



<u>Decision Ref:</u>	2022-0298
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Tracker Mortgage
<u>Conduct(s) complained of:</u>	Failure to offer a tracker rate throughout the life of the mortgage
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

This complaint relates to a mortgage loan account held by the Complainants with the Provider. The mortgage loan account was secured on the Complainants' residential investment property.

The **Mortgage Loan Offer Letter** dated **02 May 2003** in relation to mortgage loan account ending **9746** provided that a fixed interest rate of 2.950% would apply for the first 12 months of the term of the mortgage loan. The loan amount was €135,000.00 and the term of the loan was 20 years.

The mortgage loan account was drawn down in full on **31 July 2003** on a fixed interest rate of 2.490%.

The Complainants' Case

The Complainants submit that they approached the Provider in **January 2013** and sought to renegotiate their mortgage loan repayments "*which at the time was on a tracker rate*".

The Complainants submit that on **26 February 2013**, the Provider informed them that it would "*renegotiate payments*" on their mortgage loan if they "*were prepared to move*

from [their] tracker rate". The Complainants state that they were led to believe that they had no alternative option but to "relinquish [their] tracker mortgage".

The Complainants submit that they "strongly feel" that their tracker interest rate was "wrongly removed" from their mortgage loan. The Complainants maintain that they were "forced" to give up their tracker interest rate in order to have their "mortgage rescheduled", which they were granted "before [the Provider] changed the criteria".

The Complainants are seeking a refund of any overpaid interest in respect of what they have paid and what they would have paid if their mortgage loan was on a tracker interest rate.

The Provider's Case

The Provider submits that the Complainants signed and accepted a Mortgage Loan Offer Letter dated **02 May 2003** in relation to mortgage loan account ending **9746** on **12 May 2003**, which provided for a 1-year fixed interest rate of 2.95% which would thereafter move to a standard variable interest rate.

The Provider submits that the Complainants accepted and signed a Mortgage Form of Authorisation on **23 February 2006** and the mortgage loan account moved to interest only repayments for a period of 3 years.

The Provider submits that the Complainants accepted and signed a Mortgage Form of Authorisation on **5 June 2008** and the mortgage loan account moved to a tracker interest rate of ECB + 1.45%. The Provider notes that the tracker interest rate was reduced to ECB + 1.30% on **14 July 2008**.

The Provider details that on **2 March 2009** the mortgage loan account reverted to capital and interest repayments. The Provider submits that the Complainants accepted and signed a Mortgage Form of Authorisation on **9 May 2009** and the mortgage loan account moved to interest only repayments for a period of one year. The Provider notes that on **18 May 2010** the mortgage loan account reverted to capital and interest repayments.

The Provider submits that the Complainants accepted and signed a Mortgage Form of Authorisation on **02 September 2010** in order to apply reduced monthly repayments of €400.00 to the mortgage loan for a period of 12 months. The Provider details that on **8 September 2011** the mortgage loan account reverted to capital and interest repayments.

The Provider submits that the Complainants accepted and signed a Mortgage Form of Authorisation on **24 October 2011** to reduce repayments to €400.00 for a period of 3 months which were backdated to **September 2011**. The Provider details that on **28 November 2011** the mortgage loan account reverted to capital and interest repayments. The Provider submits that the Complainants accepted and signed a further Mortgage Form of Authorisation on **20 December 2011** in order to reduce the monthly repayments to €400.00 for a period of 12 months. The Provider details that on **03 December 2012** the mortgage loan account reverted to capital and interest repayments.

The Provider outlines that the Complainants advised the Provider in **December 2012** that they were anticipating financial difficulties and *“may require further forbearance”*. The Provider details that the Complainants completed a standard financial statement (“SFS”) to allow the Provider to assess their financial position with a view to engaging with the Complainants and finding a solution to their anticipated financial difficulties. The Provider submits that an offer of forbearance in the form of a term extension was made to the Complainants on **09 January 2013** and **26 February 2013**. The Provider explains that this offer of forbearance was subject to its buy-to-let pricing policy. The Provider states that the Complainants chose not to accept this offer because it meant that the Complainants would no longer have the benefit of a tracker interest rate.

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

The Provider submits that following further negotiations, the Complainants made a request for reduced repayments for a period of 24 months. The Provider details that an offer of forbearance *“in the form of reduce repayments of €400.00 per month for a period of 36 months”* was made by the Provider in **August 2013**. The Provider outlines that this offer was subject to its buy-to-let pricing policy and the Complainants accepted this offer of their own volition.

The Provider details that the Complainants accepted and signed an **Agreement to Amend the Letter of Offer** on **10 September 2013** to apply reduced repayments of €400.00 for a period of 36 months. The Provider submits that by signing the **Agreement to Amend the Letter of Offer**, the Complainants agreed to the removal of the tracker interest rate that applied to mortgage loan account ending **9746**.

The Provider details that the Complainants accepted and signed an **Agreement to Amend the Letter of Offer** on **06 August 2014**, which capitalised the arrears. The Provider notes that the arrears on the Complainants' mortgage loan account amounted to €5,250.53 at that time.

The Provider states that the Complainants accepted and signed an **Agreement to Amend the Letter of Offer** on **16 August 2016** which moved the mortgage loan account to reduced monthly repayments of €400.00 for a period of 48 months.

The Provider maintains that all three **Agreements to Amend the Letter of Offer** which were signed by the Complainants offered forbearance subject to the Provider's buy-to-let pricing policy.

The Provider asserts that it was open to the Complainants to accept or reject the Provider's offer. The Provider maintains that the **Agreement to Amend the Letter of Offer** signed by the Complainants on **10 September 2013** *"reflects the requirements of the Consumer Protection Code 2012 by containing the requisite legal notices to include warnings, indicative comparisons and details of the advantages and disadvantages."*

The Provider submits that it fully engaged with the Complainants from **December 2012** in seeking to resolve the financial difficulties anticipated by the Complainants. The Provider maintains that at all times, it was made clear to the Complainants that any offer of forbearance was subject to the Provider's buy-to-let pricing policy. The Provider maintains that it is not legally obliged to offer forbearance on mortgage loan accounts and that it has made significant efforts to facilitate the Complainants in finding a solution to their financial difficulties, by way of offering forbearance for the majority of the lifetime of the mortgage loan.

The Complaint for Adjudication

The complaint for adjudication is that the Provider incorrectly failed to permit the Complainants to retain their tracker interest rate on their mortgage loan when they sought to renegotiate their mortgage loan repayments in **2013**.

Decision

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

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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 **05 August 2022**, outlining the preliminary determination of this Office in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

In the absence of additional submissions from the parties, within the period permitted, the final determination of this Office is set out below.

In order to determine this complaint, it is necessary to review and set out the relevant provisions of the Complainants' mortgage loan documentation in relation to mortgage loan account ending **9746** and to also consider certain interactions between the Provider and the Complainants between **2003** and **2013**.

The Provider issued a **Mortgage Loan Offer Letter** to the Complainants dated **2 May 2003** which detailed as follows under **Part 1 – The Statutory Loan Details**:

“1.	<i>Amount of Credit Advanced</i>		€135,000
2.	<i>Period of Agreement</i>		20 years
3.	<i>Number of Repayment Instalments</i>	<i>Instalment Type</i>	4. <i>Amount of each Instalment</i>
	12	Fixed at 2.950%	€744.84
	228	Variable at 4.100%	€820.56

The **Mortgage Loan Offer Letter** outlines that the loan type is “*Repayment*”, and the interest rate is “2.950%”.

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

“(iii) This offer replaces our offer of 24/04/2003”

General Condition 4 of Part 5 – The General Conditions details as follows:

“4. Repayment

....

- (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.”*

General Condition 6 and 7 of Part 5 – The General Conditions detail 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 Lender’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 Lender 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 0.1% over one month’s money at the Euro Inter Bank Offered Rate (EURIBOR).”*

7. Fixed Interest Rates

- (a) *The Lender may at its absolute discretion permit the Borrower to avail of a fixed interest rate in respect of all or any part of the Loan. In the case of a fixed rate loan, interest rate shall, subject to these Conditions, be fixed from the date of draw down for the fixed period state in this Offer Letter. The*

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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 Lender's fixed rate available for the fixed period selected by the Borrower at the date of draw down.

(b) The Lender shall have sole discretion to provide any further or subsequent fixed rate period. If the Lender does not provide such a further or subsequent fixed rate period or if the Lender 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.

..."

The **Consumer Credit Act Notices** also provided as follows:

"THE PAYMENT RATES ON THIS HOUSING LOAN MAY BE ADJUSTED BY THE LENDER FROM TIME TO TIME"

The Complainants accepted and signed the **Borrower's Acceptance and Consents** section of the **Mortgage Loan Offer Letter** on **12 May 2003** on the following terms:

"...

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

..."

It is clear that the **Mortgage Loan Offer Letter** dated **2 May 2003** provided for a 1-year fixed interest rate of 2.950%. The Provider had discretion to provide any further fixed interest rate periods as **General Condition 7** stipulates that on the expiry of the 1-year fixed interest rate period, the Provider could offer a further fixed interest rate if available. If a further fixed interest rate was not made available, or if the Complainants did not select an alternative interest rate, the Provider's variable interest rate would apply. **General Condition 6** describes that nature of the Provider's variable interest rate as one that could be increased or decreased at the discretion of the Provider. The Complainants accepted the **Mortgage Loan Offer Letter**, having confirmed that they had read and fully understood the terms and conditions contained in the **Mortgage Loan Offer Letter**.

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The Complainants subsequently converted their mortgage loan account to interest only repayments for a period of 3 years by accepting and signing a **Mortgage Form of Authorisation** on **23 February 2006**. This Office has not been provided with a copy of the **Mortgage Form of Authorisation** signed **23 February 2006** however, there does not appear to be any dispute between the parties in that regard.

The Complainants opted to apply a further interest only repayment period to their mortgage loan account for a period of 1 year by accepting and signing a **Mortgage Form of Authorisation** on **9 May 2009**. This Office has not been provided with a copy of the **Mortgage Form of Authorisation** signed **9 May 2009** however, there does not appear to be any dispute between the parties in that regard.

In the interim period, the Complainants signed an **Application for Change to Tracker Mortgage – Mortgage Form of Authorisation** on **5 June 2008**, on the following terms:

“ ...

The interest rate shall be no more than 0.9% above the Bank's cost of funds for the term of the Loan. For details of the Bank's cost of funds, see Clause 2 overleaf.

APPLICATION FOR CHANGE OF INTEREST RATE:

I/We wish to apply for the tracker mortgage variable interest rate as detailed above for my/our mortgage loan (the "Loan")

....

Acknowledgement and Agreement

...

I acknowledge that following the acceptance of [the Provider] of this Application, the terms and conditions applicable to the Loan shall be amended/varied by the terms and conditions set out in this Form of Authorisation, and I accept the said conditions and agree and be bound by them.

...

*2. in converting the Loan to a Tracker Mortgage Loan, I accept and agree as follows:
(a) The interest rate applicable to the Loan is tracker variable interest rate and may vary upwards or downwards.*

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(b) The interest rate applicable to the loan shall be no more than the percentage stated on page 1 (The "Margin") above the European Central Bank Main Refinancing Bid Rate ("Repo rate") for the term of the Loan, unless the circumstances set out in paragraph (c) below apply.

(c) In the event that the Repo Rate is certified by the Lender to be inappropriate as the base funding rate for the Loan by reason of the prevailing conditions on the market for inter-banking, or for any other reason, the interest rate on the Loan payable by the Borrower shall be the Margin above the 1 month Euro Inter Bank Offered Rate (EURIBOR) or such other funding rate as may be appropriate for such time as the Lender shall determine to be appropriate.

...

4. Save as set out in this Form of Authorisation all the terms and conditions applicable to the Loan remain unchanged."

The **mortgage loan account statements** furnished in evidence show that a tracker interest rate of 5.70% (ECB + 1.45%) was applied to the mortgage loan account on **09 July 2008**.

The Complainants accepted and signed a **Mortgage Form of Authorisation** on **02 September 2010** to reduce the repayments to €400.00 for a period of 12 months. The Complainants accepted and signed a further **Mortgage Form of Authorisation** on **24 October 2011** to reduce repayments to €400.00 for a period of 3 months and this was backdated to **September 2011**.

The Complainants accepted and signed a **Mortgage Form of Authorisation** on **20 December 2011** to reduce the repayments for a period of 12 months.

The Complainants completed and signed a **Standard Financial Statement** on **05 December 2012**, which detailed as follows under the heading *'Please provide details of any steps you propose to take to reduce your monthly expenditure and the savings you expect to achieve'*:

"Since 2010 we have paid as agreed with the lender over & above the interest portion of the loan. This is €400.00 per month and for the foreseeable future we cannot envisage paying anymore than this amount as we have also a smaller mortgage that we are paying in full."

The Provider responded to the Complainants on **09 January 2013** as follows:

"...

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

...

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

We strongly recommend that you get independent financial and legal advice to help you decide whether to accept our offer of an alternative repayment arrangement.

...

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

...

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

The enclosed **Agreement to Amend Mortgage Loan Offer Letter** dated **09 January 2013** was not signed by the Complainants.

The **internal records** furnished in evidence by the Provider show details of an interaction which took place between the Provider and the First Complainant on **30 January 2013** as follows:

“Cust adv not excepting term extension as doesn’t want to lose tracker rate adv cust that if looking to keep tracker a/c would have to revert to full repayments and no forbearance could apply. Cust adv that unable to meet full repayments as is paying most the rent”.

The **internal records** show that on **06 February 2013**, a further interaction between the Provider and the First Complainant took place, details of which are as follows:

“...

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[First Complainant] is not willing to sign the MFA as he would loose the tracker rate. He has taken independent legal and financial advise on this (sic).

..."

The Complainants subsequently wrote to the Provider on **08 February 2013** as follows:

"...

With refered to your letter dated 9/1/13

..."

We wished (sic) to inform you that we are not in a position to accept the terms as per stated in your letter.

Due to our current financial circumstances, we are unable to fulfil the alternative repayment arrangements offered. As of now we have been using our full rental income of €400.00 to meet our monthly repayments since we do not have any other resources available to us and therefore moving from the tracker to a variable interest rate is not feasible at this time.

..."

We would therefore request that you to allow us continue the arrange[ment] whereby we were paying interest plus part-capital repayment i.e a total of €400.00 per month.

..."

The **internal records** show that on **20 February 2013**, a further interaction took place between the Provider and the First Complainant, details of which are as follows:

"...

Customers advise that they are unable to fulfil the alternative repayment arrangement offered. Also stating that moving from the tracker rate to variable rate is not feasible. Requesting to continued previous arrangement to pay 400pm on [mortgage loan account ending 9476]

..."

Customers are not requesting forbearance (sic) on this account.

..."

The Provider subsequently wrote to the Complainants on **26 February 2013**, as follows:

"...

/Cont'd...

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

...

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

We strongly recommend that you get independent financial and legal advice to help you decide whether to accept our offer of an alternative repayment arrangement.

...

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

...

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

The enclosed **Agreement to Amend Mortgage Loan Offer Letter** dated **26 February 2013** was not signed by the Complainants.

The **internal records** show that on **04 April 2013**, the Provider contacted the First Complainant as follows:

“Spoke to [First Complainant] who advised he was not accepting offers as he could not afford it”.

The Provider wrote to the Complainants again on **05 April 2013** stating as follows:

“...

I refer to our previous letter dated 26/2/13 where we offered you an alternative repayment arrangement in relation to your mortgage(s) which to date you have not taken up. I would like to remind you that this arrangement was offered following a detailed assessment of your case, in which we concluded that this was the most appropriate way of managing your current situation.

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If you have not already done so, I urge you to discuss this matter further with your local [advisor] 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 continue to support you in any way possible, we strongly recommend that you also get independent financial and legal advice.

I am obliged to inform you of 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.

...”

The **internal records** show details of a telephone call which took place between the Provider and the First Complainant on **10 April 2013** where the First Complainant advised the Provider that he was not willing to accept the Provider’s offer as it would have the effect of relinquishing the tracker interest rate which applied to the mortgage loan account. The First Complainant was informed that the offer was made based on an assessment of the **Standard Financial Statement** completed by the Complainants.

The Provider wrote to the Complainants again on **29 April 2013** stating as follows:

“We wrote to you previously to advise you that your mortgage was in arrears. Your mortgage remains in arrears and the up-to-date position is set out above.

If you have already cleared the arrears, made an alternative arrangement with us or are currently in discussion with us to bring your account up to date, please disregard this letter.

....”

The **internal records** show details of engagement between the Complainants and the Provider in the period that followed, however it appears that the position remained that the Complainants did not wish to accept the offer of forbearance as the Complainants were taking steps to deal with their financial difficulties.

The Provider’s internal records indicate that a meeting was held between the Provider and the First Complainant on **19 June 2013**, details of which are set out below:

“19-Jun-13 Meeting held with [First Complainant]

...

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Cust adv unhappy with final outcome re decline & change re pricing policy. Adv borr tracker rate could be maintained borr meets full C&I [capital and interest] p/ments. [First Complainant] advised this is not poss/cannot afford same."

It was agreed between the Provider and the First Complainant that the Complainants would complete a further **Standard Financial Statement** in order to assess whether their circumstances had changed since the previous **Standard Financial Statement**. The Complainants completed and signed a further **Standard Financial Statement** on **15 July 2013**.

The Provider subsequently issued an **Agreement to Amend the Mortgage Loan Offer Letter** to the Complainants on **29 August 2013**, which details as follows:

"This is an important legal document. It will amend the terms and conditions that apply to your mortgage loan"

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

"SECTION A: WHAT THIS FORM DOES

Alternative Repayment Arrangement

Reduced Regular Instalment

What you pay in each instalment

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

- (i) €400.00 (the "reduced regular instalment"); or
- (ii) Interest due for payment on the Loan if the amount of interest due for payment is greater than the reduced regular instalment (that is possible for example, because of a rise in interest rates.)

The Length of the Agreed Period

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

...

Conversion from Tracker Rate to New Interest Rate Type

Tracker to BTL Variable

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*This form converts the interest we charge on the Loan from a tracker rate which is 1.800% 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 2.800% per annum. “*

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

“SECTION B: FURTHER TERMS AND CONDITIONS OF THIS FORM

B.1 ANY COMMITMENT TO A TRACKER RATE ENDS

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

...

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

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

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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 the Mortgage Loan Offer 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 €1,028.42 each and that the total cost to you of the Loan would be €10,362.71. This estimate (i) is based on the tracker interest rate and the terms and conditions that apply to the Loan before you accept this form; but (ii) assumes you pay instalments of principal and interest on a normal annuity basis (for example, this estimate takes no account of any alternative repayment arrangement we may have entered into with you before we sent you this form.)*
- b) *If you accept this form, we estimate you will be obliged to pay monthly instalments of €400.00 each during the Agreed Period and €1,417.43 each thereafter. The total cost of the Loan would be €20,027.42. 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.*

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- 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 of the Agreement to Amend Mortgage Loan Offer Letter** on **10 September 2013** on the following terms:

“By signing this form:-

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

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

It is clear that the **Agreement to Amend Mortgage Loan Offer Letter** offered the Complainants reduced repayments of €400.00 on the mortgage loan for a period of 36 months, subject to the application of the buy -to-let variable interest rate of 2.80%. I note from the **mortgage loan account statements** that the buy -to-let variable interest rate of 2.80% was applied to the mortgage loan on **23 September 2013**.

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The Complainants signed and accepted the **Agreement to Amend Mortgage Loan Offer Letter** confirming that they did not receive independent financial or legal advice because they had sufficient appreciation of financial and legal matters and of the meaning of the alternative repayment arrangement to understand the **Agreement to Amend Mortgage Loan Offer Letter** dated **29 August 2013** completely.

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 Complainants’ mortgage loan was not secured on a private dwelling house but rather their residential investment property.

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 **Agreement to Amend Mortgage Loan Offer** dated **29 August 2013**, as detailed above.

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General Condition 4(d) of the **Mortgage Loan Offer** dated **02 May 2003** 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 in offering the Complainants an option to amend the interest rate on their mortgage loan account as part of the alternative repayment arrangement offered to the Complainants in **August 2013**. There is also no evidence to support the Complainants’ contention that they were *“forced”* into signing the **Agreement to Amend Mortgage Loan Offer Letter** on **10 September 2013**. The Provider could not have varied the terms of the mortgage loan without the Complainants’ consent.

While I acknowledge that the Complainants did not want to give up their entitlement to a tracker interest rate on mortgage loan account ending **9746**, it is important to note that it was the Complainants who were seeking to vary the terms of their original mortgage loan with the Provider by seeking forbearance measures. Following an assessment of the Complainants’ financial circumstances, the Provider offered the Complainants an alternative repayment arrangement subject to certain terms and conditions in line with its buy-to-let pricing policy that was introduced in **late 2012**. It was a matter for the Complainants to decide whether to accept the alternative repayment arrangement on offer by the Provider. The Complainants choose not to sign the **Agreements to Amend Mortgage Loan Offer** dated **09 January 2013** and **26 February 2013** which the Complainants were entitled to do.

It is clear that the Provider engaged extensively with the Complainants in **2013** in order to come to a resolution in respect of the arrears on their mortgage loan account. Having assessed the Complainants’ **Standard Financial Statement** dated **15 July 2013**, the Provider issued a further **Agreement to Amend Mortgage Loan Offer** dated **29 August 2013** which was accepted by the Complainants on **10 September 2013**.

The Complainants accepted the **Agreement to Amend Mortgage Loan Offer Letter** having confirmed that they had chosen not to get independent legal or financial advice because they had sufficient appreciation of financial and legal matters and of the meaning of the contents of the agreement. If the Complainants had any reservations regarding the terms

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of the agreement, they could have obtained independent legal or financial advice, however they chose not to do so.

By accepting and signing the **Agreement 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.

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.

A handwritten signature in black ink that reads "Jacqueline O'Malley". The signature is written in a cursive style and is positioned above the printed name and title of the signatory.

**JACQUELINE O'MALLEY
HEAD OF LEGAL SERVICES**

31 August 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—

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- (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.

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.