Decision Ref:	2022-0246
Sector:	Banking
Product / Service:	Tracker Mortgage
Conduct(s) complained of:	Failure to offer a tracker rate throughout the life of the mortgage
Outcome:	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint relates to five mortgage loan accounts held by the Complainants with the Provider.

- Mortgage loan account ending ***4728*** was for the loan amount of €150,000.00 and the term of the loan was 25 years. The Mortgage Loan Offer Letter which was issued to the Complainants on **14 March 2003** outlined that the interest rate applicable to the loan was a *"2.95% One Year Fixed"*. The mortgage loan was secured on the Complainants' residential investment property.

- Mortgage loan account ending ***8534*** was for the loan amount of €160,000.00 and the term of the loan was 25 years. The Mortgage Loan Offer Letter which was issued to the Complainants on **05 August 2005** outlined that the interest rate applicable to the loan was a *"3% (ECB Tracker Variable)"* of ECB + 1.0% and that an interest only repayment period would apply for the first 10 years of the term of the loan. The mortgage loan was secured on the Complainants' residential investment property.

- Mortgage loan account ending ***1640*** was for the loan amount of €225,000.00 and the term of the loan was 25 years. The Mortgage Loan Offer Letter which was issued to the Complainants on **27 October 2005** outlined that the interest rate applicable to the loan was a "3*.0% ECB Investment Tracker Variable Rate*" and that an interest only repayment period would apply for the first 10 years of the term of the loan. The mortgage loan was secured on the Complainants' residential investment property.

- Mortgage loan account ending ***8541*** was for the loan amount of €235,000.00 and the term of the loan was 25 years. The Mortgage Loan Offer Letter which was issued to the Complainants on **26 April 2006** outlined that the interest rate applicable to the loan was a "*3.5% Investment Variable Tracker Rate*" of ECB + 1.0% and that an interest only repayment period would apply for the first 7 years of the term of the loan. The mortgage loan was secured on the Complainants' residential investment property.

- Mortgage loan account ending ***6906*** is held solely in the name of the First Complainant. The mortgage loan was for the amount of €470,000.00 and the term of the loan was 25 years. The Mortgage Loan Offer Letter which was issued to the First Complainant on **23 February 2007** outlined that the interest rate applicable to the loan was an "*ECB Tracker Rate*" of ECB + 1.0% and that an interest only repayment period would apply for the first 5 years of the term of the loan. The mortgage loan was secured on the First Complainant's residential investment property.

<u>The Complainants' Case</u>

The Complainants submit that they encountered financial difficulties and so they approached the Provider with a number of proposals to restructure their mortgage loans *"with a view to minimising losses"*. They submit that their proposals were *"fair and equitable"* and *"would have resulted in no residual balances when the assets eventually sell/sold."*

The Complainants state that the Provider did not accept their proposals and as a result, the Complainants submit that they were "*indirectly pushed*" into alternative repayment arrangements. The Complainants note that the alternative repayment arrangements altered the interest rate on the mortgage loan accounts from a tracker interest rate to the Provider's 'Buy-to-Let' variable rate which was 1% above the tracker interest rate that had applied to the mortgage loan accounts.

/Cont'd…

The Complainants submit that *"the application of an additional 1% across the portfolio resulted in increased balances and a bigger mountain to climb."* They state that the *"alternative repayment structure was designed to benefit [the Provider]"* and has resulted in an increase in the costs on the mortgage accounts of approximately €15,000 per annum.

The Complainants outline that they had "*no choice but to accept the ARA as all of [their] options had been exhausted"* and *"If [they] had declined the ARA repayments would have multiplied to levels equating to a multiple of 2-3 times rent."* The Complainants further submit that they were *"left with little option but to agree to the Bank's offer"* due to the First Complainant's *"role in financial services and the risk of losing [his] role in front line services in the event of enforcement by the Bank which would have risked [his] Financial status under Fitness and Probity rules."*

The Complainants submit that at the time of entering into the alternative repayment arrangements with the Provider between **July 2014** and **February 2016** they had approximately €1,595,000.00 in total debt and the First Complainant was made redundant and had issues with his health. The Complainants state that the rental income from the properties was not sufficient to service the mortgage loan repayments and they detail that the Provider was aware that their position was unaffordable.

The Complainants detail that despite their financial position, the Provider declined their request to retain the tracker interest rate which the Complainants assert *"would have released additional funds to reduce debt."* The Complainants submit that the application of the 1% extra to the outstanding balance resulted in higher repayments for the Complainants which was *"unfair and unjust"* as well as not being in the Complainants' *"best interest[s]"*. The Complainants submit that they advised the Provider prior to entering the Agreement to Amend Letter of Loan Offer, that the loss of the tracker interest rate undermined the Complainants' ability to reduce the capital and clear the debt by way of sale of properties which was the *"ultimate objective"* of the transaction.

The Complainants submit that they have now sold a number of their assets and have reduced their overall debt. The Complainants state that the Provider was "*at pains*" to highlight that the decision to sell these assets was the decision of the Complainants. However, the Complainants state they "*had no choice as [the Complainants] could not meet the repayments and would have to face enforcement*."

The Complainants submit that they were *"treated unfairly and that the Bank acted in an unreasonable, unjust and oppressive fashion and was only concerned with its own interests with respect to minimising losses."*

/Cont'd…

The Complainants are seeking a refund of the overpayments of interest as a result of the tracker interest rate being removed on the mortgage loan accounts from **July 2014** to present.

The Provider's Case

The Provider details the following history with respect to the Complainants' five mortgage loan accounts that are the subject of this complaint:

Mortgage loan account ending *4728*

- **4 March 2013:** The Provider issued an interest only review letter advising that the interest only period applicable to the mortgage loan was due to end on 2 April 2013.
- **27 March 2013:** The Provider issued an Agreement to Amend Mortgage Loan Offer Letter to the Complainants offering a 5-year interest only repayment period, subject to the Provider's buy-to-let pricing policy.
- **3 April 2013:** The interest only period ended, and the mortgage loan account converted to annuity payments.
- **3 April 2013:** The mortgage loan account entered arrears.
- **9 May 2014:** The Provider issued an Agreement to Amend Mortgage Loan Offer Letter to the Complainants offering interest only repayments for a period of 36 months, subject to the Provider's buy-to-let pricing policy.
- **26 June 2014:** The Provider issued a further Agreement to Amend Mortgage Loan Offer Letter to the Complainants offering interest only repayments for a period of 36 months, subject to the Provider's buy-to-let pricing policy.
- **8 July 2014**: The Complainants signed, accepted, and returned the Agreement to Amend Mortgage Loan Offer dated **26 June 2014.**
- **7 August 2014**: The Provider's buy-to-let pricing policy was applied to the mortgage loan.
- **10 March 2015**: Letter with Agreement issued by the Provider to the Complainants offering capitalisation of arrears and continued interest only repayments for 29 months.
- **8 April 2015:** Agreement dated **10 March 2015** returned, signed, and accepted by the Complainants.
- **9 April 2015:** Arrears of €12,554.82 capitalised on the mortgage loan account.
- **8 August 2017:** An interest only rollover letter was issued by the Provider to the Complainants to confirm that the mortgage loan account had converted to annuity payments.

/Cont'd…

- **2 September 2017:** Arrears recommenced on mortgage loan account.

Mortgage loan account ending *8534*

- **27 March 2013:** The Provider issued an Agreement to Amend Mortgage Loan Offer Letter to the Complainants offering a 5-year interest only repayment period, subject to the Provider's buy-to-let pricing policy.
- **31 March 2013:** The mortgage loan account entered arrears.
- **9 December 2015:** An interest only rollover letter issued by the Provider to the Complainants advising that the mortgage account was about to convert to annuity payments.
- **9 February 2016:** Agreement issued by the Provider to the Complainants offering reduced payments of €600.00 per month subject to the Provider's buy-to-let pricing policy.
- **24 February 2016:** Agreement dated **9 February 2016** returned, signed, and accepted by the Complainants.
- **1 March 2016:** Buy-to-let pricing policy applied to the mortgage loan account.
- **2 October 2017:** Interest only rollover letter issued by the Provider advising that the mortgage loan account was reverting to annuity payments.
- **6 October 2017:** Product Switch Letter issued by the Provider to the Complainants confirming mortgage loan account converted to annuity payments.
- **27 October 2017:** Mortgage loan account fell back into arrears.

Mortgage loan account ending *1640*

- **27 March 2013:** The Provider issued an Agreement to Amend Mortgage Loan Offer Letter to the Complainants offering a 5-year interest only repayment period, subject to the Provider's buy-to-let pricing policy.
- **17 April 2013:** The mortgage loan account entered arrears.
- **14 August 2014:** Arrears cleared in full.
- **18 January 2016:** Interest only rollover letter issued by the Provider advising that the mortgage account was about to convert to annuity payments.
- **9 February 2016:** Agreement issued by the Provider to the Complainants offering reduced payments of €607.00 per month subject to the Provider's buy-to-let pricing policy.
- **24 February 2016:** Agreement dated **9 February 2016** returned, signed, and accepted by the Complainants.
- **1 March 2016:** Buy-to-let pricing policy applied to the mortgage loan account.

/Cont'd…

- **2 October 2017:** Interest only rollover letter issued by the Provider advising that the mortgage loan account was reverting to annuity payments.
- **6 October 2017:** Product Switch Letter issued by the Provider to the Complainants confirming mortgage loan account had converted to annuity payments.
- **27 October 2017:** Mortgage loan account re-entered arrears.

Mortgage loan account ending *8541*

- **27 March 2013:** The Provider issued an Agreement to Amend Mortgage Loan Offer Letter to the Complainants offering a 5-year interest only repayment period, subject to the Provider's buy-to-let pricing policy.
- **31 March 2013:** The mortgage loan account entered arrears.
- **29 November 2013:** Interest only rollover letter issued by the Provider advising that the mortgage loan account was about to convert to annuity payments.
- **9 May 2014:** Agreement issued by the Provider to the Complainants offering interest only repayments for 36 months, subject to the Provider's buy-to-let pricing policy.
- **26 June 2014:** Agreement issued by the Provider to the Complainants offering interest only repayments for 36 months, subject to the Provider's buy-to-let pricing policy.
- **8 July 2014:** Agreement dated **26 June 2014** returned, signed, and accepted by the Complainants.
- **7 August 2014**: The Provider's buy-to-let pricing policy was applied to the mortgage loan account.
- **10 March 2015**: Letter with Agreement issued by the Provider to the Complainants offering capitalisation of arrears and continued interest only repayments for 29 months.
- **8 April 2015:** Agreement dated **10 March 2015** returned, signed, and accepted by the Complainants.
- **9 April 2015:** Arrears of €8,616.83 capitalised on the mortgage loan account.
- **8 August 2017:** Interest only rollover letter issued by the Provider to the Complainants advising that the mortgage loan account had converted to annuity payments.
- **2 September 2017:** Mortgage loan account fell back into arrears.

Mortgage loan account ending *6906*

- **9 May 2012:** Interest only period from drawdown expired and the mortgage loan account converted to annuity repayments.

/Cont'd…

- **31 July 2012:** The First Complainant's accountant requested a 12-month interest only repayment period.
- **29 August 2012:** Standard Financial Statement completed by the First Complainant
- **8 September 2012:** Provider issued letter to the First Complainant declining request for interest only repayment period.
- **9 September 2012:** Mortgage loan account entered into arrears.
- **27 March 2013:** The Provider issued an Agreement to Amend Mortgage Loan Offer Letter to the First Complainant offering a 5-year interest only repayment period, subject to the Provider's buy-to-let pricing policy.
- **9 May 2014**: The Provider issued an Agreement to Amend Mortgage Loan Offer Letter to the First Complainant offering a 36-month interest only repayment period, subject to the Provider's buy-to-let pricing policy.
- **26 June 2014**: The Provider issued a further Agreement to Amend Mortgage Loan Offer Letter to the First Complainant offering a 36-month interest only repayment period, subject to the Provider's buy-to-let pricing policy.
- **8 July 2014:** Agreement dated **26 June 2014** returned, signed, and accepted by the First Complainant.
- **7 August 2014**: The Provider's buy-to-let pricing policy was applied to the mortgage loan account.
- **10 March 2015**: Letter with Agreement issued by the Provider to the First Complainant offering capitalisation of arrears and continued interest only repayments for 30 months.
- **8 April 2015:** Agreement dated **10 March 2015** returned, signed, and accepted by the First Complainant.
- **9 April 2015:** Arrears of €36,142.21 capitalised on the mortgage loan account.
- **10 April 2017:** Interest Only Review letter issued by the Provider to the First Complainant to advise that the interest only repayment period was ending on **7 August 2017**.
- **8 August 2017:** Interest Only rollover letter issued by the Provider to the First Complainant to notify that the mortgage loan account was about to convert to annuity payments.
- **2 September 2017:** Arrears recommenced on mortgage loan account.
- **10 October 2018:** Request from the First Complainant's solicitor for title deeds on accountable trust receipt
- **17 April 2019:** Arrears cleared in full and capital reduced on the mortgage loan account following the sale of an investment property.
- **2 December 2019:** Agreement issued by the Provider to the First Complainant offering a term extension to **2 May 2048**, reduced payments of €710.71 per month and capitalisation of the arrears in the future.

/Cont'd…

- **31 December 2019:** Agreement dated 2 December 2019 returned, signed, and accepted by the First Complainant

The Provider outlines that the five mortgage loan accounts that are the subject of this complaint all drew down on interest only repayments for periods of 5,7 or 10 years. The Provider states that when the respective interest only repayment periods expired, the Complainants made requests to extend the interest only repayment periods on each mortgage loan.

The Provider details that the mortgage loan agreements entered into with the Complainants "*are not secured on the Complainants' primary residences and therefore are not subject to the Code of Conduct on Mortgage Arrears 2013*."

The Provider states that the amendments to the terms of the mortgage loan agreements were subject to its buy-to-let pricing policy and therefore the interest rate applicable to the mortgage loan accounts switched from a tracker interest rate to a standard variable interest rate which "*will be at the discretion of the Provider and will be influenced by market interest rates and can move up or down over the life of the mortgage".* The Provider highlights that the *"tracker status of the loan ends completely on taking up of new amendments to the terms and conditions."* The Provider details that in such circumstances *"the Buy-To-Let Tracker customer will 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 details that following the issuing of a standard financial statement ("SFS") to the Complainants in **August 2012**, it received the completed SFS, supporting documentation and a proposal from the Complainants. The Provider submits that "*[t]he SFS and proposal by the Complainants was assessed, and further to a decision in March 2013 and again in June 2014, an offer was made by the Provider for reduced repayments subject to the Provider's Buy-to-Let pricing policy*."

The Provider states that it made a commercial decision to implement a "*pricing policy change*" in respect of its buy-to-let mortgage loans where "*if a change of terms and conditions is deemed appropriate*" then the customer would be offered a standard variable interest rate for the life of the mortgage loan which "*is initially priced at 1% above what they are currently paying on their tracker mortgage*." The Provider submits that offers of reduced repayments were made to the Complainants subject to its buy-to-let pricing policy on **27 March 2013**, **26 June 2014,** and **9 February 2016**.

/Cont'd…

The Provider submits that it is satisfied that it has acted fairly in its dealings with the Complainants and in relation to the offer of alternative repayment arrangements.

<u>The Complaint for Adjudication</u>

The complaint for adjudication is that the Provider "*indirectly pushed*" the Complainants into entering alternative repayment arrangements on their mortgage loan accounts from **July 2014** to **February 2016**, and as a result the Provider removed the tracker interest rates from the Complainants' mortgage loan accounts and applied a buy-to-let variable interest rate.

<u>Decision</u>

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 **24 June 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.

Following the issue of my Preliminary Decision, the Complainants made a further submission under cover of e-mail correspondence to this Office dated **27 June 2022**, a copy of which was transmitted to the Provider for its consideration.

/Cont'd…

The Provider has not made any further submission.

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

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

In order to determine this complaint, it is necessary to review and set out relevant provisions of the Complainants' five mortgage loan accounts ending ***4728, 8534, 1640, 8541*** and ***6906***. It is also necessary to consider the interactions between the Complainants and the Provider between **2013** and **2016**, when the alternative repayment arrangements were entered into by the parties to this complaint.

I will firstly consider the terms and conditions of each mortgage loan account under separate headings, before detailing the evidence and exchanges between the parties in relation to the alternative repayment arrangements that were implemented between **2013** and **2016**.

<u>Extracts from Mortgage Loan Agreements</u>

Mortgage Loan Account ending *4728*

The Provider issued a **Mortgage Loan Offer Letter** to the Complainants dated **14 March 2003**, which provided for an advance of €150,000.00 repayable over a term of 25 years.

Part 1 (The Statutory Loan Details) of the **Mortgage Loan Offer** dated **14 March 2003** details as follows:

1.	*"Amount of Credit advanced:*		*€150,000*
2.	*Period of Agreement:*		*300 Months*
3.	*Number of Repayment Instalments:*		*300*
4.	*Amount of Each Instalment:*	*12 @*	*€368.75*

/Cont'd…

108 @ €512.50
180 @ €1116.01"

Part 2 (The Additional Loan Details) outlines as follows:

11. "Type of Loan (E.G. Annuity of Endowment):	*Annuity – 10 year Interest only product*
12. Interest Rate & whether Fixed or Variable:	*2.95% One Year Fixed*
13. *Fixed Rate Period (if interest rate is fixed):*	*12 months"*

General Condition 4 of **Part 3 – The General and Special Conditions** 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 Bank. The amounts of such repayments and the due dates for payment thereof shall be determined by the Bank at its absolute discretion.

(b) In the event of any repayment not being paid on the due dates or any of them, or of any breach of the Conditions of the Loan or any of the covenants or conditions contained in any of the security documents referred to in clause 2(a), the Bank may demand an early repayment of the principal and accrued interest or otherwise alter the Conditions of the Loan.

(c) If so agreed in writing by the Bank, the Loan may be repaid in 10 or 11 payments in any year of the term and such payments (unless the Bank at its absolute discretion permits an extension of the term) shall be of such amounts as will discharge the liability of the Borrower during 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…

General Conditions 6 and **7** of **Part 3 – The General and Special Conditions** details as follows:

"6. Variable Interest Rates

a) Subject to clause 6 (c), at all times when a variable interest rate applies to the Loan the interest rate chargeable will vary at the Bank's discretion upwards or downwards. If at any time a variable rate of interest applies, repayments in excess of those agreed may be made at any time during the term of the Loan without penalty.

b) The Bank shall give notice to the Borrower of any variation of the interest rate applicable to the Loan, either by notice in writing served on the Borrower in accordance with clause 1 (c) above, or by advertisement published in at least one national daily newspaper. Such notice or advertisement shall state the varied interest rate and the date from which the varied interest rate will be charged.

c) Notwithstanding anything else provided in this Offer Letter, the varied applicable interest rate shall never, in any circumstances, be less than 0.5% over one month's money at the Euro Inter Bank Offered Rate (EURIBOR).

7. Fixed Interest Rates

a) The Bank may at its absolute discretion permit the Borrower to avail of a fixed interest rate in respect of all or any part of the principal sum borrowed. In the case of a fixed rate loan, the interest rate shall, subject to these Conditions, be fixed from the date of draw down for the fixed period stated in this Offer Letter. ***The fixed rate of Interest set out in this Offer Letter is the fixed rate which would apply were the Loan drawn down today. There is no guarantee that the fixed rate so stated will be available when the Loan is in fact drawn down. The actual fixed rate that shall apply shall be the Bank's fixed rate available for the fixed period selected by the Borrower at the date of draw down.***

b) The Bank shall have sole discretion to provide any further or subsequent fixed rate period. If the Bank does not provide such a further or subsequent fixed rate period or if the Bank offers the Borrower a choice of interest rate at the end of any fixed rate period and the Borrower fails to exercise that choice, then in either case the interest rate applicable to the Loan will be a variable interest rate.

…"

/Cont'd…

The **Acceptance and Consents** section of the **Mortgage Loan Offer** was signed by the Complainants on **14 March 2003** on the following terms:

> *"I confirm that I have read and fully understand the Consumer Credit Act notices, set out above, and the term 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** envisaged a 12-month fixed interest rate of 2.95% with a variable interest rate to apply thereafter. The variable interest rate in this event made no reference to varying in line with the ECB rate but rather was an interest rate that would "*vary at the Bank's discretion upwards or downwards*". Under **Part 2 (The Additional Loan Details)** it is clearly detailed that this mortgage loan would commence on a 10-year interest only repayment period.

The mortgage loan statements provided in evidence show that mortgage loan account ending ***4728*** was drawn down on **4 April 2003**. The evidence shows that when the interest only repayment period expired, interest and capital repayments commenced on **3 April 2013** and arrears started to accrue on the mortgage loan account.

It appears the Complainants applied a tracker interest rate to the mortgage loan account. I have not been provided with documentation reflecting its application. However, it is not in dispute between the parties that a tracker interest rate was applied to this mortgage loan account.

The Provider issued an **Agreement to Amend Mortgage Loan Offer** Letter to the Complainants on **9 May 2014**, however it does not appear that this document was signed by the Complainants.

The Provider issued a further **Agreement to Amend Mortgage Loan Offer Letter** to the Complainants dated **26 June 2014**, offering an interest only repayment period for 36 months, subject to the Provider's buy-to-let pricing policy. **Section A** of the **Agreement to Amend Mortgage Loan Offer Letter** dated **26 June 2014** details as follows:

> ***"SECTION A: WHAT THIS FORM DOES***
>
> ***Interest Only***
>
> *What you pay in each instalment*

/Cont'd…

1.1 *If you accept this form (a) you are to pay interest only as it falls in each regular instalment in the Agreed Period; and (b) you agree to make these payments during the Agreed Period.*

The Length of the Agreed Period

1.1.1 *The "Agreed Period" means the period of 36 months starting from the date we put the alternative repayment arrangement into effect.*

What Happens when the Agreed Period Ends

1.2 *When the Agreed Period ends you will have to repay the Loan over the rest of the period of the Loan. The amount of the Loan then to be repaid will include all of the principal and other sums which you did not pay during the Agreed Period (and which you would have been obliged to pay if this form did not come into force).*

1.3 *We will calculate the repayment instalments that you have to pay when the Agreed Period ends. You agree to pay these repayment instalments in full as they are calculated by us. The terms and conditions of the Mortgage Loan Offer Letter which provide for repayment of the Loan on an annuity basis will operate after the Agreed Period by reference to the amount you then owe under the Loan.*

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 1.150% 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 2.150% per annum."*

Section B of the **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 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.

/Cont'd…

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 <u>This Form will amend the Mortgage Loan Offer Letter</u>

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.

…

<u>B.10</u> <u>About Your Acceptance of this Form</u>

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

…"

Section C of the **Agreement to Amend Mortgage Loan Offer Letter** provides as follows

/Cont'd…

"SECTION C: LEGAL NOTICES
<u>(PLEASE READ THESE CAREFULLY)</u>

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 €981.69 each and that the total cost to you of the Loan would be €12,357.18. 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 €269.35 each during the Agreed Period and of €1,299.40 each thereafter. The total cost of the Loan would be €28,015.24. 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.

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 details the advantages and disadvantages of a tracker variable interest rate, a buy-to-let variable interest rate and a fixed interest rate.

/Cont'd…

The Complainants signed the **Acceptance** of the **Agreement to Amend Mortgage Loan Offer Letter** on **5 July 2014** on the following terms:

> *"By signing this form:-*
>
> *(1) I confirm I understand both the form and the information given to me in the letter that the Lender sent me with this form;*
> *(2) I accept and agree to be bound by the terms and conditions of the form;*
> *(3) I understand I am moving from a tracker rate of interest using this form. I have read and understood each part of the form concerning that, including Section C.*
>
> *(4) PLEASE TICK AT LEAST ONE OF THE FOLLOWING BOXES:*
>
> ☑ *I have received independent legal advice on this form.*
>
> ☐ *I have received independent financial advice on this form.*
>
> ☐ *I did not get independent legal or financial advice on this form because I have sufficient appreciation of financial and legal matters and of the meaning of this form to understand this form completely. I am satisfied to sign it without such advice; I will never raise the lack of advice as a reason to question this form."*

The mortgage loan statements provided in evidence indicate that the terms of the **Agreement to Amend Mortgage Loan Offer** were applied to the mortgage loan account on **7 August 2014**, with the interest rate being altered to 2.15% in line with the terms of the alternative repayment arrangement agreed to by the parties.

I note that further correspondence issued on **10 March 2015** indicating that the Provider would be proceeding to capitalise arrears on the Complainants' mortgage loan account with the Complainants' agreement. The Complainants returned the signed form, which was signed by each Complainant on **18 March 2015** and **24 March 2015** respectively and the arrears were capitalised on **9 April 2015**.

Arrears began to accrue on the mortgage loan account from **2 September 2017**.

Mortgage Loan Account ending *8534*

The Provider issued a **Mortgage Loan Offer Letter** to the Complainants dated **5 August 2005**, which provided for an advance of €160,000.00 repayable over a term of 25 years.

/Cont'd…

Part 1 (The Statutory Loan Details) of the **Mortgage Loan Offer Letter** dated **5 August 2005** details as follows:

1. Amount of Credit advanced:		*€160,000*
2. Period of Agreement:		*25 Years*

3. Number of Repayment Instalments	*Instalment Type*	*4. Amount of each Instalment*
120	*Interest Only*	*€400.00*
180	*Capital and Interest*	*€1,104.36"*

Part 2 The Additional Loan Details outline as follows:

"11. Type of Loan:	*120 Months Interest Only, Annuity Thereafter*
12. Interest Rate:	*3% (ECB Tracker Variable)"*

General Conditions 4, 6 and **7** of **Part 3 – The General and Special Conditions** of the **Mortgage Loan Offer Letter** dated **5 August 2005 contain the same text as detailed in General Conditions 4, 6** and **7** of **Part 3 – The General and Special Conditions** of the **Mortgage Loan Offer Letter** dated **14 March 2003**. For the sake of brevity, I do not propose to repeat the text here.

Under the heading **Interest Rate,** it is detailed as follows:

> *"**The interest rate quoted for this facility is the Bank's Investment tracker variable rate, currently 4% 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 1% 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 Investment Variable rate."*

/Cont'd…

The **Acceptance and Consents** section of the **Mortgage Loan Offer** was signed by the Complainants on **14 August 2005** on the following terms:

> *"I confirm that I have read and fully understand the Consumer Credit Act notices, set out above, and the term 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 a tracker interest rate of 3% (ECB + 1%). **Part 2 (The Additional Loan Details)** provided that the mortgage loan would commence on a 10-year interest only repayment period.

The mortgage loan statements provided in evidence indicate that the mortgage loan was drawn down on **12 December 2005** at which point the applicable interest rate was 3.35%. The Provider issued an **Agreement to Amend Mortgage Loan Offer Letter** to the Complainants offering a 5-year interest only repayment period on **27 March 2013**. The Complainants did not sign this agreement.

This mortgage loan account entered into arrears on **31 March 2013**.

On **9 December 2015**, the Provider issued correspondence indicating that the 10-year interest only repayment period was due to expire.

The Provider issued two **Agreement to Amend Mortgage Loan Offer Letters** separately to each of the Complainants dated **9 February 2016**, offering a reduced repayment arrangement of €600.00 per month for a period of 19 months, subject to the Provider's buy-to-let pricing policy. **Section A** of the **Agreement to Amend Mortgage Loan Offer** dated **9 February 2016** details as follows:

> ***"SECTION A: WHAT THIS FORM DOES***
>
> ***Reduced Regular Instalment***
>
> *What you pay in each instalment*
>
> *1.4 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;-*
>
> *(iii) €600.00 (the "reduced regular instalment"); or*

/Cont'd…

(iv) 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 19 months starting from the date we put the alternative repayment arrangement into effect.

…

What Happens when the Agreed Period Ends

1.4 When the Agreed Period ends you will have to repay the Loan over the rest of the period of the Loan.

The amount of the Loan then to be repaid will include all of the principal and other sums which you did not pay during the Agreed Period (and which you would have been obliged to pay if this form did not come into force).

1.5 We will calculate the repayment instalments that you have to pay when the Agreed Period ends. You agree to pay these repayment instalments in full as they are calculated by us. The terms and conditions of the Mortgage Loan Offer Letter which provide for repayment of the Loan on an annuity basis will operate after the Agreed Period by reference to the amount you then owe under the Loan.

<u>Conversion from Tracker Rate to New Interest Rate Type</u>
Tracker to BTL Variable

*This form converts the interest we charge on the Loan from a tracker rate which is 1.050% 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 2.050% per annum."*

/Cont'd…

Section B of the **Agreement to Amend Mortgage Loan Offer** dated **9 February 2016** details as follows:

B.1 ANY COMMITMENT TO A TRACKER RATE ENDS

Any commitment or obligation in your Mortgage Loan Offer Letter or otherwise to provide you with a tracker variable rate for the Loan, now or in the future, will end once you complete and return this form. This Clause takes precedence over any condition of your Mortgage Loan Offer Letter, this form or elsewhere concerning interest in general or tracker variable rates in particular including any Special Condition. The phrases "tracker rate", "tracker interest rate" or "tracker variable rate" are popular expressions to describe an interest rate that is an agreed margin above the European Central Bank ("ECB") Main Refinancing Operations Rate (including where it is described in your Mortgage Loan Offer Letter or elsewhere as the ECB Main Refinancing Operations Minimum Bid Rate). A tracker rate follows or "tracks" movements in this ECB rate. The word "tracker" and phrases containing that word are used with that meaning in this form.

…

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

7.1 This form will amend the terms and conditions that apply to the Loan, including the Mortgage Loan Offer Letter.

7.2 This form does not change the maturity date of the Loan which will remain as provided for in the Mortgage Loan Offer Letter unless Section A says so (if it does say so, the term of the Loan is extended by the maturity date shown in Section A).

7.3 Unless amended or replaced by this form, each of the terms and conditions of the Mortgage Loan Offer Letter will remain in full force and effect. (For example, the General Terms and Conditions contain clauses dealing with interest in general, additional interest charges on overdue payments, variable interest rates and fixed interest rates.

7.4 If there is a conflict between a term or condition in the Mortgage Loan Offer Letter and a term or condition in this form, the term and condition in this form will take priority.

…

/Cont'd…

<u>B.10</u> ***<u>About Your Acceptance of this Form</u>***

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

Section C of the **Agreement to Amend Mortgage Loan Offer** provides as follows:

"SECTION C: LEGAL NOTICES
<u>(PLEASE READ THESE CAREFULLY)</u>
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 €958.53 each and that the total cost to you of the Loan would be €12,815.58.

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 €600.00 each during the Agreed Period and of €1,089.00 each thereafter. The total cost of the Loan would be €26,878.71. These estimates are based on the rate of interest and other terms (for example, your reduced payment obligations during the Agreed Period) provided for in this form. The increase in the cost of the Loan is because (i) the interest rate offered in this form is higher than your present tracker interest rate; and (ii) the Loan principal will not be repaid as quickly as set out in the initial version of your Mortgage Loan Offer Letter.

c) Each estimate (i) assumes you met your payment obligations to us in full and in time; (ii) is indicative only, for example, the amounts you pay in regular instalments may differ because of future changes in interest rates;

/Cont'd…

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

The **Agreement to Amend Mortgage Loan Offer Letter** also contained a section entitled *"Advantages and disadvantages of tracker and other rates (Consumer Protection Code, Provision 6.9)"* which provided the advantages and disadvantages of a tracker variable rate, a buy-to-let variable interest rate and a fixed interest rate.

The Complainants signed the **Acceptance** on each of their respective **Agreement to Amend Mortgage Loan Offer Letters** separately on **18 February 2016**, 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."*

The mortgage loan statements provided in evidence indicate that the terms of the Agreement to Amend Mortgage Loan Offer were applied to the mortgage loan account on **1 March 2016**, with the interest rate being altered to 2.05% in line with the terms of the alternative repayment arrangement agreed to by the parties.

Mortgage Loan Account ending *1640*

The Provider issued a **Mortgage Loan Offer Letter** to the Complainants dated **27 October 2005**, which provided for an advance of €225,000.00 repayable over a term of 25 years.

Part 1 (The Statutory Loan Details) of the **Mortgage Loan Offer** dated **27 October 2005** details as follows:

1. Amount of Credit advanced:		*€225,000*
2. Period of Agreement:		*300 months*
3. Number of Repayment <u>Instalments</u>	*Instalments <u>Type</u>*	*4. Amount of each <u>Instalment</u>*
120	*Interest-only payments @ 3.0% Investment Tracker Variable Rate*	*€562.50*
180	*Capital and Interest @ 3.0% Investment Tracker Variable Rate"*	*€1,553*

Part 2 The Additional Loan Details outline as follows;

> *"11. Type of Loan: Interest-only for 10 years; Annuity thereafter.*
> *13. Interest Rate: 3.0% ECB Investment Tracker Variable Rate…"*

General Conditions 4, 6 and **7** of **Part 3 – The General and Special Conditions** of the **Mortgage Loan Offer Letter** dated **5 August 2005** contain the same text as detailed in **General Conditions 4, 6** and **7** of **Part 3 – The General and Special Conditions** of the **Mortgage Loan Offer Letter** dated **27 October 2005**. For the sake of brevity, I do not propose to repeat the text here.

Under the heading **Interest Rate,** it is detailed as follows:

> *"The interest rate quoted for this facility is the Bank's Investment Tracker Variable Rate, currently 3.0% per annum. The interest rate applicable to the Loan is a variable interest rate and may vary upwards or downwards. The interest rate shall be no more than 1.0% 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*

/Cont'd…

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 Investment Variable rate."

The **Acceptance and Consents** section of the **Mortgage Loan Offer** was signed by the Complainants on **6 December 2005** on the following terms;

"I confirm that I have read and fully understand the Consumer Credit Act notices, set out above, and the term 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** envisaged a tracker interest rate of 3% (ECB + 1%). Under **Part 2 (The Additional Loan Details)** it is clearly indicated that this mortgage loan would initially operate on 10-year interest only repayment period.

The mortgage loan statement provided in evidence indicates that the mortgage loan was drawn down on **18 January 2006** at which point the applicable interest rate was 3.25%.

I note that the Provider issued an **Agreement to Amend Mortgage Loan Offer Letter** to the Complainants dated **27 March 2013**, however it does not appear that the Complainants accepted or signed this agreement.

The Provider issued two dated **Agreement to Amend Mortgage Loan Offer Letters** separately to each of the Complainants dated **9 February 2016**, offering a reduced repayment arrangement of €607.00 per month for a period of 19 months, subject to the Provider's buy-to-let pricing policy. I note that **Section A** of the **Agreement to Amend Mortgage Loan Offer** dated **9 February 2016** details as follows:

"SECTION A: WHAT THIS FORM DOES

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) €607.00 (the "reduced regular instalment"); or

/Cont'd…

(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 19 months starting from the date we put the alternative repayment arrangement into effect.

…

What Happens when the Agreed Period Ends

1.4 When the Agreed Period ends you will have to repay the Loan over the rest of the period of the Loan. The amount of the Loan then to be repaid will include all of the principal and other sums which you did not pay during the Agreed Period (and which you would have been obliged to pay if this form did not come into force).

1.5 We will calculate the repayment instalments that you have to pay when the Agreed Period ends. You agree to pay these repayment instalments in full as they are calculated by us. The terms and conditions of the Mortgage Loan Offer Letter which provide for repayment of the Loan on an annuity basis will operate after the Agreed Period by reference to the amount you then owe under the Loan.

<u>Conversion from Tracker Rate to New Interest Rate Type</u>
Tracker to BTL Variable

*This form converts the interest we charge on the Loan from a tracker rate which is 1.050% 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 2.050% per annum."*

Section B of the **Agreement to Amend Mortgage Loan Offer Letter** details as follows:

<u>B.1 ANY COMMITMENT TO A TRACKER RATE ENDS</u>

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.

/Cont'd…

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 <u>This Form will amend the Mortgage Loan Offer Letter</u>

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.

…

<u>B.10</u> <u>About Your Acceptance of this Form</u>

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 **Agreement to Amend Mortgage Loan Offer** dated **9 February 2016** provides as follows:

> ***"SECTION C: LEGAL NOTICES***
> ***<u>(PLEASE READ THESE CAREFULLY)</u>***
> ***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 €1,346.47 each and that the total cost to you of the Loan would be €18,197.12. 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 €607.00 each during the Agreed Period and of €1,562.44 each thereafter. The total cost of the Loan would be €38,918.36. 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.*

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 interest rate, a BTL variable interest rate and a fixed interest rate.

/Cont'd…

The Complainants signed the **Acceptance** section of their respective **Agreement to Amend Mortgage Loan Offer Letters** separately, the Second Complainant on **17 February 2016** and the First Complainant on **18 February 2016**, 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."*

The mortgage loan statements provided in evidence indicate that the terms of the **Agreement to Amend Mortgage Loan Offer** were applied to the mortgage loan account on **1 March 2016**, with the interest rate being altered to 2.05% in line with the terms of the alternative repayment arrangement agreed to by the parties.

Mortgage Loan Account ending *8541*

The Provider issued a **Mortgage Loan Offer Letter** to the Complainants dated **26 April 2006**, which provided for an advance of €235,000.00 repayable over a term of 25 years.

Part 1 (The Statutory Loan Details) of the **Mortgage Loan Offer** dated **26 April 2006** details as follows:

1. Amount of Credit advanced:	*€235,000*
2. Period of Agreement:	*300 months*

/Cont'd…

3. Number of Repayment Instalments	Instalments Type	4. Amount of each Instalment
84	*Interest-only payments @ 3.5% Investment Tracker Variable Rate*	*€685.42*
216	*Capital and Interest @ 3.5% Investment Tracker Variable Rate"*	*€1,466.75*

Part 2- The Additional Loan Details outline as follows;

> *"11. Type of Loan:* *Interest Only for 7 years; Annuity thereafter.*
>
> *12. Interest Rate:* *3.5% Investment Tracker Variable Rate…"*

General Conditions 4, 6 and **7** of **Part 3 – The General and Special Conditions** of the **Mortgage Loan Offer Letter** dated **5 August 2005** contain the same text as detailed in **General Conditions 4, 6** and **7** of **Part 3 – The General and Special Conditions** of the **Mortgage Loan Offer Letter** dated **26 April 2006**. For the sake of brevity, I do not propose to repeat the text here.

Under the heading **Interest Rate,** it is detailed as follows:

> *"The interest rate quoted for this facility is the Bank's Investment Tracker Variable Rate, currently **3.5%** per annum. The interest rate applicable to the Loan is a variable interest rate and may vary upwards or downwards. The interest rate shall be no more than 1.0% 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 Investment Variable rate."*

The **Acceptance and Consents** section of the **Mortgage Loan Offer** was signed by the Complainants on **28 April 2006** on the following terms:

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

/Cont'd…

It is clear to me that the **Mortgage Loan Offer** envisaged a tracker interest rate of 3.5% (ECB + 1.0%) and that the mortgage loan would be operate on interest only repayments for the first seven years of the term of the mortgage loan.

The mortgage loan statement provided in evidence indicates that the mortgage loan was drawn down on **23 October 2006** at which point the applicable interest rate was 4.75%.

I note that the Provider issued an **Agreement to Amend Mortgage Loan Offer Letter** to the Complainants dated **27 March 2013**, however it does not appear that the Complainants accepted or signed this agreement.

The Provider issued a further **Agreement to Amend Mortgage Loan Offer Letter** to the Complainants dated **26 June 2014**, offering interest only repayments for a period of 36 months, subject to the Provider's buy-to-let pricing policy. **Section A** of the **Agreement to Amend Mortgage Loan Offer Letter** details as follows:

> ***"SECTION A: WHAT THIS FORM DOES***
>
> ***<u>Alternative Repayment Arrangement</u>***
>
> ***Interest Only***
>
> *What you pay in each instalment*
>
> *1.1 If you accept this form (a) you are to pay interest only as it falls in each regular instalment in the Agreed Period; and (b) you agree to make these payments during the Agreed Period.*
>
> *The Length of the Agreed Period*
>
> *1.1.1 The "Agreed Period" means the period of 36 months starting from the date we put the alternative repayment arrangement into effect.*
>
> *What Happens when the Agreed Period Ends*
>
> *1.2 When the Agreed Period ends you will have to repay the Loan over the rest of the period of the Loan. The amount of the Loan then to be repaid will include all of the principal and other sums which you did not pay during the Agreed Period (and which you would have been obliged to pay if this form did not come into force).*

/Cont'd…

1.3 *We will calculate the repayment instalments that you have to pay when the Agreed Period ends. You agree to pay these repayment instalments in full as they are calculated by us. The terms and conditions of the Mortgage Loan Offer Letter which provide for repayment of the Loan on an annuity basis will operate after the Agreed Period by reference to the amount you then owe under the Loan.*

…

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 1.150% 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 2.150% per annum."*

Section B of the **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 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.

/Cont'd…

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.

…"

Section C of the **Agreement to Amend Mortgage Loan Offer Letter** 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 €1,248.13 each and that the total cost to you of the Loan would be €34,460.34. 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.)

/Cont'd…

b) *If you accept this form, we estimate you will be obliged to pay monthly instalments of €422.64 each during the Agreed Period and of €1,589.40 each thereafter. The total cost of the Loan would be €53,865.43.*

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.*

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 interest rate, a buy-to-let variable interest rate and a fixed interest rate.

The Complainants signed the **Acceptance** section of each of their respective **Agreement to Amend Mortgage Loan Offer Letters** on **5 July 2014**, on the following terms:

"By signing this form:-

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

☑ *I have received independent legal advice on this form.*

☐ *I have received independent financial advice on this form.*

☐ *I did not get independent legal or financial advice on this form because I have sufficient appreciation of financial and legal matters and of the meaning of this form to understand this form completely.*

/Cont'd…

> *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 mortgage loan statements provided in evidence indicate that the terms of the **Agreement to Amend Mortgage Loan Offer** were applied to the mortgage loan account on **7 August 2014**, with the interest rate being altered to 2.15% in line with the terms of the alternative repayment arrangement agreed to by the parties.

Mortgage Loan Account ending *6906*

The Provider issued a **Mortgage Loan Offer Letter** to the First Complainant dated **23 February 2007**, which provided for an advance of €470,000 over a term of 25 years.

Part 1 (The Statutory Loan Details) of the **Mortgage Loan Offer** details as follows;

1. *Amount of Credit advanced:* *€470,000*
2. *Period of Agreement:* *300 months*

3. *Number of Repayment Instalments*	*Instalments Type*	4. *Amount of each Instalment*
60	*Interest only payments @ ECB Tracker Rate*	*€1,762.50*
240	*Capital and Interest @ ECB Tracker Rate"*	*€2,969.20*

Part 2 The Additional Loan Details outline as follows;

> *"11. Type of Loan:* *5 years interest only, annuity thereafter.*
> *12. Interest Rate:* *ECB Tracker Rate…"*

General Conditions 4, 6 and **7** of **Part 3 – The General and Special Conditions** of the **Mortgage Loan Offer Letter** dated **5 August 2005** contain the same text as detailed in **General Conditions 4, 6** and **7** of **Part 3 – The General and Special Conditions** of the **Mortgage Loan Offer Letter** dated **23 February 2007**. For the sake of brevity, I do not propose to repeat the text here.

/Cont'd…

Under the heading **Interest Rate**, it is detailed as follows:

> *"The interest rate quoted for this facility is the Bank's Investment Tracker Variable Rate, currently 4.5% per annum. The interest rate applicable to the Loan is a variable interest rate and may vary upwards or downwards.*
>
> *The interest rate shall be no more than 1.0% 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 Investment Variable rate."*

The **Acceptance and Consents** section of the **Mortgage Loan Offer** was signed by the First Complainant on **7 March 2007** on the following terms;

> *"I confirm that I have read and fully understand the Consumer Credit Act notices, set out above, and the term 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** envisaged a tracker interest rate of 3.5% (ECB + 1.0%) and the mortgage loan would initially operate on interest only repayments for the first 5 years of the term of the mortgage loan.

The mortgage loan statements provided in evidence indicate that the mortgage loan was drawn down on **10 May 2007** at which point the applicable interest rate was 5.0%.

The Provider issued an **Agreement to Amend Mortgage Loan Offer Letter** to the First Complainant dated **27 March 2013**, however it does not appear that the First Complainant accepted or signed this agreement.

The Provider issued a further **Agreement to Amend Mortgage Loan Offer Letter** to the First Complainant dated **26 June 2014**, offering interest only repayments for a period of 36 months, subject to the Provider's buy-to-let pricing policy.

/Cont'd…

Section A of the **Agreement to Amend Mortgage Loan Offer Letter** details as follows:

"SECTION A: WHAT THIS FORM DOES

Alternative Repayment Arrangement

Interest Only

What you pay in each instalment

1.1 If you accept this form (a) you are to pay interest only as it falls in each regular instalment in the Agreed Period; and (b) you agree to make these payments during the Agreed Period.

The Length of the Agreed Period

1.1.1 The "Agreed Period" means the period of 36 months starting from the date we put the alternative repayment arrangement into effect.

What Happens when the Agreed Period Ends

1.2 When the Agreed Period ends you will have to repay the Loan over the rest of the period of the Loan. The amount of the Loan then to be repaid will include all of the principal and other sums which you did not pay during the Agreed Period (and which you would have been obliged to pay if this form did not come into force).

1.3 We will calculate the repayment instalments that you have to pay when the Agreed Period ends. You agree to pay these repayment instalments in full as they are calculated by us. The terms and conditions of the Mortgage Loan Offer Letter which provide for repayment of the Loan on an annuity basis will operate after the Agreed Period by reference to the amount you then owe under the Loan.

…

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 1.150% per annum at present to a **BTL Variable** rate.*

/Cont'd…

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 2.150% per annum."

Section B of the **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 Letter or otherwise to provide you with a tracker variable rate for the Loan, now or in the future, will end once you complete and return this form. This Clause takes precedence over any condition of your Mortgage Loan Offer Letter, this form or elsewhere concerning interest in general or tracker variable rates in particular including any Special Condition. The phrases "tracker rate", "tracker interest rate" or "tracker variable rate" are popular expressions to describe an interest rate that is an agreed margin above the European Central Bank ("ECB") Main Refinancing Operations Rate (including where it is described in your Mortgage Loan Offer Letter or elsewhere as the ECB Main Refinancing Operations Minimum Bid Rate). A tracker rate follows or "tracks" movements in this ECB rate. The word "tracker" and phrases containing that word are used with that meaning in this form.

…

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

7.1 This form will amend the terms and conditions that apply to the Loan, including the Mortgage Loan Offer Letter.

7.2 This form does not change the maturity date of the Loan which will remain as provided for in the Mortgage Loan Offer Letter unless Section A says so (if it does say so, the term of the Loan is extended by the maturity date shown in Section A).

7.3 Unless amended or replaced by this form, each of the terms and conditions of the Mortgage Loan Offer Letter will remain in full force and effect. (For example, the General Terms and Conditions contain clauses dealing with interest in general, additional interest charges on overdue payments, variable interest rates and fixed interest rates.

7.4 If there is a conflict between a term or condition in the Mortgage Loan Offer Letter and a term or condition in this form, the term and condition in this form will take priority.

…

/Cont'd…

B.10 About Your Acceptance of this Form

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

…"

Section C of the **Agreement to Amend Mortgage Loan Offer Letter** 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 €2,065.80 each and that the total cost to you of the Loan would be €42,903.62. 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 €717.61 each during the Agreed Period and of €2,621.48 each thereafter. The total cost of the Loan would be €93,835.50. 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;

/Cont'd…

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

The **Agreement to Amend Mortgage Loan Offer Letter** also contained a section entitled *"Advantages and disadvantages of tracker and other rates (Consumer Protection Code, Provision 6.9)"* which provided the advantages and disadvantages of a tracker interest rate, a buy-to-let variable interest rate and a fixed interest rate.

The First Complainant signed the **Acceptance** section of the **Agreement to Amend Mortgage Loan Offer Letter** on **5 July 2014**, on the following terms:

> *"By signing this form:-*
>
> *(1) I confirm I understand both the form and the information given to me in the letter that the Lender sent me with this form;*
> *(2) I accept and agree to be bound by the terms and conditions of the form;*
> *(3) I understand I am moving from a tracker rate of interest using this form. I have read and understood each part of the form concerning that, including Section C.*
> *(4) PLEASE TICK AT LEAST ONE OF THE FOLLOWING BOXES:*
>
> ☑ *I have received independent legal advice on this form.*
>
> ☐ *I have received independent financial advice on this form.*
>
> ☐ *I did not get independent legal or financial advice on this form because I have sufficient appreciation of financial and legal matters and of the meaning of this form to understand this form completely. I am satisfied to sign it without such advice; I will never raise the lack of advice as a reason to question this form."*

The mortgage loan statements provided in evidence indicate that the terms of the **Agreement to Amend Mortgage Loan Offer** were applied to the mortgage loan account on **7 August 2014**, with the interest rate being altered to 2.15% in line with the terms of the alternative repayment arrangement agreed to by the parties.

A further **Agreement to Amend Mortgage Loan Offer Letter** was issued to the First Complainant on **2 December 2019**, offering reduced monthly repayments of €710.71 for a period of 6 months and a term extension where the maturity date was changed from **2 May 2032** to **2 May 2048**.

/Cont'd…

Section A of the **Agreement to Amend Mortgage Loan Offer Letter** details as follows:

"SECTION A: WHAT THIS FORM DOES

1. THE ALTERNATIVE REPAYMENT ARRANGEMENT (ARA) IS AS FOLLOWS:

1.1 The Borrower and Lender agree that:

1.1.1 The current maturity date of the Loan is extended from 2705/2032 to a new maturity date of 2/05/2048 (the "New Maturity Date").

1.1.2. The Borrower will pay the sum of €710.71 ("the Interim Payment") each month for 6 month(s) (the "Interim Period"). If the interest rate on the Loan changes the amount of capital repaid by the Interim Payment amount will vary. If the interest rate increases the Interim Payment amount may increase to ensure that the Loan is repaid over the remaining mortgage term.

1.1.3. the Lender will capitalise the arrears on the Loan after the Interim Period ends if the conditions set out below are met (the concept of capitalising arrears is explained below). Once the arrears are capitalised the alternative repayment arrangement will apply for the full term of the Loan until the maturity date.

1.2 What Happens when the Agreed Period Ends

1.2.1 The Lender will review the Loan to establish if the Borrower paid each Interim Payment in full and on time in the Interim Period. If the Lender is satisfied the Borrower did so.

(a) The Lender will capitalise the arrears on the Loan; and
(b) No further periodic reviews will be required. (The concept of capitalising arrears is explained below).

This Clause is subject to the following one.

1.2.2. The Lender has no obligation to capitalise the arrears on the Loan if
(a) The Borrower's financial circumstances disimprove significantly before the end of the Interim Period (for example, if you lose a source of income making it unlikely in our view that you will be able to afford to make the repayments that would be due if arrears were capitalised):

/Cont'd…

(b)The Borrower does not meet the mortgage repayments, on any mortgage loan with the Lender secured against the property, in full and on time in the Interim Period.

The previous Clause is subject to this Clause.
…"

Section B of the **Agreement to Amend Mortgage Loan Offer Letter** details as follows:

1 THIS FORM WILL AMEND YOUR MORTGAGE LOAN OFFER LETTER

1.1 This form will amend the terms and conditions that apply to the Loan, including the Mortgage Loan Offer Letter.

1.2 This form does not change the maturity date of the Loan unless it says so (if it does say so, the term of the Loan is extended by the maturity date shown in the Form). The maturity date coincides with the due date for the payment by the Borrower of the last instalment due under the Loan.

1.3 To the extent they are not amended or replaced by this Form, each of the terms and conditions of the Mortgage Loan Offer Letter, including those concerning how interest is applied to the Loan, will remain in full force and effect. (For example, the General Terms and Conditions attached to the Mortgage Loan Offer Letter remain in effect and are not replaced by these General Conditions).

1.4 If this Form provides for the Borrower to pay amounts to the Lender (for example, as part of an alternative repayment arrangement), the Borrower is obliged to pay those amounts in full and on time. The Lender will calculate the amount of the regular repayment to be made by the Borrower
(a) during the alternative repayment arrangement; and
(b) after the alternative arrangement ends (where it applies for an Agreed Period).
The Borrower agrees to pay the amounts so calculated by the Lender.

1.5 Any agreement to a flexible payment option (for example one in which payments are omitted for some months in a year) is hereby cancelled.
…"

/Cont'd…

The First Complainant signed the **Acceptance** section of this **Agreement to Amend Mortgage Loan Offer Letter** on **9 December 2019**, 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"*

The mortgage loan statements provided in evidence indicate that the terms of the **Agreement to Amend Mortgage Loan Offer** were applied to the mortgage loan account on **24 February 2020**, with repayments being altered to €710.71 in line with the terms of the alternative repayment arrangement agreed to by the parties.

<u>Extracts from Communications between the parties</u>

The First Complainant sent an email to the Provider on **27 March 2013**, outlining the Complainants' financial position as follows;

"Hi [redacted],

…

I have provisionally included an approximate income of €1,000 per month for myself as I'm unsure of what level of work will be available at that stage.

I could have difficulty in securing SW assistance due to my rental income even though I do not avail of any these monies.

The computation is also based on the following assumptions.

• Private Dwelling Mortgage to be placed on an interest only repayment structure (I have commenced discussions with [third party provider])
• Proposed savings as outlined to be implemented without delay
• Further savings to be made where achievable

/Cont'd…

Rental Income

I have analysed previous returns and I am satisfied with the accuracy of the assessment, there is minimal capacity to service interest over and above the present arrangements. Interest, taxation, repairs, & vacancy levels absorb all surplus income.

In addition any surplus will be required to meet the interest cost on the site loan.

…

The original borrowing rationale was based on the expectation that the market would facilitate and early sale resulting in a profit after bank.
Repayment of the facilities via the traditional amortisation method was never a viable option as rental yields are not and will never be sufficient to achieve this result.

Interest Rates

The increase proposed on the rate is not sustainable as funds are also required to meet the balance on the site loan.

There is just about enough rent after costs to meet [Provider], [Provider], & [other] obligations. It is critical that [the Provider] leave the rate on the mortgages at the present level to allow for full cover on all [the Provider] borrowings

Please also review the rate on the site loan as 4.86% is too high in the present circumstances.

Both [third party-providers] are satisfied to leave the loans on existing rates as debt clearance is the ultimate goal.

Summary

In conclusion I propose to place all facilities on 10 at affordable interest rates (site included) with a phased sale of assets (sites initially) over a 5 to 10 year term.
No reasonable offer to be turned down with the agreement of the Bank.
I want to clear as much of this debt (if not all) if the Bank supports me through the process. I am hopeful that the above will meet F & P standards and if so will allow me work in financial services.

/Cont'd…

A strong PAYE salary will support the debt repayment plan; in absence of a job it will be difficult to meet all of my obligations."

It appears that the First Complainant sent this email to inform the Provider of his proposed plan to clear the debt that had accrued on the mortgage loans he held with the Provider and other third-party providers.

The First Complainant issued a follow up letter to the Provider dated **16 April 2013**, detailing as follows:

"Dear Manager:

I wish to acknowledge receipt of your recent mortgage loan offers dated 27th March 2013 in relation to my loan facilities. In addition I acknowledge the Bank's support in the form of an interest only extension over a 5 year term incorporating an interest rate rise of 1% across my [Provider] debt balance of €l.595m. Unfortunately I have no capacity to meet the additional annual interest cost of €16k required as I have outlined in my recent correspondence dated 26th March 2013.

You are also aware that I will be unemployed on the 1st July which result in a loss of approximately € 120k gross per annum. I am actively seeking alternative employment with other institutions and I am hopeful of a positive result in the medium term. I advised the Bank that my existing indebtedness may impact on my ability to secure employment in Financial Services; this is why it is critical that I secure a viable and sustainable arrangement with my banking creditors.

I note from your correspondence that you have assessed my case taking into account the following criteria.

a) My personal circumstances

b) My overall indebtedness

c) All the information I have provided to the Bank

d) My current repayment capacity

e) My previous payment history.

/Cont'd…

Please refer to the attachments provided which comprehensively address all the areas outlined above, please outline how the Bank came to its decision on based on this information.

Please also identify the capacity to meet the extra interest outlay considering that I will be unemployed at the end of June.

Meetings & Discussions

Please note that I commenced discussions with the Bank as far back as early 2012, I outlined my repayment position and the clear gap in my ability to meet capital reductions on my debt. My objective at that stage was to achieve a sustainable solution to my debt burden and to meet my obligations to the Bank in a realistic and achievable fashion.

I employed a professional advisor for support & expertise and also to demonstrate to the Bank my commitment to dealing with my financial position. I engaged in numerous lengthy discussions with the relationship management team in [Provider's branch location] focusing on all options to support me in my efforts to repay the Bank. It was generally accepted that the balance would be cleared by asset disposal rather than the traditional method of amortisation. This was the rationale when the funds were borrowed in the first instance, it was always clear that rental yields were never going to be sufficient to meet capital reductions. The repayment of the debt via capital appreciation was acknowledged by the Bank in all my borrowing requests, please review your files to confirm this assertion.

I provided a significant amount of relevant information in the form of a certified statement of my assets, liabilities, income, & expenditure updating my position in a timely fashion. I also proposed a number of structures such as parking debt or continuous interest only repayment structures as alternatives to present arrangements.

Unfortunately my requests were declined resulting in the proposal outlined in your recent loan offers, if also took nearly 12 months to get a response resulting in a capital arrears position on one of my mortgages.

Statement of Affairs

Please revisit the figures relating to my income and asset value position, which is detailed in my attachments to this correspondence.

/Cont'd…

I am unsure if the Bank has a different view of my financial position and as result I would welcome clarification on this matter.

The figures clearly are based on fact and reflect my income position post June 2013; in addition the asset values quoted reflect examples in the marketplace and can be verified.

Please note that I have no difficulty in proving all my details to external agencies for an independent assessment of my position.

Interest Rates

The interest rate increase on the investment property loans is not achievable as funds are required to meet the interest cost on the non- income producing site loan.

It is clear from these figures that I have minimum capacity to meet an additional interest outlay and that I need sufficient funds to meet expenses and taxation. It is critical that [the Provider] leave the rate at present levels to allow for full interest cover on all [the Provider's] borrowings.

I have also requested that the rate on the site loan be reduced from its present level of 4.86% to release capacity, please note that both [third party providers] are satisfied to leave rates at existing rates as debt clearance is the ultimate goal.

I am unsure why the bank propose the increase to the rate when a capital reductions cannot be achieved, if a surplus after obligations is achieved these funds should be utilized to reduce the capital balance on the debt.

Additional Costs

All my properties require a level of refurbishment and redecoration to maintain occupancy at current levels. Please note that I have commenced work at the [location] properties which included new insulation works in the external walls to an acceptable level to satisfy the new BER regulations. The [location] property also requires additional insulation for the very same reason. I estimate the cost at €10,000 for 2013 which will have to be funded from cashflow. This is on top of costs associated with engaging a professional advisor during 2012/13.

/Cont'd…

Summary

In conclusion I propose to place all facilities on an affordable repayment plan at existing rates with an agreed phased sale of assets over a 5-10 year period. I am committed to clearing as much of this debt if not all of it but I need the Bank's support to achieve this goal. I am hopeful that an arrangement can be agreed which will meet Fitness & Probity standards and allow me to continue my career in financial services. A strong PAYE salary will support the debt repayment plan.

The bank's offer is not affordable and if implemented will result in further default and a potential crystallisation of my position, this is a situation that I wish to avoid as a significant deficit will be realised by all parties.

Please treat this letter as formal correspondence as I may refer this matter to the Financial Services Ombudsman at a future date."

The Provider responded to the First Complainant's letter by way of letter dated **13 September 2013**, detailing as follows:

"Dear [First Complainant],

I am writing in response to your recent request for an alternative repayment option for your mortgages above. I have now completed a review and assessment of the financial and other information you provided and regret to advise that your request has been declined.

I have considered all the facts of your case and concluded that the above loans are no longer affordable.

I urge you to discuss this matter further with your local [Provider's] Branch Mortgage Adviser, who can explain our decision in more detail and assist you with a further review of your financial position, or any other option that might be appropriate. While we will continue to support you in any way possible, we strongly recommend that you also get independent financial and legal advice.

Given your present financial circumstances, I would like to draw your attention to other options open to you, the implications for you and our rights in each case. These options and other important information are set out in an appendix to this letter.

/Cont'd…

Once again, I regret I cannot offer you an alternative repayment arrangement on this occasion and recommend you contact your local [Provider's] Branch Mortgage Adviser and continue to work with us to achieve a satisfactory long term outcome."

A further response issued from the Provider to the First Complainant on **14 November 2013**, in response to his letter of **16 April 2013**, detailing as follows:

"Dear [First Complainant],

I refer to my letter of the 16th October 2013 in relation to your complaint regarding the offers from [the Provider] by way of Agreement to Amend Mortgage Loan Offer Letters dated the 27th March 2013. I confirm that I have completed my investigation and I am now in a position to give you a final response. I apologise that this matter has taken some time to investigate and I thank you for your patience during that time.

As noted in your letter of the 16th April 2013, the Bank did take into account the criteria listed in its assessment of your case and offered what it considered to be the most suitable and sustainable forbearance in your case by way of letters of the 27th March 2013. I confirm that the Bank has documented all considerations in coming to this decision; however the Bank is not obliged and therefore will not provide you with such information.

In relation to the terms and conditions of your mortgages, please refer to the original Letters of Loan Offer, which continue to apply unless amended by way of Agreement to Amend Mortgage Loan Offer. I have reviewed such letters in relation to all of the above mortgage accounts and confirm that there is no requirement nor agreement to redeem these accounts by asset disposal or otherwise. You were advised to seek independent legal advice at the time of signing these offers and I respectfully suggest that you discuss any such issues with the Solicitor who advised you at the time.

In relation to your request to have your case reassessed, I note that the Bank already reviewed your case in June of this year and it appears from my records that this was discussed with [redacted] of [Provider's branch location] by both yourself , in September of this year, and by [redacted], your Financial Advisor, in October of this year. If this matter requires further discussion, please revert to [redacted] to arrange.

/Cont'd…

In relation to the change in interest rate, I confirm that there are no exceptions to the Bank's pricing policy regarding residential investment property tracker mortgages on properties not covered by the Codes of Conduct on Mortgage Arrears. Any amendments to the terms and conditions of the original loan agreements will only be offered on the basis of a switch to a variable rate mortgage, initially priced at an interest rate of 1% above the current tracker interest rate. The offer of forbearance in your case requires an amendment to the terms and conditions of the original Loan Offers, and the Bank is entitled to vary other terms and conditions, such as the interest rate, by way of Agreements to Amend Mortgage Loan Offer Letter. Please note that the Bank fully engaged with the Central Bank in implementing this pricing policy. Please note further that this is a policy of [the Provider] and it applies to all residential investment property tracker mortgages, without exception.

…"

The First Complainant issued a further letter dated **26 February 2014**, detailing his financial situation as follows:

"Hi [redacted]

Sorry for the delay but as you can see from the attached it took a fair bit of time.

Summary
As stated in my previous emails I need to come to a sustainable solution to my finances via one of the following options.

1. *Private Contracted Arrangement*
2. *Personal Insolvency Arrangement*
3. *Debt Settlement Arrangement*
4. *Bankruptcy*

…

I hope the attached gives the [Provider] an insight into my situation and the options open to me at present, it is my intention to utilise one of the above options in 2014. My position is as [the Provider] have stated in correspondence "unaffordable" Please do not hesitate to contact to discuss further".

/Cont'd…

The First Complainant sent a further letter to the Provider dated **30 April 2014** which details as follows:

> *"Dear Sir/Madam:*
>
> *I acknowledge with disappointment your response to my comprehensive proposal to deal with my outstanding exposure to [the Provider].*
> *I feel that I have gone very far to deal with the debt and the response does not give my proposal any justice.*
> *At the core of my proposal is the acknowledgement of reality and not pretence; my situation requires a solution not a deferment.*
> *Any agreement must provide a level of certainty or an "end game" to make it fair to all parties; otherwise I will have to do what is best for myself.*
> *This may involve pursuing the new insolvency & bankruptcy options, which were introduced to deal with unsustainable debt.*
> *I have a preference for a private arrangement with the Bank that involves a greater sacrifice on my behalf, nevertheless it would facilitate my wish to remain working in financial services.*
>
> ***Key Objective***
> *My objective is to clear as much of my debt (if not all of it) over a reasonable period of time, to achieve this I need the support of the Bank.*
> *This support needs to be measurable, fair, & realistic and if this is the case more will be achieved over time.*
> *The extension of debt on an interest only basis does nothing to serve this shared objective and will only make the situation worse for me.*
> *I am unsure of the benefit of the Bank and I would welcome an explanation in this regard.*
>
> *…*
>
> ***Personal Insolvency Options***
> *Please refer to the spreadsheet (better to read on screen rather print) provided in my proposal, all insolvency options such as the Debt Settlement & Personal Insolvency arrangements are detailed in a comprehensive fashion.*
> *These options require the agreement of the majority of my creditors and are available over a 5-7 year period.*
> *Additional costs such as Personal Insolvency Practitioner fees are payable.*

/Cont'd…

Bankruptcy
This is an option that I do not wish to consider; I may have no choice considering the level of debt.
As detailed in my proposal asset realisation costs of 15% apply through Bankruptcy which will further reduce the distributions to creditors.
In [the Provider's] case this additional cost could exceed €150k.

…

Conclusion
Please consider this proposal as a matter of priority; I need to start down a road that leads to a realistic and sustainable solution.
This repayment structure will suffice from a fitness and probity perspective and facilitate my return to a career in financial services, where I have enjoyed 25 successful years.
The Bank's [u]tter of a 3-year interest only extension is neither a solution nor a realistic strategy, it only postpones a problem.
I am not looking for a deal or a write-off of debt, my request is that the Bank accepts reality and provides a solution that reflects that reality.
I have proposed to work towards a final settlement in 10 years, which may result in a positive rather than a negative position.
Whatever the result, both parties must agree a final settlement.
In my opinion this is a very fair proposal and should be carefully considered by the Bank.

In absence of agreement please provide a full explanation of your response and a realistic alternative to my proposal.
I would welcome some input from the Bank in relation to a repayment structure that will deal with debt."

The Provider responded with a further letter on **6 May 2014**, detailing as follows:

"…

We regret to inform you that your proposals are not acceptable to the Bank as your proposals are not in accordance with the Banks current credit guidelines. Based on our assessment of your circumstances, there is an alternative arrangement available on the mortgage loans which will not require the sale of the Property."

/Cont'd…

As detailed above, the Provider offered the Complainants **Agreements to Amend Letter of Loan Offers** which were accepted by the Complainants on following dates:

Account ending	Agreement to Amend Letter of Loan Offer	Date of acceptance
6906	26 June 2014	05 July 2014
4728	26 June 2014	05 July 2014
1640	09 February 2016	18 February 2016
8534	09 February 2016	18 February 2016
8541	26 June 2014	05 July 2014

The Provider issued a letter to the Complainants dated **9 August 2017** detailing that the alternative repayment arrangements were due to expire in respect of mortgage loan accounts ending ***6906***, ***4728***, ***1640***, ***8534*** and ***8541****,* as follows:

> *"As I am sure you are aware a number of your mortgage accounts are due to roll off their current arrangement between now and October 2017. If you wish to avail of any further forbearance you will need to complete a financial assessment form (FAF) and provide a proposal for your mortgages going forward.*
>
> *I have enclosed a FAF to help you set out your financial circumstances. The FAF is an important document. Please fill in each section fully, accurately and honestly as we will use the information to assess your mortgage.*
>
> *If this is a joint mortgage, all joint borrowers must give details in, and sign, the FAF. …"*

A **Credit Review** dated **26 October 2017** has been submitted by the Provider in evidence and details as follows under the heading "*Credit Requests*":

> *"1. Borrowers seeking extension of FB in line with rental income on all a/c's but same not sufficient to support C&I even on max T/E.*
> *2. FB of 1 year fixed repayments backdated in line with last arrangement as below on [First Complainant] sole accounts x 2 with sale of properties once this forbearance ends.*
> *3. Decline FB on Joint A/C's and Vol sales pack to issue for all of Joint properties.*
> *4. if borrowers not agreeable to Vol sale then once a/c's fall 90 DPD receiver appointment to progress."*

/Cont'd…

The **Credit Review** also details the following under the heading "*Brief Summary – Existing Strategy in train"*:

> *"• Borrowers are […] and have been on IO across all mortgages rolling off Aug to Oct '17.*
> *• Last review Jan '17. Request was for borrowers to provide up-to-date financials plus proposal for repayment/next strategy at next review.*
> *• [First Complainant] -two mortgages, three properties in sole name one property in his portfolio already disposed of. He is seeking forbearance with a view to disposing of assets in 2018.*
> *• [The Complainants] - four mortgages, four properties, no disposals to date.*
> *• [Second Complainant] - performing PDH with his wife under [account number]."*

The Credit Review also details the following under the heading "*Retail Credit (MARS) Recommendation*":

> *"• Agree 12 month reduced arrangements on [First Complainant] connection*
> *• [Accounts ending 6906 and 5135] will pay at €2350pm (-906: €1350/- 135: €1000) for 12 months That connection is on target to breakeven in 2018 and borrower [First Complainant] has stated his intention to dispose of these securities in 2018. Voluntary sale docs to issue along with MFAs.*
> *• Joint connection are declined as unsustainable and referred for voluntary sale now*
> *• [Accounts ending 4723, 1640, 8534 and 8541] (joint) declined unsustainable. Proceeding with a ten year strategy on these loans is not an attractive option for the bank given the FCR status that will be required. Exit strategy will be expedited and VS letters issued now*
> *• Satisfied that there is no surplus income from either household Spouse incomes are helping to cover personal income shortfalls."*

The Complainants are of the view that the Provider "*indirectly pushed*" them into entering the alternative repayment arrangements on their various mortgage loan accounts as detailed above between **July 2014** and **February 2016**, and by doing so they no longer had the benefit of a tracker interest rate, on the mortgage loan.

I accept that the Complainants did not want to give up the entitlement to the tracker interest rates on their mortgage loan accounts, however the reality of the situation at the time was that the Complainants were concerned that they were not able to service the repayments required within the original terms of their mortgage loan agreements.

/Cont'd…

In this regard, the First Complainant in the Complainants' post-Preliminary Decision submissions dated **27 June 2022**, states as follows;

> *"I do not understand this point at all and does not reflect my view or correspondence. It was very clear that I could not meet the repayments, I wanted to dispose of the property at a time that would clear the balances. The application of an extra interest charge was going to make that task more difficult. This point does not come across to me as fair. Tracker or not tracker I wanted to clear the debt by asset disposal ARA term reduction was never going to work particularly with an additional 1% on circa €1.5m".*

The Complainants sought to alter the terms of their mortgage loan agreements with the Provider to different terms than had originally been agreed between the parties by seeking alternative repayment arrangements from the Provider in respect of their mortgage loans. It was therefore a matter for the Provider to decide whether to offer alternative repayment arrangements and it was a matter for the Complainants to decide whether to accept the arrangements proposed by the Provider.

The First Complainant further submits in his post-Preliminary Decision submission as follows:

> *"Financial distress is a good reason to seek alternatives, this is stated as if I had a choice. I had no choice but to accept, why did I approach the CBOI financial regulator"*

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 significant volume of arrears correspondence that has been submitted in evidence. 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. The Provider considered the proposals of the First Complainant and after carrying out an assessment of the Complainants' financial circumstances, the Provider issued **Agreements to Amend Mortgage Loan Offers** to the Complainants in respect of the mortgage loan accounts the subject of this complaint.

/Cont'd…

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."*

The mortgage loans in this instance were not private dwelling house mortgage loans. Rather, the mortgage loans were secured on the Complainants' residential investment properties.

I am satisfied that the appropriate information and warnings as stipulated in **provision 6.9** of the **Consumer Protection Code 2012** were contained in the five **Agreements to Amend Mortgage Loan Offers** that the Provider issued to the Complainants dated between **26 June 2014** and **09 February 2016**, as detailed above.

/Cont'd…

General Condition 4(d) of the **Mortgage Loan Offers** dated **14 March 2003, 05 August 2005, 27 October 2005, 26 April 2006** and **23 February 2007** stipulates that the Provider 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".* 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 and 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 when offering the Complainants the option to amend the interest rate on their mortgage loan accounts as part of the alternative repayment arrangements offered to the Complainants from **26 June 2014** to **09 February 2016.** There is also no evidence to support the Complainants' contention that they were *"indirectly pushed"* into signing the **Agreement to Amend Mortgage Loan Offer Letter**. The Provider could not have varied the terms of the mortgage loan without the Complainants' consent.

The Complainants were seeking to alter the terms of the mortgage loan agreements in an effort to address the increasing arrears that accrued following the expiry of the interest only repayment periods. The Provider was willing to accede to the Complainants' request for forbearance on their five 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 to a buy-to-let variable interest rate in line with the Provider's buy-to-let pricing policy. The Provider issued offers to the Complainants in respect of each mortgage loan account in the form of **Agreement to Amend Mortgage Loan Offer Letters** dated **26 June 2014** and **09 February 2016** which contained the appropriate warnings under the **Consumer Protection Code 2012** relating to moving from a tracker interest rate to a buy-to-let variable interest rate. The Complainants accepted and signed each of the five **Agreements to Amend Mortgage Loan Offer Letter** confirming that they had received independent legal advice in relation to the three **Agreements to Amend Mortgage Loan Offer Letter** dated **26 June 2014** and confirming that they did not get independent legal or financial advice in relation to the two **Agreements to Amend Mortgage Loan Offer Letter** dated **09 February 2016**, because they had sufficient appreciation of financial and legal matters and of the meaning of the alternative repayment arrangements to understand the **Agreements to Amend Mortgage Loan Offer Letter** dated **09 February 2016** completely.

The First Complainant in his post-Preliminary Decision submission details that he *"wanted to clear the debt by asset disposal ARA term reduction was never going to work particularly with an additional 1% on circa €1.5m"*.

/Cont'd…

By accepting and signing the **Agreements to Amend Mortgage Loan Offer Letter**, the Complainants confirmed that they understood that they were moving off a tracker interest rate to a buy-to-let variable interest rate and would not be contractually entitled to revert to a tracker interest rate in the future. If it was the case that the Complainants were of the view that the alternative repayment arrangement "*was never going to work*", they had the option of not accepting the Provider's offer and considering alternative options available to seek to resolve their debt. It is important to highlight that the Complainants were seeking to alter the terms of the mortgage loan agreements, and where the mortgage loan agreements were not in respect of a PDH property the Provider was entitled to introduce new terms into the agreement provided it acted in compliance with the CPC. The evidence shows that the Provider complied with the CPC.

The Complainants, in their post-Preliminary Decision submission dated **27 June 2022**, state as follows;

> *"I knew what I was signing so there is no need for FSPO to continue to stress a fact that was never disputed. Also aware of the warnings, again heavily stressed. What the FSPO failed to identify were alternatives. What I believed to be fair was to lodge all net rents to the debt allowing phased reduction and eventual clearance via asset disposal- **this has not been analysed or queried by the FSPO**."*

The Complainants further submit as follows in their post-Preliminary Decision submission:

> *"In my view, the document reflects a bad school report where my points are aired but are firmly ruled out on the interpretation of the law. The tone of the report makes me feel like that I am being disciplined by my school principal and told to cop on and take my medicine. The final paragraphs of the report are particularly blunt referring to legalities and pointing to a rejection. Basically, I believe the report is structured to be easily read on the FSPO website when published.*
>
> *Furthermore, it is my opinion, that there seems to be no real analysis by the examiner of the fairness/equity of my position other stating my complaint. However, there is a significant analysis of the Bank side referencing facility letters from to top to bottom. To be honest, this report could have come directly from the bank. I have never questioned that I signed the alternative repayment arrangements (FSPO examiner refers to my signing ARAs on many occasions as if I wasn't aware). I questioned the rationale for an approach (BOI ARA) that suited a long term repayment strategy for a loan that would be repaid in normal circumstances.*

/Cont'd…

> *Basically, somebody who wanted to retain property and repay the debt in a normal fashion over time, that is my understanding of ARAs. My circumstances were not normal and required a phased repayment via asset disposal without the imposition of additional costs. An asset sale at that stage would have crystalised losses and that would not have suited the bank. The examiner for some reason does not review these points in detail while at the same time goes into great length and pages referring to various facilities and conditions (33 pages). The report also includes credit commentary from the Bank in 2017/18, where is the credit commentary I requested in relation to the rationale for declining my fair and equitable proposal".*

It is important to re-emphasise that it is not the function or the role of this Office to identify or impose alternative repayment options between the parties or interfere with any re-negotiation of the commercial terms of a mortgage which is a matter between the Provider and the Complainants, unless the conduct complained of is unreasonable, unjust, oppressive, or improperly discriminatory in its application to a complainant, within the meaning of ***Section 60 (2)*** of the ***Financial Services and Pensions Ombudsman Act 2017.*** The Complainants state they "*firmly believe that it was unfair, unreasonable and unjust and does not reflect global standards of treating the consumer fairly*". I do not agree with the Complainants' submissions in this regard.

I accept and can see from the evidence submitted that the Complainants engaged with the Provider with respect to the arrears arising and considered their options in detail and sought to agree a proposal with the Provider that they considered to be most suitable to resolve the issues arising with the debt. I accept that the proposal made was detailed. However, there was no obligation on the Provider to accept that proposal. Rather, in circumstances where the Complainants were seeking to agree alternative repayment arrangements, the Provider was entitled to consider the options and decide the alternative arrangements that it was willing to offer to the Complainants with respect to the loans.

I fully appreciate that the offer made by the Provider to the Complainants was not the outcome the Complainants wanted, but it was an offer the Provider was entitled to make and the relevant provisions of the CPC were complied with.

The tone of the language of the decision is not intended to be as the Complainants have submitted. I accept that this was a difficult time for the Complainants and can understand why they feel they were "*indirectly pushed*" into the relevant alternative repayment agreements. However, I have considered all of the evidence and submissions in an impartial manner and there are no grounds upon which to uphold this complaint.

/Cont'd…

For the reasons outlined above, 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.

JACQUELINE O'MALLEY
HEAD OF LEGAL SERVICES

26 July 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,
(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.

/Cont'd…

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.