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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

CHANCERY DIVISION

UCB HOME LOANS CORPORATION LIMITED

Plaintiff/Respondent

and

CHRISTOPHER JAMES GORDON

Defendant/Appellant

**Robert McCausland (instructed by TLT NI LLP, Solicitors) for the Plaintiff
The Defendant represented himself**

SIMPSON J

Introduction

[1] The plaintiff and the defendant entered into a 25 year mortgage dated 30 November 2007 in relation to premises known as Apartment 5, Mount Royal Apartments, 4 Eglinton Street, Portrush. Pursuant to Order 88 of the Rules of the Court of Judicature in Northern Ireland the plaintiff seeks delivery by the defendant to the plaintiff of possession of those premises and payment of moneys secured by the mortgage. The Originating Summons in this case was issued by the plaintiff almost eight years ago, on 7 February 2018.

[2] UCB Home Loans, which is now a wholly owned subsidiary of Nationwide Building Society, closed its books to new mortgage business in October 2008.

[3] On foot of the mortgage the plaintiff advanced to the defendant the sum of £191,250. In 2015, the defendant stopped making any payments under the mortgage. Arrears have mounted so that the total sum outstanding (as at November 2025) is some £544,000.

[4] The issue in this case is whether the plaintiff has the contractual right to charge the defendant the interest which it has charged under the mortgage. That issue

involves identifying the documentation which makes up the contract and the construction of the contract documentation.

[5] Following a protracted hearing before the Master which, I was told, lasted some 4½ days intermittently over some years, the Master granted the relief sought by the plaintiff. The Master's Order is dated 6 January 2025, more than 12 months ago. The defendant has appealed the Master's decision, and the matter was heard by me over three different days as a rehearing, but probably actually taking up two full court days, the third day being necessary to accommodate the availability of a witness. After the hearing was completed on 25 November 2025 the defendant asked to be permitted to make his final written submissions by early January. Because he was representing himself I allowed this very lengthy period of time for final submissions. His submissions and those of the plaintiff were all submitted by mid-January.

[6] During the hearing before me the defendant complained that I had prevented him asking questions of witnesses. If I heard him correctly, he said he had some 48 pages of notes, and had only been able to utilise some eight pages. The defendant had many other points which he wanted to make, as identified in his affidavits and skeleton arguments. These included points about other mortgage offers and their terms; about the Bank of England's special liquidity scheme accessed by the plaintiff; why the plaintiff had to raise interest rates to continue to make a profit; about various versions of the 2004 Conditions referred to below; about resolutions of the plaintiff's board of directors relating to interest rates; about the contents of his initial complaint to the plaintiff and the subsequent change of personnel dealing with his case; about his concern as to the potential thousands of other loans where borrowers may have suffered financially because of the plaintiff's actions; a *cri de coeur* that because for some significant time all parties were working from the wrong version of a document it was wholly unfair that he was still being charged inflated interest; and questioning in his skeleton argument "why are plaintiff's counsel basing their arguments on a false instrument." There were others.

[7] The defendant, like many self-represented litigants, seemed to be under the impression that the court should listen to every point, no matter how peripheral it might be to the actual issue or issues between the parties. Self-represented litigants, unlike the legal profession, have no understanding of and take no account of the overriding objective in Order 1 Rule 1A of the Rules of the Court of Judicature in Northern Ireland which applies to all litigation and all litigants, represented or otherwise. They should be made aware of it in no uncertain terms. The Rule provides *inter alia*:

(1) The overriding objective of these Rules is to enable the Court to deal with cases justly.

(2) Dealing with a case justly includes, so far as is practicable –

...

(e) allotting to it an appropriate share of the Court's resources, while taking into account the need to allot resources to other cases."

[8] As it seems to me, both in this court and below, this case has had much more than its appropriate share.

What comprises the contractual documentation?

The plaintiff's case

[9] The plaintiff's case is that the contract comprises three documents. First, a document entitled "Your Mortgage Offer" addressed to the defendant and dated 10 August 2007. Secondly, a document entitled "Mortgage Deed (N. Ireland)" dated, on its face, 30 November 2008. It is agreed that this is a typographical error and it should read 30 November 2007. Thirdly, a document entitled "UCB Home Loans Corporation Ltd Mortgage Terms & Conditions 2004 (Northern Ireland)."

[10] The document entitled "Your Mortgage Offer", which I shall call "the Offer", comprises some initial text and then a series of boxes (called "sections" in the document itself) in which text appears. The Offer begins:

We are pleased to offer you a loan on the following basis, which you must repay with interest and other fees and costs on the terms set out in this Mortgage Offer and our ... Mortgage Terms & Conditions (2004) (Northern Ireland) where the property is in Northern Ireland and any special conditions attached. You are free to decline this offer, but you would lose any fees that you have already paid or are payable to UCB Home Loans Corporation Ltd."

[11] The Offer goes on to provide, where material:

In box 1, entitled "About this offer document":

- You are not bound by the terms of this offer document until you have signed the legal charge and the funds are released for your mortgage.

In box 3, entitled "Your mortgage requirements":

This offer is based on a mortgage loan for a property purchase.

- Loan Amount £191,250 plus £730 for fees that have been added to the loan ...

- Type of Mortgage Interest only
- Term of Loan. 25 years
- Purchase price £225,000

This means that you are borrowing 85.00% of the property's purchase price...

In box 4, entitled "Description of this mortgage":

Your loans will be on:

Buy to Let 2 Year Tracker

A Tracker Rate which is variable and will be 0.29% above the Bank of England base rate unless the Bank of England base rate is 2.75% or less in which case the Tracker Rate will be 2.75% plus 0.29%

The Tracker Rate will apply from completion until 2 years from the end of the month in which you take the loan (the Benefit Period), after which our Investment Flexible Variable Rate, currently 8.04%, will apply for the remainder of the term. Any variation to the Tracker or Investment Flexible Variable Rate as a result of the change in the Bank of England base rate will take place on the first day of the following month.

In box 5, entitled "Overall cost of this mortgage":

The overall cost takes into account the payments in Sections 6 & 8 below. However, it excludes any payments that you may need to make into a separate savings plan, to build up a lump sum to repay the amount borrowed, but assumes that you pay off the amount borrowed as a lump sum at the end of the mortgage.

The total amount you must pay back, including the amount borrowed is £569,782.33

This means you pay back £2.98 for every £1 borrowed

The overall cost for comparison is 8.0% Apr

The figures in this section will vary if interest rate changes and if you do to keep the mortgage for 25 years...

In box 6, entitled "What you will need to pay each month":

These payments are based on a mortgage of £191,780 and assume that the mortgage will start on 01 September 2007

and include the fees that are shown in section 8 as being added to your this (sic) mortgage...

24 payments at a variable rate, currently 6.04% ...

Followed by

276 payments at a variable rate, currently 8.04%

In box 7, entitled Are you comfortable with the risks?

What if interest rates go up?

The monthly payments shown in this offer could be considerably different if interest rates change. For example, for a one percentage point increase in the Bank of England's Base Rate, your monthly payment will increase by around £159.98

RATES MAY INCREASE BY MUCH MORE THAN THIS
SO MAKE SURE YOU CAN AFFORD THE MONTHLY
PAYMENT"

[12] At page 7 of 8 in the Offer, a total of seven Terms and Conditions are set out, and on the final page of the Offer, seven Special Conditions are set out.

[13] On behalf of the plaintiff Mr Michael Kosifou, Lead Product Manager in the Mortgage Customer Manager Product and Propositions Community of Nationwide, explained the Investment Flexible Variable Rate (IFVR)" in the following terms in an affidavit:

The IFVR operates as a managed rate and is determined by a number of factors considered by the plaintiff. It is not linked to any benchmark or index. For example, it is not linked to Libor or the Bank of England base rate. The rate is varied depending on a number of factors ..."

[14] The second document, entitled Mortgage Deed (N. Ireland)", which I will call the Deed, is a one page document, to which is annexed a document entitled Mortgage Conditions (Northern Ireland)" which I will call the Deed Conditions." This comprises eight pages.

[15] The final document is that which is entitled UCB Home Loans Corporation Ltd. Mortgage Terms & Conditions 2004 (Northern Ireland)", which I will call the 2004 Conditions." The document comprises 12 internally numbered pages.

[16] Within the 2004 Conditions, Condition 3.9, "Monthly Payments", provides: "We may set and vary from time to time the monthly payments to reflect (i) the current interest rate applicable to the debt..."

[17] Condition 4, "Interest", provides at 4.1: "the interest rate we will charge you will be the rate we have told you in the offer document. Apart from any initial fixed rate under the offer document the rate may change under Condition 5."

[18] Condition 5 provides, where material:

5 CHANGES IN INTEREST RATE

5.1 We may change the interest rate applicable to the debt at any time except during any fixed rate period under the offer document giving you three days written notice of our intention to do so.

5.2 We will only change the interest rate for one or more of the following reasons:

- (i) ...;
- ...
- (iv) to act upon our legitimate commercial interests, including but not limited to:
 - (a) changes in prevailing market rates;
 - (b) costs associated with specific changes in relevant market conditions including technological changes and changes in services or facilities provided;
 - (c) to reflect a change in the credit risk relating to the loan;
- (v) If we vary the interest rate for any other reason, we will notify you at least 30 days in advance and waive any early repayment charge payable on your mortgage for 60 days starting on the date of the notice we send to you, to allow you to repay your mortgage without charge."

[19] One matter raised by the defendant in his cross examination, and at length in his written material, is the version of the 2004 Conditions which existed in 2007, when the mortgage contract was entered into. Unfortunately, during the course of the case before the Master a version of the 2004 Conditions was exhibited to an affidavit of Mr Kosifou which bore, on the final page, the words: "N5172 (October 2009)." Clearly, that document could not have been the version of the 2004 Conditions which related

to a mortgage in 2007. The matter was clarified in a further affidavit from Mr Kosifou filed at the direction of the Master after the discrepancy had been raised by the defendant. The further affidavit is dated 24 November 2022. This explains that the oversight came about because the publication date [ie the date appearing on the version of the 2004 Conditions] did not arise as a relevant consideration in respect of what was considered to be in dispute in this action.” Mr Kosifou goes on to say:

15. The very first time the issue of the publication date on the 2004 Conditions arose was when the defendant served his skeleton argument just prior to the hearing in September 2022. In his skeleton argument the defendant identified the endorsed publication date. This was the first time that I had cause to examine the matter. In so doing I realised that the oversight had arisen and I had inadvertently exhibited the 2004 Conditions published in 2009.

16. Copies of the conditions published on diverse (sic) dates are stored in an internal drive held by the plaintiff...”

[20] To the November 2022 affidavit Mr Kosifou has exhibited, inter alia, the 2009 version and a version bearing on the last page the words “N5172 (June 2005).” There are no material differences between the 2005 version and the 2009 version.

[21] Notwithstanding the defendant’s insistence that there is something suspicious about all this, I consider that it is no more than a red herring – unless one is driven by conspiracies theories.

The defendant’s case

[22] The defendant denies that the three sets of documents which I identified above in para [9] comprise the mortgage documentation. His robust contention is that the 2004 Conditions do not form part of the contract between him and the plaintiff. The defendant says he did not see the 2004 Conditions at any time before he entered into the mortgage, nor did his mortgage adviser nor did his solicitor. At one stage the defendant seemed to suggest that perhaps the 2004 Conditions did not exist at the time – a suggestion potentially fueled by the different versions of the Conditions. In a skeleton argument he said that the plaintiff has intentionally and dishonestly made retrospective changes to primary obligations in its Terms and Conditions in 2009 for its own profit and my loss” – but, in the end, evidentially this suggestion went nowhere.

[23] The defendant says that the only terms which apply are those which appear in the Offer and in the Deed. In his closing submissions he says:

The only valid terms governing the NI mortgages are the Registered Terms and Conditions (NI502, 11-2004), which UCB's initial witness confirmed as the 'applicable terms' in the repossession claim grounding affidavit.

The Registered T&Cs (NI502) and the Mortgage Offer documents did not permit UCB to unilaterally vary the Investment Flexible Variable Rate (IFVR) at its discretion. Variation was only permitted by reference to a change in the Bank of England (BoE) Base Rate.

UCB improperly relied on the Undisclosed T&Cs (N5172), which contain a clause allowing for discretionary interest rate variation".

[24] The defendant says that since neither the Offer nor the Deed Conditions provide the plaintiff with the right to charge the interest rates which it has charged, it was (contractually) unlawful for the plaintiff to do so. In his written closing submissions, he says: "UCB committed a breach of contract by applying unauthorised interest rate increases (starting in late 2009/January 2010). This intentional and continuing breach amounted to a repudiatory breach, entitling myself to rescind the contract and/or claim damages."

[25] The defendant says that the only right which the plaintiff had to vary interest rates derives from boxes 4 and 7 of the Offer and this right was specifically only to be exercised if there was a rise in the Bank of England Base Rate.

[26] The defendant called as a witness Mr Colin Kirkpatrick, his mortgage adviser. In 2007 Mr Kirkpatrick had some 15 years' experience working as a mortgage intermediary. In his evidence he produced a letter written to him by the plaintiff on 13 August 2007. The letter begins: "I have pleasure in enclosing a copy of the Mortgage Offer and any Special Conditions...". He said that he received this letter, including the Offer, by post - what he called the Mortgage Offer pack - and the defendant's solicitor also got a copy.

[27] In an affidavit sworn by him he made the case, in support of the defendant, that box 7 of the Offer provided the only basis on which the plaintiff could vary the interest rate. In his evidence he added that box 4 was also a basis on which the plaintiff could vary interest rates, but the only right to vary interest rates came from those 2 boxes in the Offer. There was no other provision which permitted the plaintiff to vary interest rates.

[28] As to the 2004 Conditions he says, in his affidavit:

I can confirm that this document Mortgage Terms & Conditions (2004) (Northern Ireland) was not included

with the mortgage offer pack ... nor sent separately to me as a mortgage advisor.

At this point in 2007 I had never seen a document Mortgage Terms & Conditions (2004) (Northern Ireland) nor received it with any UCB Home Loans mortgage offer."

[29] As to the IFVR his affidavit says: my understanding was in 2007 that UCB did not have the Right to Vary Interest Rates except for changes in the Bank of England Base Rate – detailed in [box] 7."

[30] In evidence he said that prior to November 2008 the interest rate variance or margin above Bank of England Base Rate historically charged by the plaintiff was constant at 2.29%. It was suggested to him in cross examination that he had simply assumed that that variance would continue thereafter, and he was asked if there was anything in the Offer to suggest that that variance or margin would continue. He accepted that there was not. When asked if there was anything in the Offer to support a suggestion that the IFVR would be Bank of England Base Rate plus 2.29% he said "no", but that that was my expectation."

[31] In cross examination Mr Kirkpatrick also said that he assumed that the solicitor (retained by the defendant) would go through the 2004 Conditions with the defendant.

[32] Mr McCaughey, of Macaulay Wray Solicitors, acted for the defendant in the purchase of the Mount Royal property. As is routine in cases such as this, he also acted for the plaintiff. He gave oral evidence, but had also sworn an affidavit. In it he says:

In order to complete the purchase of this apartment [the defendant] was required to sign the mortgage deed and be supplied with the terms and Conditions. It is usual that we would receive a letter from the plaintiff confirming which documents to supply to the defendant in order to complete the purchase.

[The defendant] called with me to sign the Mortgage Deed/Certificate of Charge and once the purchase completed I lodged the deed with the Land Registry.

At no time, to the best of my knowledge and belief, was a further set of Mortgage terms and conditions made available to me from the plaintiff."

[33] His affidavit records that when first asked about this by the defendant in October 2023 and whether he could remember another set of conditions than those registered at the Land Registry he said: "...I had never seen or been referred to more than one set of Terms and Conditions ... There would not be more than one and this was registered with Land Registry at the time."

[34] It is clear that Mr McCaughey, when he refers to the terms and conditions registered in the Land Registry, means the 8 pages of Mortgage Conditions (Northern Ireland) which are attached to the Mortgage Deed (N. Ireland), and which I have referred to as the Deed Conditions.

[35] There is a letter to Macaulay Wray, Solicitors, from the plaintiff dated 13 August 2007. It specifically includes a copy of the Mortgage Offer." The third paragraph of the letter states:

All documents required for this transaction are available from the UCB Home Loans web site at www.ucbhomeloans.co.uk/solicitors. If you have any difficulties downloading these documents please contact me so that I can arrange for a pack to be sent to you."

[36] In his oral evidence Mr McCaughey said that he was never referred to more than one set of terms and conditions, and what was registered by him in the Land Registry was the only set of terms and conditions which he saw. He also said that he was not qualified to give mortgage advice.

[37] In cross examination Mr McCaughey said that he could not remember accessing any documents from the website. I think it more likely than not that he did not do so as, if he did, I consider that he would have made some reference to the 2004 Conditions. He accepted that the Offer letter referred to three different sets of Terms & Conditions, namely (1) those contained in the Offer, (2) those contained in the 2004 Conditions and (3) any special conditions."

[38] He also agreed that what he would lodge with the Land Registry would be the Deed and its annexed conditions, not any other conditions, even if he had had them.

[39] The significance of all of this, says the defendant, is that the plaintiff, therefore, was not entitled to charge the interest rates which it charged.

[40] Ms Amy Meech, now Amy Geidt, swore the grounding affidavit in this case on behalf of the plaintiff. In her oral evidence, she was challenged by the defendant as to why the only documents exhibited to that affidavit were the Deed and the Offer, and did not include the 2004 Conditions. Effectively her evidence was that really only the Deed needed to be exhibited to her grounding affidavit to the summons. The defendant would wish me to draw the inference that the 2004 Conditions were not

exhibited because either they did not exist in 2007 or because they never formed part of the contract.

Discussion

[41] I am satisfied that the Offer clearly referred to terms governing the mortgage contract which were to be found in three separate and clearly identified places –

- (1) set out in this Mortgage Offer”,
- (2) and our Mortgage Terms & Conditions (2004) (Northern Ireland)”,
- (3) and any special conditions attached.”
[emphasis added)”

[42] In my view, any reasonable person reading that letter would want to familiarise himself with, and should have familiarised himself with, all of the terms, so as to enter the contract on an informed basis, whether by reading them himself or taking legal advice about the effect of the terms.

[43] I am satisfied that the Offer also clearly stated that the defendant was not bound by the terms of this offer document until you have signed the legal charge and the funds are released for your mortgage.” I find, therefore, that when the defendant signed the legal charge, as he did, and received the funds, as he did, he became contractually bound by the three sets of terms which I have identified in the paragraph above. Specifically, he was contractually bound by the 2004 Conditions which provided the basis for the interest rates subsequently charged by the plaintiff during the currency of the mortgage.

[44] Quite why the defendant did not seek to obtain a copy of the 2004 Conditions is unclear. Mr Kirkpatrick seems to recall them from the Offer, as he says he assumed that the defendant's solicitor would go through those conditions with the defendant. I think that was a reasonable approach on his part, as he was not legally qualified, and a solicitor would be the proper person to advise the defendant on the Conditions. The solicitor, Mr McCaughey, simply says that he never saw them. However, as the defendant's legal adviser who, by a letter of 13 August 2007 was sent a copy of the Offer in which the 2004 Conditions were clearly referred to as part of the suite of conditions applicable to the mortgage contract, I cannot understand how he could have advised the defendant without obtaining a copy of the 2004 Conditions. The details of the website from which he could have downloaded the relevant document were provided to him in the letter, together with an assurance that if he had trouble obtaining the documents he should contact the plaintiff which would provide the documentation to him. I cannot understand why he did not take the necessary steps to ensure that he had all the documentation referred to when he was advising the defendant.

[45] I find as a fact that the 2004 Conditions – in the 2005 version as identified by Mr Kosifou – existed at the time the defendant was sent the Offer and could have been accessed if anyone had bothered to try to do so. The Offer made it abundantly clear where the relevant conditions were to be found. The fact that the defendant did not obtain and read the terms, or the fact that neither of his advisers obtained and read the terms and advised him appropriately, does not absolve the defendant from the contractual consequences which arose when he signed the legal charge and received the funds.

[46] Since the defendant says he did not see the 2004 Conditions, his case as to the contractual right to charge interest is entirely based on the fact that only the terms contained in the Offer apply to his mortgage. That case and therefore the majority of his assertions and submissions, both written and oral in this case, are based on what I have held to be an erroneous foundation. In the circumstances I reject this case. Accordingly, all of his assertions as to the contractual interest rate applicable during his mortgage are unsustainable.

[47] I find that the 2004 Conditions provided the contractual basis for the plaintiff to vary the interest rates during the 23 years following the ending of the Benefit Period to meet its own commercial interests. I find that there is no contractual basis for an argument that the IFVR during those 23 months was pegged in any way to the Bank of England Base Rate.

[48] The plaintiff has the contractual right to vary the interest rates. It cannot do so, however, improperly. The defendant relies on various legislative provisions relating to unfair contractual terms. Again, however, the basis for such reliance is flawed, because in my view the terms are clear and when one reads the various contractual documents, there is no room for an allegation of ambiguity.

[49] Further, as to unfairness, in *Swift 1st. Ltd. v McCourt* [2012] NICH 33, Horner J said:

[32] The Defendant claims that the term is 'unfair and open ended.' In *Paragon Finance plc v Nash & Others* [2002] 1 WLR 685 the Defendants sought to defeat a claim for possession even though they were in arrears with their mortgage repayments. The Defendants admitted the arrears but claimed that the loan agreements were extortionate credit bargains within Section 138 of the Consumer Credit Act 1974. On appeal the Court of Appeal held that:

The power of the mortgagee to set the interest rates from time to time was not completely unfettered; that in order to give effect to the reasonable expectations of the parties it was an

implied term of each mortgage that the discretion to vary interest rates should not be exercised dishonestly, for an improper purpose, capriciously, arbitrarily or in a way in which no reasonable mortgagee, acting reasonably, would do; that it was not a breach by the claimant of that implied term if, as a commercial organisation, it raised interest rates paid by mortgagors in order to overcome financial difficulties it had encountered; and that, since there was no evidence that the decision to widen the gap between the rates charged by the claimant and standard market rates was motivated by other than purely commercial considerations, there was no real prospect of the Defendants proving a breach of the implied term at trial.

[33] In his judgment Dyson LJ said (at paragraph 33) that:

Of course, I accept as a general proposition that a lender must have an eye to the market when it sets its rates of interest.

He also went on to say at paragraph 46:

I would hold that there were terms to be implied in both agreements that the rates of interest would not be set dishonestly, for an improper purpose, capriciously or arbitrarily. I have no doubt that such an implied term is necessary to give effect to the reasonable expectations of the parties.”

[50] Further, in the case of *Alexander v West Bromwich Mortgage Co. Ltd.* [2016] EWCA Civ 496, the court said:

As the *Paragon Finance* case makes clear, there is no breach of such a term where a lender's decision is motivated by commercial considerations, as it is likely to be in most cases. Realistically, a commercial lender is only likely to wish to vary interest rates for business reasons and there will therefore nearly always be a justifiable reason for doing so.”

[51] This, of course, chimes with what Mr Kosifou said, as I have recorded in para [13] above.

[52] The defendant also makes the case that the Land Registration Act (NI) 1970, and rules made thereunder, make it a requirement, effectively, that the 2004 Conditions should have been registered. He asserts in his closing submissions – “The Undisclosed T&Cs (N5172) [ie the 2004 Conditions] were neither referenced in the deed nor registered. Therefore, they are legally invalid and cannot be relied upon for interest rate variation or possession proceedings.” In my view this is simply incorrect. What was required to be registered, and what was registered, was the Mortgage Deed, together with its accompanying conditions. Mr McCaughey made it clear (see para [38] above) that even if he had seen the 2004 Conditions, these would not have been registered in the Land Registry.

[53] The same flawed approach infects the defendant's submissions in relation to the MCOB Rules. Having reviewed, as I have, the material comprising the contractual document I see no evidence of lack of clarity, unfairness or that they are misleading. The provisions which allow for discretionary interest rate changes are clear. Equally, I see no evidence of misrepresentation, concealment or procedural misconduct on the part of the plaintiff – assertions also prayed in aid by the defendant.

[54] The defendant relies on the decision in *Alexander v West Bromwich Mortgage Co. Ltd.* [2016] EWCA Civ 496 to support his proposition that there is inconsistency in the documentation. He says, in his final submissions:

I direct the court to clause 2.4 in the mortgage conditions that Mr Kosifou say are the relevant ones [the 2004 Conditions] which states If these conditions and the terms of the offer document are not consistent the offer document shall take priority . I state they are not consistent . The offer document does not give any right to universally vary the interest rate for any other reason other than a change in the BoE base rate.”

[55] First, as I have held, the 2004 Conditions form part of the contract documentation. There is no inconsistency. Secondly, the facts which led to the decision in *Alexander* are fundamentally different to those in this case. There, the mortgage offer stated that the mortgage term would be 25 years and that the interest rate would be fixed for the first two years, after which it would be at a variable rate of 1.99% above the Bank of England base rate. [My emphasis]. Clause 5 of the lender's standard mortgage conditions stated that the variable rate could be changed for a number of reasons, including to reflect market conditions generally and to ensure that the lender's business was carried out prudently. After the fixed-rate period had expired, the lender informed the borrower that it had decided to increase the margin over base rate from 1.99% to 3.99%. The borrower claimed that the mortgage conditions were inconsistent with the offer and were therefore not incorporated into

the contract. The Court of Appeal held that Clause 5 was inconsistent with the product description set out in the offer document.

[56] The facts in that case are instantly distinguishable from those in the present case. Here the Offer document makes it abundantly clear that the Tracker Rate would only last for two years, after which the mortgage would switch to the IFVR (ie a variable rate) for the remainder of the term and that it was currently (ie then) 8.04%.

Conclusion

[57] The defendant has paid nothing under the mortgage for more than 10 years. He has fought a lengthy rearguard action to prevent the plaintiff from repossessing the property on foot of his failure to pay under the mortgage. During that fight the arrears have built up and interest has mounted significantly. The whole genesis of the problem for the defendant is that he did not take the trouble to obtain and read the 2004 Conditions referred to in the Offer, nor did his mortgage adviser nor did his solicitor. Those failures cannot absolve him from the consequences which flow from his entering into the mortgage.

[58] In his closing submissions the defendant reiterates his own claim for relief. He seeks a declaration that the Deed conditions are the only valid terms of the contract. For the reasons I have stated above, I reject this claim for a declaration. He seeks damages and restitution and an order dismissing the plaintiff's claim for possession. For the reasons set out above, I reject these claims.

[59] In all the circumstances, I dismiss the defendant's appeal from the Order made by the Master.

[60] The plaintiff is entitled to its costs.