



<b><u>Decision Ref:</u></b>	2021-0161
<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**

This complaint relates to one of the mortgage loan accounts held by the Complainant with the Provider. The mortgage loan that is the subject of this complaint was secured on the Complainant's principal private residence.

The loan amount was £190,000 and the term of the loan was 20 years. The particulars of the Offer of Mortgage Loan dated **20 February 2002** detailed that the applicable interest rate was *"4.99% Fixed, for 3 years after which the rate will revert to the Bank's Variable Interest Rate, unless borrower(s) avail(s) of another interest rate option then on offer by the Bank."*

**The Complainant's Case**

In **March 2002**, the Complainant submits he drew down his mortgage with the Provider secured against his primary residence. He submits that at that time he was advised by the Provider *"that the best approach was to split the mortgage into a fixed and variable element"*. The Complainant therefore drew down the mortgage as follows:

- Mortgage loan account ending **1991** was drawn down in the sum of €127,000.00 on a 3-year fixed interest rate of 4.99%

- Mortgage loan account ending **1801** was drawn down in the sum of €63,461.00 on a standard variable interest rate of 4.25%.

The Complainant submits that in **2005**, after meeting with a branch manager of the Provider, he *“advised [the Provider] to move my mortgage to the tracker product”*. He details that following this instruction, the mortgage loan account ending **1801** was moved from the variable rate to the tracker interest rate.

The Complainant submits however that when the fixed rate period on the mortgage account ending **1991** expired in **March 2008**, a variable interest rate was applied. He states that *“I had a reasonable expectation that the tracker rate would apply to this when I came off fixed rate.”* He further submits that he *“did not receive any communication from [the Provider] on this decision, and once it came to my attention I made a complaint on this”*.

He further submits that the Provider has *“indicated that they had sent out a letter to me stating that I could move to a tracker mortgage ... I did not receive such a letter.”* In this regard the Complainant states that the Provider previously acknowledged in **2015** that it had the incorrect address for the Complainant on its system.

The Complainant states *“I asked that both elements of my mortgage be moved to the tracker rate, but I was told that the tracker product was no longer available for new business, and therefore [the Provider] would not change this.”* He submits that he was *“already availing of the tracker rate”* on part of the mortgage and therefore he *“did not constitute new business”* in **2008**.

The Complainant submits he made several attempts to raise this with the Provider since **2008** including contacting the Provider’s call centre and during a meeting at a branch of the Provider in **2012**.

The Complainant is seeking to have a tracker interest rate applied *“retrospectively”* to mortgage loan account ending **1991** from **March 2008**.

### **The Provider’s Case**

The Provider submits that on **4 April 2001** the Complainant completed a mortgage loan application for an amount of £150,000 over a term of 20 years. It states that in the application the variable rate option was selected.

The Provider states that having considered the loan application, it issued a Letter of Offer dated **18 December 2001** for the loan amount of £150,000, which the Complainant accepted and signed in the presence of his solicitor on **11 January 2002**.

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The Provider submits that on **15 February 2002** it received a written request from the Complainant *"specifically requesting"* that his mortgage loan was split as follows; €63,461.00 (£50,000 approx.) at the *"variable rate of 4.25%"* and €127,000.00 (£100,000 approx.) for *"3 yrs fixed @4.99%"*.

The Provider states that it complied with the Complainant's request and instruction and issued two new Letters of Offer on **20 February 2002**; the first for €127,000 over 20 years on a 3 year fixed rate of 4.99% and the second for €63,461 over 20 years on a variable rate of 4.25%. The Provider details that there *"was no requirement by the Bank for either of these new Letters of Offer to be signed due to the Complainant signing the first Letter of Offer on 11 January 2002 and consequently sending in a written signed instruction to split his mortgage."*

The Provider states that the Complainant's mortgage loan account ending **1991** drew down on a 3-year fixed rate of 4.99%. It states that **Condition 3.2** of Part 4 of the Letter of Offer outlines that at the end of the fixed rate the Complainant would be offered a further fixed rate at the Provider's sole discretion, or a variable rate. The Provider submits that there *"was no entitlement to be provided with a tracker interest rate option and the provisions of the Letter of Offer are clear and transparent as to what was to occur at the end of any fixed rate period."*

The Provider states that the request and instruction to split the mortgage loans was expressly made by the Complainant. The Provider states that it *"does not advise its customers on which rates to choose, rather it provides information on all rates available and any decision on which rate to opt for rest solely with the customer."* The Provider details that all its mortgage products are *"widely publicised"* in its branches and on its website. The Provider submits that its advertised wording in relation to split mortgages detailed as follows:

*"The **Split Rate** option allows you to split your mortgage loan between Variable Rate and Fixed Rate, in whatever proportion you choose. This gives you peace of mind on part of your mortgage repayments while at the same time availing of the flexibility that a variable rate mortgage can provide".*

The Provider submits that a fixed rate rollover letter issued to the Complainant on **09 March 2005** outlining that the fixed rate on mortgage account ending **1991** would expire on **22 March 2005** and including a sample of the then current rates available to choose from. It states that the letter informed the Complainant that in the event the Complainant didn't reply with an instruction, then the mortgage account would switch to the Provider's standard variable rate.

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The Provider submits that on **18 March 2005** it received a signed request from the Complainant requesting the 3-year fixed rate of 4.25%. It states that the Provider issued a letter to the Complainant confirming the application of this fixed rate on **24 March 2005**.

The Provider submits it received a letter from the Complainant on **09 September 2005** containing an independent valuation of the mortgage property and requesting that the applicable tracker interest rate of 2.95% (ECB + 0.95%) be applied to the mortgage loan account ending **1801**. It details that a letter issued to the Complainant on **23 September 2005** confirming a tracker interest rate of 2.95% was applied to mortgage loan account ending **1801**.

The Provider submits that its system note dated **27 September 2005** calculates the breakage cost of the fixed rate "contract" as €1,261.99 and its system note dated **27 February 2006** calculates the breakage cost at €564.08. It submits that it *"has no record or evidence of the Complainant requesting this fixed rate breakage cost calculation but generally these calculations are done on request from a customer who is enquiring what the cost would be to exit from their Fixed rate period."*

The Provider details that on **05 March 2008** a fixed rate rollover letter issued to the Complainant at his home address to inform him that his fixed rate on the mortgage loan account was expiring on **25 March 2008**. The Provider states that the letter included a sample of the current available rates to choose from, including tracker interest rates, and informed the Complainant that if the Provider did not receive an instruction then his mortgage loan account would convert to the Provider's standard variable rate. The Provider states that in the absence of a response from the Complainant, his mortgage account ending **1991** converted to the standard variable rate of 5.25% on **27 March 2008**.

The Provider states that tracker interest rates were available for consideration by new and existing customers from **late 2002 to late 2008**. It states that it has *"no written evidence of the Complainant requesting a Tracker interest rate, nor any evidence of the Complainant being denied a Tracker interest rate on this Mortgage Loan Account ending 1991."*

The Provider states that it *"holds no record of any meetings and/or discussions held between the Bank and Complainant in 2008"*.

The Provider asserts that *"the Complainant's Mortgage Loan Account ending 1991 was never on a Tracker interest rate and there was no contractual entitlement to a Tracker interest rate as per the signed and accepted Letter of Offer dated 18 December 2001."*

The Provider states it “*complied with all signed requests*” from the Complainant and his “*accounts operated at all times in line with the General Terms and Conditions of the Letter of Offer.*”

The Provider states that at all times the Complainant’s address “*was completely correct in letters issued to him, apart from the Mortgage Loan Statements which bore the address as stipulated in the Letter of Offer. For the avoidance of all doubt, the Fixed Rate Roll Over letter which provided a sample of rates, was issued to the correct address as evidenced in the copy retained on the Bank’s file*”.

### **The Complaints for Adjudication**

The complaints for adjudication are;

- (a) The Provider failed to apply a tracker interest rate to the mortgage loan account ending **1991** despite being requested to do so by the Complainant in or around **2005**; and
- (b) The Provider failed to offer the Complainant a tracker interest rate on mortgage loan account ending **1991** on the expiry of the fixed rate period in or around **March 2008**.

### **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 Complainant was given the opportunity to see the Provider’s response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

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

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

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A Preliminary Decision was issued to the parties on 28 April 2021 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.

In order to determine this complaint, it is necessary to review and set out the relevant provisions of the Complainant's loan documentation. It is also relevant to set out the details of certain interactions between the Provider and the Complainant between **2005** and **2008**.

I note that a **mortgage application** was signed by the Complainant on **4 April 2001** which states that the "*Loan now requested*" was £150,000 and the "*Loan term required*" was 20 years. In response to "*Details of the property to be mortgaged*" the Complainant has written "*not yet built*".

The **Letter of Offer of Mortgage Loan** dated **18 December 2001** details as follows;

**"IMPORTANT INFORMATION AS AT 18 December 2001**

- |                                    |                      |
|------------------------------------|----------------------|
| 1. Amount of Credit Advanced       | £150,000.00          |
| 2. Period of Agreement             | 20 years/240 months. |
| 3. Number of Repayment Instalments | 240                  |

...

**LEGAL ADVICE SHOULD BE TAKEN BEFORE THIS DOCUMENT IS SIGNED."**

**Part 1 - Particulars of Offer of Mortgage Loan** details as follows:

<i>"Offer Date</i>	<i>18 December 2001</i>
...	
<i>Mortgage Loan Amount</i>	<i>£150,000.00</i>
<i>Loan Term</i>	<i>20 years/240 months.</i>
<i>Loan Type</i>	<i>Annuity</i>
<i>Applicable Interest Rate (at Offer Date)</i>	<i>4.25% varying – includes margin of 0.00% over Standard Home Mortgage Variable rate. APR 4.3568%"</i>

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The relevant sections of the **General Terms and Conditions** attaching to the Letter of Mortgage Loan detail as follows;

**“3.0 INTEREST RATES**

**3.1 RATE NOT GUARANTEED TO DRAWDOWN**

*The Applicable Interest Rate specified in the Particulars is the prevailing interest rate at the date of this Offer.*

*Due to fluctuations in interest rates the Bank does not warrant or guarantee that the rate so specified (including a fixed rate if not drawn down within 45 days of date of Offer) will apply on drawdown. In respect of an Offer at fixed interest rate, if a different fixed interest rate prevails at drawdown the customer may accept thus rate or opt for the variable rate prevailing at that time.*

**3.2 FURTHER FIXED INTEREST RATE OPTIONS/CHOICE**

*The Bank in its sole discretion, at the end of any fixed interest rate period, may provide any further fixed interest rate period, but if it elects not to do so or the Bank offers the customer a fixed interest rate choice at the end of any fixed interest rate period and the customer fails to exercise this choice then the mortgage loan will convert to a variable interest rate mortgage loan.*

**3.3 FIXED INTEREST RATE BREAKAGE COSTS PAYABLE BY CUSTOMER**

*The customer will be entitled, subject to prior advice to the Bank, to withdraw from a fixed interest rate agreement either:*

- a) By repayment in full of the mortgage loan and interest accrued on the date of repayment or*
- b) by conversion to a variable interest rate or another fixed interest rate, or*
- c) by making a partial out-of-course payment.*

*In any if the foregoing events, subject to the provisions of Section 121(2) of the Consumer Credit Act, 1995, a redemption fee (breakage costs) is usually payable to the Bank in addition to an administration fee. The breakage costs shall be fairly and conclusively determined by the Bank on the basis of the formula contained in Part 5.*

**3.4 FIXED INTEREST RATE MORTGAGE LOAN**

*In the case of a fixed interest rate mortgage loan, the interest rate is fixed for the period of time stated in the Particulars, subject to these conditions.*

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3.5 VARIABLE INTEREST RATE MORTGAGE LOAN

*In the case of a variable interest rate mortgage loan the interest rate applicable, at any time, will vary according to the prevailing rates set generally by the Bank from time to time, subject to these conditions."*

**Part 5 - Statutory Notices and Other Notices details:**

**"WARNING**

...

**"THE PAYMENT RATES ON THIS HOUSING LOAN MAY BE ADJUSTED BY THE LENDER FROM TIME TO TIME."**

*Note: The above notice in respect of adjustments to payment rates will not apply during any period when the mortgage loan is at a fixed interest rate.*

..."

I note that **Part 7 - Acceptance and Consents** was signed by the Complainant and witnessed by his solicitor on **11 January 2002** on the following terms:

*"I/We accept the conditions of this Offer and agree to mortgage the property to the Bank as Security for the mortgage loan.*

...

*I/We hereby irrevocably authorise and direct my/our Solicitor to give the undertaking referred to in the Pre-Drawdown Requirements (Part 3(b)) of this offer."*

It is clear to me that this **Letter of Mortgage Loan** envisaged a variable interest rate of 4.25%. The loan offer clearly sets out the nature of the variable rate to be one which may be increased or decreased by the Provider at any time. I note that the particulars of the **Letter of Mortgage Loan** were accepted by the Complainant by signing the **Acceptance and Consents** on **11 January 2002**.

The Complainant subsequently wrote to the Provider by letter dated **15 February 2002** as follows:

*"I wish to avail of the following interest rate options on the above Home Mortgage:*

*€127,000 for 3 yrs fixed @ 4.99% and  
€63,461 on the variable rate of 4.25%"*

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I note that two Letters of Offer of Mortgage Loan dated **20 February 2002** were issued to the Complainant.

The first Letter of Offer of Mortgage Loan relating to mortgage loan account ending **1991** details as follows:

**“IMPORTANT INFORMATION AS AT 20 February 2002**

- |                                    |                      |
|------------------------------------|----------------------|
| 1. Amount of Credit Advanced       | €127,000.00          |
| 2. Period of Agreement             | 20 years/240 months. |
| 3. Number of Repayment Instalments | 240                  |

...

**LEGAL ADVICE SHOULD BE TAKEN BEFORE THIS OFFER IS SIGNED.”**

The **Part 1 – Particulars of Offer of Mortgage Loan** details as follows:

“Offer Date	20 February 2002
...	
Mortgage Loan Amount	€127,000.00
Loan Term	20 years/240 months
Loan Type	Annuity
Applicable Interest Rate (at Offer Date)	4.99% Fixed, for 3 years after which the rate will revert to the Bank’s Variable Interest Rate, unless borrower(s) avail(s) of another interest rate option then on offer by the Bank. (Rates include margin of 0.00%). Apr 4.6158%
Amount of Monthly payment instalment (at Offer Date)	€836.08
...”	

The **Part 2 - Special Conditions** outline:

“...  
This Letter of Offer supersedes all previous Home Plan Offers made to the above borrowers.”

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It is clear to me that this **Letter of Mortgage Loan** envisaged a fixed interest rate of 4.99% with the option of a further fixed rate thereafter at the sole discretion of the Provider or a variable interest rate. The loan offer clearly sets out the nature of the variable rate to be one which may be increased or decreased by the Provider at any time.

The second Letter of Offer of Mortgage Loan relating to mortgage loan account ending **1801** details as follows;

**"IMPORTANT INFORMATION AS AT 20 February 2002**

- |                                    |                      |
|------------------------------------|----------------------|
| 1. Amount of Credit Advanced       | €63,461.00           |
| 2. Period of Agreement             | 20 years/240 months. |
| 3. Number of Repayment Instalments | 240                  |

...

**LEGAL ADVICE SHOULD BE TAKEN BEFORE THIS DOCUMENT IS SIGNED."**

The **Part 1 – Particulars of Offer of Mortgage Loan** details as follows:

- |  |   |
|--|---|
| "Offer Date  | 20 February 2002  |
| ...  |   |
| Mortgage Loan Amount                                 | €63,461.00  |
| Loan Term  | 20 years/240 months   |
| Loan Type  | Annuity   |
| Applicable Interest Rate (at Offer Date)             | 4.25% varying – includes margin of 0.00% over Standard Home Mortgage Variable rate. APR 4.3277% |
| Amount of Monthly payment instalment (at Offer Date) | €392.50   |
| ..."   |   |

The **Part 2 – Special Conditions** detail:

"...  
This Letter of Offer supersedes all previous Home Plan Offers made to the above borrowers."

/Cont'd...

It is clear to me that this **Letter of Mortgage Loan** envisaged a variable interest rate of 4.25%. The loan offer clearly sets out the nature of the variable rate to be one which may be increased or decreased by the Provider at any time.

I understand that tracker interest rate products were not available from the Provider in **2001** when the Complainant applied for the mortgage loan as such products only became available for selection from the Provider in **late 2002**. Therefore, I accept that the Provider was not in a position to offer the Complainant a tracker interest rate option during the mortgage loan application process in **2001/2002** because such rates had not been introduced at that time.

I note that the two Letters of Mortgage Loan dated **20 February 2002** were not signed or accepted by the Complainant. The Provider has submitted that *“There was no requirement by the Bank for either of these new Letters of Offer to be signed due to the Complainant signing the first Letter of Offer on 11 January 2002 and consequently sending in a written signed instruction to split his mortgage.”* The particulars of the **Letter of Mortgage Loan** dated **18 December 2001** were accepted by the Complainant by signing the **Acceptance and Consents** on **11 January 2002**.

In any event it does not appear to be disputed between the parties that the Complainant’s mortgage loan accounts were drawn down pursuant to the terms of the Letters of Loan Offer dated **20 February 2002**.

The **mortgage loan statement** provided in evidence shows that the mortgage loan account ending **1991** which is the subject of this complaint, was drawn down on **21 March 2002** on a fixed interest rate of 4.99%.

I note that the Provider wrote to the Complainant by letter dated **22 March 2002** and detailed as follows:

“...  
Home Mortgage Account Number: [ending 1991]  
Loan Amount: €127,000.00

*I refer to your above Home Mortgage and confirm that this has been drawn down in full. The details of the Mortgage are as follows:-*

**-Term is 20 years/240 months; Final Payment due on 21/03/2022.**  
**-Interest rate. 3 Year Fixed New, to 22/03/2005, is 4.99% (APR 4.6156%) including interest adjustment at 0.00%**

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- Monthly repayments, based on the above interest rate, of €836.35 commence on 21/04/2002, and are fixed for the fixed interest period.**
- Interest charge (estimated) to 31<sup>st</sup> December 2002 is €4,607.18**
- An additional interest charge, dependent on the level of rates at the time, may arise in the event you prepay/opt-out of the fixed interest rate arrangement (see example over page)**

*Interest, calculated on the daily outstanding balance of your loan, is debited to your mortgage quarterly, in arrears, on about 15<sup>th</sup> March, June, September and December. Your account statement and interest certificate for the tax year to the 31<sup>st</sup> of December will be furnished to you in January of each year.*

*You will be advised of your interest rate options before 22/03/2005 and interest instruction will be required prior to that date.”*

The Provider also issued a letter to the Complainant dated **22 March 2002** in respect of mortgage loan account ending **1801** which detailed as follows:

“...

*Home Mortgage Account Number: [ending 1801]*

*Loan Amount: €63,461.00*

*I refer to your above Home Mortgage and advise that a cheque for €63,461.00 in respect of full/final payment has been debited to your account today (total now drawn €63,461.00) the details of which are:-*

- Term is 20 years/240 months; Final Payment due on 21/03/2022.**
- Interest rate, Variable Rate, is 4.25% (APR 4.3276%) including interest adjustment of 0.00%**
- Monthly repayments, based on the above interest rate, of €392.61 commence on 21/04/2002.**
- Interest charge (estimated) to 31<sup>st</sup> December 2002 is €1,960.28**

*A variable interest rate moves in line with the general movement of interest rates and changes will be published in the daily press and on notices in Branches. Your repayments will be adjusted in line with these changes. Interest, calculated on the daily outstanding balance of your loan, is debited to your mortgage quarterly, in arrears, on/about 15<sup>th</sup> March, June, September and December. Your account statement and interest certificate for the tax year to the 31<sup>st</sup> of December will be furnished to you in January.*

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*You may fix your interest rate and repayment at any time during the life-time of your loan subject to a fee of €63. Details will always be available from your Branch. You may also fix the amount of your repayment, without charge, subject to review on an annual basis, without fixing the interest rate.”*

I note that the Complainant’s solicitor wrote to the Provider on **20 March 2002**, as follows;

*“Further to the above, we confirm that [Complainant’s postal address].... and [address on Letter of Mortgage Loan] .... are one and the same property.*

*We trust this is satisfactory.”*

The Provider issued a letter to the Complainant dated **09 March 2005**, at the Complainant’s postal address referred to in the Complainant’s solicitor’s letter of **20 March 2002**. The letter detailed as follows;

*“Property: [address on Letters of Mortgage Loan]  
Home Mortgage Account Number: [ending 1991]*

*Dear [Complainant]*

*The fixed rate period on your above home mortgage expires on 22/03/2005 and I should be obliged for your further instructions as to the rate you wish to avail of from that date. In the absence of any reply the Bank’s standard Variable rate (plus the existing agreed adjustment of 0.00%) will be applied but may subsequently be revised at your request to any fixed rate option available in the future. The payments quoted below do not include any PPP cover which you may have taken out upon drawdown of the mortgage.*

*Here is a sample of the rates currently on offer from [the Provider]. To avail of a fixed rate please complete the attached tar-off section below and return it to this Department immediately. Please note that the rates quoted are valid as of to-days date, and are subject to variation prior to the rollover date above.*

<u>RATE</u>	<u>%</u>	<u>APR</u>	<u>REPAYMENT</u>
Variable Rate	3.300	3.3480	735.67
1 Year Fixed	3.300	3.3480	735.67
3 Year Fixed	4.250	3.6840	790.56
5 Year Fixed	4.750	4.1450	820.33
10 Year Fixed	5.400	5.2080	859.92

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...”

Having considered the evidence before me, including the mortgage loan documentation, it is my view that the Complainant did not have a contractual entitlement to a tracker interest rate at the end of the fixed rate period which applied to the mortgage account ending **1901** until **March 2005**.

I note that the Complainant wrote to the Provider on **18 March 2005**, from his postal address. The letter detailed as follows:

“...

*With reference to my home mortgage account no. [ending] 1991 I wish to apply for the three year fixed rate of 4.25%.*

*Please apply this rate from 22/3/2005.*

*Please ensure that the above address is on your records for both my home mortgage accounts. Number [ending] 1801 and [ending] 1991.*

...”

The Provider issued a letter to the Complainant dated **24 March 2005** at his postal address, detailing as follows;

“...

*Property: [address on Letters of Mortgage Loan]  
Home Mortgage Account Number: [ending] **1991***

*With reference to your recent request, I confirm that a fixed interest rate of 4.25% (including the existing adjustment of 0.00%) will apply to your home loan from 24 March 2005 for **a period of 3 years**. The Monthly repayment for the period of the fixed interest rate will be €792.01 and will be revised on its expiry in accordance with the rate then applicable.*

*You will be entitled, with the Bank’s prior consent, to withdraw from the fixed rate agreement either by repayment in full of the Home Mortgage and interest accrued to the date of repayment or by conversion to the variable interest rate then prevailing. In either of the foregoing events, or in the event of your wishing to make a partial out-of-course payment, **a prepayment/conversion premium may be payable to the Bank sufficient to compensate the Bank for the cost of replacement; in addition an administration fee of €63.***

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*The premium will be computed on the sum of the balance outstanding as at the date of repayment/conversion and interest accrued to that date or in the event of a partial repayment by the reference to the amount paid."*

The Complainant wrote to the Provider by letter dated **09 September 2005** and detailed as follows:

*"...*

*Please find enclosed an updated property valuation from [redacted] auctioneers, which values my property at [Complainant's postal address] at €315,000.*

*As discussed when we last met, the outstanding mortgage loan now represents less than 60% of this property value.*

*I would be very interesting in now moving the variable part of my mortgage to the reduced tracker rate.*

*Please give me a call i[f] there is any further information required."*

The Provider wrote to the Complainant on **23 September 2005** as follows;

*"...*

*Property: [address on Letters of Mortgage Loan]  
Home Mortgage Account Number: [ending] **1801**  
Balance: €55,335.58*

*I refer to the above Home Loan account.*

*I confirm I have amended the interest rate applying to your loan to the tracker rate of 2.95% (incl. 0.95% margin over ECB rate). Your revised repayment is €353.38. Your next repayment is due on 21/10/2005. Your loan is due to expire on 21/03/2033.*

*I trust the above is to your satisfaction. Please do not hesitate to contact your branch, or this office, should you have any queries."*

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The Provider's internal system note dated **27 September 2005** furnished in evidence outlines a Breakage Cost of €1,261.99 in respect of the fixed interest rate then applying to mortgage loan account ending **1991**.

A further letter issued from the Provider to the Complainant dated **08 October 2005**, which detailed:

*"Property: [address on Letters of Mortgage Loan]  
Home Mortgage Account Number: [ending] **1801**  
Balance: €55,335.58*

*I refer to the above home loan and the letter you received dated the 23/09/2005. I apologise for the typing error that occurred in this letter.*

*I confirm that the expiry date of this loan is the 21/03/2022. Your next repayment of €353.38 is due on the 21/10/2005.*

*I trust the above is to your satisfaction. Please feel free to contact your local branch or this office should you have any queries."*

Based on the evidence before me, it is clear to me that the Complainant's request for the tracker interest rate related to the portion of his mortgage loan that was on the variable rate (account ending **1801**). I note that the Provider acceded to the Complainant's request and applied a tracker interest rate of 2.95 (ECB + 0.95%) to the mortgage account ending **1801**. The mortgage loan account ending **1991** remained on the fixed interest rate of 4.25% at that time.

The Provider's system note dated **27 February 2006** outlines a Breakage Cost of €564.08 in respect of the fixed interest rate then applying to mortgage loan account ending **1991**. The Provider states that it *"has no record or evidence of the Complainant requesting this fixed rate breakage cost calculation but generally these calculations are done on the request from a customer who is enquiring what the cost would be to exit early from their Fixed rate period."*

If the Complainant wanted to pursue the option of applying a tracker interest rate to the mortgage loan account ending **1991** he could have contacted the Provider to request this as he had done for the mortgage loan account ending **1881**. It would then have been a matter of commercial discretion for the Provider as to whether it wished to accede to any such request made by the Complainant to apply a tracker interest rate to the mortgage loan account ending **1991**.

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It was entirely within the Provider's rights not to accede to that request, if it was made. However, no evidence has been provided to me which shows that the Complainant requested that a tracker interest rate be applied to the mortgage loan account ending **1991** either in **September 2005, February 2006** or at any other time.

The Provider issued correspondence to the Complainant at his postal address, on **05 March 2008** detailing as follows;

"...

*Property: [address on Letters of Mortgage Loan]  
Mortgage Loan Account Number: [ending 1991]*

*The fixed rate period on your above mortgage loan expires on 25/03/2008 and I should be obliged for your further instructions as to the rate you wish to avail of from that date. In the absence of any reply [the Provider's] current standard Variable rate (plus the existing agreed adjustment of 0.00%) will be applied but may subsequently be revised at your request to any fixed rate option available in the future. The payments quoted below do not include and PPP cover which may have taken out upon draw down of the mortgage loan.*

*Here is a sample of the rates currently on offer from [the Provider]. To avail of a fixed rate please complete the attached tear-off section below and return it to [the Provider] at the above address, immediately. **Please note that the rates quoted are valid as of to-days date, and are subject to variation prior to rollover date above.***

<u>RATE</u>	<u>%</u>	<u>APR</u>	<u>REPAYMENT</u>
TrackerHome LTV <=50%	4.600	4.6870	809.56
TrackerHome LTV >=50% & <+80%	4.750	4.8410	817.14
TrackerHome LTV >=80% Ln <500k	5.100	5.2000	834.97
TrackerHome LTV >=80% Ln >=500k	4.900	4.9950	824.75
Variable Rate	5.250	5.3550	842.68
1 Year Fixed	5.200	5.3470	840.10
3 Year Fixed	4.850	5.1840	822.21
5 Year Fixed	5.120	5.2720	835.99
10 Year Fixed	5.300	5.4030	845.25

/Cont'd...

Important Information

*LTV means, "Loan to Value" i.e the loan amount as a percentage of the value of the property. BTL means, "Buy to Let". To avail of the "Tracker<60% LTV" rate, an up-to-date valuation report must be provided to the Bank."*

It does not appear from the evidence that the Complainant signed or returned the options form selecting an interest rate from the options provided and as such the Complainant's mortgage loan defaulted to the standard variable rate of 5.25% on **27 March 2008**. The Complainant was informed in the letter dated **5 March 2008**, that the mortgage loan account ending **1991** would default to the standard variable rate if the Complainant did not select an alternative rate.

Having considered the evidence before me, including the mortgage loan documentation, it is my view that the Complainant did not have a contractual entitlement to a tracker interest rate at the end of the fixed rate period in **March 2008**. It appears that the Provider, in line with its own commercial discretion and policy at the time, offered the Complainant tracker interest rate options in **March 2008**. The rate options letter clearly outlined that the options set out were the rates "*currently on offer*". It is important for the Complainant to understand that while tracker rate options may have been available as a product option from the Provider at the time, the Complainant was not contractually entitled to be offered a tracker interest rate.

I note that the Complainant contacted the Provider by email on **20 November 2015** and stated as follows:

*"...*

*As discussed earlier today I have an ongoing issue in relation to the particulars of my home mortgage.*

*I purchased a property in 2002 from plans, and if I recall the site number on the plan was [house number redacted]. To clarify, I only own 1 property [Complainant's postal address], and it is both my family home, and I operate a registered limited company from this address also [named company].*

*All my personal bank accounts, car loans, credit cards, and corporate accounts are registered to [Complainant's postal address].*

/Cont'd...

*As I receive the certificate of Interest annually, I didn't really notice that the property has the address of [address on Letters of Mortgage Loan] rather than the correct address of [Complainant's postal address]. I assume this is also on the contracts, but I don't have a copy available to review.*

*The postman also, it appears, kindly redirected the letters, so I did receive all correspondence.*

*I recall on a number of occasions in the past ringing the Home Mortgage department to ask them to correct this, but it appears that they only corrected the correspondence address. As the mortgage has only 5 years left, I am increasingly concerned of any legal complication to this difference of address.*

*On 5th November I rang the home mortgages department again and asked them why they won't correct this error, and also what are there any legal implications in relation to this. I was assured I would receive a reply to this from the accounts team.*

*Today (20<sup>th</sup> Nov) I rang in again to the home mortgages department to ask why I didn't receive a reply, and it appears that this issue wasn't progressed, and again no-one could tell me why.*

*I was offered the option to again make the request.*

*At this point I became quite frustrated, as it appears [the Provider] have been just systematically ignoring these requests.*

*I spoke with a supervisor, [redacted], but he seemed unable to progress the issues, and said that he could raise the issue again with the accounts team, but again had no explanation as to why [the Provider] have systematically ignored any reasonable requests on this matter.*

*When I asked if i could speak to someone in the accounts team he said that this was impossible, as they don't take calls from customers. He also refused to provide the contract details of anyone in a governance role over this business function.*

*I asked how long could I expect to wait if he escalates this to the team, and he said up to 10 days. Given that i raised it over 15 days ago, i feel this should be addressed immediately, but he again he could only say it could take up to 10 days.*

/Cont'd...

*He did offer the option of making a complaint, but the SLA on that was 20 days, which is even worse.*

*I have made many reasonable requests over a number of years to bring this to the attention of [the Provider].*

*The refusal so far of [the Provider] to respond is worrying, and the fact that the people who have the responsibility to address this issue, do not take calls from customers is baffling.*

*I have 2 Mortgage loans associated with this property, and over the period of 14 years, I have never missed a payment.*

*If this issue is not addressed by the Accounts team in Home mortgage early next week, I will cease all future payments to these loan accounts.*

*I hope you understand that this is the only sensible thing I can do, as paying into a loan where the information about the actual asset (ie the house) is in some dispute is reckless.*

*..."*

The Provider sent the Complainant a Final Response letter on **22 December 2015** which detailed:

*"I can confirm I am amending the property address to the correct address of [Complainant's postal address]. I am also ensuring that the security records attached to the account are correct and all references match this address. I apologise for any confusion or uncertainty caused.*

*In 2002 when the solicitor informed us that the two property addresses were one and the same, the property address should have been amended and I again apologise that this was not done. I hope these actions and clarifications meet your satisfaction.*

*..."*

The Provider sent a further letter to the Complainant on **27 January 2016** which detailed as follows:

*"...*

/Cont'd...

*Please find attached a comfort letter as discussed and requested, to clarify and remove your concerns regarding the address of the property attached to your mortgage.*

*..."*

The Complainant followed up with an email on **12 April 2016** detailing as follows;

*"I refer to my recent complaint, and a failure of [the Provider] to correct address of the property on my Mortgage account.*

*I note your reply from the 7<sup>th</sup> January, which details that [the Provider] have now corrected the mistake, after 15 years.*

*However your reply makes no reference to the systemic refusal of [the Provider] to correct this error over many years, despite the fact that I highlighted it several times, on many different occasions.*

*...*

*From my reading of your letter, you have only addressed one aspect of this complaint, but you have not addressed it in its entirety. Therefore i consider that the complaint has not been fully addressed and i would ask [the Provider] to do so.*

*Finally, I had asked on a call with you, as a gesture of goodwill in this case, if [the Provider] could waive the requirement to have my house again valued in order to move the 2<sup>nd</sup> part of my mortgage to the LTV rate that is used for the other part of the mortgage.*

*I would ask that this is again done, as i had already done this for the 1st mortgage, and the cost to value my property again, would offset any saving i would get from the lower LTV rate."*

The Provider wrote to the Complainant on **31 May 2016** as follows:

*"...*

*I recognize your frustration experienced in attempting to get your address corrected with this department and I apologise that you did encounter such issues to getting the address rectified. As per previous response I can confirm that the address on our systems has been corrected and I hope the letter of comfort provided for your legal advisors has met your needs.*

/Cont'd...

*I regret that no return contact was made to your calls or that you weren't directly spoken to by a supervisor on the occasions that you phoned. I recognize this as an unacceptable level of customer service and I am sorry that you encountered this in your dealings with our Call Centre.*

*In light of the above and as a gesture of goodwill, [the Provider] would like to pay for the valuation you have mentioned if you would be so kind to forward a copy of the invoice, we will recompense your funding account for that amount."*

The above letters do not form part of the substantive complaint for adjudication, however, I consider it important to address those letters in light of the Complainant's submission that he did not receive the Provider's letter of **5 March 2008** in which the Provider stated "that [the Complainant] could move to a tracker mortgage". In circumstances where it appears that the Provider was using the correct address to issue correspondence to the Complainant since **2005**, there does not appear to be any reason why the Complainant would not have received the Provider's letter of **5 March 2008**. I note in this regard that the Provider's letter of **9 March 2005** to the same postal address, was received and responded to by the Complainant.

I note that the Complainant has submitted that his mortgage loan account ending **1801** was transferred to a tracker interest rate at his request in **2005**. It is important for the Complainant to understand that each mortgage loan is governed by the terms and conditions applicable to that particular mortgage loan. The fact that both of the Complainant's mortgage loans were secured on the same property does not entitle the Complainant to the same interest rates on both accounts.

Furthermore the fact that tracker interest rates were offered as a matter of policy on the Complainant's mortgage loan account ending **1801** does not entitle the Complainant to avail of that offering on the mortgage loan account ending **1991**.

Having considered the documentation furnished in evidence to this office, it is clear that the Complainant did not have any contractual or other entitlement to switch to the tracker rate at the end of the fixed rate period in **March 2008**, and the mortgage loan account ending **1991** defaulted to the standard variable rate at that time in accordance with the terms of the loan.

For the reasons set out in this Decision, I do not uphold this 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**

20 May 2021

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.**