



<b><u>Decision Ref:</u></b>	2020-0480
<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 appropriate compensation or redress CBI Examination
<b><u>Outcome:</u></b>	Rejected

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

This complaint relates to a mortgage loan account held by the Complainants with the Provider. The mortgage loan was secured on the Complainants' private dwelling house in **2004**. The loan amount was for €135,000 for a term of 22 years. The interest rate applicable was a tracker rate of ECB + 0.95%.

On **19 July 2007** the Complainants chose to apply a 3 year fixed interest rate of 5.25% to their mortgage loan account until **30 September 2010**. Prior to the expiry of the fixed interest rate, the Complainants fully redeemed their mortgage loan on **16 September 2010** on foot of the sale of their private dwelling house. The Complainants subsequently drew down a new mortgage loan with another Provider in respect of the purchase of their new private dwelling house.

The Complainants' mortgage loan account was considered by the Provider as part of the Central Bank directed Tracker Mortgage Examination (the "Examination"). The Provider identified that a failure had occurred on the mortgage loan account and as such the mortgage loan account was deemed to be impacted under that Examination.

The Provider wrote to the Complainants on **17 November 2017** advising them of the error that had occurred on their mortgage loan account.

The Provider detailed “What happened on your mortgage sub-account” as follows;

*“When you drew down on a tracker interest rate you received a letter of offer that used the term “Home Loan” to describe your mortgage. When you moved to a fixed rate in July 2007 the document you received, when read in conjunction with your letter of offer, was unclear as to the default interest rate that was to apply on the expiry of your fixed rate term.*

*This document referred to the default interest rate that was to apply on expiry of your fixed rate term as follows: “...the [Provider] Home Loan Rate shall apply in accordance with General Condition 2 of the Offer of Advance originally accepted by you...” It was not clear that the [Provider’s] Home Loan Rate was [the Provider’s] Standard Variable Rate (SVR) and not your original “Home Loan” rate, which was a tracker interest rate.*

*You were due to default to the [Provider’s] Home Loan Rate when your fixed rate came to an end. Shortly before the expiry of the fixed rate term you received a document from us that described the [Provider’s] Home Loan Rate as the Standard Variable Rate. You chose however to redeem your mortgage sub-account prior to the expiry of your fixed rate term. As you were still on a fixed interest rate at the time of redemption, we do not believe that you suffered any financial detriment up to that point. Financial detriment would have occurred if you redeemed after your fixed rate term came to an end and you defaulted to an SVR instead of a tracker interest rate.*

The Provider made a payment to the Complainants of €600.00 towards the cost of independent professional advice.

The Provider also offered the Complainants the opportunity to apply for a new mortgage loan on a tracker interest rate as follows;

*“The default rate quoted within the document you received when your fixed rate term was coming to an end may have influenced your decision to redeem your mortgage early. As such, you may be eligible to apply for a new mortgage with [the Provider] on a tracker interest rate on the secured property referenced above.*

*The eligibility to apply for a new mortgage with [the Provider] on a tracker interest rate, secured on the property referenced above is subject to:*

- *Eligibility criteria,*

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- *Credit assessment and*
- *Terms & conditions.*

*If you would like to establish your eligibility, please call our dedicated Tracker Mortgage Helpline detailed below. We will then send you the required documentation for completion and return. This request must be made within 6 months from the date of the letter.”*

In **May 2018**, the Complainants appealed the Provider’s determination of no financial detriment to their mortgage loan account to the Independent Appeals Panel. The Complainants engaged a third party to submit their appeal.

The Appeals Panel decided on **25 July 2018** that the appeal was not upheld. The key factors in determining the decision by the Appeals Panel are detailed as follows;

*“The Panel noted the amended loan offer issued to [the Complainants] by [new Provider] on 9 August 2010 in respect of the purchase of the property at [location], the date of the Product Expiry Letter issued by the [Provider] and the date of the sale of the secured property. Arising from this examination, the Panel determined that the detriment claimed by [the Complainants] was not caused by the failure of the Bank to return the mortgage on their then secured property to a tracker rate. The Panel further determined that as [the Complainants] redeemed their mortgage before the expiry of the fixed rate term, they did not suffer any financial loss as a result of the [Provider’s] admitted use of ambiguous and confusing terminology.”*

As the Complainants completed the Provider’s internal appeals process, this office was in a position to progress the investigation and adjudication of the complaint.

The conduct complained of that is being adjudicated on by this office is that the Provider has not offered adequate compensation to the Complainants by consequence of the Provider’s failure in relation to their mortgage loan account.

### **The Complainants’ Case**

The Complainants submit that they took out their mortgage loan with the Provider in **2002** and a tracker interest rate was applied to their mortgage loan account at that time. The Complainants explain that in **July 2007**, after the European Central Bank decided to increase “*mortgage rates*”, they decided to apply a fixed interest rate to their mortgage loan account for 3 years. The Complainants state that they were of the view that they “*would be put back on a tracker rate*” upon the expiry of the fixed interest rate period.

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The Complainants submit that they sold their private dwelling house in **September 2010** to *“a friend of ours and we done a quick sale”*. The Complainants explain that they rented another property for 2 months while they *“decided to buy another house”*.

The Complainants submit that the reason why they sold their private dwelling house was because the Provider’s *“rates were dear”* and they were not offered a tracker interest rate at the end of the fixed interest rate period. The Complainants assert that if the Provider had explained to them in **2007**, when they moved to a fixed interest rate because ECB rates were increasing, that they would not be allowed to revert to a tracker rate on the expiry of the fixed rate period, then they *“would never have went to a fixed rate in the first place”*.

The Complainants explain that they took out a new mortgage loan account with another Provider in **2010** in respect of their new private dwelling house. The Complainants submit that the reason they moved to another Provider was because the Provider, against which this complaint is made, was no longer offering tracker interest rates. The Complainants submit that if the Provider was offering tracker rates they *“would have stayed with [the Provider] for [their] new house”* in **2010**.

The Complainants contend that the *“incorrect information”* that they received on their mortgage product *“provided cost issues and formed the basis of their future actions, which has been to their detriment”*. The Complainants assert that had they been in receipt of the correct information they would have been *“very unlikely to give up their tracker rate and move house”*. The Complainants submit that *“they would have moved house if they could have ‘ported’ their tracker at the margin involved”*.

The Complainants explain that they heard information regarding the Central Bank of Ireland led Tracker Mortgage Examination on the radio which prompted them to contact the Provider in **October 2017**.

The Complainants state that the Provider offered them a new mortgage, however, they explain that they do not qualify for the mortgage because the First Complainant was involved in an accident and has not been in a position to return to work since **March 2016**.

The Complainants are not satisfied with the payment of €600.00 made by the Provider for independent professional advices and are seeking *“a sum of money”* as compensation for the following;

- (a) The Complainants sold their private dwelling house in **September 2010** and subsequently took out a new mortgage with an alternative Provider because they believed that the Provider was no longer offering tracker interest rates.

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- (b) The Complainants do not meet eligibility criteria to apply for a new mortgage with the Provider as the First Complainant suffered an accident in March 2016 and is unable to work.

### **The Provider's Case**

The Provider submits that the Complainants' mortgage loan account drew down on a tracker interest rate of ECB + 0.85% in **July 2004**. The Provider explains that the Offer of Advance dated **11 June 2004** that issued to the Complainants "*used the term "Home Loan" to describe their mortgage*".

The Provider states that the Complainants completed and signed a Fixed Rate Transfer Authority on **19 July 2007** where they elected to apply a fixed interest rate of 5.25% to their mortgage loan account until **30 September 2010**. The Provider explains that the Fixed Rate Authority signed by the Complainants, stated that the Provider's "*Home Loan Rate*" was to apply as the default interest rate on expiry of the fixed rate term "*in accordance with General Condition 2 of the Offer of Advance*". The Provider states that on **30 August 2010**, prior to the expiry of the fixed interest rate period, it issued a Product Expiry Letter to the Complainants outlining the alternative interest rate products available to the Complainants at that time. However, the Provider explains that the Complainants redeemed their mortgage loan account on **16 September 2010**, prior to the expiry prior to the expiry of the fixed interest rate period.

The Provider submits that the Complainants' mortgage loan account was reviewed in line with the requirements of the Examination framework as mandated by the Central Bank of Ireland and the Complainants' mortgage loan account and was determined to be impacted under the Examination. The Provider states that it wrote to the Complainants on **17 November 2017** stating that it had conducted a detailed assessment of their mortgage loan account under the Examination. The Provider highlights that the letter stated that the Provider had identified that the mortgage documents provided to the Complainants "*contained ambiguous and confusing terminology*". The Provider states that while it assessed that the mortgage documents provided to the Complainants contained ambiguous and confusing terminology, it was determined that the Complainants had "*not incurred any financial detriment due to the fact that their mortgage account had been redeemed on 16 September 2010 before the expiry of the fixed rate term*". The Provider states that financial detriment would have occurred if the fixed rate period ended and the Complainants had defaulted onto the Provider's standard variable rate.

That said, the Provider states that it recognised that the Complainants had received documentation with ambiguous and confusing terminology and provided a payment of €600.00 in the event the Complainants wished to obtain independent professional advice in relation to the matter.

In response to the Complainants' submission that the reason they sold their dwelling house in **2010** and subsequently took a new mortgage with an alternative Provider was because they believed the Provider was no longer offering tracker interest rates, the Provider states that tracker interest rate products were available for selection from the Provider from **late 2001** until **late 2008**, when they were withdrawn from the market. The Provider explains that this meant that when the Complainants drew down their new mortgage loan in **September 2010**, tracker interest rates were no longer available from the Provider. The Provider further states that it did not have a product available at that time "*which allowed the porting of a tracker interest rate to a new property had the customer been availing of a tracker interest rate*". The Provider also asserts that, given the Product Expiry Letter issued on **30 August 2010** and the Complainants sold their private dwelling house on **16 September 2010**, it is "*reasonable to assume*" that the Complainants had already made the decision to sell their property in advance of the fixed rate period expiring and in advance of receipt of the Product Expiry Letter. The Provider states that this means that the fact that the Complainants were informed that their mortgage loan account was moving to the Provider's standard variable rate and not the original tracker interest rate "*did not affect their decision to move*".

The Provider states that the Complainants could not have availed of a tracker interest rate product with the Provider in respect of a new mortgage application in **September 2010**. The Provider explains that it was also not possible for the Complainants to "*port*" or "*transfer*" the tracker interest rate to another property as this product was not available at the time from the Provider.

### **The Complaint for Adjudication**

The complaint for adjudication is the Provider has not offered adequate redress and compensation to the Complainants in respect of its failure on the Complainants' mortgage loan account.

### **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.

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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 27 November 2020 outlining my preliminary determination 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, I set out below my final determination.

Before dealing with the substance of the complaint, I note 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 dated **10 June 2019**, 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 will not be investigating any conduct of the named Broker in the course of investigating and adjudicating on this complaint. If you have any complaint to make in relation to the advice given by your Broker, any such conduct must form the basis of a separate 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.

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The Provider has detailed that the Complainants' mortgage loan account was reviewed in line with the requirements of the Examination framework as mandated by the Central Bank of Ireland and the criteria adhered to the Central Bank of Ireland's Principles for Redress. The Provider has conceded that the mortgage loan documentation provided to the Complainants contained "*ambiguous and confusing terminology*" and, on that basis, that Provider provided a payment of €600 to the Complainants should they wish to seek independent professional advice in relation to the matter. The Provider did not offer and pay redress and compensation to the Complainants as it was determined that the Complainants had not incurred any financial detriment.

I will now consider if compensation and redress is necessary given the individual circumstances of the Complainants.

The Complainants' mortgage loan account was drawn down in **2004** in the amount of €135,000 on a tracker interest rate ECB + 0.95 % in accordance with the terms of the **Offer of Advance** dated **11 June 2004** which was signed and accepted by the Complainants.

The **Special Conditions** attached to the **Offer of Advance** state as follows in respect of the applicable interest rate;

*"The rate of the [Provider's product] tracks ECB rate with a margin which is fixed for the life of the Home Loan term. The margin for this Home Loan is ECB rate plus 0.95%. This margin is dependent on the amount borrowed and the value of the property to be mortgaged".*

On **19 July 2007**, the Complainants signed a **Fixed Rate Authority Transfer Form** where they selected to apply a fixed interest rate of 5.25% to their mortgage loan account until **30 September 2010**. The **Fixed Rate Authority Transfer Form** states as follows as to what is to occur at the end of the fixed period;

*"At the end of the fixed period: [Provider] may offer to continue the advance for such a period and at such a fixed rate as it may decide. It may also offer alternative available products.....If no such offer is made or if an offer is made and no acceptance received as prescribed above, then, from the day following the expiry of any option selected above, the [Provider] shall apply in accordance with General Condition 2 of the Offer of Advance originally accepted by you being the Bank's General Conditions Relating to Advances by [Provider] House Mortgages Section, which varies the Interest Rate, and the said General Conditions relating to the Advances shall be construed accordingly".*

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**General Condition 2** of the **General Conditions Relating to Home Loan Advances** attaching to the offer of Advance dated **11 June 2004** and as referred to in the **Fixed Rate Authority Transfer Form** above describes how the interest is calculated and states as follows;

*“.....The monthly repayments will vary if changes in the Home Loan Interest Rate occur. Variations in [Provider’s] Home Loan Rate may occur at any time and notice of each variation will be published at least once in a national daily newspaper. Interest is calculated on a compound basis...”*

It was at this time that the failure that was subsequently identified in **2017** as part of the Examination occurred on the Complainant’s mortgage loan account in that the **Fixed Rate Authority Transfer Form**, when read in conjunction with the Offer of Advance, was unclear as to the default interest rate that was to apply on the expiry of the fixed rate term.

The Provider issued a **Product Expiry Letter** dated **30 August 2010** to the Complainants prior to the expiry of the 3 year fixed interest rate period which detailed as follows;

*“The fixed rate period on your mortgage is coming to an end on **30/09/2010**, 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 (APR 3.9%) of 3.85%**.*

*You might choose a new variable rate or alternatively you could select a new fixed rate...*

*If you choose one of the interest rate options above, other than your Default option, please complete the enclosed Letter of Authority and return it to us within 10 days of the date on this letter. We will then move your existing Mortgage to the option chosen...”*

The **Product Expiry Letter** detailed various interest rate options for the Complainants to choose from to include 2 year, 3 year and 5 year fixed interest rate options together with discounted variable rate options and a standard variable rate option. I note that the **Product Expiry Letter** did not include the option of the previously held tracker interest rate. The Complainants have submitted that they did not receive the Product Expiry Letter dated **30 August 2010** however I note that this letter was sent to the address of the Complainants’ private dwelling house the subject of their mortgage loan account and it was up to the Complainants to notify the Provider of any change in correspondence address. The Complainants appear to indicate that they only had sight of this letter when they made a complaint to this Office at which point the letter was exchanged by the Provider.

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The Complainants state that they sold their private dwelling house, the subject of their mortgage loan account, in **September 2010** and subsequently rented a property for 2 months before moving into their new private dwelling house in **November 2010**. In their later submissions, the Complainants state that the reason they sold their private dwelling house “*was because [the Provider’s] rates were too dear*”. I note from the **mortgage statements** submitted in evidence that the monthly repayments on the Complainants’ mortgage loan account from **1 January 2010** up to date the mortgage loan was redeemed were €833.57. A fixed interest rate of 5.25% applied to the Complainants’ mortgage loan account during this period. The Complainants have submitted an “**Amended Loan Offer**” dated **9 August 2010** from another Provider in respect of their new private dwelling house offering a new mortgage loan in the amount of €210,000 and monthly repayments in the amount of €942.45 for the first three years.

I understand that the Complainants ultimately drew down a new mortgage loan with this other Provider as I have been furnished with **Annual Loan Statements** from **2010 to 2017**. I note that a fixed interest rate of 3.9% applied and the monthly mortgage repayments ranged from €895.21 to €985.21 during this period which are clearly higher than the monthly repayments that the Complainants had been paying in respect of their mortgage loan account with the Provider before they sold their first private dwelling house and redeemed the loan. I accept that this may have been because the second mortgage was for a greater sum than the original mortgage. While I appreciate that the Complainants may have wanted a more competitive interest rate for their mortgage loan, it does not appear to me that the sole reason for deciding to sell their private dwelling house was because of the Provider’s rates.

The Complainants further contend that the reason they decided to move to a different Provider was because the Provider “*was not offering tracker mortgages*” and if it was the case that the Provider was offering tracker interest rates the Complainants state that they “*would have stayed with [Provider] for [their] new house*”. I am of the view that this assertion suggests that the Complainants intended to sell their private dwelling house regardless of the interest rates available. I note that tracker interest rate products were available for selection from the Provider from **late 2001** until **late 2008**, when they were withdrawn from the market. I further note and accept that, at that time, the Provider did not offer a product that would allow the porting or transfer of a tracker interest rate to a new property, had the Complainants been availing of a tracker interest rate. Therefore, had the Complainants been given the option to revert to a tracker interest rate on the expiry of the fixed interest rate on **30 September 2010**, they would not have been able to transfer this tracker interest rate to their new property.

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Instead, the Complainants would have been obliged to take out a new mortgage loan with the Provider or indeed apply for a new mortgage loan with an alternative Provider, which the Complainants ultimately ended up doing. In any event, the Complainants redeemed their mortgage in full prior to the expiry of the fixed interest rate as detailed in the following paragraphs.

The Provider received a letter from the Complainants' solicitors dated **9 September 2010** in relation to the Complainants' mortgage loan account which details as follows;

*"Our clients now intend discharging the above mortgage. Please let us have Redemption figures on **all loans** secured by this property up to and including the 15<sup>th</sup> September next.*

*Please confirm you will seal a Deed of Discharge on receipt of the redemption monies quoted in your letter of reply. The letter received from you in reply quoting the redemption figures will be taken by us to relate to all loans from you secured by this property."*

The Provider responded to the Complainants' solicitors by way of letter dated **13 September 2010** detailing the redemption figure and associated costs as follows;

*"Further to your recent enquiry, I wish to advise that the Redemption Figure for the House Loan at House Mortgage Section as at 13/09/10 is Euro 109,773.48 with interest accruing at Euro 15.76 per day. This figure assumes that the most recent monthly repayment, which would have been presented by Direct Debit, has been paid. Should this direct debit be unpaid subsequent to this letter, the amount of that repayment will be due in addition to the redemption figure quoted above.*

***The amount quoted is based on receipt of the redemption cheque at this office on the above date otherwise appropriate daily interest must be added.** Where it is anticipated that a Redemption will take place outside this current month, fresh redemption figures should be sought nearer the relevant date in the interest of precision.*

*The Redemption Figure quoted above includes a standard Sealing Fee of 38.00 which is required by our Solicitors Office to seal a Vacate of the Mortgage."*

The Complainants' mortgage loan statements indicate that the mortgage loan account was redeemed on **16 September 2010**. The Provider issued a letter dated **21 September 2010** to the Complainants' solicitors acknowledging receipt of the redemption funds and confirming that the mortgage loan had been redeemed.

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While I understand that the Provider's letter dated **17 November 2017** suggests that the **Product Expiry Letter** dated **30 August 2010** may have influenced the Complainants' decision to redeem their mortgage early, given the Complainants state that they did not receive this letter until they made a complaint to this office coupled with the fact that they had clearly decided to sell their private dwelling house well in advance of the issuing of that letter, I am of the view that it is reasonable to conclude that the **Product Expiry Letter** could not have had a bearing on the Complainants' decision to redeem their mortgage loan. I note that the Provider's letter dated **17 November 2017** also suggests that the Complainants may be eligible to apply for a tracker interest rate secured on the private dwelling house the subject of their mortgage loan account.

I note that the Complainants have indicated that they are not eligible to apply for a new mortgage with the Provider as the First Complainant suffered an accident in **March 2016** and is therefore unable to work however, the Provider submits that it has no record of the Complainants submitting a mortgage application with the Provider after **August 2010**.

In consideration of the foregoing, it is clear to me that the Complainants decided to sell their private dwelling house well in advance of the expiry of the fixed interest rate period on **30 September 2010** and in advance of the issuing of the **Product Expiry Letter** on **30 August 2010**, which they said they did not receive. The Complainants were offered a new mortgage loan by another Provider on **9 August 2010**, in respect of the purchase of their new private dwelling house, and redeemed their mortgage loan in full on **16 September 2010** on foot of the sale of the private dwelling house the subject of their mortgage loan with the Provider. Therefore, despite the Provider's admitted failure by virtue of its use of "*ambiguous and confusing terminology*" in the **Fixed Mortgage Authority** as to what would happen at the end of the fixed interest rate period on **30 September 2010**, the Complainants' mortgage loan never reached the point where the Provider's failure actually impacted on the Complainants' mortgage loan account to cause financial detriment to the Complainants. I am of the view that the Complainants may have experienced a financial loss if their mortgage loan account was not redeemed prior to the expiry of the fixed interest rate and defaulted to the Provider's standard variable rate and that standard variable rate was, or became higher, than the tracker interest rate of ECB + 0.95% as contained in the **Offer of Advance** dated **11 June 2004**. However, this did not occur as the Complainants redeemed their mortgage loan prior to the expiry of the fixed rate term and therefore suffered no financial loss and so were not offered any redress or compensation by the Provider. I am of the view that the payment of €600.00 made by the Provider to assist with the cost of independent professional advice was reasonable given the circumstances of this matter.

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For the reasons set out in this Decision, 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**

21 December 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.