



<b><u>Decision Ref:</u></b>	2019-0414
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Tracker Mortgage
<b><u>Conduct(s) complained of:</u></b>	Failure to offer a tracker rate throughout the life of the mortgage
<b><u>Outcome:</u></b>	Rejected

#### **LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

#### **Background**

This complaint relates to two mortgage loan accounts that the Complainant held with the Provider. Each mortgage loan is secured on an individual property held by the Complainant. The Complainant disputes that these properties are “*Investment Properties*” and submits that one property was to be used by [Redacted] as his place of residence and the other property was a “*holiday home for family use*”.

#### **The Complainant’s Case**

The Complainant holds two mortgage loan accounts with the Provider, namely:

##### **1. Mortgage loan account ending 6122**

The Complainant drew down mortgage loan account ending **3876** on **18 September 2006** on a fixed interest rate with a roll over date of **1 February 2009**. The mortgage loan rolled over to a variable interest rate in **February 2009**.

The Complainant opted to apply a fixed interest rate to the mortgage loan account ending **3876** in **February 2011**. As a result, a new mortgage loan account ending **6122** drew down on a fixed rate of 4.10% with a roll over date of **01 April 2014**.

The Provider wrote to the Complainant on **17 February 2014**, to outline the interest rate options available to her on the expiry of the fixed rate period for the mortgage loan account ending **6122**.

## **2. Mortgage loan account ending 5878**

The Complainant drew down mortgage loan account ending **6519** on **28 September 2006** on a fixed rate with a roll over date of **1 August 2009**. This mortgage loan rolled over to a variable interest rate in **August 2009**.

In **January 2011**, the Complainant made a lump sum payment of €80,000 to reduce the balance on mortgage loan account ending **6519**. In **February 2011**, the Complainant opted to apply a fixed interest rate to the mortgage loan account ending **6519**. As a result, she drew down a new mortgage loan account ending **5878** on a fixed rate of 3.5% with a roll over date of **01 March 2014**.

The Provider wrote to the Complainant on **20 January 2014**, to outline the interest rate options available to her on the expiry of the fixed rate period on mortgage loan account ending **5878**.

The Complainant submits that she telephoned the Provider on **17 February 2014**, to request that both mortgage loan accounts ending **6122** and **5878** be switched to the tracker interest rate *“with the margin [she] had prior to fixing the loans”*. The Complainant submits that the Provider informed her that she was not entitled to a tracker interest rate for either mortgage loan account, as neither were on a tracker rate previously.

The Complainant asserts that both mortgage loan accounts were on *“special agreed tracker rates prior to the fixed periods”*.

The Complainant further submits that the properties which were the subject of the mortgage loans were not investment properties. She submits that the property secured on mortgage loan account ending **6122** was [Redacted] place of residence, and the property secured on mortgage loan account ending **5878** was her holiday home.

The conduct complained of is as follows;

- a) The Provider failed to offer the Complainant the option to *“revert”* to a tracker interest rate on her mortgage loan account ending **6122** on the roll over date of **01 April 2014**.
- b) The Provider failed to offer the Complainant the option to *“revert”* to a tracker interest rate on her mortgage loan account ending **5878** on the roll over date of **1 March 2014**.

The Complainant is seeking that she is “repaid all of the interest overcharged” on both mortgage loan accounts since the roll over dates in **March 2014** and **April 2014**.

The Complainant is also seeking “damages” for the “stress” caused both to the Complainant and to [Redacted]. The Complainant submits that she was unable to afford the mortgage repayments due to the increased interest rates and had to rent out one of the mortgaged properties to help meet the repayments. She submits as follows;

[Redacted]

### The Provider’s Case

#### **1. Mortgage loan account ending 6122**

The Provider submits that the mortgage loan account ending **3876** drew down on **18 September 2006** on a fixed interest rate for the first 3 years, in the sum of €252,000, pursuant to a facility letter dated **12 September 2006**.

The Provider submits that this mortgage loan moved to a variable rate at the end of the fixed rate period in **February 2009** until **February 2011**, as the loan was secured by an investment property.

The Provider submits that following a request from the Complainant in **2011**, it was agreed that the discounted rate available to loans secured on a customer’s principle private residence would be applied to mortgage loan account **3876** retrospectively from **February 2009** as a gesture of goodwill, on the basis that [Redacted] was living in the property which secured the loan. The Provider submits that it agreed to apply the discounted rate solely as a gesture of goodwill, as was confirmed to the Complainant by letter dated **18 January 2011**.

The Provider submits that the Complainant wished to fix her loan for a period of 3 years. The Provider submits that the Complainant then drew down the sum of €248,300, pursuant to a facility letter dated **18 February 2011** under mortgage loan ending **6122**, which replaced mortgage loan account ending **3876** in its entirety.

#### **2. Mortgage loan account ending 5878**

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The Provider states that mortgage loan account ending **6519** was drawn down on **28 September 2006** on a fixed interest rate for the first 3 years, in the sum of €290,000, pursuant to a facility letter dated **30 August 2006**.

The Provider submits that this mortgage loan moved to a variable rate at the end of the fixed rate period in **February 2009** and remained on a variable rate until **January 2011**, when the Complainant reduced the balance of the loan by making a lump sum payment of €80,000.

The Provider submits that it agreed by letter dated **18 January 2011** that a fixed rate of 3% for one year would be applied to this loan on the basis that the property securing this loan was to be put up for sale; however, this loan was only drawn for a period of one month.

The Provider submits that the Complainant then drew down the sum of €124,150 on a 3 year fixed interest rate of 3.5%, pursuant to a facility letter dated **8 February 2011** under mortgage loan account ending **5878**, which replaced mortgage loan account ending **6519** in its entirety. The Provider submits that therefore following the lump sum reduction the entire balance of mortgage loan account ending **6519** was repaid when the new mortgage loan account ending **5878** was drawn down.

The Provider submits that mortgage loan account ending **6122** and mortgage loan account ending **5878** were never on a tracker interest rate. The Provider further submits that the Complainant's previous mortgage loan accounts ending **3876** and **6519**, which were replaced by mortgage loan accounts ending **6122** and **5878**, were also never on a tracker interest rate. It further submits that there is no documentary evidence to support the Complainant's assertion that she had "*special agreed tracker rates*".

The Provider submits that the Complainant was at all times issued with facility letters, roll over notification letters and annual bank statements which confirmed that mortgage loan accounts ending **3876**, **6122**, **6519** and **5878** were never on a tracker interest rate.

The Provider submits that the facility letters for mortgage loan accounts ending **5878** and **6122** both confirmed that on the expiry of the respective fixed interest rate periods the loans would "*revert*" to a variable interest rate. In this regard, the Provider relies on the roll-over date in the schedule to the relevant facility letters. The Provider also relies on **Clause 11.4** and **12.1 of the Terms and Conditions** in the relevant facility letters. The Provider submits that **Clause 12.1** makes it clear that the Provider's "*variable home loan rate*" is subject to change in response to market conditions, which is different to a "*loan linked to the ECB Refinance Rate*" as specified in **Clause 12.2** of the **Terms and Conditions**. The Provider submits that the "*variable home loan rate*" clearly does not track the ECB

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Refinance Rate and there is “*nothing else*” in the facility documentation that makes that link. The Provider further submits that in any event, as a former senior employee of the Provider and [Redacted], the Complainant would have been aware to what the Provider’s variable home loan rate related.

The Provider submits that it wrote to the Complainant by letters dated **20 January 2014** and **17 February 2014** in relation to the expiry of the fixed rate periods on mortgage loan accounts ending **5878** and **6122** respectively. The Provider submits that the letters outlined that the Complainant had the option to fix the mortgage loans again or move to a variable interest rate or “*revert to an ECB Tracker rate (with the margin which had applied before your fixed rate period) subject to certain qualification criteria*”. The Provider submits that the “*qualification criteria*” relates to a specific loan product of the Provider known as the “*Loan to Value*” or “*LTV*” product. The terms on which the LTV product was made available permitted the customer to return to an LTV Tracker loan on the expiry of their LTV fixed interest rate period if they had a LTV Tracker prior to moving to the LTV fixed rate. The Provider submits that mortgage loan accounts ending **3876, 6122, 7166** and **5878** were not LTV Fixed products and neither of these loans were ever previously on an LTV Tracker loan. Therefore the Complainant did not meet the “*qualification criteria*” to switch to a Tracker rate.

The Provider submits that the letters issued to the Complainant on **20 January 2014** and **17 February 2014**, were the Provider’s template notification letters at that time. The Provider submits that the template format letter issued to all customers with fixed interest rates on their mortgage loan in advance of the expiry of their fixed interest period, regardless of the terms and conditions of their loan product and irrespective of whether they previously had an ECB tracker interest rate loan or not.

The Provider submits that it applied the interest rates to both mortgage loan accounts in accordance with the agreed contractual terms of the relevant facility letters.

### **The Complaint for Adjudication**

The complaint for adjudication is the Provider failed to offer the Complainant a tracker interest rate on the mortgage loan accounts ending **6122** and **5878**, on the expiry of the fixed interest rate periods respectively in **April 2014** and **March 2014**.

### **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

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items in evidence. The Complainant was given the opportunity to see the Provider's response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

In arriving at my Legally Binding Decision I have carefully considered the evidence and submissions put forward by the parties to the complaint.

Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties **07 November 2019**, 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.

**The issue to be determined is whether the Provider failed to offer the Complainant a tracker interest rate on the mortgage loan accounts ending 6122 and 5878, on the expiry of the fixed interest rate periods in March 2014 and April 2014 respectively.**

Two separate **Credit Applications** (under accounts ending **3876 and 7166**) were submitted to the Provider by the Complainant in **August/September 2006**.

Details relevant to each application are as follows;

<b>Credit Application under account ending 3876 submitted on 11 September 2006</b>	<b>Credit Application under account ending 7166 submitted on 25 August 2006</b>
<i>Application for EUR 252,000 Fixed Rate Home Loan</i>	<i>Application for EUR 290,000 Fixed Rate Home Loan</i>
The " <i>Comments</i> " section of the Credit Application outlines as follows;	The " <i>Comments</i> " section of the Credit Application outlines as follows;

<p><i>"[The Complainant] has bought this apt in the [named] area. Rental agreements will be 1300 p/m and [the Complainant] has tenants ready to move in. Rental agreements will be in place we will get a copy.</i></p> <p><i>...</i></p> <p><i>[The Complainant] is fixing her mortgage for 3 years so an increase in rates will not effect her"</i></p>	<p><i>"The Complainant wishes to purchase a holiday home in [location] costing Eur 275k plus costs bringing total to Eur 290. This loan is to be cross secured with family home and other investment apartment. It is [the Complainant's] intention to use this house herself at weekends and not to rent out if possible. However she has the option to rent if need arises."</i></p>
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Two **Fixed Rate Home Loans** (under accounts ending **3876** and **6519**) were issued by the Provider to the Complainant. In this regard mortgage account number ending **6519**, replaced the credit application account number ending **7166**. Details relevant to each of the **Fixed Rate Home Loans**, are quoted as follows;

<b>Fixed Rate Home Loan (under account ending 3876) dated 12 September 2006</b>	<b>Fixed Rate Home Loan (under account ending 6519) dated 30 August 2006</b>
Amount of Credit advanced: €252,000	Amount of Credit advanced: €290,000
<p>The "<b>Schedule</b>" section on <b>page 2</b> of the <b>Fixed Rate Home Loan</b> detailed as follows;</p> <p><i>"Rate of Interest: 3.45% per annum, fixed 4.49% per annum, variable</i></p> <p><i>Fixed Rate: Roll-over date: 1 February 2009. The Roll-over Date is the start of the standard variable interest rate at that time. The fixed rate period expires on the date preceding this day."</i></p>	<p>The "<b>Schedule</b>" section on <b>page 2</b> of the <b>Fixed Rate Home Loan</b> detailed as follows;</p> <p><i>"Rate of Interest: 4.55% per annum, fixed 4.49% per annum, variable</i></p> <p><i>Fixed Rate: Roll-over date: 1 August 2009. The Roll-over Date is the start of the standard variable interest rate at that time. The fixed rate period expires on the date preceding this day."</i></p>

The following conditions were contained in the **General Conditions for Annuity Home Loans** in relation to both mortgage loan accounts (ending **3876** and **6519**);

- **Condition 11** of the **General Conditions for Annuity Home Loans**;

**"11 Interest – Fixed Rate Loans**

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11.1 *If the Loan is a fixed rate loan the rate of interest applicable to the Loan for the Fixed Period specified in the Schedule will be our applicable fixed home loan rate on the date of drawdown of the Loan or, if a margin over or under the rate is specified in the Schedule, the aggregate from time to time of that margin and the applicable fixed home loan rate. The applicable fixed home loan rate at the date specified in the Important Information Notice is the rate specified in the Schedule.*

...

11.3 *You may, prior to the expiration of a Fixed Period, request us to fix the rate of interest on the Loan for such further period as you may specify (so long as it is a period for which we offer fixed rates on home loans). If we agree to such request (and we have no obligation to do so) the rate of interest applicable to the Loan for the requested Fixed Period shall be our applicable fixed home loan on the first date of the requested Fixed Period or, if a margin is specified in the Schedule, the aggregate from time to time of that margin and such fixed home loan rate.*

11.4 *Unless a further Fixed Period is agreed in accordance with clause 11.3, at the end of a Fixed Period the rate of interest applicable to the Loan will revert to our then applicable variable home loan rate.*

- **Condition 12 of the General Conditions for Annuity Home Loans;**

**12 Interest – Variable Rate Loans**

12.1 *If the Loan is a variable rate loan which is not linked to the ECB Refinance rate, the rate of interest applicable to the Loan will be our applicable variable home loan rate or if a margin over or under that rate is specified in the Schedule the aggregate from time to time of that margin and the applicable variable home loan rate. Our variable home loan rate is subject to variation from time to time in response to market conditions and such rate at the date specified in the Important Information Notice is the rate quoted in the Schedule.*

12.2 *If the Loan is an ECB Tracker Variable Rate Home Loan, then the interest rate is linked to the ECB Refinance Rate. The rate of interest specified in the Schedule is the rate applicable to the Loan at the date of the facility letter, and it represents the sum of the ECB Refinance Rate on that date and an agreed margin (“the ECB rate margin”). The ECB Refinance Rate is subject to variation, and the rate of interest applicable to the Loan shall be the ECB*

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*rate margin added to the ECB Refinance Rate from time to time, and shall vary accordingly.”*

Two letters were issued by the Provider to the Complainant with respect to the maturity of the fixed interest rate periods on each mortgage loan account, as follows;

- The letter with respect to mortgage loan account ending **3876** was dated **16 December 2008** and advised that the fixed rate period was maturing on **02 February 2009**.
- The letter with respect to mortgage loan account ending **6519** was dated **22 June 2009** and advised that the fixed rate period was maturing on **04 August 2009**.

Both letters detailed *“you now have the opportunity to review and agree the interest terms for the amount outstanding on your loan”*. The letters further detailed *“You have the option to choose between a standard variable rate and a new fixed rate period”* and that if no response was received the interest rate would change *“to the standard variable rate, as agreed in the original Terms and Conditions”* of the mortgage loans.

The terms and conditions of both of the Complainant’s mortgage loans accounts (ending **3876** and **6519**) outlined that a fixed interest rate would apply to the mortgage loan until the specified roll over dates (**01 February 2009** and **01 August 2009** respectively) and the loan would then roll onto a standard variable interest rate on that date. This was clearly set out in the **Schedules** and **condition 11.4** of the **General Conditions for Annuity Home Loans**. In accordance with **condition 12.1** of the **General Conditions for Annuity Home Loans** the standard variable rate was one that was *“not linked”* to the ECB Rate and was *“subject to variation from time to time in response to market conditions”*. The Schedule to the Fixed Rate Home Loan did not contain any reference to an ECB rate, such as would have been required for the application of a tracker interest rate to the Complainant’s mortgage loan under **condition 12.2**. It is not in dispute between the parties that mortgage loan account ending **3876** and **6519** were to roll over onto the standard variable rate and this is what happened at the time, in accordance with the terms and conditions of each loan.

The Provider sent a letter to the Complainant on **18 January 2011** in relation to a meeting which took place between the parties on **5 January 2011** regarding the interest rates applicable to the Complainant’s two mortgage loans (ending **3876** and **6519**). The letter details as follows;

*“You queried the interest rate on two of your mortgage accounts.*

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*The query was flagged to our Finance Department and the following has been agreed as discussed with you on the telephone:-*

*Account no. [ending **6519** (NAMED PROPERTY)] Mortgage to be reduced by Eur 80,000 lump sum leaving a balance of Eur 124,150. A fixed rate of 3% for one year has been agreed and the property is to be put on the market for sale. If you are successful in selling the property before the fixed term has expired, there will be no penalty interest charged to close the loan early. We will issue new letters of offer under separate cover in relation to this loan.*

*Account no. [ending **3876** (NAMED PROPERTY)] – Family home loan rate to apply to this property – current 3.4%. A refund of interest will be applied to the account back dated to February 2009 and the refund will reduce the capital amount outstanding on the loan accordingly. We will recalculate the repayment once this reduction occurs.”*

The lump sum payment of €80,000 was made by the Complainant on mortgage loan account ending **6519** on **14 January 2011**. A **Fixed Rate Home Loan** was then issued (account ending **5452**) on **19 January 2011** for €124,150. This was signed by the Complainant on that date. This **Fixed Rate Home Loan** was for a one year fixed interest rate period with a roll-over date of **01 February 2012**, rolling to a “*standard variable interest rate*”. The **Fixed Rate Home Loan** (under account ending **5452**) contained the same Conditions **11.4** and **12.1** in the **General Conditions for Annuity Home Loans**, as are quoted above, for mortgage account ending **6519**. This mortgage loan account was subsequently closed in **February 2011**, when the Complainant sought a three year fixed interest rate under account ending **5878**.

Two meetings took place between the Provider and the Complainant on **07** and **18 February 2011**, the note of the meetings record “*Fix existing mortgage*”.

Two separate **Credit Applications** (under accounts ending **6122 and 5878**) were submitted to the Provider by the Complainant in **February 2011**. Details relevant to each application are as follows;

<b>Credit Application under account ending 6122 submitted on 18 February 2012</b>	<b>Credit Application under account ending 5878 submitted on 07 February 2012</b>
<i>“Application for EUR 248,300 Fixed Rate Home Loan”</i>	<i>“Application for EUR 124,150 Fixed Rate Home Loan”</i>
The “Comments” section of the Credit Application outlines <i>“Application is to fix an existing mortgage onto a 3 year rate for budget purposes”</i> . The Credit Application, also recorded <i>“no other changes to existing loan terms &amp; conditions”</i>	The “Comments” section of the Credit Application outlines <i>“This application has been reprocessed as the fixed rate option drawn was incorrect. Client has opted for a 3 year fixed rate...”</i>

Two **Fixed Rate Home Loans** (under accounts ending **6122** and **5878**) were issued by the Provider to the Complainant. Details relevant to each of the **Fixed Rate Home Loans**, are as follows;

<b>Fixed Rate Home Loan (under account ending 6122) dated 18 February 2011</b>	<b>Fixed Rate Home Loan (under account ending 5878) dated 08 February 2011</b>
Amount of Credit advanced: €248,300	Amount of Credit advanced: €124,150
The “ <b>Schedule</b> ” section on <b>page 2</b> of the <b>Fixed Rate Home Loan</b> detailed as follows;  <i>“Rate of Interest: 4.10% per annum 4.15% per annum, variable</i>  <i>Fixed Rate: Roll-over date: 1 April 2014. The Roll-over Date is the start of the standard variable interest rate at that time. The fixed rate period expires on the date preceding this day.”</i>	The “ <b>Schedule</b> ” section on <b>page 2</b> of the <b>Fixed Rate Home Loan</b> detailed as follows;  <i>“Rate of Interest: 3.50% per annum, 4.15% per annum, variable</i>  <i>Fixed Rate: Roll-over date: 1 March 2014. The Roll-over Date is the start of the standard variable interest rate at that time. The fixed rate period expires on the date preceding this day.”</i>

The **Fixed Rate Home Loans** (under account ending **6122** and **5878**) contained the same Conditions **11.4** and **12.1** in the **General Conditions for Annuity Home Loans**, as are quoted above for mortgage accounts ending **3876 and 6519**.

The “**Acceptance and Authority**” section on **page 4** of the **Fixed Rate Home Loans** detailed as follows;

*“WARNING – THIS IS AN IMPORTANT LEGAL DOCUMENT AND YOU ARE STRONGLY ADVISED TO SEEK INDEPENDENT LEGAL ADVICE BEFORE YOU SIGN YOUR ACCEPTANCE*

*I/We have read and understand the nature and contents of this Loan Agreement  
I/We agree to be bound by this Loan Agreement  
Where applicable I/We irrevocably authorise my/our solicitor to give the undertaking(s) referred to in clause 3 of the General Conditions and I/We irrevocably authorise you to pay the Loan through my/our Solicitor (unless another mode of payment is agreed by my/our Solicitor).”*

The **“Acceptance and Authority”** for account ending **6122** and **5878** were signed by the Complainant on **18 February 2011** and **12 February 2011**, respectively.

Mortgage loan account ending **6122**, replaced mortgage loan account ending **3876**.

Mortgage loan account ending **5878**, replaced mortgage loan account ending **5452**.

Two letters were issued by the Provider to the Complainant with respect to the maturity of the fixed interest rate periods on each mortgage loan account, as follows;

- The letter with respect to mortgage loan account ending **6122** was dated **17 February 2014** and advised that the fixed rate period was maturing on **01 April 2014**.
- The letter with respect to mortgage loan account ending **5878** was dated **20 January 2014** and advised that the fixed rate period was maturing on **03 March 2014**.

Both letters detailed *“you now have the opportunity to review and agree the interest terms for the amount outstanding on your loan”*. The letters further detailed that the Provider *“recommended”* that the Complainant contact the Provider by phone to arrange an appointment so that the Provider could take the Complainant through each of the options.

The letters further outlined;

***“Your options, variable interest rate or a new fixed interest period?”***

*You may have the option to choose between one of the following:*

- *To agree a new fixed rate period,*
- *To revert to an ECB tracker rate (with the margin which had applied before your fixed rate period), subject to certain qualification criteria.*
- *Continue your existing loan agreement at the Banks variable interest rate.”*

The letters outlined that in the absence of hearing from the Complainant that the loans would *“automatically change”* to the applicable variable home loan interest rate.

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The Complainant submits that she “telephoned” the Provider on **17 February 2014** to “query” the rate with respect to the mortgage loan accounts. The Complainant submits that the loans were on a “special agreed tracker rate” prior to the fixed rates and that she requested that the mortgage loan accounts “revert to the ECB rate with the margin I had prior to fixing the loans”. She submits that the Provider advised her that both mortgage loan accounts would revert to the standard variable rate. She submits that, “I complained that this was an error and that they should be put back on the rates that they were on prior to my fixing them but I was told my complaint was not valid.”

I am disappointed to note that the Provider does not hold a transcript and/or recording of this telephone call on **17 February 2014**. The Provider submits that telephone conversations relating to staff members who had staff loan accounts were not recorded pre or post **17 February 2014**. In any event, it does not appear to be in dispute between the parties that the Complainant requested for a tracker interest rate to be applied to the mortgage loan at this time.

The **Fixed Rate Home Loan** conditions applicable to both mortgage loan accounts (ending **6122** and **5878**) envisaged that a fixed rate would apply to the mortgage loan accounts until the respective roll over dates and the loans would then roll to a standard variable interest rate. The terms and conditions provided that the Complainant may “request” a further fixed rate, if such an option is available and where such an option is not made available, or in circumstances where the Complainant fails to exercise the option, the applicable rate will be the Provider’s standard variable rate. The standard variable rate in this case was clearly set out to be one which may be increased or decreased by the Provider at any time, as opposed to a tracker variable rate, which would fluctuate in accordance with the European Central Bank base rate. The Schedule to the Fixed Rate Home Loans did not contain any reference to an ECB rate, such as would be required for the application of a tracker interest rate to the Complainant’s mortgage loan under **condition 12.2**. As such, the Provider was under no contractual or other obligation to offer the Complainant a tracker interest rate on her mortgage loan accounts (ending **6122** and **5878**) in **April** and **March 2014**.

The Complainant’s mortgage loan accounts (ending **6122** and **5878**) were never on tracker interest rates and neither were the earlier mortgage loan accounts (ending **3876** and **6519/5452**) which were redeemed and replaced in early **2011**. There is no evidence of any “special agreed tracker rate” applicable to any of the Complainant’s mortgage loan accounts. For the Complainant to have a contractual right to apply a tracker interest rate to the mortgage loans at the end of the fixed interest rate periods, that right would have to have been specifically outlined in the mortgage loan documentation, that was signed by the parties. However no such right was set out in any of the **Fixed Rate Home Loans** signed by the Complainant. The Complainant signed the mortgage loan documentation, with

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respect to mortgage loan accounts (ending **6122** and **5878**) in **February 2011**, with a clear written warning to seek independent legal advice. She also confirmed that she had read and understood the nature and content of the loan agreement.

I am of the view that the communications issued by the Provider to the Complainant with respect to the expiry of the fixed interest rate periods in **17 February 2014** and **20 January 2014** were unhelpful. It is unclear to me why these letters made any reference to a potential option of applying a tracker interest rate to the Complainant's mortgage loans at that time, as that was not an option that would be made available by the Provider to the Complainant. The Complainant's mortgage loans were not of the product type "*Loan to Value*" that could avail of the tracker rate. The Provider classifies these letters as "*template notification letters*". I accept that the letters are caveated by outlining that "*you may have the option*" and that the application of a tracker rate was "*subject to certain qualification criteria*". However, I am of the view that the use of these template communications could have been confusing to the Complainant in these circumstances. It would have been better if the Provider's communications to the Complainant in **January** and **February 2014**, only contained real options available to the Complainant at that time and an "option" that was never in fact going to be an "option" that the Complainant could choose was not included in the letters. That said I do not believe that the wording of the template letters gave the Complainant an entitlement to a tracker interest rate on the mortgage loans at the time.

The Complainant takes issue with the Provider's classification of the mortgage loans as "*investment mortgages*". She states that "*neither loans were investment mortgages. This wording only appeared on statements after the loans came off the fixed rates in 2009.*" The Complainant submits that the property secured by mortgage loan account ending **6122** (formerly account ending **3876**) was [Redacted]. She further submits that the property, secured by mortgage loan account ending **5878** (formerly account ending **6519**), was "*a holiday home in [LOCATION] for family use. This property is not an investment property.*" The Provider submits that following a request from the Complainant, the Provider agreed to apply a discounted variable interest rate to mortgage loan account ending **3876** solely as a goodwill gesture, given that the Complainant was a staff member and [Redacted] was living in the property. The Provider relies upon its letter to the Complainant dated **18 January 2011** in relation to this.

It appears to me from the documentation furnished in evidence that neither of the properties secured on the mortgage loan accounts ending **6122** and **5878** (formerly accounts ending **3876** and **6519**) were ever the Complainant's principal place of residence. On the basis of the evidence provided, I accept that the Provider retrospectively applied the discounted variable rate to the Complainant's mortgage loan account ending **3876**, between **2009** and **2011** as a goodwill gesture owing to the fact that the Complainant was a staff member and [Redacted] was living in the secured property during that time period.

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In any event the classification of these properties as “*investment properties*” does not change the fact that there was no contractual or other obligation on the Provider to offer the Complainant a tracker interest rate on her mortgage loan accounts (ending **6122** and **5878**) on the expiry of the fixed rate period in **April and March 2014**.

For the reasons set out 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.**

**GER DEERING  
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

29 November 2019

Pursuant to **Section 62** of the ***Financial Services and Pensions Ombudsman Act 2017***, the Financial Services and Pensions Ombudsman will publish legally binding decisions in relation to complaints concerning financial service providers in such a manner that—

- (a) ensures that—
  - (i) a complainant shall not be identified by name, address or otherwise,
  - (ii) a provider shall not be identified by name or address,and
- (b) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.