



<u>Decision Ref:</u>	2020-0247
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Tracker Mortgage
<u>Conduct(s) complained of:</u>	Failure to offer a tracker rate at point of sale
<u>Outcome:</u>	Partially upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

This complaint relates to a mortgage loan account held by the Complainants with the Provider. The mortgage loan that is the subject of this complaint was secured on the Complainants' private dwelling house.

The loan amount is €380,000 for a term of 40 years. The mortgage was drawn down in **June 2007** on a fixed interest rate of 4.95% until **31 August 2012**, with a variable rate to apply thereafter.

The Complainants' Case

The Complainants accepted a **Loan Offer Letter** from the Provider on **23 May 2007**. The interest rate applicable was a 5 year fixed interest rate of 4.95%.

The Complainants submit that they were first time buyers with no previous experience of the mortgage process. The Complainants have questioned why they were not offered a tracker rate at draw down when it is their understanding that tracker rates were available. The Complainants submit that they were offered a 5 year fixed interest rate and were told it was the only option available to them at the time. The Complainants say that they expressed concern as they felt that *"this would lead [them] into debt"*. The Complainants submit that they were subsequently offered a 2 year fixed interest rate which they

accepted, however when they received the Loan Offer Letter, it referred to a 5 year fixed interest rate. The Complainants state that in circumstances where they were *“under pressure from the estate agent and sellers to close the sale, naïve that [they] were, [they] signed the contract”*.

The Complainants take issue with the fact that the Provider has stated that it does *“not allow a borrower to become over indebted, whereby they may experience financial difficulties”*. If this is the case, the Complainants question why they were offered *“the highest rate the bank had at the time”* and go on to say that *“surely the first time buyers tracker rate would have been the more financially stable offer”* for them.

The Complainants refer to certain advertising campaigns launched by the Provider at the time which *“did not mention any exclusions to particular products or options”*. The Complainants state that the Provider has since informed them that they were not offered the option of a tracker rate as the mortgage was for *“100% finance of the property”*. The Complainants are not satisfied with this explanation and have queried whether applicants for *“100% loan approvals”* at the time were *“excluded from applying for a Tracker Loan, and that this condition was included in [the Provider’s] business terms and conditions within [the Provider’s] lending policy at that point”*.

The Complainants feel that the quality of their family life *“would have been significantly different if [they] had been given the opportunity to avail of the tracker option”* which they believe they should have been entitled to. The Complainants state that they feel that the Provider has led them to the indebtedness that they now face because it *“did not offer the best rate suitable for [them] at the time but the rate that would make [the Provider] the most money at [their] expense by not fully disclosing and refusing [them] all the options and rates available in the market at that time”*.

The Complainants are seeking:

- a) A tracker interest rate to be applied to their mortgage loan account backdating to the time the mortgage loan drew down in **June 2007**; and
- b) A refund of the interest the Complainants believe they have overpaid since **June 2007**; and
- c) A copy of the relevant terms and conditions to the Complainants’ mortgage loan account.

The Provider’s Case

The Provider submits that the Complainants availed of the services of a third party broker during the application stage of their mortgage loan. The Provider explains that the broker conducted the application for the mortgage loan on behalf of the Complainants in relation

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to “selecting a lender, a mortgage product and submitting the application form”. The Provider states that a range of interest rate options were available from the Provider to the Complainants through their broker, subject to certain credit criteria, eligibility and terms and conditions.

The Provider submits that it was prohibited from contacting broker customers directly until such time as the customers’ mortgage funds were drawn down. Therefore the Provider says that “*it is not in a position to confirm or comment on any information given to the customers by their broker during the application stage of their mortgage loan, and in particular the information provided regarding the loan type and rate options available*”.

The Provider details that no advice or recommendation regarding the product or suitability of the product was provided to the Complainants by the Provider and its role was “*as provider of the product*”. The Provider states that despite there being no “*legal or regulatory requirement*” on the Provider before the introduction of the **Consumer Protection Code 2006** on **1 July 2007** to ensure that products were suitable for the Complainants, it is satisfied that the product which the Complainants chose was a suitable one for them.

The Provider issued the Complainants, through their broker, a **Loan Offer Letter** dated **9 May 2007** which provided for a mortgage loan in the amount of €380,000 for a term of 40 years based on a fixed interest rate of 4.95% fixed until **31 August 2012**. The Provider details that the Complainants signed and accepted the **Loan Offer Letter** on **23 May 2007** and in doing so confirmed that they had “*the Loan Offer, the Specific Loan Offer Conditions and the General Terms and Conditions were explained to [them] by [their] Solicitor and [they] fully understand them*”.

The Provider submits that the Loan Offer clearly states that the draw down rate was fixed in nature i.e. “*Fixed Rate 4.95% until 30/08/12*”. The Provider states that it never offered a tracker interest rate as a default rate upon expiry of a fixed rate product. The Provider explains that where “*customers drew down on a fixed interest rate, their default interest rate on expiry of the fixed rate period was at all times a variable interest rate which may be increased or decreased by the Lender (i.e. the Bank) at any time*”. The Provider states that this is set out in **General Condition 14(c) (ii)** of the **Standard Mortgage General Terms and Conditions** attaching to the Loan Offer.

Accordingly, the Provider submits that in **August 2012**, prior to the expiry of the fixed rate period, a **Product Expiry Letter** issued to the Complainants advising them of the upcoming end of the fixed interest rate period and confirmed that the loan account would default to the standard variable rate from **1 September 2012**. The **Product Expiry Letter** also outlined the alternative interest rate products available to the Complainants at that time. The

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Provider states that given tracker interest rate products had been withdrawn by the Provider in **late 2008**, this product type was not offered to the Complainants or included in the **Product Expiry Letter**.

The Complaints for Adjudication

The complaints for adjudication are that the Provider incorrectly failed to offer the Complainants a tracker interest rate when they applied for a mortgage loan in **2007** and the Provider has failed to supply the relevant terms and conditions of the Complainants' mortgage loan to the Complainants.

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 **01 July 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 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.

Before dealing with the substance of the complaint, I note that the application for the mortgage loan was submitted by the Complainants to the Provider through a third party broker. As this complaint is made against the respondent Provider only, it is the conduct of this Provider and not the broker which will be investigated and dealt with in this Decision. The Complainants were informed of the parameters of the investigation by this office, by letter, which outlined as follows;

“In the interests of clarity, the complaint that you are maintaining under this complaint reference number is against [the Provider] and this office has not investigated any conduct of the named Broker in the course of investigating and adjudicating on this complaint.”

Therefore, the conduct of the third party broker engaged by the Complainants, does not form part of this investigation and decision for the reasons set out above.

In order to determine this complaint, it is necessary to review and set out the relevant provisions of the Complainants’ mortgage loan documentation. It is also necessary to consider the details of certain interactions between the Complainants and the Provider in **2007** when they applied for the mortgage loan.

The Complainants applied for a mortgage by way of **Mortgage Application Form** which was signed by the Complainants and submitted to the Provider through the Complainants’ broker under cover of letter which appears to be dated **24 April 2007**. The signed **Mortgage Application Form** does not provide for the selection of a specific interest rate type of product. The letter dated **24 April 2007** from the broker states as follows;

“Attached please find lenders file & valuation report for the above. Please forward a loan offer as soon as possible.

I confirm the loan offer required as follows:

Rate: 2 year fixed

Term: 40 years

Amount: 380k

Loan type: Annuity

Solicitor: [...]”

A document titled “CASES GOING TO LOAN OFFER” has also been furnished in evidence by the Provider, which appears to have been attached to the Complainants’ mortgage application. The “Rate” section says “5 yr fixed” and “2 yr fixed” is scribbled out.

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The Provider issued the Complainants, through their broker, a **Loan Offer** dated **9 May 2007**. The **Loan Offer** provided for a mortgage loan in the amount of €380,000 over a term of 40 years based on a fixed interest rate of 4.95% until **31 August 2012**.

The particulars of the **Loan Offer** are set out below;

*“Loan Type: Fixed Rate 4.95% until 31/08/12 100%
Capital and Interest
Loan Amount: €380,000.00
Interest Rate: 4.95%
Interest Type: Fixed
Term: 40 years”*

The **Specific Loan Offer Conditions** attaching to the **Loan Offer** include the following;

“A copy of the buildings insurance schedule, with the amount of cover to be at least that recommended by our valuer to be forwarded to this office prior to the release of the mortgage monies.

A satisfactory Valuation report on the Bank’s standard form to be forwarded to this office prior to the release of the mortgage monies.

Life policy schedule for the amount and term of the mortgage to be forwarded to this office prior to the release of the mortgage monies.

One copy of the offer of Advance to be signed by all applicants and witnessed by the acting Solicitor this item to be returned to this office prior to the release of the mortgage monies.

That a letter of waiver in the banks standard form, waiving any interest held in this mortgaged property in favour of [the Provider]...”

The **Specific Loan Offer Conditions** had to be met by the Complainants before the Provider would be in a position to release the mortgage monies.

Two sets of **General Terms and Conditions** have been furnished in evidence by the Provider: The **General Terms and Conditions** and the **Standard Mortgage General Terms and Conditions**.

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The set titled **Standard Mortgage General Terms and Conditions** are stated to be effective from "01/06/2006" and detail as follows;

"1. Introduction

(a) These General Mortgage Terms and Conditions apply in all circumstances to the Lender's Standard Mortgage/Tracker Mortgage. These General Terms and Conditions are supplemental to and form part of the Loan Offer which comprises Specific Loan Offer Conditions and General Terms and Conditions. In the event of any conflict or inconsistency, the Specific Loan Offer Conditions shall apply."

I accept that the **Standard Mortgage General Terms and Conditions** are supplemental to the **Specific Loan Offer Conditions** and the **General Terms and Conditions** comprised in the Complainants' Loan Offer.

General Condition 14 of the **Standard Mortgage General Terms and Conditions** details as follows:

"14. Interest Rate

- (a) Subject to Sub-Clause 14(b), all Loans are subject to the Bank's Mortgage Rate at the date the Loan is drawdown.*
- (b) In the case of a Tracker Mortgage the conditions of this Sub-Clause shall apply:-*
- (i) The Loan is subject to the Tracker Mortgage variable interest rate at the date of payment of the Loan. This rate will depend on the Loan to Value set out in the Specific Loan Offer Conditions. In the event of a movement in the European Central Bank ("ECB") rate the Lender will adjust the Tracker Mortgage variable interest rate within 30 days of the ECB rate movement.*
 - (ii) There will be no reduction in the Tracker Mortgage interest rate as a result of the Loan to Value reducing during the term of the Loan*
- (c) In the case of a fixed rate Mortgage, the following conditions will apply:-*
- (i) The rate of interest applicable to the Loan will be fixed at the rate and for the period specified in the Loan Offer;*
 - (ii) The Borrower on the expiry of the Fixed Rate Period may, by prior notice in writing to the Lender, opt to choose a fixed rate for a further Fixed Rate Period if such an option is made available by the Lender and on terms and conditions as may be specified by the Lender. Where such an option is not made available by*

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the Lender or, if available, where the Borrower fails to exercise the option, the interest rate applicable will be a variable interest rate which may be increased or decreased by the Lender at any time, and in this respect, the decision of the Lender will be final and conclusively binding on the Borrower;...”

The Complainants signed their acceptance of **the General Terms and Conditions** and **Specific Conditions** attached to the **Loan Offer** on **23 May 2007**. The **Loan Acceptance** signed by the Complainants states as follows;

“I/We acknowledge receipt of the General Terms and Conditions and Specific Conditions attached to the Loan Offer. I/We have had the Loan Offer, the Specific Loan Offer Conditions and the General Terms and Conditions explained to me/us by my/our Solicitor and I/we fully understand them. I/We hereby accept the Loan Offer on the terms and conditions specified. I/We undertake to complete the Mortgage Deed as soon as possible.

I/We fully understand and accept the specific nature of this Purchase Mortgage. I/We further understand that any outstanding debt owing (whether owing now or in the future) to [the Provider] by me/us at any given time is secured on the Property the subject of the Tracker Mortgage and must be repaid in full before the relevant title deeds can be returned or the relevant mortgage deed released.”

It is clear from **Condition 14 (c)** that, on the expiry of the fixed interest rate period on the Complainants’ mortgage loan account, a variable interest rate would apply, or a further fixed rate if it was made available by the Provider and selected by the Complainants. The variable interest rate set out in **Condition 14 (c)** was clearly one which may be increased or decreased by the Provider at any time. **Condition 14 (c)** does not mention the application of a tracker interest rate to the Complainants’ mortgage loan. The Complainants submit that the *“terms and conditions have never been given to us by third party or [the Provider] nor were the[y] included in the SARS request. So where have they appeared from because they obviously weren’t in our file and that’s why we never received them”*. In this regard, the Complainants are referring to the **Standard Mortgage General Terms and Conditions**.

It appears that the reason the Complainants have sought a copy of terms and conditions since **2017**, was to establish the terms and conditions under which their loan was approved. In this regard, the Complainants refer to the Provider’s contemporaneous notes (which the Complainants received on foot of a Subject Access Request on **4 July 2017**) and in particular the entry on **7 June 2007** which states the following;

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*“Approved subject to the usual terms and conditions as follows: Amount: ?380,000
Term: 40 years Rate : 4.95% LTV:100% 1 Valuation 2 Life cover 3 Buildings Insurance
Additional conditions: Deed of waiver in relation to third party contribution”.*

However the “usual terms and conditions” as referred to in the Provider’s contemporaneous notes correlate with the **Specific Loan Offer Conditions** attaching to the **Loan Offer** which are outlined above and not with any conditions contained in the **Standard Mortgage General Terms and Conditions**.

I have been provided with a copy of a letter dated **9 May 2007** from the Complainants’ broker to the Complainants which states the following;

“I am delighted to enclose your loan offer, the original of which has been forwarded directly to your solicitor.

To ensure the smooth issue of your loan cheque the loan conditions attached must be complied with. Please note that your loan cheque can only be issued after all such conditions have been complied with.”

The evidence suggests that any documentation that issued in **2007** was issued by the Provider to the third party broker, as opposed to the Complainants directly. It is unclear from this letter whether the **Loan Offer** enclosed included the **Specific Loan Offer Conditions**, the **General Terms and Conditions** and the **Standard Mortgage General Terms and Conditions**. Having considered the evidence, there does not appear to me to be any reason why the Provider would not have issued the full set of the terms and conditions to the Complainants’ broker or solicitor in **May 2007** or why the Complainants’ broker or solicitor would not have received them. I note that the Complainants appear to have received the **Loan Offer Letter** that issued on **9 May 2007** and in those circumstances I have no reason to doubt that all terms and conditions pertaining to the Complainants’ mortgage loan account were issued to the Complainants’ agents. The evidence also demonstrates that the Complainants signed the **Loan Acceptance** acknowledging receipt of the **General Terms and Conditions** and **Specific Conditions** attached to the **Loan Offer** and that they had the **Loan Offer, the Specific Loan Offer Conditions** and the **General Terms and Conditions** explained to them by their solicitor and they understood them.

Any issues in relation to data protection or subject access requests are more appropriate for the office of the Data Protection Commission.

The Complainants have stated that they expressed concern that a 5 year fixed interest rate period would “lead [them] into debt” but were told that this “was the only option available to [them] at the time”. The Complainants further state that they were then offered a 2

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year fixed rate which they accepted. However, the Complainants state that when they “received the contract it was for 5yr rate again”.

I acknowledge that the Complainants may have applied for a 2 year fixed interest rate, however this appears to have been crossed out on their **Mortgage Application Form** (submitted to the Provider through the Complainants’ third party broker) and replaced with reference to a 5 year fixed rate. Whilst it may be the case that the discussions with the broker related to a 2 year fixed interest rate, it is important for the Complainants to note that there was no formal offer of a 2 year fixed interest rate from the Provider. The evidence shows that the only **Loan Offer** that issued to the Complainants was for a 5 year fixed interest rate. If it was the case that the Complainants were of the view that mortgage loan commencing on a 5 year fixed interest rate loan was not suitable to them, then the Complainants could have decided not to sign and draw down the loan and instead, seek an alternative rate with the Provider or indeed with another mortgage provider. However the Complainants did not do so.

The Complainants further state that they were “under pressure from the estate agent and sellers to close the sale” and “naïve that [they] were, [they] signed the contract.” The Complainants confirmed by signing the **Loan Acceptance** on **23 May 2007** that the **Loan Offer** and the conditions attaching to the **Loan Offer** were explained to them by their solicitors and they understood them. As such, I have to accept that the Complainants had the benefit of independent legal advice as well as assistance from their third party broker when entering into the mortgage loan agreement and agreeing to the terms and conditions attaching to the **Loan Offer**.

The Complainants are of the view that the Provider did not offer them a tracker rate despite advertising campaigns by the Provider in or around the time of drawdown of the Complainants’ mortgage loan offering tracker interest rates. In this regard, the Complainants refer to articles from various media sources from in or around **April 2007** noting that the Provider had launched the “*best First Time Buyer Tracker Rate*” which was available to “*all First Time Buyers*” who secured a loan offer by **31 August 2007**. The Complainants state that the Provider’s advertising campaign at the time “*did not mention any exclusions to particular products or options*”. The Provider states that at the time of the Complainants’ loan application in **April 2007**, tracker interest rate products were available from the Provider subject to credit criteria, eligibility and terms and conditions.

The Complainants requested sight of the Provider’s “*lending policy document regarding eligibility for tracker rate mortgage products based on loan to value of the property at the time of approval of [their] mortgage*”. The Provider submits that it does not have any specific policy with respect to tracker interest rate offerings including the tracker margin to new or existing customers from **2007** onwards. I have been provided with the Provider’s

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contemporaneous notes which it holds in respect of the Complainants' mortgage loan account.

The first entry is dated **7 June 2007** and refers to "*Date Opened 08/05/2007*" which I understand to be the date the Provider began assessing the Complainants' mortgage application. The contemporaneous notes demonstrate that the Provider carried out an assessment of the Complainants' mortgage application as the notes refer to certain criteria such as "*age criteria*", "*LTV criteria*" and "*affordability criteria*". I note that the Complainants "*passed the minimum age criteria*" and "*the maximum age at the end criteria*" as well as the "*affordability criteria*". It appears that the Complainants did not meet the "*LTV criteria*" as the "*LTV is 100%*".

The Provider submits that, at the time the Complainants drew down their mortgage, the product rates available for a loan to value (LTV) of 100% was a 2 year fixed rate of 4.65%, a 5 year fixed rate of 4.95% or a standard variable rate of 5.49%. The Provider has not furnished any evidence on this. However, it is important for the Complainants to be aware that the availability of any types of mortgage products are subject to credit criteria, eligibility and terms and conditions which can be set at the Provider's commercial discretion. I am of the view that while tracker interest rate options may have been available to new customers at the time the Complainants applied for their mortgage loan in **April 2007**, the Complainants did not have an entitlement to be offered a mortgage loan on a tracker interest rate. Equally while a 2 year fixed interest rate of 4.65% may have been available from the Provider, the Complainants were ultimately offered a 5 year fixed rate of 4.95% which the Complainants duly accepted. The Complainants contend that the Provider did not offer them the best rate suitable for them at the time. If the Complainants believed that this was the case, they were under no obligation to accept the **Loan Offer**. It is important for the Complainants to be aware that advertisements do not constitute an offer to lend by a Provider.

In any event, I note that the Complainants' mortgage loan was applied for through a third party mortgage broker and on this basis it appears that the Provider did not have any direct interaction with the Complainants between the time that the mortgage loan application was made in **April 2007** and the time that the mortgage loan was drawn down in **May 2007**. The evidence is clear that the Complainants' application was for a fixed interest rate mortgage loan and that is what they were offered. The Complainants did not have any entitlement to be offered a mortgage loan on a tracker interest rate as they have suggested.

Prior to the expiry of the fixed rate period, the Provider issued a **Product Expiry Letter** to the Complainants dated **14 August 2012**. The **Product Expiry Letter** notes the following;

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“The fixed rate period on your mortgage is coming to an end on 31/08/2012, so now it’s time to start thinking about your next mortgage deal. Any borrowings you have on this fixed rate will automatically roll to the Standard Variable Rate Default Option (APR 4.7%). Your monthly repayment on this rate is included in the table overleaf.”

The **Product Expiry Letter** outlined the range of options available to the Complainants to include 2, 3, and 5 year fixed rates and discounted variable rates together with a standard variable rate default option of 4.5%. The range of options offered to the Complainants was in line with the **General Condition 14 (c) (ii)** as outlined above. The Complainants were not offered a tracker interest rate at that time as they had no contractual entitlement to be offered a tracker interest rate. I accept that the Complainants could not have formed any reasonable expectation of defaulting to a tracker interest rate upon the expiry of the fixed interest period, based on the terms and conditions of their loan.

I note that there is a reference to *“Tracker Mortgage”* in the second paragraph of the **Loan Acceptance**, as quoted above. This appears to be an error on the part of the Provider as the sentence that contains this erroneous reference to *“Tracker Mortgage”* is in relation to potential outstanding debt being secured on the property which was the subject of the mortgage loan and confirming that the Complainants understood this had to be repaid before the deeds of the property could be released and returned. This sentence was clearly not in relation to the interest rate applicable at the end of the initial fixed interest rate period. Whilst this error on the part of the Provider is entirely unsatisfactory, I am satisfied that the particulars of the **Loan Offer** are sufficiently clear as to the type of mortgage offered to the Complainants and confirm that the Complainants were offered a mortgage loan on a fixed interest rate as opposed to a tracker interest rate.

Whilst I am of the view that there was no contractual entitlement to a tracker interest rate on the Complainants’ mortgage loan account, I am also of the view that the information provided to the Complainants in the **Loan Acceptance** was somewhat confusing. The **Consumer Protection Code 2006 (the “CPC 2006”)** and the **Consumer Protection Code 2012 (the “CPC 2012”)**, outlines that;

“A regulated entity must ensure that in all its dealings with customers and within the context of its authorisation it acts with due skill, care and diligence in the best interests of its customers”

I am of the view that the Provider did not act with due skill, care and diligence in its dealings with the Complainants. Whilst I accept that errors can occur and in this circumstance that error did not affect the Complainants’ underlying contractual entitlements, I am of the view that the Provider should have been proactive and brought

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this typographical error to the Complainants' attention and highlighted how the error occurred, in advance of the Complainants making this complaint to this office.

The Complainants submit that during the Provider's handling of their complaint, the Provider repeatedly sent correspondence in relation to their complaint to their former postal address which led to a delay in the Complainants receiving letters of response. I note from the Provider's contemporaneous notes that on **25 June 2009**, the Complainants were advised to send a letter signed by each of them requesting a change of correspondence address. According to the contemporaneous notes, the address was corrected by the Provider on **1 July 2010**. I note that the **Product Expiry Letter** dated **14 August 2012** together with the Provider's letter dated **19 December 2017** and a **Mortgage Transaction Summary** dated **17 July 2019** were sent to what appears to be the Complainants' former correspondence address whereas the Provider's response to the Complainants' subject access request dated **4 July 2017** and the **Final Response Letter** dated **10 October 2018** were sent to the correct address. This is highly unsatisfactory on the part of the Provider. **General Condition 25(b)** of the **Standard Mortgage General Terms and Condition** provides that "[a]ll correspondence, notices and statements, in relation to joint Borrowers will be addressed to the Borrower at the Borrower's Address". It is clear from the contemporaneous notes that the Complainants requested their address be amended however this does not appear to have been fully actioned by the Provider.

The **CPC 2012** outlines as follows:

"11.5 A regulated entity must maintain up-to-date records containing at least the following:

...

b) the consumer's contact details;"

The Provider's failure to update the Complainants' address appropriately and ensure that all correspondence issued to the Complainants' correct address are in my view further failures by the Provider to comply with the relevant **Consumer Protection Codes**. The Provider failed to act with due skill, care and diligence by issuing correspondence to an incorrect address. This was particularly unsatisfactory in circumstances where the Complainants had already raised this issue with the Provider in **2009**, however the Provider continued to issue correspondence to the incorrect address, up to a recent occurrence when the **Mortgage Transaction Summary** dated **17 July 2019** was issued to the incorrect address. In these circumstances I am of the view that the Provider did not maintain an up to date record of the Complainants' address for correspondence, as is required by the **Consumer Protection Codes**.

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I have considered the Complainants' mortgage loan documentation in its entirety and it appears to me that the Provider was under no obligation to offer the Complainants a tracker interest rate when they applied for a mortgage loan in **May 2007**. If the Complainants were of the view that the fixed interest rate offered was not suitable to them, the Complainants could have decided not to accept the offer made by the Provider. Instead, the Complainants signed the **Loan Acceptance** on **23 May 2007** in the presence of their solicitor and confirmed that they accepted the **Loan Offer** on the terms and conditions set out therein.

However for the reasons set out above, I partially uphold the complaint in relation to the Provider's shortcomings under the **Consumer Protection Code 2006** and **2012**. I direct that the Provider pay to the Complainants a sum of €2,500 in compensation.

Conclusion

My Decision is that this complaint is partially upheld, pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, on the grounds prescribed in **Section 60(2)(g)**.

I direct, pursuant to **Section 60(4)** of the **Financial Services and Pensions Ombudsman Act 2017**, that the respondent Provider pay to the Complainants a sum of €2,500 in compensation to an account of the Complainants' choosing, within a period of 35 days of the nomination of account details by the Complainants to the Provider.

I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in **Section 22** of the **Courts Act 1981**, if the amount is not paid to the said account, within that period.

The Provider is also required to comply with **Section 60(8) (b)** 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.



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FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

23 July 2020

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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.

