

# Financial Services Authority

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Andrew Tyrie MP  
Treasury Committee  
House of Commons, Committee Office  
7 Millbank  
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Dear Andrew

Thank you for your letter of the 6 March on the Bank of Ireland UK's action to increase the differential on a number of its base rate tracker mortgages (including some buy to let mortgages). As you know, these mortgages track the Bank of England's Bank rate plus a stated differential to arrive at a rate the customer pays. In this case, it is this differential that the Bank of Ireland UK is increasing.

The mortgages impacted by this change originated prior to FSA regulation of mortgage contracts, which commenced on 31 October 2004, and some are buy-to-let mortgages, which are not subject to FSA regulation. The effect of this is that the FSA's rules (including the Mortgage Conduct of Business Sourcebook-MCOBS) do not apply in respect of these mortgages. However, a firm's conduct in respect of such mortgages will still be of some relevance to FSA regulation if the conduct is relevant to its ability to satisfy threshold condition 5 (suitability). In addition, the Unfair Terms in Consumer Contracts Regulations (the Regulations) apply to contracts entered into on or after 1 July 1995.

Although these mortgages are not regulated, the FSA engaged with the firm prior to the change being announced to impress upon its senior management the need to ensure fair customer outcomes, and we will continue to do so in respect of their dealings with customers that have been impacted by this change.

We have addressed each of your questions in turn below. Some of the information provided below would fall within the definition of confidential information for the purposes of section 348 of the Financial Services and Markets Act 2000. Bank of Ireland UK has helpfully given its consent to us providing this information to you.

*What contacts and discussion have you had with the Bank of Ireland about this decision and at what level of seniority?*

The FSA (both the Prudential and Conduct Business Unit) was aware of this issue and has been in contact with the Bank of Ireland UK since the beginning on this matter. We have reviewed proposals discussed at the Bank of Ireland UK Board to increase the differential on a population of base rate tracker mortgages and have held discussions with the senior management of Bank of Ireland UK.

*Will you be investigating whether the mortgage agreements concerned contained unfair clauses?*

We have considered the interest rate variation terms, in line with the Regulations, in relation to the relevant mortgage contracts provided to us by Bank of Ireland UK. We did not identify any concerns with the relevant terms which led us to believe that the terms may be unfair. However, only a court may determine whether a term is unfair under the Regulations. If a customer is eligible and complains to the Financial Ombudsman Service (FOS), it may come to its own view about what may be fair and reasonable in the circumstances of any particular case.

*Will you treat this as a prima facie case of product mis-selling?*

We currently have no plans to treat this as a prima facie case of mis-selling. We have reviewed the terms and conditions provided to us by the Bank of Ireland UK and did not identify any concerns which led us to believe the terms may be unfair. Additionally, the mortgages were sold prior to FSA mortgage regulation. Separately, the Bank of Ireland UK volunteered to exclude customers from this change where there is evidence suggesting that the customer could have been led to believe the differential was for the “life” or “lifetime” of the product. The Bank of Ireland UK has also excluded all customers whose mortgage offers did not include the condition that the firm has used to justify this increase.

*What analysis have you made of the customers affected and their ability to move their mortgage to another provider?*

Prior to the increase, Bank of Ireland UK had undertaken analysis on the population of customers impacted by this increase and how this would affect them. These mortgages were entered into approximately 10 years ago and are seasoned loans with 94% of the mortgages currently being below 75% of the property’s value. Bank of Ireland UK has confirmed that it provided customers with advance notice and that affected borrowers can re-mortgage to another lender without paying early repayment charges, including any charges that might apply to connected extra borrowing. Bank of Ireland has also considered how customers who are currently in arrears will be treated and contacted in relation to this increase.

*How many other mortgage lenders have such clauses in their agreements with customers? What discussion with other lenders have you had as a result of the Bank of Ireland decision?*

Given that we review changes or increases to SVR and other mortgage rates on a case by case basis we cannot give an industry wide answer to this question.

*What discussions have you had with the prudential regulation arm of the FSA about the Bank of Ireland’s claim that the interest rate rise is a result of increased capital requirements?*

There is regular dialogue between the Conduct and Prudential Business Units of the FSA in regard to the supervision of Bank of Ireland UK, in line with the draft Memorandum of Understanding arrangements between the Financial Conduct Authority and Prudential Regulation Authority, and the proposed increase to the differential on the base rate tracker mortgages has formed part of those discussions (including the cost of funding and capital requirements). Bank of Ireland UK’s capital requirements are reviewed and reset regularly as is the case for all firms of this type.

*What discussions have you had with the Financial Ombudsman Service about the Bank of Ireland decision?*

We have not discussed the Bank of Ireland's decision to increase the differential on the base rate tracker mortgages with the Financial Ombudsman Service (FOS).

If customers believe they have grounds to complain against the Bank of Ireland UK, they can follow the Bank of Ireland UK's complaints procedure in the first instance. If the customer believes they were mis-sold this product by a mortgage broker or financial advisor, they could also make a complaint to the relevant firm. If customers are not satisfied by the response they receive, they may be able to refer their complaint to the FOS for a decision. As these mortgages fall outside of our regulatory remit we do not plan to take further action in respect of the increase to the differential. We have reviewed the terms and conditions provided to us by the Bank of Ireland UK and did not identify any concerns which led us to believe the terms may be unfair. Additionally, the mortgages were sold prior to FSA mortgage regulation. However, we will continue to ensure Bank of Ireland UK treats those customers who have been impacted by the change, fairly.

I hope that this is helpful. If you have any further questions please do not hesitate to contact me.

A handwritten signature in black ink, appearing to read 'M. Wheatley', written in a cursive style.

Martin Wheatley  
Managing Director