



<u>Decision Ref:</u>	2022-0133
<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 a mortgage loan account held by the Complainants with the Provider.

The loan amount was €242,000 and the term of the loan was 25 years. The Mortgage Loan Offer Letter dated **12 December 2005** provides that a tracker variable interest rate of ECB + 1.10% would apply for the term of the loan

The mortgage loan account was drawn down in two stages on **19 December 2005** and **25 January 2006**.

The Complainants' Case

The Complainants outline that in **2011** they advised the Provider that they were leaving the country for the short term in order to “*get back on [their] feet financially*”. The Complainants explain that they informed the Provider that the secured property the subject of mortgage loan account ending **3586** was always their family home and that they intended to return to it. The Complainants submit that the Provider “*took the position that as [they] were not residing in the property, it was a Buy to Let Property*”.

The Complainants submit that they were told on many occasions that if they did not sign an agreement dated **26 July 2013**, that the Provider would start a legal process to have their family home sold. The Complainants assert that they *“were bullied into signing up to this agreement”*.

The Complainants submit that the *“[Provider’s] solution to the unsustainability issue was to restructure the loan onto a higher interest rate loan”*. The Complainants maintain that this *“is illogical and defies common sense.”* The Complainants refer to a number of telephone calls with the Provider in that regard in **2011, 2012 and 2013** and submit that nowhere *“does it mention how heated those conversations were”*. The Complainants further submit that the Provider does not mention that they were told that if they did not sign the *“agreement”* that they would *“ultimately have the house sold from under [them]”* nor does it mention any of their objections raised in respect of the *“agreement”*. The Complainants detail the impact this has had on their mental health and that they are at their *“wits end”*.

The Complainants are seeking the following:

- a) The tracker rate to be restored to their mortgage loan account; and
- b) Redress and compensation for the stress and worry caused to the Complainants.

The Provider’s Case

The Provider outlines that the Complainants signed and accepted a **Mortgage Loan Offer Letter** dated **27 October 2005** in relation to mortgage loan account ending **3586** on **07 November 2005**.

The Provider submits that mortgage loan account ending **3586** first entered arrears on **18 September 2008**, which were subsequently cleared on **02 October 2008**. The Provider details that the direct debits due on **01 October 2008** and **01 November 2008** were also unpaid and those arrears were repaid on **20 November 2008**. The Provider explains that the mortgage loan account fell into arrears again on **20 May 2009** and the arrears continued until **16 September 2013**, at which stage the arrears on the mortgage loan account were capitalised in accordance with the terms of the **Agreement to Amend the Letter of Offer**.

The Provider maintains that it engaged substantively with the Complainants from **May 2009** onwards with a view to dealing with the Complainants’ arrears.

The Provider details that it implemented a new pricing policy in **late 2012** for “*non-CCMA buy-to-let (“BTL”) tracker customers*” who were seeking any change to their existing repayment terms and conditions. The Provider explains that as part of a financial review, if a change of terms and conditions is deemed appropriate, the BTL customer would be offered a new standard variable interest rate mortgage for the life of the loan, “*which is initially priced at 1% above what they are currently paying on their tracker mortgage*”.

The Provider outlines that the Complainants submitted a **Standard Financial Statement** (“SFS”) on **14 January 2013** as part of a request for forbearance on three linked mortgage loan accounts to include mortgage loan account ending **3586**. The Provider details that the SFS was not signed by the Second Complainant and that a SFS with both signatures was subsequently received on **21 February 2013**. The Provider submits that during a telephone call with the Complainants on **15 March 2013**, they were informed that following the assessment of the SFS, an offer of reduced repayments for the period of 12 months would be issued.

The Provider notes that the Complainants wrote to the Provider by letter dated **16 June 2013** and the Complainants stated that they believed that their property was their family home. The Provider submits that the Complainants submitted a new proposal by way of letter dated **28 June 2013**, seeking reduced repayments of €1,400.00 over all of the three linked mortgage loan accounts.

The Provider details that it issued an **Agreement to Amend the Letter of Offer** to the Complainants on **26 July 2013** offering reduced repayments of €510.00 for a period of 29 months and capitalisation of the arrears. The Provider submits that the **Agreement to Amend the Letter of Offer** also provided that the tracker interest rate would convert to a Buy-to-Let variable rate of interest. The Provider outlines that during a telephone call on **02 August 2013**, the Complainants were informed that an offer of reduced repayments of €510.00 for a period of 29 months was to be made subject to the BTL pricing policy, as the secured property was not covered under CCMA procedures. The Provider notes that the Complainants completed and signed the **Agreement to Amend the Letter of Offer** on **20 August 2013**.

The Provider asserts that it was open to the Complainants to accept or reject the Provider’s offer. The Provider refers to **Condition 4(b)** of the **Mortgage Loan Offer Letter** which “*expressly provides that any proposed variation in the terms of the loan is, “with the consent of the borrower”*”. The Provider maintains that the **Agreement to Amend the Letter of Offer** “*reflects the requirements of the Consumer Protection Code 2012 by containing the requisite legal notices to include warnings, indicative comparisons and details of the advantages and disadvantages.*”

/Cont’d...

The Provider refutes the Complainants' contention that it *"bullied"* the Complainants into signing the **Agreement to Amend the Letter of Offer** and submits that they *"had the benefit of legal advice for the purpose of negotiation"*. The Provider submits that the Complainants were in continuous arrears since **May 2009** and that they had been given the benefit of forbearance on two occasions in that time. The Provider submits that it is satisfied that it worked constructively with the Complainants, *"and in their best interests, to seek to bring about a resolution to the arrears arising from the mortgage loan account"*.

The Provider submits that it is unable to retrieve copies of any telephone calls with the Complainants and that the staff member referred to by the Complainants has since ceased employment with the Provider. The Provider explains that any telephone calls made from a branch location are not recorded.

The Complaint for Adjudication

The complaint for adjudication is that the Provider incorrectly removed the tracker interest rate from the Complainants' mortgage loan account 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.

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 March 2022, outlining the preliminary determination of this office 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, the final determination of this office is set out below.

In order to consider this complaint, it is necessary to review and set out the relevant provisions of the Complainants' mortgage loan documentation and also to consider certain interactions between the Provider and the Complainants between **2011** and **2013**.

The Provider issued a **Mortgage Loan Offer Letter** to the Complainants dated **27 October 2005** which details as follows under **Part 1 – The Statutory Loan Details**:

“1.	<i>Amount of Credit Advanced</i>		€200,000
2.	<i>Period of Agreement</i>		25 years
3.	<i>Number of</i>	4.	<i>Amount</i>
	<i>Repayment</i>		<i>of each</i>
	<i>Instalment</i>		<i>Instalment</i>
	<i>Instalments</i>		<i>Instalment</i>
	12		€515.34
	288		€984.54

The **Mortgage Loan Offer Letter** outlines that the loan type is “*Interest Combo*” and the interest rate is “*3.100% Variable*”.

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

- “(v) *This offer replaces our offer of 23/08/2005*

- (vi) *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 1.10% 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.*

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 Home Loan Variable Rate”.

The Complainants signed the **Borrower’s Acceptance and Consents** on **07 November 2005** 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 **Mortgage Loan Offer Letter** provided for a tracker interest rate of ECB + 1.10% for the 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 contained in the offer letter. I note however that the Complainants did not draw down this loan.

The Provider issued a further **Mortgage Loan Offer Letter** to the Complainants dated **12 December 2005** which details as follows under **Part 1 – The Statutory Loan Details**:

1.	<i>Amount of Credit Advanced</i>		€242,000
2.	<i>Period of Agreement</i>		25 years
3.	<i>Number of Repayment Instalments</i>	<i>Instalment Type</i>	4. <i>Amount of each Instalment</i>
	12	Variable at 3.350%	€673.71
	288	Variable at 3.350%	€1,222.77

The **Mortgage Loan Offer Letter** outlines that the loan type is *“Interest Combo”* and the interest rate is *“3.350% Variable”*.

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

- “(v) This offer replaces our offer of 27/10/2005*

- (vii) 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 1.10% 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. 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 Home Loan Variable Rate”.

I note that the Complainants signed the **Borrower’s Acceptance and Consents** on **15 December 2005** 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 **Mortgage Loan Offer Letter** provided for a tracker interest rate of ECB + 1.10% for the term of the loan. The Complainants accepted the **Mortgage Loan Offer Letter** dated **12 December 2005**, having confirmed that they had read and fully understood the terms and conditions contained in the offer letter. I note from the **mortgage loan account statements** that the loan was drawn down in two stages on **19 December 2005** and **25 January 2006**.

The Complainants obtained two further mortgage loans from the Provider in **2007**. The first by way of **Mortgage Loan Offer Letter** dated **09 March 2007**, in relation to mortgage loan account ending **0706**, which provided for a loan in the sum of €60,000 for a term of 25 years on a variable interest rate of 4.840%. The second by way of **Mortgage Loan Offer Letter** dated **28 September 2007**, in relation to mortgage loan account ending **6872**, which provided for a loan in the sum of €70,000 for a term of 25 years on a variable interest rate of 5.340%. Mortgage loan accounts ending **0706** and **6872** are not subject of this complaint

On foot of a request by the Complainants to change mortgage loan account ending **3586** to interest only repayments, the Provider wrote to the Complainants by way of letter dated **20 July 2009**, as follows:

“...We refer to your recent request to change your mortgage type to interest only/moratorium. Due to the fact that the loan does not fall within the criteria set out for the interest only product, your request has been declined by our Credit Department...”

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The Complainants converted both mortgage loan accounts ending **0706** and **6872** to interest only repayments by signing **Mortgage Forms of Authorisation Application for Change to Interest Only Loan** on **18 August 2009**.

The Provider subsequently wrote to the Complainants on **24 August 2009** in relation to mortgage loan account ending **3586**, as follows:

“...

We refer to your recent request to convert your mortgage account, as above, to an interest only loan for a period of 6 months. We confirm that the conversion to interest only has been approved subject to the receipt of the following documents as outlined below:

Signed Mortgage form of Authorisation (enclosed)

Condition of Interest only is that we also receive additional payment of EUR 379 per month”.

The enclosed **Mortgage Form of Authorisation Application for Change to Interest Only Loan** 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 **Mortgage Form of Authorisation Application for Change to Interest Only Loan** also provided as follows:

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.

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*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. **Condition of Interest only is that we also receive additional payment of EUR 379 per month***

The Complainants accepted and signed the form on **22 September 2009** thereby converting mortgage loan account ending **3586** to interest only repayments for a period of 6 months.

The Provider wrote to the Complainants by letter dated **30 July 2010** in relation to all three mortgage loan accounts as follows:

“ ...

Despite previous requests and reminders, you have failed to meet the instalment repayments due to your homeloan account(s), as detailed above.

The Bank is no longer prepared to accept this situation and hereby call on you to repay the entire debt within 10 days of this letter...”

The Provider subsequently wrote to the Complainants on **06 August 2010** in respect of all three mortgage loan accounts, as follows:

“ ...

We refer to your recent request to convert your mortgage account, as above, to an interest only loan for a period of 3 months. We confirm that the conversion to interest only has been approved subject to the receipt of the following documents as outlined below:

Signed Mortgage form of Authorisation (enclosed)...”

The enclosed **Mortgage Form of Authorisation Application for Change to Interest Only Loan** detailed as follows in relation to all three mortgage loan accounts:

“ ...

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 **Mortgage Form of Authorisation Application for Change to Interest Only Loan** also provided as follows:

CONDITIONS: CONVERSION TO INTEREST ONLY LOAN For a period of 3 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 shows that the Complainants accepted and signed the form on **25 August 2010** thereby converting mortgage loan accounts ending **3586, 0706** and **6872** to interest only repayments for a period of 3 months.

The Provider wrote to the Complainants by way of letter dated **07 March 2011** in relation to the three mortgage loan accounts as follows:

"...

Further to our previous correspondence, please note we have not received a payment to mortgage refs [mortgage accounts ending 0706, 6972] and since July 2009 re mortgage ref [mortgage account ending 3586], we acknowledge receipt of regular lodgements but regret that they are approx. 50% of the repayments due on this account for the last 12 months.

In order to assist you move forward positively, I enclose a Financial Review Form (one each) for you to complete and return asap which will enable a full review, which will in turn will hopefully facilitate a mutually agreeable/viable proposal to address the arrears..."

/Cont'd...

I note that the Complainants completed and signed a **Financial Review Form** on **10 March 2011** and detailed as follows:

*"Please provide any other information which you believe to be relevant to above:
at the moment we are receiving some financial assistance from [family members] I
have been to [another country] to try and get some work but not successful. I have
only gotten a few days work in Ireland since Xmas*

*Reason for Review (please specify and provide background as appropriate
We need this review badly at present as we have no work and the prospects are not
too bright..."*

The Provider wrote to the Complainants on **16 January 2012** in relation to all three mortgage loan accounts as follows:

"...

*Please find enclosed a financial assessment form which we need you to complete in
order to assess your financial circumstances and consider any alternative repayment
options.*

...

*The financial assessment form is an important document. Please take the time to
fully, accurately and honestly complete each section as we will use this information
in our assessment of your case.*

...

*We also recommend that you should seek independent financial advice before you
return the completed financial assessment form to us..."*

The Complainants completed and signed a **Standard Financial Statement** ("SFS") on **29 January 2012**. It included the following:

*"I have uprooted my family and emigrated to [redacted] to rent my family home so
as I could yield an extra €150 per mth to go towards my mortgage..."*

/Cont'd...

The Provider wrote to the Complainants on **08 August 2012** as follows:

“ ...

Thank you for your correspondence enclosing the letter that you received from the Financial Services Ombudsman dated 2nd August 2012.

I would like to confirm our advices that your three mortgage accounts, with [the Provider] secured on [secured property address] are not protected under the Mortgage Arrears Resolution Process (MARP), as you are not residing in the property and you are the owner of two further residential properties in [redacted] and they are therefore outside the qualifying criteria.

Your request for forbearance was inadvertently assessed under MARP and referred to [the Provider's] Appeals Board on 14th June 2012. Following detailed discussions the Board was of the opinion that the mortgage was unsustainable and the original decision be upheld....”

I note that the Complainants completed a further **SFS** in relation to all three mortgage loan accounts which was signed by them on **05 November 2012**. I note that the Complainants detailed as follows in the SFS:

“We have moved to [another country] temporarily to try get back on our feet financially and also to obtain [country] citizenship to give our 3 children a better start in life...”

The Provider subsequently wrote to the Complainants on **20 March 2013** in relation to mortgage loan account ending **3586** 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.

...

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 Agreement.

/Cont'd...

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.

...

Accepting the form of Agreement will have long term implications for you. For example:

...

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

The enclosed **Agreement to Amend Mortgage Loan Offer Letter** was not signed by the Complainants. I note that the Provider wrote to the Complainants on **25 March 2013** enclosing **Mortgage Form of Authorisation Application to Pay Reduced Payment** in relation to mortgage loan accounts ending **6872** and **0706**, however neither form was signed by the Complainants.

The Complainants subsequently wrote to the Provider by way of letter dated **16 June 2013**, which details as follows:

“...

Having consulted with our lawyer at [redacted] we have decided not to accept the proposal regarding our mortgage on our Family Home. We would also request to be treated under the MARP process, as we have always been clear that this property is our Family Home and our living in [redacted] was only a short term arrangement.... Also we would request that [the Provider] would consider offering us a split mortgage for a few years to allow us to get back on track financially...”

I note the Complainants wrote again to the Provider by way of letter dated **28 June 2013**, which details as follows:

“...Further to my letter dated Sun 16th June 2013 regarding mortgage accounts above, I would ask that the Appeals Board would consider this proposal.

If [the Provider] would leave me on the present arrangement where I am paying minimum €1400.00 per month for the next eighteen months to two years on my tracker mortgage, and at that point I know I will be more than capable of reverting to paying the full amount of interest and principal on the mortgage on my family home..."

The Provider issued an **Agreement to Amend the Mortgage Loan Offer Letter** to the Complainants on **26 July 2013**.

The cover letter dated **26 July 2013** enclosing the **Agreement to Amend the Mortgage Loan Offer Letter** in relation to mortgage loan account ending **3586** details 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.

...
...

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 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.

...
...

Accepting the form of Agreement will have long term implications for you. For example:

...
...

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

Section A of the form details as follows:

“SECTION A: WHAT THIS FORM DOES

/Cont’d...

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) €510.00 (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 29 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 1.600% 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 2.600% per annum.

Arrears

If there are arrears on the Loan this form capitalises them. That means we will add the arrears to the principal amount of the Loan after you accept this form. We estimate the principal amount of the Loan will then be €232,386.40...”

Section B of the form details as follows:

“SECTION B: FURTHER TERMS AND CONDITIONS OF THIS FORM

/Cont’d...

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.*

...

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.*

/Cont’d...

...”

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 €1,271.20 each and that the total cost to you of the Loan would be €34,208.65. 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 €510.00 each during the Agreed Period and €1,553.85 each thereafter. The total cost of the Loan would be €63,293.50. These estimates are based on the rate of interest and other terms (for example, your reduced payment obligations during the Agreed Period) provided for in this form. The increase in the cost of the Loan is because (i) the interest rate offered in this form is higher than your present tracker interest rate; and (ii) the Loan principal will not be repaid as quickly as set out in the initial version of your Mortgage Loan Offer Letter.*
- c) *Each estimate (i) assumes you met your payment obligations to us in full and in time; (ii) is indicative only, for example, the amounts you pay in regular instalments may differ because of future changes in interest rates; (iii) assumes you make 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”.*

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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 **29 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 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 €510.00 on the mortgage loan for a period of 29 months, subject to the BTL variable interest rate of 2.60%. I note from the **mortgage loan account statements** that the BTL variable interest rate 2.60% applied to mortgage loan account ending **3586** on **16 September 2013**.

The Complainants signed and accepted the **Agreement to Amend Mortgage Loan Offer Letter**, having ticked the box to confirm that they did not receive independent financial advice as they have a “*sufficient appreciation of financial and legal matters and of the meaning of this form to understand this form completely*”.

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I note that the Complainants also signed and accepted **Agreement to Amend Mortgage Loan Offer Letters** dated **26 July 2013** in relation mortgage loan accounts ending **6872** and **0706** which applied reduced monthly repayments to both mortgage loan accounts.

The Complainants in their submissions refer to “heated” telephone calls that they had with the Provider in relation to the alternative repayment arrangement however the Provider is unable to retrieve any telephone call recordings. This is disappointing.

Nevertheless, it is clear from the documentary evidence that the Complainants were aware, or ought to have been aware of the consequences of accepting the terms of the **Agreement to Amend Mortgage Loan Offer Letter** in respect of mortgage loan account ending **3586**.

While I acknowledge that the Complainants did not want to give up their entitlement to a tracker interest rate on mortgage loan account ending **3586**, it is important to note that it was the Complainants who were seeking to vary the terms of their original mortgage loan with the Provider by seeking forbearance measures. Following an assessment of the Complainants’ financial circumstances, the Provider offered the Complainants an alternative repayment arrangement subject to certain terms and conditions. It was a matter for the Complainants to decide whether to accept the new arrangement on offer by the Provider. The Provider could not have varied the terms of the mortgage loan without the Complainants’ consent.

With respect to the Central Bank of Ireland Code applicable to the Complainants’ dealings with the Provider about the arrears, while I note the Complainants make reference to the property which was security for the mortgage loan being their family home, at the time of the forbearance arrangement in **July 2013**, the property did not meet the definition of primary residence as set out in the **Code of Conduct of Mortgage Arrears (2013)** (the “CCMA”). The CCMA defines primary residence as:

“Primary Residence: means a property which is: a) the residential property which the borrower occupies as his/her primary residence in this State, or b) a residential property which is the only residential property in this State owned by the borrower.”

In **July 2013**, the property was not occupied by the Complainants as their primary residence in the State or the only residential property owned by the Complainants in the State. As such, the CCMA did not apply. Rather the **Consumer Protection Code 2012** applied.

Provision 8.3 of the **Consumer Protection Code 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.”

I have considered the arrears correspondence that has been furnished to this office. I accept that in its engagements with the Complainants, the Provider complied with its obligations under **provision 8.3** of the **Consumer Protection Code 2012** and sought to agree an approach with the Complainants to resolve the arrears. In **July 2013**, the Provider offered the Complainants reduced repayments on their mortgage loan account for a period of 29 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, having assessed the Complainants’ financial circumstances and affordability, issued an alternative repayment arrangement to the Complainants in the form of the **Agreement to Amend Mortgage Loan Offer Letter** which the Complainants accepted.

Provision 6.9 of the **Consumer Protection Code 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.*

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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."

I note 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 Letter** in respect of mortgage loan account ending **3586**. The mortgage loan was not in respect of a private dwelling house, despite the Complainants' submissions to the contrary. It is clear from the evidence that the Complainants had moved abroad and were no longer occupying the secured property as their primary residence in this State in **2013**. It appears that the Complainants had in fact started renting the secured property. Furthermore, the secured property the subject of mortgage loan account ending **3586** was not the only residential property in this State owned by the Complainants.

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. There is also no evidence to support the Complainants' contention that they "*bullied*" or pressurised into signing the **Agreement to Amend Mortgage Loan Offer Letter**.

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 arrangement on offer by the Provider. While the Complainants were in a very difficult position, 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.

I am satisfied that the **Agreement to Amend Mortgage Loan Offer Letter** in respect of mortgage loan account ending **3586**, contained the appropriate warnings under the **Consumer Protection Code 2012**, about moving from a tracker interest rate to a variable interest rate. The Complainants accepted the **Agreement to Amend Mortgage Loan Offer Letter** having confirmed that they had chosen not to get independent legal or financial advice because they had sufficient appreciation of financial and legal matters and of the meaning of the contents of the agreement. If the Complainants had any reservations regarding the terms of the agreement, they could have obtained independent legal advice, however they chose not to do so.

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

Conclusion

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

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



JACQUELINE O'MALLEY
HEAD OF LEGAL SERVICES

19 April 2022

PUBLICATION

Complaints about the conduct of financial service providers

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,

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- (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.

Complaints about the conduct of pension providers

Pursuant to *Section 62* of the *Financial Services and Pensions Ombudsman Act 2017*, the Financial Services and Pensions Ombudsman will **publish case studies** in relation to complaints concerning pension 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.