

IN THE HIGH COURT OF JUSTICE

QUEENS' BENCH DIVISION

COMMERCIAL COURT

ROYAL COURTS OF JUSTICE      Claim Number

BETWEEN

MARK ROBERT ALEXANDER

(AS A REPRESENTATIVE OF PROPERTY118 ACTION GROUP)

CLAIMANT

-V-

WEST BROMWICH MORTGAGE COMPANY LTD

DEFENDANT

WITNESS STATEMENT OF MARK ROBERT ALEXANDER

1. I am the Claimant in this case, and I make this statement in support of my representative claim for declaratory relief and other orders against the defendant in this case.
2. Following an application for a loan I made to the defendant via a broker, I received an offer of mortgage directly from the defendant dated 6<sup>th</sup> June 2008. I produce a copy of that application as exhibit MRA/1, consisting of 7 pages.
3. The passage concerning the interest rates can be found at page 2, in the third, fourth and fifth boxes of paragraph 4.
  - i) 'The product description sets out that the product is 'Buy to Let 6.29% fixed until 30.6.2010 (115% cover)- a fixed rate. Any applicable change in the Bank of England base rate will be applied to your account on the first day of the month following the change, unless the change is made after the 13<sup>th</sup> day of the month in which case it will be applied on the 1<sup>st</sup> day of the second month following the change.
  - ii) Rate payable 6.29%.
  - iii) After 30<sup>th</sup> June 2010 your loan reverts to a variable rate which is the same as the Bank of England Base Rate, currently 5%, with a premium of 1.99%, until the term end, giving a current rate payable of 6.99%. Any applicable change in the Bank of England base rate will be applied to your account on the first day of the month following the change, unless the change is made after the 13<sup>th</sup> day of the month in which case it will be applied on the 1<sup>st</sup> day of the second month following the change'.

4. I treated this set of conditions, if I accepted the offer, as committing me to paying an initial fixed rate reverting thereafter to a variable rate interest only mortgage for the 25 years after completion of the mortgage, with capital repayment at the end of the term. The interest rate would vary as the Bank of England base rate varied, with the agreed premium of 1.99%. I believed this would amount to a beneficial deal for me, as I predicted the BoE base would remain low, and I was also pleased that WB would not be able to vary the rate that I would have to pay them of their own volition. The rate would be controlled by the fluctuations of the base rate, which is far more sensitive to the whole money market and therefore would represent the fairest deal for me. The power to carry out unilateral variations of the rate was not a power that the defendant had, under the terms of this offer. I therefore accepted it.
5. Had I been happy to concede the power to the defendant to carry out unilateral variations of the rate I would have opted for a standard variable rate offer either with the defendant or another lender.
6. On 15<sup>th</sup> July 2008 the mortgage was completed. I produce a copy of the mortgage deed and the booklet, as exhibit MRA/2, consisting of 15 A4 sized pages, although the booklet is laid out at right angles. This booklet is a generic document, covering owner-occupied, buy-to-let and commercial mortgages, with fixed, variable and tracker interest rates, and a variety of hybrid rates.

7. The relevant parts of the booklet are at pages numbered 14-16 in the booklet, and paginated 7 and 8 in exhibit MRA/2.
8. The first point of relevance is the final bullet point above paragraph 2 at page 14. This states that if there is any variance between the terms of the Offer of Loan (exhibit MRA/1) and the Mortgage Conditions then the former will prevail.
9. The second point of relevance is paragraph 5 at pages 15 and 16 of the booklet, paginated 7 and 8 in exhibit MRA/2. This is the paragraph which the defendant relies upon to empower it to increase the interest rate it is charging me. This attempted exercise of the powers in paragraph 5 (referred to in paragraph 12 below) is at complete variance with the way the interest rate is calculated in the mortgage offer and clearly relates to the powers associated to standard variable rate mortgages, not tracker mortgages. The defendant claims a contractual right to vary the rate at a time when the Bank of England rate has not moved, as well as the right to increase the contractually agreed premium of 1.99% above this rate. Given the supremacy of the terms in the offer of mortgage, where the permitted timing and circumstances of interest rate variations are set out as described in paragraphs 3 and 4 above, the the defendant has contractually excluded itself from use of the powers under paragraph 5 of the 2006 Conditions. There is no room to read the overall picture in any other way.
10. I also produce a screenshot of advertising published by the defendant, as exhibit MRA/3. The mortgage product I contracted for was advertised as giving 'certainty that the amount you pay

will move in line with bank base rates'. It also advertises the availability of a range of "variable trackers" (sic).

11. I am experienced in property investment and finance. My firm belief, based on the advertising and the contract documents was that the interest on the loan I took out would only be altered by the defendant if there was a change in the Bank of England base rate, and be recalculated as the new base rate + a premium of 1.99%. I was quite content for that to be the case, as I believed from my reading of financial and property markets that we were in for a lengthy period of low interest rates. I had no access to any information that was not freely available to anyone. I have researched official information concerning tracker mortgages.

The Council of Mortgage Lenders website says this:

***What types of interest rates deals are there?***

*Fixed-rate - your interest payments are fixed for a set period of time after which you will be moved on to another rate, such as the standard variable rate or tracker rate.*

*Standard variable rate - your interest will vary with your lender's mortgage rate.*

*Tracker rate - your interest rate will move up or down by tracking an external rate such as the Bank of England rate or London interbank rate.*

The Money Advice Service, set up by the Government, says this:

***Tracker mortgages***

*Tracker mortgages move directly in line with another interest rate, normally the Bank of England's base rate. So if the base rate goes up by 0.5%, your mortgage rate will go up by 0.5%.*

### ***The advantages of tracker mortgages***

- *If the rate is linked to the Bank of England base rate and it falls, you'll know for sure that your mortgage payments will fall.*

### ***The disadvantages of tracker mortgages***

- *If the rate being tracked goes up too much, you may struggle to meet your repayments.*
- *You may have to pay an early repayment charge if you want to switch.*

### ***Suitable if you're looking for...***

*The opportunity to pay less when interest rates are low and don't mind the risk that rates might rise.*

The Financial Conduct Authority website says this:

*Tracker- where the interest rate is guaranteed to move in line with either the Bank of England Base (or repo) Rate (BBR) or another index such as LIBOR (London InterBank Offered Rate).*

*Capped (and collared) rate mortgage where the interest rate is guaranteed not to exceed a stated maximum rate (the 'capped' rate) for specific period of time, but where the standard variable interest rate applies when the rate is lower than the capped rate. Also includes products where the interest rate is subject to a minimum rate (the 'collared' rate).*

There was nothing to stop the defendant putting a collar on the tracker rate in the contract with me. I am also aware that the defendant reported loans of this type to credit rating agencies as trackers, and attach a Reuters report to this effect as exhibit MRA/4.

12. In September 2013 I received a letter from the defendant advising me that they intended to increase the premium of 1.99% to one of 3.99%. I produce a copy of this letter as exhibit MRA/5 consisting of 2 pages.
13. I disagreed with many of the assertions that were contained in the letter, for the reasons I set out above, and so complained to the defendant. I received a reply on 7<sup>th</sup> October, rejecting my complaint and containing a thinly-veiled threat to call in the loan by demanding repayment in full within 28 days if I did not accept the new terms or refinance. I produce a copy of this letter as exhibit MRA/6 consisting of 2 pages.
14. I refer again to the offer of loan, and the threat to call the loan in. Paragraph 14 of the conditions referred to in the letter of 7<sup>th</sup> October can be found at page 22 of the booklet, paginated page 11 of exhibit MRA/2.
15. The defendant has also excluded its right to rely on this part of the standard terms, as it is at variance with paragraph 6 of the mortgage offer, to be found at page 3 of exhibit MRA/1. This paragraph sets out the payments that are required to be made under the contract. I have made each one. There are 299 interest payments to be made over the period of 25 years, with a requirement that a capital sum of £91703.48 be paid at the end of that period. To allow the defendant to demand virtually instant repayment of the entire capital sum on one month's notice is inconsistent with the mortgage offer, and therefore not contractually permitted, for the same reasons that the interest

increase is not permitted. There is no room for any other reading of the totality of the contract.

16.I then received a further letter in November 2013 advising me that the increase in premium would now only be 1.9% not 2%. I produce this letter as exhibit MRA/7, consisting of 1 page.

17.When I received the September 2013 letter referred to in paragraph 9 above I opened a discussion about this issue on my website property118.com, as a result of which hundreds of borrowers in the same situation contacted me. I organised a group response to the defendant, including a request for the matter to be resolved by binding arbitration, which was rejected by the defendant. As a consequence of this, having no other option, I instructed counsel on behalf of the group of borrowers to draft an application to this Honourable Court.

18.I ask that the Court orders the defendant to adhere to the terms of their contract with me, and makes the same order in respect of all other borrowers that are represented in this claim. The orders I seek are set out in draft on my formal application to the court.

I produce a list of all those mortgage holders that I am acting as the representative for as exhibit MRA/8. I believe that the facts stated in this witness statement are true

Signed \_\_\_\_\_

Mark Robert Alexander      Dated 29/05/2014