documentation relating to this, however I do not believe that this rate change is in dispute between the parties.

Mortgage account loan ending 7151

The Provider issued **Mortgage Loan Offer Letter** dated **10 August 2007** to the Complainants in respect of mortgage loan account ending **7151** which details as follows:

“Part 1 – The Statutory Loan Details

1.	<i>Amount of Credit Advanced</i>		€315,000
2.	<i>Period of Agreement</i>		180 months
3.	<i>Number of Repayment Instalments</i>	<i>Instalments Type</i>	4. <i>Amount of each Instalment</i>
	24	Capital & interest repayments	€2,453.59

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156 @ 4.79% 2 Year Fixed Rate
Capital & Interest repayments €2,476.44
@ 4.95% ECB Tracker rate

...

Part 2 - The Additional Loan Details

11. "Type of Loan

Annuity

...

14. Interest Rate

2 Year Fixed Rate; ECB Tracker Rate thereafter (see Part 4, Special Conditions)"

The relevant section of **Part 4 – Special Conditions** of the **Mortgage Loan Offer Letter** details as follows:

"Interest Rate

The interest rate quoted for the first 2 years of this facility is the Bank's 2 Year Fixed rate, currently 4.79% pa. The interest rate quoted for this facility following this period the Bank's Investment tracker variable rate, currently 4.95% pa. 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 rate shall be implemented by the lender no 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 of in accordance with General Conditions 6(b) of this offer letter. 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."

The relevant section of **General Conditions** of **Part 5 – The General Conditions** of the Mortgage Loan Offer Letter details as follows:

"4. Repayment

(b) *Unless otherwise stated herein or agreed by the Lender in writing, the repayment of the Loan shall be by monthly instalments in arrears by direct debit and the Borrower must effect and maintain a suitable direct debit*

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mandate with the Borrower's bank or other financial institution. For an annuity, or other repayment loan, repayments shall be comprised of principal and interest and any other amounts payable and for an endowment loan shall comprise of interest and such other amounts only. The due dates for repayment of the Loan are those dates that are from time to time set by the Lender. The amounts of such repayments and the due dates for payment thereof shall be determined by the Lender at its absolute discretion.

- (c) *In the event of any repayment not being paid on the due dates or any of them, or of any breach of the Conditions of the Loan or any of the covenants or conditions contained in any of the security documents referred to in clause 2(a), the Lender may demand an early repayment of the principal and accrued interest or otherwise alter the Conditions of the Loan.*
- (d) *If so agreed in writing by the Lender, the Loan may be repaid in 10 or 11 payments in any year of the term and such payments (unless the Bank at its absolute discretion permits an extension of the term) shall be of such amounts as will discharge the liability of the Borrower during the year for that Loan.*
- (d) *The Bank may at its absolute discretion, and with the consent of the Borrower, vary any payment of principal, interest or any other amount payable in respect of the Loan."*

It is clear that the **Mortgage Loan Offer Letter** dated **10 August 2007** provided that an initial fixed interest rate of 4.79% would apply to the mortgage loan account for a period of 24 months, with a tracker interest rate of 4.95% to apply thereafter.

The copy of the **Borrower's Acceptance and Consents** section of the **Mortgage Loan Offer Letter** dated **10 August 2007** provided in evidence that was signed by the Complainants is not legible. While it is unclear what date the Complainants signed the Borrower's Acceptance and Consents section, it was likely it was signed at some point between **10 August 2007** when the loan offer was issued to the Complainants and the date of drawdown of the loan on **21 September 2007**.

The Provider issued a **Mortgage Form of Authorisation** to the Complainants prior to the expiry of the fixed interest rate period in **August 2009**. While the document provided in evidence is undated, the Provider has outlined that the **Mortgage Form of Authorisation** issued on **21 August 2009**.

The **Mortgage Form of Authorisation** details as follows:

"I/we wish to apply for the interest rate indicated below for my/our Mortgage Loan ("the Loan") upon the expiry of my/our existing rate...."

2 Year Fixed RIL	4.850%
3 Year Fixed RIL	4.950%
5 Year Fixed RIL	5.200%
Tracker VAR ECB + 0.95% INV>500K	1.950%"

The evidence shows that the Complainants selected a tracker interest rate of ECB + 0.95%. I note from the **mortgage loan account statements** submitted in evidence that a tracker interest rate of ECB + 0.95% was applied to the Complainants' mortgage loan account on **21 September 2009**.

Mortgage loan accounts ending 9136 and 7151

The Complainants completed and signed a **Homeloan Mortgage Financial Review Form** on **01 July 2010** in relation to both mortgage loan accounts. I note that there is a handwritten note from Complainants on the form which reads as follows:

"Looking for 12 months Interest Only on Both Accounts As Previously Agreed on No [account number not the subject of this complaint redacted]".

The Provider subsequently issued a **Mortgage Form of Authorisation Application for Change to Interest Only Loan** in relation to both mortgage loan accounts, which was signed and accepted by the Complainants on **27 July 2010**. It detailed as follows:

"I acknowledge that following acceptance by the Bank of this Application the terms and conditions applicable to the Loan shall be amended/varied by the terms and conditions set out in this Form of Authorisation"

The form also provided as follows:

CONDITIONS: CONVERSION TO INTEREST ONLY LOAN For a period of 6 months only
<i>For the next Agreed period of the term of the Loan, repayment of this Loan shall be comprised of interest and any other amounts payable only and General Conditions 4(a) is hereby varied. At the end of the Agreed period, repayment shall comprise of principal and interest and any other amounts payable fully in accordance with General Conditions 4(a). The amount of such revised repayment instalments shall be as advised to the Borrower by the Bank in writing. The Bank may at any time during this Agreed period and at its absolute discretion (or at the request of the Borrower), convert the Loan to an annuity or repayment loan whereupon the Borrower shall be obliged to make such revised repayments instalments comprising both principal and interest and any other moneys payable as the Bank shall advise the Borrower in writing.</i>

The evidence is that the Complainants signed and accepted the form agreeing to interest only repayments for 6 months in relation to both mortgage loan accounts.

On **06 January 2011**, the Complainants completed and signed a **Buy to Let Financial Review Form** in relation to both mortgage loan accounts. I note that there is a handwritten note on the form which reads as follows:

“CUSTOMER LOOKING TO EXTEND INT. ONLY PERIOD ON MORTGAGES”.

The Provider issued two separate **Mortgage Forms of Authorisation** to the Complainants dated **20 April 2011**, in relation to each mortgage loan account and I will outline the details of both forms separately below:

The **Mortgage Form of Authorisation** dated **20 April 2011** in relation to mortgage loan account ending **9316** details as follows:

“MORTGAGE FORM OF AUTHORISATION APPLICATION FOR CHANGE TO INTEREST ONLY LOAN

Issue Date: 20 April 2011

....

Mortgage Account No: [Mortgage account ending 9316]

/Cont'd...

I/We wish to apply to change my/our Mortgage Loan (the "Loan") repayments to an INTEREST ONLY loan for a period of 6 months (Agreed Period).

...

I acknowledge that following acceptance by the Bank of this Application the terms and conditions applicable to the Loan shall be amended/varied by the terms and conditions set out in this Form of Authorisation

**CONDITIONS: CONVERSION TO INTEREST ONLY LOAN
For a period of 6 months only**

For the next Agreed period of the term of the Loan, repayment of this Loan shall be comprised of interest and any other amounts payable only and General Conditions 4(a) is hereby varied. At the end of the Agreed period, repayment shall comprise of principal and interest and any other amounts payable fully in accordance with General Conditions 4(a). The amount of such revised repayment instalments shall be as advised to the Borrower by the Bank in writing. The Bank may at any time during this Agreed period and at its absolute discretion (or at the request of the Borrower), convert the Loan to an annuity or repayment loan whereupon the Borrower shall be obliged to make such revised repayments instalments comprising both principal and interest and any other moneys payable as the Bank shall advise the Borrower in writing. For the next Agreed Period of the term of the Loan, the interest rate shall be no more than 1.45% above the European Central Bank Main Refinancing Operations Minimum (sic) Rate ("Repo Rate"). This is loading of 0.5% on to your existing tracker variable rate of 2.20% above the Repo Rate. This loading will apply for the Agreed Period only i.e 6 Months, subject to the Borrower meeting his/her repayment obligations during that period"

The **Mortgage Form of Authorisation** dated **20 April 2011** in relation to mortgage loan account ending **7151** details as follows:

**"MORTGAGE FORM OF AUTHORISATION
APPLICATION FOR CHANGE TO INTEREST ONLY LOAN**

Issue Date: 20 April 2011

....

Mortgage Account No: [Mortgage account ending 7151]

I/We wish to apply to change my/our Mortgage Loan (the "Loan") repayments to an INTEREST ONLY loan for a period of 6 months (Agreed Period).

...

/Cont'd...

I acknowledge that following acceptance by the Bank of this Application the terms and conditions applicable to the Loan shall be amended/varied by the terms and conditions set out in this Form of Authorisation

...

CONDITIONS: CONVERSION TO INTEREST ONLY LOAN

For a period of < 6 months only

For the next Agreed Period of the term of the Loan the interest rate shall be no more than 1.45% above the European Central Bank Main Refinancing Operations Mimimum (sic) Rate ("Repo Rate"). This is a loading of 0.5% on to your existing tracker variable rate of 2.20% above the Repo Rate. This loading will apply for the Agreed Period only i.e. 6 Months, subject to the Borrower meeting his/her repayment obligations during that period. At the end of the Agreed Period, if the Borrower has met his/her repayment obligations during the Agreed Period, then the variable interest rate applicable to the Loan shall be no more than 0.95% above the Repo Rate for the remaining term of the Loan (unless otherwise agreed in writing by the Lender and Borrower.) Where the Borrower has not met his/her repayment obligations during the Agree Period the interest rate shall be no more than 1.45% above the Repo Rate for the remaining term of the Loan (unless otherwise agreed in writing by the Lender and the Borrower)"

I note the Complainants signed both **Mortgage Forms of Authorisation** on **2 May 2011**, thereby agreeing to interest only repayments for a period of 6 months in relation to both mortgage loan accounts.

Prior to the expiry of the agreed interest only repayment period in relation to mortgage account ending **9316**, the Provider issued a letter to the Complainants dated **29 October 2011**, which details as follows:

"We are writing to let you know that the Interest Only Combo period of your mortgage is due to expire on 27/11/2011. From this date, repayments will comprise of principal and interest for the remaining term of your loan.

Your current repayment on this account is €605.78. However from 27/11/2011, the following details will apply:

Mortgage type: Repayment

/Cont'd...

<i>Description</i>	<i>Rate</i>	<i>Projected* Standard Repayment</i>
<i>TRACKER VAR ECB+1.25% INV>250K</i>	<i>2.450%</i>	<i>€1,955.58</i>

...

If you foresee any difficulties in making this new repayment amount, please contact your branch. [The Provider] is committed to working with you in relation to any mortgage repayment difficulties you may encounter."

The Complainants wrote a letter to the Provider dated **17 November 2011** in relation to both mortgage loan accounts, which details as follows:

"We are looking for 3 years interest only on the properties.

We have rental income of 27,600 euro per year

Interest only of 14,520 euro per year

Excess of maintenance and taxes of 3,080 euro per year.

That leaves a balance of 10,000 euro per year which we propose to pay 5,000 euro off the capital

Twice a year from the start date of the interest only been granted.

...

We have been loyal customers of [the Provider] for the last 20 years and have never gave you any cause to worry about our repayments.

The interest only would help us out now and it would also benefit the bank as we would be reducing the capital on our mortgage.

Thank You"

I note that the Complainants also refer to three other properties in the proposal which are not subject of this complaint. The Complainants enclosed a completed **Buy-to-Let Mortgage Financial Review Form** with the letter dated **17 November 2011**. I note the signature block of the Buy-to-Let Mortgage Financial Review contains a handwritten note that reads "*signed letter attached*".

The Provider issued two separate letters to the Complainants dated **24 January 2012** in relation to both mortgage loan accounts.

/Cont'd...

The relevant particulars of each letter are the same and detail as follows:

“Our Arrears Support Unit (ASU) has carefully assessed your mortgage loan to see if there is an alternative payment arrangement to suit you. We have determined that the most appropriate option for you in your current circumstances is to allow you to pay interest only in your mortgage instalments for a period of 6 months.

The ASU considered all aspects of your case:

- a) your personal circumstances;*
- b) your overall indebtedness;*
- c) the information you provided in the standard financial statement;*
- d) your current repayment capacity; and*
- e) your previous payment history*

...

If you wish to take up this offer we require you to send us the following documents (As we need to be satisfied with each of them) within 10 business days.

...

We strongly recommend you get independent financial and/or legal advice to help you decide whether to accept our offer of an alternative payment arrangement.”

The Provider enclosed a **Mortgage Form of Authorisation** with both letters on **24 January 2012**. The relevant particulars of each form are different therefore I have outlined the details of the forms separately below.

The **Mortgage Form of Authorisation** in relation to mortgage loan account ending **9316**, details as follows:

**“MORTGAGE FORM OF AUTHORISATION
APPLICATION FOR CHANGE TO INTEREST ONLY LOAN**

Issue Date: 24 January 2012

....

Mortgage Account No: [Mortgage account ending 9316]

/Cont'd...

I/We wish to apply to change my/our Mortgage Loan (the “Loan”) repayments to an INTEREST ONLY loan for a period of 6 months (Agreed Period).

The lender estimates the interest only repayment amount will be €395.41 per month”

...

ACKNOWLEDGEMENT AND AGREEMENT

...

I acknowledge that this Form will amend the terms and conditions that apply to the Loan, for example, the mortgage loan offer letter. Unless amended by this Form, the terms and conditions which apply to the Loan will remain in full force and effect. I acknowledge this Form is an application by me and does not come into force until the lender accepts the Form in writing. The lender is not obliged to accept this Form...”

The **Mortgage Form of Authorisation** dated **24 January 2012** in relation to mortgage loan account ending **7151** details as follows:

**“MORTGAGE FORM OF AUTHORISATION
APPLICATION FOR CHANGE TO INTEREST ONLY LOAN**

Issue Date: 24 January 2012

....

Mortgage Account No: [Mortgage account ending 7151]

I/We wish to apply to change my/our Mortgage Loan (the “Loan”) repayments to an INTEREST ONLY loan for a period of 6 months (Agreed Period).

The lender estimates the interest only repayment amount will be €394.85 per month”

...

ACKNOWLEDGEMENT AND AGREEMENT

...

I acknowledge that this Form will amend the terms and conditions that apply to the Loan, for example, the mortgage loan offer letter. Unless amended by this Form, the terms and conditions which apply to the Loan will remain in full force and effect. I acknowledge this Form is an application by me and does not come into force until the lender accepts the Form in writing. The lender is not obliged to accept this Form...”

/Cont’d...

The Complainants signed and accepted both of the above Mortgage Forms of Authorisation on **29 January 2012** and **31 January 2012** respectively, thereby accepting the Provider's offer for interest only repayments for 6 months in relation to both mortgage loan accounts.

The Complainants completed and signed a Standard Financial Statement (SFS) dated **12 July 2012**, in respect of both loan mortgage accounts. It detailed that the Complainants' total monthly income was €7,500.00 and total monthly expenditure was €1,342.00.

The Complainants wrote a letter to the Provider dated **31 October 2012** in respect of both mortgage loan accounts, which detailed as follows:

"We would like to apply for a short 6 month extension on our interest only agreement regarding the above accounts as we are currently in the complicated process of selling some properties with a view of clearing both mortgages in full and the re-structuring of our third loan (redacted)."

The Provider wrote a letter to the Complainants dated **9 January 2013** in relation to mortgage loan account ending **9316**, which detailed as follows:

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

We have considered all aspects of your case including:

- a) your personal circumstances;*
- b) your overall indebtedness;*
- c) the information you provided in the financial assessment form or subsequently submitted;*
- d) your current repayment capacity; and*
- e) your previous payment history.*

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

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

/Cont'd...

The Provider enclosed an **Agreement to Amend Mortgage Loan Offer Letter** with the letter dated **9 January 2013**, which details as follows:

*Agreement to Amend Mortgage Loan Offer Letter
(Change from Tracker Rate and Amend other Terms of the Mortgage Loan)*

Date of this Form: 09/01/2013

...

The amount you owe under the Mortgage Loan: €240,406.50

The Total Amount of arrears you owe under the Mortgage Loan: €0.00”

SECTION A: WHAT THIS FORM DOES of Agreement to Amend Mortgage Loan Offer Letter, details as follows:

“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 1.7% 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 2.7% per annum.”*

SECTION B: FURTHER TERMS AND CONDITIONS OF THIS FORM of Agreement to Amend Mortgage Loan Offer Letter, details as follows:

“B.1 ANY COMMITMENT TO A TRACKER RATE ENDS

Any commitment or obligation in your Mortgage Loan Offer 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 Operation Minimum Bid Rate.)

/Cont’d...

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 his form.”

I note that the Complainants did not sign and accept this form.

The Complainants’ independent financial advisor issued a letter to Provider dated **15 April 2013** with authority from the Complainants to authorise the financial advisor to act on behalf of the Complainants and provided consent to the financial advisor to have access to both mortgage loan accounts held by the Complainants with the Provider.

The financial advisor issued a further letter to the Provider dated **12 July 2013** in respect of **both mortgage loan accounts**, enclosing a Standard Financial Statement. The letters details as follows:

“I refer to the above. Please find enclosed the following documents: -

- *Completed & signed SFS*
- *Accounts for 2011 [(First named Complainant)] as 2012 are not available yet*
- *3 payslips for [Second named Complainant]*

...

I would be obliged if you could assess this application at your earliest convenience and revert to me with a decision or any queries on same.”

The Standard Financial Statement was completed and signed by the Complainants and dated **9 July 2013**.

The Provider subsequently issued two separate letters to the Complainants dated **2 August 2013** in regard to each mortgage loan account. The relevant particulars of each letter are identical, and detail as follows:

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

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

/Cont’d...

- d) *Your current repayment capacity; and*
- e) *Your previous payment history.*

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

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

....

- *You will lose the present tracker variable rate for the remaining term of the mortgage...”*

Enclosed with the Provider’s letters dated **2 August 2013** was an **Agreement to Amend Mortgage Loan Offer Letter (Change from Tracker Rate and Amend other Terms of the Mortgage Loan dated 2 August 2013)**. The relevant details of the forms are identical, and detail as follows:

*Agreement to Amend Mortgage Loan Offer Letter
(Change from Tracker Rate and Amend other Terms of the Mortgage Loan)*

Date of this Form: 2 August 2013

...

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

SECTION A: WHAT THIS FORM DOES of Agreement to Amend Mortgage Loan Offer Letter, details as follows:

“Conversion from Tracker Rate to New Interest Rate Type

/Cont’d...

Tracker to BTL Variable

*This form converts the interest we charge on the Loan from a tracker rate which is 1.450% 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 2.450% per annum."*

SECTION B: FURTHER TERMS AND CONDITIONS OF THIS FORM of Agreement to Amend Mortgage Loan Offer Letter, details as follows:

"B.1 ANY COMMITMENT TO A TRACKER RATE ENDS

Any commitment or obligation in your Mortgage Loan Offer 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 Operation 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."

SECTION E: ACCEPTANCE BY (EACH) BORROWER of Agreement to Amend Mortgage Loan Offer Letter, details as follows:

I note that **SECTION E: ACCEPTANCE BY (EACH) BORROWER** in relation to both forms was signed by the Complainants on **11 August 2013**, on the following terms:

"By signing this form:-

- (1) I confirm I understand both the form and the information given to me in the letter that the Lender sent 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 understand each part of the form concerning that including Section C.*

/Cont'd...

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

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

The Complainants ticked the box confirming they received independent financial advice when signing **page 9** of both forms. However, I further note the Complainants also signed **page 10** of the forms, which contained the same declaration as quoted above but ticked the box confirming they had not received independent legal or financial advice. I note in ticking this box, the Complainants confirmed that they were satisfied to sign the forms without such advice and that they would not raise the lack of advice as a reason to question the agreements.

Both **Agreements to Amend Mortgage Loan Offer** were implemented on **20 August 2013** and the Complainants reverted to capital and interest payments on **20 August 2014** in respect of both mortgage loan accounts.

The Complainants submitted a further Standard Financial Statement in relation to both accounts to the Provider in **September 2014** and requested to continue with the existing interest only repayments period until **December 2014**, to allow for the sale of their buy-to-let properties to be complete.

The Provider issued a **Mortgage Forms of Authorisation** to the Complainants on **18 September 2014** in relation to both mortgage loan accounts. I note the **Mortgage Form Authorisation** forms were signed accepted and signed by the Complainants on **29 September 2014**, thereby agreeing to interest only repayments for a period of three months.

I note that both mortgage loan accounts reverted to capital and interest repayments on **8 December 2014**. I further note the mortgage loan account ending **9316** was redeemed in full on **13 July 2015** and mortgage loan account ending **7151** was redeemed in full on **29 January 2015**.

I accept that the Complainants did not want to give up the entitlement to the tracker interest rate in respect of both of their mortgage loan accounts. However, the Complainants were seeking to agree an alternative repayment arrangement with the Provider on mortgages that were not secured on their principal private residence. The Provider made an offer to the Complainants to make interest only payments for 12 months on both mortgage loan accounts on the condition that a variable rate of 2.450% would apply to each of the two mortgage loans. While I accept that the Complainants were in a difficult position, it was nonetheless a matter for the Complainants to decide whether or not to accept the arrangement proposed by the Provider. I note the Complainants were not in arrears on either of their mortgage loan accounts when they entered into the Agreements to Amend Mortgage Loan Offer.

Provision 6.9 of the **Consumer Protection Code 2012** outlines as follows:

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

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

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

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

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

/Cont’d...

I am satisfied that the appropriate information and warnings under **provision 6.9** of the **Consumer Protection Code 2012** were contained in the **Agreement to Amend Mortgage Loan Offer Letters**. The mortgage loans were not private dwelling house mortgage loans.

I accept that the Complainants did not want to give up the entitlement to the tracker interest rate of ECB + 1.450% per annum on their mortgage loans, however, the reality of the situation at that time in **August 2013**, was that the Complainants were concerned that they were not able to service the repayments required within the original terms of both of their mortgage loans. The Complainants therefore sought a further interest only period in respect of the mortgage loan accounts in an effort to avoid entering arrears on either of their mortgage loan accounts. **General Condition 4(d)** of the **Mortgage Loan Offer Letter** stipulates that the Provider to *“at its absolute discretion, and with the consent of the Borrower, vary any payment of principal, interest or any other amount payable in respect of the Loan”*. The Provider was willing to accede to the Complainants’ request to provide a further period of interest only in respect of both mortgage loan accounts on the condition that the Complainants agreed to change the interest rate applicable to the mortgage loans from a tracker interest rate of ECB + 1.45% per annum to a variable interest rate of 2.45% per annum. The Provider issued an offer to the Complainant to this effect in the form of the two **Agreement to Amend Mortgage Loan Offer Letters**, which contained the appropriate warnings under the **Consumer Protection Code 2012**, relating to moving from a tracker interest rate to a variable interest rate.

This office will not interfere with a financial service provider’s commercial discretion in relation to renegotiating terms of a mortgage loan agreement, other than to ensure that the Provider complies with relevant codes/regulations and does not treat the Complainants unfairly or in a manner that is unreasonable, unjust, oppressive, or improperly discriminatory. There is no evidence to suggest that the Provider acted in a manner that was unreasonable, unjust, oppressive, or improperly discriminatory in offering the Complainants an option to amend the interest rate on their mortgage loan accounts.

The evidence that has been provided to me does not support the Complainants’ assertion that the Provider inappropriately sought to remove the tracker rate from the Complainants’ mortgage loan accounts in **August 2013** or that they were under any form of duress from the Provider to sign the **Agreement to Amend Mortgage Loan Offer Letters**. As outlined above, the Complainants were seeking to agree an alternative repayment arrangement and it was a matter for them to decide whether to accept the arrangements on offer by the Provider.

/Cont’d...

I accept that the consequences of accepting the alternative repayment arrangements in respect of both mortgage loans offer and the appropriate information were provided to the Complainants in the **Agreement to Amend Mortgage Loan Offer Letters** that issued from the Provider.

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

Conclusion

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

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



GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

17 December 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.

