



<b><u>Decision Ref:</u></b>	2020-0138
<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**

The Complainants hold two mortgage loan accounts (ending **7827** and **8003**) with the Provider. Both mortgage loan accounts are secured on the Complainants' private dwelling house. This complaint relates to the mortgage loan account ending **7827**.

The Letter of Approval dated **25 September 2007** in respect of mortgage loan account ending **7827** outlined the Loan Type as "*Staff Home Loan*". The loan amount was €166,600 and the term was 35 years.

**The Complainants' Case**

The Complainants submit that in **September 2007** they "*switched*" their mortgage to the Respondent Provider. They state that prior to this, they had held a mortgage loan on a tracker interest rate of ECB + 0.80% with a third party provider.

The Complainants submit that their mortgage with the Provider was “split” as follows;

- (a) Mortgage loan account ending **7827**, which is the subject of this complaint, was drawn down for the loan amount of €166,000 on a staff rate of 2.50% pursuant to the terms and conditions of a Letter of Approval dated **25 September 2007**.
- (b) Mortgage loan account ending **8003** was drawn down for the loan amount of €213,400.00 on a tracker rate of ECB + 0.80% pursuant to the terms and conditions of a Letter of Approval also dated **25 September 2007**.

The Complainants submit in respect of the staff rate on account ending **7827** that *“it should be noted that this Staff Rate was seen as a Benefit in Kind and as such was taxable and [the Second Complainant] paid Benefit in Kind through her monthly salary.”*

The Complainants state that in **April 2009**, the tracker interest rate on mortgage account ending **8003** “dropped below” the staff rate on mortgage account ending **7827** and from that point in time the Second Complainant was no longer charged Benefit in Kind. They submit that at this stage they were not offered a tracker rate for the mortgage account ending **7827**. They submit, *“Surely when the staff rate stopped being a beneficial rate, we should have been offered the Tracker rate back on our total mortgage in April 2009.”*

The Complainants further submit that **page 5** of the **European Standardised Information Sheet** provided that the rate on the mortgage account was fixed for a period of 2 years and would roll to the tracker rate at the end of that fixed period. They state that the Provider failed to offer them a tracker interest rate for the mortgage account ending **7827** in **September 2009** when the initial staff two year fixed rate period expired.

The Complainants *“strongly refute”* the Provider’s submission that the mortgage loan account ending **7827** was not on a 2 year fixed rate at drawdown or at any time throughout the term of the loan to date. They submit that when they applied for the mortgage loan in **2007**, *“over and over again”* the Provider referred to the European Standardised Information Sheet which stated that the loan was fixed for 2 years and would roll over to the tracker rate.

The Complainants submit that they requested to *“return”* to a tracker rate on mortgage loan account ending **7827** *“well before February 2015”* but are unable to locate correspondence in relation to this request.

The Complainants submit that from **April 2009** to date *“the extra amount paid on the Staff Rate as opposed to the Tracker Rate in retrospect would have made a difference financially in our daily life.”* They state that during this period they were in contact with the Provider

*“on more than one occasion looking for a payment holiday or period of interest only, which was approved”.*

The Complainants in their Complaint Form detail that they estimate that they have been overcharged over €8,000 in interest on the mortgage account ending **7827**. The Complainants in their post Preliminary Decision submission dated **13 February 2020** detail that this is an error of fact in the Preliminary Decision and that as of the end of **December 2019** the amount they have been overcharged on mortgage account ending **7827** is €20,700.

### **The Provider’s Case**

The Provider submits that the Second Complainant was a staff member of the Provider in **2007** and therefore was eligible to apply for a Staff Home Loan with an interest rate of 2.50%. It states that the maximum loan amount the staff rate could be applied to was €166,600, based on the staff lending criteria at that time.

The Provider outlines that the total borrowing applied for by the Complainants in **July 2007** was €383,000, as follows;

- €166,600.00 at a staff home loan rate of 2.50%, and
- €216,400.00 at a 12 month discount tracker rate of ECB + 0.60% (4.60%).

The Provider submits that the Complainants confirmed when they accepted the terms and conditions of each **Letter of Approval** dated **25 September 2007**, that their solicitor had explained the terms and conditions of each loan to them.

The Provider submits that the **Letter of Approval** with respect to mortgage account ending **7827** specifies that the loan was a Staff Home Loan with an interest rate of 2.5% and makes no reference to the ECB refinancing rate or to a tracker interest rate. It submits that the Complainants had no contractual right to a tracker interest rate on this loan at any time throughout the period of the loan, and as a result they were not offered a tracker rate in **April 2009** or at any other time. The Provider relies on **Special Condition 6** of the Complainants’ Letter of Approval and **Condition 5** of the **General Mortgage Loan Approval Conditions** to support this. It states that the relevance of this Special Condition is that while the Provider can opt to vary this rate should the need arise, particularly as a result of Benefit in Kind (BIK) and Revenue considerations or if the borrower ceases to be a member of staff, the Staff Home Loan rate is otherwise generally regarded as being fixed for the term of the loan. It states that in the event of the cessation of employment for any reason, the period of “fixed” interest of 2.5% is at an end and **Condition 5** provides that the Provider may then apply a variable rate of interest.

The Provider outlines that the mortgage account ending **7827** was not an initial fixed rate account. It details that as outlined in the Letter of Approval, the loan drew down on the staff rate of 2.50% on **24 October 2007** and did not draw down on a 2 year fixed rate and has never been on a 2 year fixed rate to date. It states that the rate was briefly increased to 2.80% on **5 March 2009** in line with the Provider's arrangements regarding staff loans with the Revenue Commissioner relating to Benefits in Kind (BIK), and was returned to 2.50% on **16 March 2009** and has remained on this rate to date in accordance with the mortgage contract.

The Provider details that the Complainants' mortgage contract consists of the **Letter of Approval** dated **25 September 2007**, the **General Mortgage Loan Approval Conditions**, the Provider's **Mortgage Conditions**, and the **Acceptance of Loan Offer**. It states that the wording contained in the **European Standardised Information Sheet** is sufficiently clear and transparent as to its legal status with regard to the Complainants' mortgage agreement. It refers to **page 1** of the European Standardised Information Sheet which states that "*This document does not constitute a legally binding offer.*" It outlines that the European Standardised Information Sheet serves to provide information to a mortgage applicant prior to their acceptance of a mortgage product and is for illustrative purposes only. The Provider states that the information referred to by the Complainants on **page 5** of the European Standardised Information Sheet is clearly outlined as an assumption based on the current interest rates available at that point in time. It states that in preparing the European Standardised Information Sheet, it outlined a product description, general product information and an illustrative amortisation table with estimated figures based on a set point in time. The Provider further submits that there was a "*manual error*" in the information contained in the assumptions at the end of the **Illustrative Amortisation Table** where it outlines that the "*rate is fixed for 2 year(s)*". The Provider details that this is "*factually incorrect*" and contradicts the first assumption "*that the interest rates that currently prevail are available for the term of the loan*". The Provider outlines that the **Illustrative Amortisation Table** is correct and models the loan as remaining for 35 years on an interest rate of 2.5% and does not model a 2 year fixed rate loan.

The Provider submits that it was possible to move from a Staff Home Loan rate to another of its current rate offerings, if requested by the account holders and approved by the Provider. It states that the Complainants did not request to switch the account ending **7827** from the staff home loan rate to a tracker interest rate until **15 February 2015**. It submits that tracker interest rates were no longer on offer to new or existing customers in 2015, other than those with a contractual right to be offered a tracker interest rate, and as such the Provider was not in a position to switch the Complainants' mortgage account ending **7827** to a tracker interest rate in 2015.

The Provider outlines that the ECB lowered its refinancing rate from 4.25% to 1.0% between **October 2008 and May 2009** and the rate of interest applying to the Complainants' mortgage account ending **8003** was lowered commensurately during this period in accordance with the terms and conditions of the loan.

### **The Complaints for Adjudication**

The complaints for adjudication are as follows:

- (a) The Provider failed to apply a tracker interest rate to the Complainants' mortgage loan account ending **7827** in **April 2009** when the staff home loan rate ceased to be beneficial to the Complainants.
- (b) The Provider failed to apply a tracker interest rate to the Complainants' mortgage loan account ending **7827** on the expiry of the 2 year fixed rate period in **September 2009**.

### **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 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 on **24 January 2020** 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

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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.

Following the issue of my Preliminary Decision, the following submissions were received from the parties:

- Email from the Complainants to this office dated **13 February 2020**
- Email from the Complainants to this office dated **12 March 2020**.
- Letter from the Provider to this office dated **26 March 2020**.

Copies of these additional submissions were exchanged between the parties. Following the consideration of the additional submissions from the parties, together with submissions and evidence furnished, my final determination is set out below.

In order to ascertain if the Provider did incorrectly fail to offer the Complainants a tracker interest rate on their mortgage loan account ending **7827** in **April 2009** and/or **September 2009**, it is necessary to consider the interactions with the Complainants during the mortgage loan application process in **2005**, and also during the relevant periods in **2009**. It is also necessary to review and set out the relevant provisions of the Complainants' mortgage loan documentation.

**The first issue to be determined is whether the Provider failed to offer the Complainants the option of a tracker interest rate for mortgage loan account ending 7827 when the staff rate became less beneficial than the tracker rate in April 2009.**

The Complainants applied for a mortgage on **26 July 2007**. I have considered the **Application for Credit** that has been furnished in evidence. In the **Mortgage Details** section of the **Application for Credit** the rate options were Tracker, Fixed, Variable, Discount, Split or Other. The Complainants selected the Fixed Rate option. In response to "*reason for choosing [the Provider]*" the Complainants wrote "*Staff Member*".

The Provider wrote to the Complainants on **20 August 2007** detailing as follows;

*"The following outlines our proposal based on the information you have given us regarding your personal circumstances, financial needs and plans.*

...

*We propose the following:*

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*Split Loan – Combination of any mortgage repayment options e.g. place some of your mortgage at a fixed rate and the remainder at a tracker variable rate.*

...

*Details are as follows:*

- *Amount of loan required* €166,600.00
- *Property price/value* €0.00/€420,000.00
- *Loan Purpose* Refinance/Restructure
- *Loan Type* Staff Home Loan
- *Repayment term required* 35 Years”

The Letter of Approval dated **25 September 2007** details as follows;

<i>“Loan Type:</i>	<i>Staff Home Loan</i>
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...

*Purchase Price/Estimated Value: EUR 420,000.00*  
*Loan Amount: EUR 166,600.00*  
*Interest Rate: 2.5%*  
*Term: 35 year(s)”*

The **Special Conditions** to the Letter of Approval detail as follows;

***“Special Conditions***

...

4. *The interest rate of this advance will be immediately increased to the rate then payable by an ordinary mortgagor with similar (sic) advances and that advance will be at call if : (i) The applicants employment (whether full-time or part-time) with [the Provider] or [the Provider group company] (whichever is applicable) terminates for any reason whatsoever or (ii) The applicants repayments are more than 3 months in arrears. Where the applicants loan is an interest-only loan and the circumstances at (i) above arise, the applicant will cease any interest only repayment and will repay the loan by repayments of principle and interest and the applicant will immediately arrange to pay the revised monthly repayment comprising the repayment of principle and interest calculated over the remaining term so that the principle and interest will be discharged within the existing term of the loan.*

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6. *General Mortgage Loan Approval condition 5 “conditions relating to Fixed Rate loans” applies in this case. The interest rate specified above may vary before the completion of the mortgage.”*

**General Condition 5** of the **General Mortgage Loan Approval Conditions** outline;

**“CONDITIONS RELATING TO FIXED RATE LOANS**

*5.1 The interest rate applicable to this advance shall be fixed from the date of the advance for the period as specified on the Letter of Approval, and thereafter will not be changed at intervals of less than one year.*

*5.2 The interest rate specified in the Letter of Approval may vary before the date of completion of the Mortgage.*

*5.3 Whenever repayment of a loan in full or in part is made before the expiration of the Fixed Rate Period the applicant shall, in addition to all other sums payable, as a condition of, and at the time of such repayment, pay whichever is the lesser of the following two sums:*

- (a) A sum equal to one half of the amount of interest (calculated on a reducing balance basis) which would have been payable on the principal sum desired to be repaid for the remainder of the Fixed Rate Period, or*
- (b) A sum equal to [the Provider’s] estimate of the loss (if any) occasioned by such early repayment, calculated as the difference between on the one hand the total amount of interest (calculated on a reducing balance basis) which the applicant would have paid on the principal sum to that being repaid to the end of the Fixed Rate Period at the fixed rate of interest, and on the other hand the sum (if lower) which [the Provider] could earn on a similar principal sum to that being repaid if [the Provider] loaned such sum to a Borrower at its then current New Business Fixed Rate with a maturity date next nearest to the end of the Fixed Rate period of the loan, or part thereof, being repaid.*

*5.4 Notwithstanding Clause 5.1, [the Provider] and the applicant shall each have the option at the end of each fixed rate period to convert to a variable rate loan agreement which will carry no such redemption fee.”*

**Page 1** of the **European Standardised Information Sheet** details as follows;

*“This document does not constitute a legally binding offer.*

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*The figures are provided in good faith and are an accurate representation of the offer that the lender **would** make under **current market conditions** based on the information that has been provided. It should be noted, however, that the figures could fluctuate with market conditions.” [my emphasis]*

**Page 2 of the European Standardised Information Sheet** details as follows;

**“Nominal Rate**

*The interest rate is 2.5 percent*

*The interest rate may vary from time to time. Notice will be given in respect of rate increases. No notice will be given for decreases in rate.*

*The option to apply for a fixed rate product (if available) may be exercised by you at any time otherwise the rate will remain a variable rate. An administration fee of EUR 100 is payable when switching from a variable to a fixed rate product. The option to apply for a fixed rate product does not apply in respect of One Plan loans.*

*There are no lock-in periods or penalties associated with this product.”*

**Pages 4 and 5 of the European Standardised Information Sheet** contains an **Illustrative Amortisation Table** and details as follows;

**“Illustrative Amortisation Table**

*Summarised amortisation table illustrating the capital outstanding and the monthly repayments for the first year followed by the yearly figures over the term of the loan and based on the assumptions referred to below.*

.....

*Assumptions:*

*The table above illustrates the amortisation of the loan assuming the loan runs full term and interest rates that currently prevail are available for the term of the loan.*

*The rate is fixed for 2 year(s). The above table assumes that the loan will roll over into the Tracker Mortgage Rate appropriate for the balance outstanding at the end of this period and as may be varied from time to time.”*

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The **Acceptance of Loan Offer** was signed by the Complainants and witnessed by a solicitor on **28 September 2007**. The Acceptance of Loan Offer states as follows:

- “1. I/we the undersigned accept the within offer on the terms and conditions set out in*
- i. Letter of Approval*
  - ii. the General Mortgage Loan Approval Condition*
  - iii. [the Provider’s] Mortgage Conditions.*
- copies of the above which I/we have received, and agree to mortgage the property to [the Provider] as security for the mortgage loan.*
- ...
- 4. My/our Solicitor has fully explained the said terms and conditions to me/us.”*

It is clear to me that the Letter of Approval envisaged an interest rate of 2.5% and in the event that the Complainant’s employment with the Provider ceased, a variable rate would then apply. The variable rate, in the Complainants’ mortgage loan documentation, made no reference to varying in accordance with variations in the ECB refinancing rate, rather it was a variable rate which could be adjusted by the Provider. The Complainants accepted the **Letter of Approval** having confirmed that it had been explained to them by their solicitor in **September 2007**. If the Complainants were not happy with the terms of the Letter of Offer, including the type of interest rate, the Complainants could have decided not to accept the offer made by the Provider.

The Complainants in their post Preliminary Decision submission dated **12 March 2020** detail that:

*“At the time in September 2007, we had just switch[ed] from a full tracker mortgage to the Staff Rate offering with [the Provider], we would naturally have the expectation that we would be able to switch ba[c]k to a tracker rate when the staff rate became less favourable.”*

The Complainants’ mortgage loan documentation with respect to mortgage loan account ending **7827** did not contain any contractual right to a tracker interest rate on their mortgage loan at any point. The fact that the Complainants had a tracker interest rate applied to the mortgage loan that they held with a separate third party provider does not in any way create an obligation on the Provider to offer the Complainants that previously held tracker interest rate on their new mortgage loan with the Provider. The Complainants ended their contract with the separate third party provider by redeeming their mortgage loan with that Provider. The Complainants then entered into two new mortgage loans with the Provider which were subject to the terms and conditions as outlined in those individual mortgage loan contracts. There is absolutely no reasonable basis for the Complainants to have had any expectation that the interest rate and the associated terms and conditions of the loan that they held

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with their former provider could or would apply to either of the new mortgage loans taken out with the Provider, either at inception or at any later point in time. The Complainants' expectation in this respect is entirely unreasonable and has no legal basis.

The Complainants submit that they should have been offered a tracker rate for the mortgage account ending **7827** in **April 2009** when the staff rate "*stopped being beneficial*". In this regard I have considered correspondence from the Provider to its staff dated **5 March 2009** which details as follows;

*"[Provider] Staff Mortgages at 3%*

*After reviewing our current staff mortgage rate with Revenue it has been agreed no Benefit in Kind (BIK) will be payable on a staff mortgage rate of 2.8%*

*As the current staff rate is 2.5% we will increase this rate to 2.8% backdated to the 1<sup>st</sup> February in order to eliminate any further BIK liability and you will receive notification of the new repayment amount. No further BIK will be charged through salary."*

The Provider has furnished an excerpt from its **Staff Banking & Credit Policy** which details as follows;

***"Benefit in Kind***

*Staff facilities sanctioned at rates which are more beneficial than those available to customers are subject to benefit in kind."*

It appears from the above that when the staff rate ceased to be the most beneficial rate in **March 2009**, that Benefit in Kind was no longer payable on the mortgage account ending **7827**. There is no provision in the Staff Banking & Credit Policy or in the Complainant's mortgage loan documentation that obliged the Provider to offer the Complainants a tracker interest rate when the staff rate "*stopped being beneficial*", as they have asserted.

In their post Preliminary Decision submission dated **12 March 2020** the Complainants submit that:

*"[The Provider] state "they cannot provide a copy of the staff banking policy due to the commercially sensitive nature of the policy". I would argue that that this document is important to this complaint and should be provided and that sensitive information should be redacted. I also feel it is important to request the staff banking policy from [the Provider] as the document I have attached, which was provided by the bank is factually incorrect, [a]s it states the current staff rate on offer to staff is 3, where in fact the staff rate is 2.5%. The staff banking policy for [the Provider] is important as [the Second Complainant] was and still is an employee of [the Provider]."*

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The Provider in its post Preliminary Decision submission dated **26 March 2020** outlines:

*“The Bank produced in Schedule of Evidence 6 an extract from its credit policy relevant to the period when the loan was drawdown. The policy related to all staff of the [Provider] group of companies. The second-named Complainant was then an employee of [named Provider], part of the [Provider] group. It operated its banking business as well as being the parent company of a number of subsidiary companies including [named Provider]. Its staff lending policy applied to all employees of the group. The only difference between staff of the Bank and staff of [named Provider] insofar as mortgage lending was concerned was the more favourable mortgage loan interest rate of 2.5% available to employees of [named Provider], of which the Complainants availed. There was no other difference in the staff credit policy treatment of employees of the [Provider] and employees of [named Provider].”*

I do not accept that it is necessary to request further documentation from the Provider. I accept the Provider’s submission that the Policy related to all staff of the Provider’s group of companies and the evidence shows that the Complainants availed of the more favourable rate of 2.5% on their mortgage loan account ending **7827**.

I accept that there was no obligation on the Provider to contact the Complainants in **April 2009** to offer a tracker interest rate to the Complainants on their mortgage loan when it became more beneficial than the staff rate. If the Complainants wished to pursue the potential option of applying a tracker interest rate on the mortgage loan account ending **7827**, the Complainants could have contacted the Provider at this time. It would have been at the Provider’s commercial discretion as to whether to offer the Complainants a tracker interest rate. It would have been entirely within the Provider’s rights not to accede to a request to apply a tracker interest rate if it was made by the Complainants in **April 2009**.

The Complainants have submitted that *“to the best of [their] knowledge [they] did request to return to a tracker rate on this mortgage, well before February 2015”*. However no evidence has been furnished which shows that the Complainants contacted the Provider at any time prior to **February 2015** to seek to apply a tracker interest rate to the mortgage loan.

The Complainants outline in their post Preliminary Decision submission on **13 February 2020**, as follows:

*“I would like to point out an additional fact that is not covered in [the] preliminary decision. As well as complaining to [the Provider] in 2011, I also made a complaint to the Financial Services and Pensions Ombudsman in relation to the Tracker Rate. I would have corresponded with your office on several occasions regarding this complaint. I*

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*made this this complaint before 25 September 2011, this is 2 years after the time it is stated the rate would roll onto a tracker. I would have corresponded with your office on several occasions regarding this matter by phone and email. To state[] that I only complained in 2015 is factually incorrect. I am going to submit a Freedom of Information request of all correspondence with your offices from Summer 2011 to 2015 to confirm this fact."*

The Provider has submitted in its post Preliminary Decision submission dated **26 March 2020** that it *"is not aware of a complaint relating to the account ending 7827 and made by the Complainants in 2011"*.

The Complainants have not submitted any evidence that they complained to the Provider, or indeed to the office of the Financial Services Ombudsman, in **2011** or at any other stage prior to **February 2015**. In any event, even if the Complainants did complain to the Provider in **2011** about the interest rate applicable to the mortgage loan, there was no obligation on the Provider to apply a tracker interest rate to the Complainants' mortgage loan account ending **7827** at any time.

A recording of a telephone call between the Complainants and the Provider has been provided in evidence. I have considered the content of the telephone call between the Provider and the First Complainant on **5 February 2015**. It appears on the basis of the evidence before me that this telephone call was the first time the Complainants had raised the issue with the Provider. I note that during the course of this telephone call on **5 February 2015** the First Complainant outlines *"when we were given it in 200[7] it was to our advantage to go with the staff but now it's actually penalising us for switching to it"*. It is apparent that the Complainants in hindsight believe that redeeming the mortgage that they held with another provider which was the subject of a tracker rate, and taking out the two mortgages with the Provider, one being on a staff rate (mortgage loan account **7827**) and the other on a tracker interest rate (mortgage loan account **8003**) turned out to be less advantageous from when the ECB base rate began to drop. The evidence shows that the choice to take out the mortgage loans on the terms and conditions offered by the Provider was a choice that was freely made by the Complainants, as it was to their *"advantage"* at the time.

Throughout this complaint I note that the Complainants continually refer to mortgage loan account **7827** being *"reverted back"* to the tracker rate of interest. For the avoidance of doubt the evidence shows that mortgage loan account **7827** was never on a tracker rate of interest.

**The second issue to be determined is whether the Provider failed to offer the Complainants the option of a tracker interest rate for mortgage loan account ending 7827 at the end of a two year fixed interest rate period in September 2009.**

The Complainants have submitted that they are entitled to rely on the rates used in the **European Standardised Information Sheet** which provided that the rate was fixed for 2 years and would roll over to a tracker rate at the end of that period.

Under the **European Voluntary Code of Conduct on Pre-Contractual Information for Home Loans**, the Provider must provide certain standard pre-contractual information to borrowers by means of a personalised European Standardised Information Sheet. The purpose of a European Standardised Information Sheet, is to enable a borrower to make an informed decision on whether or not to accept a loan offer from the Provider, by comparing the credit available from the Provider to what is available in the market.

Having considered the content of this documentation, I note that it is specifically detailed on **page 1** of the European Standardised Information Sheet that the document is not a legally binding offer. Furthermore, on **pages 4 and 5** of the European Standardised Information Sheet, it is set out clearly that the Illustrative table has been prepared based on current "*market conditions*", but that those figures could "*fluctuate*".

I am of the view that the Complainants do not have a contractual entitlement to a tracker interest rate on the basis of the information contained in the European Standardised Information Sheet. The information contained in the Illustrative Amortisation Table was for illustrative purposes only and was prepared on the basis of the rates applicable at the time the mortgage loan issued in **September 2007**. The Illustrative Amortisation Table was specifically outlined to be based on the assumption that the interest rates that "*prevailed*" at the time would be available for the term of the loan.

The Provider was not under any obligation to offer the Complainants a tracker interest rate in **September 2009**. While I accept that it is possible that the European Standardised Information Sheet may have led to some confusion on the Complainants' part regarding the period for which the staff interest rate of 2.5% on the account was "*fixed*", it is clear that the Complainants' mortgage loan documentation did not provide for a fixed rate period of 2 years. Nor did it provide for a tracker interest rate entitlement at the end of a fixed interest rate period. **General Condition 5.4** in the **General Mortgage Loan Approval Conditions** provided that either party would have the "*option*" of converting the loan to a variable rate loan following a fixed rate period. There was no contractual right or obligation on the Provider to apply a tracker interest rate to the mortgage loan at that time. If the Complainants wished to pursue the potential option of applying a tracker interest rate on the mortgage loan at the time, the Complainants could have contacted the Provider at the time.

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However it does not appear to me that the Complainants did so until **February 2015**, by which time the Provider had withdrawn its tracker offering and mortgage account ending **7827** remained on the staff rate.

The Complainants in their post Preliminary Decision submission dated **13 February 2020** also outline:

*"I also believe there to an Error of Law in the Preliminary Decision, namely i believe the way in which the Financial Services Ombudsman has analysed the law, does not take into account that [the Provider] has admitted in their response to my complaint, that "they made a mistake". The bank stated that this mortgage was never on a fixed rate, yet over and over again they have referred to the mortgage as: "Type of Mortgage: Staff Variable Rate Loan". As stated in my correspondence, the bank has continually "made mistakes" in their correspondence, describing the mortgage as variable and putting incorrect information in The European Standardised Information Sheet. Even after we had signed our documentation with our solicitor, [the Provider] has sent us factually incorrect information in its correspondence."*

The Complainants in their post Preliminary Decision submission dated **12 March 2020** outline:

*"I have also attached correspondence from [the Provider] dated 25/03/19, in which they state on page 2, that "it is clear that one assumption contradicts the [ ]other assumption". Surely there should be an obligation on the bank to ensure that all the[ir] paperwork is correct and that a customer should not have to decipher which assumption is the correct one and which assumption contradicts the other assumption. We have have two other mortgages with [the Provider] and nowhere on the paperwork for these mortgages is there a similar manual error or an assumption that contradicts another assumption. I have attached paperwork which was the other part of the mortgage from [the Provider] on our residential home, as you can see from this paperwork there is no similar "manual error". We also [have] another mortgage with [the Provider] and there is no similar manual error on this mortgage."*

As detailed above, the error on the **European Standardised Information Sheet** has been taken into account in arriving at my decision. While it is disappointing that a factually incorrect assumption was erroneously included in the **European Standardised Information Sheet** by the Provider, the fact remains that their mortgage loan documentation did not provide for a fixed rate period of two years. I would also point out that the purported lack of "manual errors" in the Complainants' mortgage loan documentation relating to other mortgages they hold with the Provider, is not relevant to and has no bearing on the

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complaint in relation to the Complainants' mortgage loan account ending **7827** which is the subject of this complaint.

With respect to the Complainants' submission that the Provider made errors on a number of occasions in correspondence with the Complainants by referring to the type of mortgage loan as a "Staff Fixed Rate Loan" and also a "Staff Variable Rate Loan". I note that the Provider has detailed as follows;

- *"The rate of 2.5% can be said to be "fixed insofar as the Bank will apply this rate for the entire period unless the Revenue Commissioners requires the application of a benefit in kind differential, which occurred in early 2009 for a number of weeks when the rate of interest on this loan and other similar loans increased to 2.8%.*
- *The rate of interest of 2.5% can be said to be "variable" insofar as a variation may occur arising from the intervention of the Revenue Commissioners, as occurred in 2009"*

I accept that the Provider made errors in correspondence with the Complainants and should have more appropriately referred to the mortgage loan type in correspondence with the Complainants in accordance with the Letter of Approval dated **25 September 2007** as a "Staff Home Loan". Errors of this nature, whilst they should not happen, do not give rise to an entitlement to a tracker interest rate on the Complainants' mortgage loan as has been submitted by the Complainants.

A further argument made by the Complainants is that they should have been offered a tracker rate in **2009** on the mortgage account ending **7827** on the basis that their other mortgage account ending **8003** was operating on a tracker rate. The documentary evidence shows that each of the mortgage loan accounts is separate and subject to different terms and conditions and therefore, the fact that their other account was operating on a tracker rate, did not give the Complainants an entitlement to such a rate for the account which is the subject of this complaint. The Complainants' mortgage loan which is the subject of this complaint, was accepted by them, having confirmed that their solicitor had explained the terms and conditions of the loan to them.

There is no provision in the Loan Offer or the Specific Loan Offer Conditions or the General Terms and Conditions to link the Complainants' mortgage account ending **7827** which is the subject of this complaint, to the Complainants' other mortgage account ending **8003**, such that would mean that they share the same terms and conditions in relation to the applicable interest rates.

For the reasons outlined above, I do not uphold this complaint.

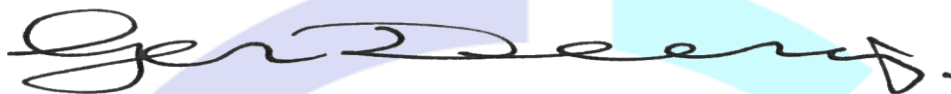
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**Conclusion**

My Decision is that this complaint is rejected, pursuant to **Section 60(1)** of the ***Financial Services and Pensions Ombudsman Act 2017***.

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**

17 April 2020

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.