



<b><u>Decision Ref:</u></b>	2021-0221
<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 two mortgage loan accounts held by the Complainants with the Provider. The two mortgage loan accounts held by the Complainants with the Provider are detailed below;

- Mortgage loan account ending **6093** was drawn down in **July 2005** in the amount of €268,870 for a term of 35 years on a standard variable rate of 3.3%. This mortgage loan account was secured on the Complainants' private dwelling house. It is this mortgage loan account that is the subject of this complaint. Mortgage loan account ending **6093** was redeemed on **31 July 2018**.
- Mortgage loan account ending **6176** is a top-up loan which was drawn down in **2007** in the amount of €35,000 for a term of 20 years. This mortgage loan account was also secured on the Complainants' private dwelling house. The Loan Offer Letter dated **9 August 2007** provided for 1-year discounted tracker interest rate of 4.6% (ECB + 0.6%), with a tracker interest rate of 5.1% (ECB + 1.1%) to apply thereafter. This mortgage loan account is not the subject of this complaint.

### **The Complainants' Case**

The Complainants maintain that the “[l]oan documentation for [their] home mortgage letter of offer outlines that the tracker rate is an option on drawdown”. The Complainants submit that they, together with the Provider “signed up to and entered into this agreement with this option in place”. The Complainants further submit that the Provider “stopped offering tracker rates in [late] 2008” however they “would like to have the tracker rate option as per the original loan documentation / agreement”.

The First Complainant contends that he “wrote to [the Provider] in quarter 1 of 2015 requesting that a tracker rate be applied to [his] mortgage account”. The First Complainant details that the Provider indicated that this was not possible as the tracker rate product was no longer available. The First Complainant further contends that he “made numerous phone calls to [the Provider] over the first half of 2015 outlining that [his] original loan documentation had outlined that this product was available to [him] on signing the mortgage loan documentation”. However, the Complainants state that despite these numerous telephone calls, the Provider insisted that they were not entitled to have a tracker interest rate applied to their mortgage loan account ending **6093**.

The Complainants maintain that at the time their mortgage loan was drawn down, they “had been offered three interest rate products”. The Complainants contend that a tracker interest rate product offering “was openly discussed and sold as a product on offer as part of the pre-drawdown of the 35-year mortgage”. The First Complainant states that “[a] number of years post [his] mortgage drawdown (duration of 35 years), 1 of the 3 interest rate products, in [this] case the tracker rate, was withdrawn and no longer available to [him]”. The First Complainant contends that he “signed up to this and yet, approximately 12 years into [his] Mortgage Loan Account [ending 6093] [he is] unable to have the tracker rate as an option”. The Complainants state that they “don’t understand why the Mortgage Loan Account [ending 6093] has no entitlement to a tracker rate”.

The Complainants are seeking;

- a) The option of a tracker interest rate to be offered on mortgage loan account ending **6093**; and
- b) Redress and compensation in relation to same.

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

The Provider submits that, by way of background, there was ongoing communication between the Provider's branch and the Complainants from **January 2005** up to the issuance of a Loan Offer Letter dated **28 June 2005** which was signed by the Complainants on **6 July 2005** in the presence of their solicitor. Prior to that, the Provider states that Loan Offer Letters dated **09 February 2005, 22 February 2005, 26 May 2005** and **11 June 2005** were issued to the Complainants however none of these Loan Offer Letters were accepted by the Complainants.

The Provider explains that the Loan Offer Letter dated **28 June 2005** that issued to the Complainants provided for a 1-year fixed interest rate of 2.75%, "*reverting to the Bank's Variable Interest Rate*". The Provider states that the Loan Offer Letter dated **28 June 2005** was ultimately accepted by the Complainants on **06 July 2005** however "*the rate on the Loan Offer was amended from 1 year fixed interest rate of 2.75% to "Variable" and was initialled by both Complainants*". The Provider details that mortgage loan account ending **6093** was subsequently drawn down on **13 July 2005** on the Provider's standard variable rate of 3.3%. The Provider explains that the loan was drawn down in line with the "*amended*" Loan Offer Letter dated **28 June 2005**.

The Provider submits that tracker interest rates were available to applicants for new mortgage loans at the time of the issuing and acceptance of the Loan Offer Letter dated **28 June 2005** and continued to be available up until the Provider decided to withdraw tracker interest rates in **late 2008**. The Provider explains that it withdrew tracker interest rates for new mortgage customers and existing mortgage customers who wished to change from their current contractual interest rate to a tracker interest rate. The Provider further details that existing customers who had tracker mortgages at the time were not affected by the withdrawal of the tracker interest rate product.

The Provider states that "*the Complainants had a range of available interest rate options, which was publicly advertised, when they applied for Mortgage Loan Account ending 6093 in 2005*". The Provider further states that "*it was therefore the Complainants' decision as to which interest rate option they selected.*" The Provider details that the Complainants chose to avail of the Provider's standard variable interest rate of 3.3%.

The Provider confirms that it is "*satisfied that the General Terms and Conditions attaching to the Loan Offer for the Complainants' Mortgage Loan Account ending 6093 are sufficiently clear and transparent, as regards the Complainants' entitlements on their mortgage loan agreement*".

The Provider contends that “[a]t no point did the contract governing this Mortgage Loan Account ever make reference to an entitlement to Tracker interest rate” and mortgage loan account ending **6093** was “never on a Tracker interest rate.” In this regard, the Provider refers to **Part 1** of the **Particulars of Offer** as contained in the Loan Offer Letter dated **28 June 2005** and **Conditions 3.1 to 3.5** of **Part 4- General Terms and Conditions** which were signed and accepted by the Complainants in the presence of their solicitor.

The Provider details that **Condition 3.2** specifies the applicable interest rate option that would be applicable on the expiry of a fixed interest rate period and maintains that there “was never any indication or guarantee given by the Bank that a Tracker interest rate would be available at the end of a Fixed rate period.”

The Provider also asserts that the drawdown letter dated **13 July 2005** that issued to the Complainants “clearly outlined” the interest rate that applied to mortgage loan account ending **6093**. The Provider details that “there is no reference to a Tracker interest rate or any contractual entitlement to a Tracker interest rate within the drawdown confirmation letter”.

The Provider outlines that a number of instructions were received by the Complainants to amend the interest rate on mortgage loan account ending **6093** after the loan was drawn down. The Provider details as follows;

- **25 October 2007:** The Complainants requested to apply a 1-year fixed interest rate of 2.75% to their mortgage loan account. This request was acceded to and a 1-year fixed interest rate of 2.75% was applied as of **2 November 2005**.
- **18 November 2006:** Prior to the expiry of the 1-year fixed interest rate period, the Provider states that it issued a letter to the Complainants dated **9 November 2006** detailing “a sample of interest rate options available to the Complainants to choose from” on the expiry of the fixed interest rate period, to include a tracker rate of interest. The Provider received a fax from its branch on **21 November 2006** stating that the Complainants “wish to apply for the Interest Only variable rate” on their mortgage loan account as per their instructions dated **18 November 2006**. The Provider notes that this instruction was complied with and a letter dated **23 November 2006** issued to the Complainants “confirming that interest only had been applied for one year” on the Provider’s standard variable rate of 4.35%.
- **16 April 2008:** The Complainants requested to apply a 2-year fixed interest rate of 4.7% to their mortgage loan account. This request was acceded to and a 2-year fixed interest rate of 4.7% was applied as of **17 April 2008**.

- **5 December 2008:** The Complainants requested to amend the interest rate on mortgage loan account ending **6093** *“to the standard variable rate”* and noted that they were *“aware of breakage costs (if any)”*. The Provider notes that this instruction was complied with and a standard variable interest rate of 4.5% was applied to the mortgage loan account on **8 December 2008**.
- **16 February 2010:** The Provider states that *“following a request from the Complainants, a letter was issued to them, dated 18 February 2010, detailing a sample of interest rate options available at that time”* to include fixed and variable interest rates.
- **31 May 2010:** The Complainants requested to apply a 12-month interest only period to their mortgage loan account ending **6093**. The Provider states that it *“agreed to apply a 6 month interest only period, which was applied to Mortgage Loan Account ending 6093 on 17 June 2010”*.
- **21 July 2010:** The Complainants requested to apply a 1-year fixed interest rate of 3.09% to their mortgage loan account. The Provider submits that a *“1 year Fixed interest rate of 3.09% was applied to Mortgage Loan Account ending 6093 on 23 July 2010”*.
- **28 August 2010:** The Provider states that on **8 September 2010** its records show that a letter dated **28 August 2010** was received from the Complainants, which referred to a *“previous correspondence from Feb'10 sent to [the Provider] re applying a fixed rate of 2.8% for a two year period to their property”*. The Provider details that it has no record of receiving the correspondence from **February 2010** from the Complainants.
- **4 October 2010:** The Complainants completed an **Application Form for Reduced Repayments** seeking interest only repayments for 6 months. The Provider states that it approved this request and issued a letter to the Complainants dated **9 November 2010** to inform them that a 6-month interest only repayment period had been applied to their mortgage loan account.
- **9 February 2011:** The Complainants applied to break out of the then fixed interest rate period and convert to a 2-year fixed interest rate of 3.69% *“however this instruction was not signed by both parties”*. On **10 February 2011**, the Provider states that it received a further signed instruction from both Complainants dated **9 February 2011** seeking to apply a 1-year fixed interest rate of 3.59% to their mortgage loan account. The Provider states that it complied with this request and this was confirmed to the Complainants by letter dated **4 March 2011**.
- **15 March 2011:** The Complainants requested to apply a 3-year fixed interest rate of 3.89% to their mortgage loan account. The Provider submits that this request was complied with and a *“3 year Fixed interest rate of 3.89% was applied to Mortgage Loan Account ending 6093 on 28 March 2011”*.



- **27 June 2012:** The Complainants applied to amend the rate on their mortgage loan account from a *"fixed rate (3.89%) to variable rate (3.24%)"*. The Provider details that it acceded to the Complainants' instruction and applied a *"PDH LTV Variable >80% rate of 3.24%"* to the mortgage loan account on **3 July 2012**.
- **3 October 2012:** The Complainants requested to apply a 1-year fixed interest rate of 4.15% to their mortgage loan account. The Provider states that it acceded to the Complainants' request and applied the requested fixed rate on **4 October 2012**.
- **4 October 2013:** The Provider details that *"In line with Condition 3.2, the Bank wrote to the Complainants on 26th August 2013 to advise them that their fixed interest rate period was due to expire on 4 October 2013"*. The Provider explains that due to a change in interest rates, it issued a further **Notification of Fixed Rate Expiry Letter** dated **27 August 2013** stating that the Complainants would be advised of their interest rate options before **4 October 2013** and their instructions as to the preferred interest rate would be required prior to that date. The Provider states that in the absence of an instruction from the Complainants, the mortgage loan account converted to the Provider's standard variable rate of 4.4% on **4 October 2013**.
- **4 November 2014:** The Complainants requested to apply a 2-year fixed interest rate of 3.80% to their mortgage loan account. The Provider submits that *"a 2 year Fixed interest rate of 3.8% was applied to Mortgage Loan Account ending 6093 on 11 November 2014."*
- **20 March 2015:** The Complainants requested to apply *"a tracker mortgage, as per the loan document"*. The Provider details that it received this request on **16 April 2015** and did not reply to the Complainants until **19 May 2015** at which point it informed the Complainants that it was unable to action their request to break out of their current fixed rate and apply a tracker interest rate, as tracker interest rates were withdrawn by the Provider in **late 2008**.
- **7 May 2015:** The Complainants requested to apply a 1-year fixed interest rate of 3.50% to their mortgage loan account. The Provider details that the Complainants' instruction was complied with and a 1-year fixed interest rate of 3.5% was applied to their mortgage loan account on **11 May 2015**.
- **13 May 2016:** The Provider explains that a **Notification of Fixed Interest Rate Expiry Letter** was issued to the Complainants on **4 April 2016** advising them that the fixed interest rate period was due to expire on **11 May 2016**. The Provider states that this letter *"included a sample of interest rate options available to the Complainants"* and stated that in the absence of an instruction, the Provider's *"Standard Variable Rate of 3.65%"* would apply. In the absence of receiving an instruction from the Complainants, the Provider states that mortgage loan account ending **6093** converted to the Provider's standard variable rate of 3.65% on **11 May 2016**.

However, the Provider submits that while its records show that on **19 April 2016**, it received an instruction from the Complainants dated **16 April 2016**, to apply a 1-year fixed interest rate of 3.5% *“the instruction was not complied with until 13 May 2016”* after the previous fixed interest rate period came to an end.

- **20 May 2016:** The Complainants applied to convert the fixed interest rate of 3.5% to the current available variable interest rate. The Provider states that the Complainants' instruction was complied with and *“a PDH LTV Variable >80% rate of 3.75% was applied to Mortgage Loan Account ending 6093 on 26 May 2016”*.

The Provider submits that the Complainants redeemed their mortgage loan account in full on **31 July 2018**.

The Provider submits that the **Notification of Fixed Interest Rate Expiry Letter** that issued to the Complainants on **9 November 2006** informed the Complainants of the various interest rates available to them at that time to include a tracker rate of interest. The Provider explains that *“[w]hile Condition 3.2 in the Terms and Conditions attaching to the Complainants' Mortgage Loan Account ending 6093 does not give them a contractual right to be given a Tracker interest rate as an option to choose from, it was a rate available at that time (November 2006) and was included in the sample rates available to the Complainants, as an option to choose from.”* The Provider states that the Complainants *“could have opted for the Tracker interest rate at that time or at any time up until they were withdrawn by the Bank in October 2008.”*

The Provider details that it decided to withdraw tracker interest rates for new and existing customers not already on a tracker interest rate *“because they no longer made economic sense as any Tracker interest rate it would have made available would have been prohibitively expensive.”* The Provider submits therefore that when the Complainants requested a tracker interest rate to be applied to their mortgage loan account ending **6093** in **March 2015**, *“a Tracker interest rate was not an option available for the Complainants to choose, as the Tracker interest rate product had been withdrawn since [late] 2008”*.

### **The Complaint for Adjudication**

The complaint for adjudication is that the Provider incorrectly failed to offer the Complainants the option of a tracker interest rate on their mortgage loan account ending **6093** in **2015**.

## 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 do 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 are sufficient to enable a Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties on **19 May 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.

Following the issue of my Preliminary Decision, the First Complainant made a further submission by way of e-mail to this office on **19 May 2021**, a copy of which was exchanged with the Provider for its consideration.

The Provider confirmed by way of letter to this office dated **26 May 2021** that it had no further submission to make.

Having considered the Complainants' additional submission and all of the submissions and evidence furnished to this Office, 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 Complainants' loan documentation. It is also necessary to consider certain interactions between the Provider and the Complainants from **2005**, when the Complainants applied for mortgage loan account ending **6093**, up until the mortgage loan was redeemed by the Complainants in **2015**.

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The Complainants first approached the Provider in **January 2005** to apply for a mortgage loan in the sum of €303,500 over a 35-year term. An **Application Form** marked as “*printed 31 December 2004*” was signed by the Complainants on **8 January 2004**. I accept the Provider’s submission that this date “*would appear to be an oversight given that it was the start the New Year and it should have read 8 January 2005*”. The “*Details of Mortgage Requested*” section of the **Application Form** details as follows;

“

<i>Mortgage Amount (€)</i>	<i>Mortgage Type</i>	<i>Product/Interest Option</i>	<i>Term or Expiry Date</i>	<i>Repayment Frequency</i>
<i>30,500</i>	<i>Interest Only</i>	<i>1 Year Fixed New</i>	<i>35 Yrs 00 Mths</i>	<i>Monthly</i>

”

A “**Repayment Illustration as at 31<sup>st</sup> December 2004**” issued to the Complainants which details as follows;

“

<b>Product</b>	<b>Interest Rate</b>	<b>APR</b>	<b>Repayment Amount (€)</b>	<b>Cust Per 1,000 (€)</b>	<b>Repay Amt with PPP (€)</b>
<i>1 Year Fixed New</i>	<i>2.7500%</i>	<i>3.304%</i>	<i>1,125.32</i>	<i>3.71</i>	<i>1,178.77</i>
<i>Then Variable Rate</i>	<i>3.300%</i>		<i>1,215.93</i>	<i>4.01</i>	<i>1,273.69</i>

.....

**Other Product Options**

<i>Variable Rate</i>	<i>3.300%</i>	<i>3.342%</i>	<i>1,218.19</i>	<i>4.01</i>	<i>1,276.05</i>
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<i>Tracker Home Ln &gt; 250k</i>	<i>3.100%</i>	<i>3.138%</i>	<i>1,183.97</i>	<i>3.90</i>	<i>1,240.21</i>
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**NOTE: This information is provided for illustrative purposes only and is based on the accuracy of information provided. This information is valid as at today’s date only. It does not constitute an offer of a mortgage.” (my emphasis)**

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I note that a formal loan offer did not issue to the Complainants as they decided not to continue with the mortgage loan application at that stage.

A **Letter of Offer of Mortgage Loan** dated **9 February 2005**, submitted in evidence by the Provider, was issued to the Complainants offering a loan amount in the sum of €225,000 repayable over a term of 35 years on a “*Standard Home Mortgage Variable rate*” of 3.30%. I note that the Complainants decided not to accept this loan offer.

A further **Letter of Offer of Mortgage Loan** dated **22 February 2005**, submitted in evidence by the Provider, was issued to the Complainants offering a loan amount in the sum of €239,200 repayable over a term of 35 years on a “*Standard Home Mortgage Variable rate*” of 3.30%. I note that the Complainants decided not to accept this loan offer.

A further **Letter of Offer of Mortgage Loan** dated **26 May 2005**, submitted in evidence by the Provider, was issued to the Complainants offering a loan amount in the sum of €268,870 repayable over a term of 35 years on a “*Standard Home Mortgage Variable rate*” of 3.30%. I note that the Complainants decided not to accept this loan offer.

A further **Letter of Offer of Mortgage Loan** dated **11 June 2005**, submitted in evidence by the Provider, was issued to the Complainants offering a loan amount in the sum of €268,870 repayable over a term of 35 years on a 1-year fixed interest rate of 2.75% with the Provider's variable interest rate to apply thereafter. I note that the Complainants decided not to accept this loan offer.

A further **Letter of Offer of Mortgage Loan** dated **28 June 2005**, submitted in evidence by the Provider, was issued to the Complainants and their solicitor which details as follows;

**“PART 1**

**PARTICULARS OF OFFER OF THE MORTGAGE LOAN**

<i>Mortgage Loan Amount:</i>	<i>€268,870.00</i>
<i>Loan Term:</i>	<i>35 years/420 months</i>
<i>Loan Type:</i>	<i>Annuity</i>
<i>Application Interest Rate:</i>	<i>2.75% Fixed, for 1 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 3.304%</i>
<i>Amount of Monthly Repayment instalment (at Offer Date):</i>	<i>€997.01”</i>

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The **Special Conditions** attached to the **Letter of Offer of Mortgage Loan** detail as follows;

*"This Letter of Offer supersedes all previous [product name] Offers made to the borrowers".*

**Condition 3.2 of Part 4- General Terms and Conditions of Offer of Mortgage Loan**

attached to the **Letter of Offer of Mortgage Loan** outlines what is to happen at the end of any fixed interest rate period and reads as follows;

**"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".*

**Condition 3.5 of Part 4- General Terms and Conditions of Offer of Mortgage Loan**

attached to the **Letter of Offer of Mortgage Loan** outlines as follows in relation to variable interest rates;

**"3.5 VARIABLE INTEREST RATE MORTGAGE LOAN**

*In the case of a variable interest rate Mortgage Loan the interest 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 Notice and Other Notices** attached to the **Letter of Offer of Mortgage Loan** details as follows;

**"(A) ALL MORTGAGE LOANS**

**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".*

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I note that a copy of the **Letter of Offer of Mortgage Loan** dated **28 June 2005** containing handwritten amendments has also been submitted in evidence by the Provider. The "*Applicable Interest Rate*" section at **Part 1- Particulars of Offer of Mortgage Loan**, as outlined above, has been crossed out and initialled by both Complainants and the word "*Variable*" is handwritten above the wording of this section. It appears that the Provider was satisfied with this amendment. I note that all other details contained in the **Letter of Offer of Mortgage Loan** dated **28 June 2005** to include the **Special Conditions** and **General Conditions** remain unchanged. It is this amended **Letter of Offer of Mortgage Loan** dated **28 June 2005** with the handwritten change to the "*Applicable Interest Rate*" section that was signed and accepted by the Complainants.

**Part 7-Acceptance and Consent** section of the **Letter of Offer of Mortgage Loan** was signed by the Complainants and witnessed by their solicitor on **6 July 2005** and details as follows;

*"I/We accept the conditions of the Offer and agree to mortgage the Property to the Bank as Security for the Mortgage Loan".*

The **Mortgage Account Statements** submitted in evidence show that mortgage loan account ending **6093** was drawn down on **12 July 2005** in the amount of €268,870.

The Provider issued a letter to the Complainants dated **13 July 2005** which details as follows;

*"I refer to your Home Mortgage and advise that a cheque for €268,870.00 in respect of full/final payment has been debited to your account today (total now drawn €268,870.00) the details of which are:-*

- *Term is 35 years/420 months; Final Payment due 12/07/2040.*
- *Interest rate, Variable Rate, is 3.30% (APR 3.343%) including interest adjustment of 0.00%.*
- *Monthly repayments, based on the above interest rate, of €1,079.35 commence on 12/08/2005.*
- *Interest charge (estimated) to 31<sup>st</sup> December 2005 is €3,774.18.*

*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....*

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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”.*

The First Complainant, in his post Preliminary Decision submissions dated **19 May 2021**, states as follows;

*“In the letter of offer it has fixed and variable rate. According to [the Provider] the variable rate is for a.) variable rate & b.) tracker variable rate. As can be seen from previous correspondence from [the Provider] below, this is a tracker rate mortgage that I took out with [the Provider] and while it is a tracker rate the terminology used by [the Provider] is “variable rate”, as illustrated below.*

*On my letter of offer it has fixed and variable (leaving me to believe it was variable / variable tracker), again as is worded from the correspondence from [the Provider] below.”*

The “previous correspondence” from the Provider to which the First Complainant refers in his post Preliminary Decision submissions dated **19 May 2021**, is a certificate of interest dated **31 December 2009** in respect of a mortgage loan account held by the First Complainant and a third party with the Provider. The First Complainant states that the mortgage loan account that he holds with a third party is a tracker interest rate mortgage however the wording “variable rate” is used in the certificate of interest to describe the interest rate. The First Complainant appears to suggest that given the word “variable” was used in the **Letter of Offer of Mortgage Loan** dated **28 June 2005** in relation to mortgage loan account ending **6093** and the word “variable” was used in the certificate of interest dated **31 December 2009** in relation to an entirely different mortgage loan account that the First Complainant held with the Provider, he was led to believe that mortgage loan account ending **6093** was “variable/variable tracker”. It is important for the Complainants to understand that the certificate of interest submitted by the First Complainant, which was previously submitted by the First Complainant to this office on **2 January 2020**, concerns a mortgage loan account that is not the subject of this complaint. I fail to see how the First Complainant could consider a certificate of interest in relation to an entirely separate mortgage loan to be of relevance to the complaint at hand, when my determination of this complaint must focus on the original contractual terms that the Complainants entered into by signing the **Acceptance and Consent** to the **Letter of Offer of Mortgage Loan** on **6 July 2005**.

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It is clear to me that the Complainants' mortgage loan account drew down on a standard variable rate of interest of 3.3%, in line with the Complainants' handwritten amendment to the **Letter of Offer of Mortgage Loan** dated **28 June 2005**. **General Condition 3.5** and **Part 5 – Statutory Notice and Other Notices** of the **Letter of Offer of Mortgage Loan** dated **28 June 2005** clearly set out that the nature of the variable rate to be one that could be adjusted by the Provider from time to time. The **Letter of Offer of Mortgage Loan** dated **28 June 2005** does not contain any reference to a tracker interest rate that varies in line with the changes to the ECB rate. In order for the Complainants to have a contractual right to a tracker interest rate at the inception of their mortgage loan or indeed if they chose to switch from the standard variable interest rate after drawdown, that right would need to have been specifically outlined in the mortgage loan documentation that was agreed by the parties. However, no such right was set out in writing in the **Letter of Offer of Mortgage Loan** dated **28 June 2005**, which was signed by the Complainants on **6 July 2005** in the presence of their solicitor. Consequently, I do not consider it reasonable for the Complainants to be of the view that they were led to believe that the nature of their mortgage loan account was a tracker interest rate mortgage loan.

The Complainants sent a letter dated **25 October 2005** to the Provider seeking to amend the interest rate on mortgage loan account ending **6093**. The letter details as follows;

*“We refer to the above home loan account and would be obliged if you would commence the direct debit on same on the 30th November 2005, also if at all possible could we amend the interest rate to 2.75% fixed for the first year after which time we will review same with you”.*

The Provider issued a letter to the Complainants dated **02 November 2005** which details as follows;

*“With reference to your recent request, I confirm that a fixed interest rate of 2.75% (including the existing interest adjustment of 0.00%) will apply to your home loan from 02 November 2005 for a period of 1 years...”*

*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...”*

The Provider issued a letter to the Complainants dated **9 November 2006** outlining the interest rate options available to them upon the expiry of the 1-year fixed interest rate period.

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The letter details follows;

*“The fixed rate period on your above mortgage loan expires on 22/11/2006 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 [Provider’s] current Variable rate (plus the existing agreed adjustment of 0.00%) will be applied but may subsequently be revised at your request to any fixed option available in the future...”*

*Here is a sample of the rates currently available on offer from [Provider]. To avail of a fixed rate please complete the attached tear-off section below and return it to [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><b>RATE</b></u>	<u><b>%</b></u>	<u><b>APR %</b></u>	<u><b>REPAYMENT</b></u>
<i>Int. Only - Variable Rate</i>	<i>4.350</i>	<i>4.4390</i>	<i>981.51</i>
<i>Tracker Home Int Only Ln &gt;60%</i>	<i>4.350</i>	<i>4.4390</i>	<i>981.51</i>
<i>Tracker3 Home Int Only &lt;60%LTV</i>	<i>4.200</i>	<i>4.2830</i>	<i>947.88</i>
<i>End. 1 Year Fixed</i>	<i>4.710</i>	<i>4.4590</i>	<i>1062.30</i>
<i>End. 3 Year Fixed</i>	<i>4.750</i>	<i>4.5050</i>	<i>1071.16</i>
<i>End. 5 Year Fixed</i>	<i>4.890</i>	<i>4.5830</i>	<i>1102.53</i>
<i>End. 10 Year Fixed</i>	<i>5.080</i>	<i>4.7980</i>	<i>1145.10”</i>

**General Condition 3.2** of the **Letter of Offer of Mortgage Loan** dated **28 June 2005** clearly sets out what is to happen after the end of any fixed interest period, that is the Provider has the discretion to offer a further fixed interest rate period or if it chooses not to do so, the Provider can convert the mortgage loan to a variable interest rate. I note that the interest rate options offered by the Provider upon the expiry of the 1-year fixed rate period in **November 2006** are in line with **General Condition 3.2**. It appears that the Provider also offered the Complainants two tracker interest rate options as these rates were available from the Provider at that time. However, it is important for the Complainants to understand that the Provider was under no obligation to offer a tracker interest rate at that time because the Complainants did not have a contractual entitlement to a tracker interest rate at the end of a fixed interest rate period.

In any event, the Complainants chose not to select a tracker interest rate option and instead signed the letter dated **9 November 2006** on **18 November 2006** confirming as follows;

*“I/We wish to avail of the Int. Only - Variable Rate which I/we note is subject to variation prior to rollover date”.*

/Cont’d...

The Provider issued a letter dated **23 November 2006** to the Complainants which details as follows;

*"I confirm I have extended the interest only repayments on your loan by a period of one year, as requested. Your revised repayment based on the standard variable rate of 4.35% is €982.82..."*

The Complainants submitted a **Request to Amend Mortgage Interest Rate to Fixed** to the Provider dated **16 April 2008** in relation to mortgage loan accounts ending **6093** and **6176** requesting the following;

*"We wish to fix the above mortgage account to the following:  
Fixed rate of 4.7% for 2 years  
and note that it will revert to standard variable when fixed period is up".*

I note that this instruction was signed by both Complainants.

The Provider issued a letter dated **21 April 2008** to the Complainants in relation to mortgage loan account ending **6093** which details as follows;

*"With reference to your recent request I confirm that a fixed interest rate of 4.70% (including the existing interest adjustment of 0.00%) will apply to your mortgage loan from 21 April 2008 for a period of 2 years. The monthly repayment for the period of the fixed interest rate will be €1,060.03 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 Mortgage Loan and interest accrued to the date of repayment or by conversion to the variable interest rate then prevailing..."*

The Complainants submitted a request to the Provider on **5 December 2008** noting as follows in relation to mortgage loan accounts ending **6093** and **6176**;

*"We wish to amend the above mortgage accounts to the variable rate and we are aware of breakage costs (if any)".*

/Cont'd...

The Provider issued a letter to the Complainants dated **8 December 2008** in relation to mortgage loan account ending **6093** which details as follows;

*"I confirm I have amended the rate applying to your loan account to the Bank's Standard Variable rate, currently 4.5%, as requested. Please note that no breakage cost was incurred as a result of breaking from the fixed rate."*

The Provider received a letter dated **31 May 2010** from the Complainants on **2 June 2010** which states as follows;

*"This letter is a follow up to the correspondence attached, where we requested an extension for one year interest only mortgage or six month mandatory period on repayments on our property in [location of property].*

*Our circumstances have changed dramatically that leave us in a position that our expenditure will far exceed our income as a direct result of the following:*

- 1.) [The Second Complainant] has been informed that when she goes on maternity leave in October that she will no longer be paid by her employer.*
- 2.) [The Provider] s[t]opped our interest only payments on our house in [location of other property]. We are now paying both the interest and capital amounts in [location].*
- 3.) I was informed my personal overdraft was due to expire and has since been removed.*
- 4.) My joint overdraft for the house in [location] expired and was removed.*

*With the changes above...I'm now in a position that I need to try and flag this to [Provider] in the event that we can come to some sort of solution on a short term basis only until [Second Complainant] returns to work.*

*I'm requesting short term help from [the Provider] to get us over the next 12 months whether that is:*

- 1.) 12 month interest only or*
- 2.) Six month mandatory period or*
- 3.) Sit down with [the Provider], and look at amalgamate loans and agree a monthly amount*

/Cont'd...

....

*On top of the above we have placed the house in [location] up for sale as its clear we just can't maintain the current outgoings".*

The Provider issued a letter to the Complainants dated **17 June 2010** and outlined the following in relation to mortgage loan account ending **6093**;

*"I confirm I have applied interest only repayments to your loan for a further period of 6 months, as this is the maximum period we are agreeable to. Your revised repayment, based on the Standard Variable rate of 2.75%, is €615.53".*

The Complainants subsequently wrote to the Provider on **21 July 2010** as follows;

*"Please arrange to apply a one year fixed rate to the mortgage loans on [mortgaged property the subject of mortgage loan accounts ending 6093 and 6176].*

*Also please find a copy of the previous correspondence from Feb' 10 re applying a fixed rate of 2.8% for a two year period".*

The Provider issued a letter dated **23 July 2010** to the Complainants outlining the following in relation to mortgage loan account ending **6093**;

*"With reference to your recent request I confirm that a fixed interest rate of 3.09% (including the existing interest adjustment of 0.00%) will apply to your mortgage loan from 23 July 2010 for a period of 1 year.*

*You will be entitled, with the Bank's prior consent, to withdraw from the fixed rate agreement either by repayment in full of the Mortgage Loan and interest accrued to the date of repayment or by conversion to the variable interest rate then prevailing..."*

The Complainants issued a letter dated **28 August 2010** to the Provider which details as follows;

*"Please find a copy of the previous correspondence from Feb' 10 sent to [the Provider] re applying a fixed rate of 2.8% for a two year period on our property in [address of mortgaged property].*

/Cont'd...

*I have notified my branch of this lately but I was informed that as I got no notice in the post re above that it couldn't be applied to the account.*

*In the meantime I have setup a one year fixed rate to the mortgage loans on [address of mortgaged property] but at a higher rate of 3.09% over one year.*

*I would appreciate if I could discuss this further with a representative from [the Provider]."*

I note that the Complainants attached an interest rate options letter from the Provider dated **18 February 2010** and signed by the Complainants on **24 February 2010** in relation to mortgage loan account ending **6176**, which is not the subject of this complaint, where the Complainants elected to apply a 2-year fixed interest rate of 2.8% to that particular mortgage loan account at that time.

The Provider details that it has *"no record of receiving this correspondence from the Complainants"*. It appears to me that in circumstances where the Provider did not receive this request from the Complainants in **February 2010**, the Complainants' request was never actioned by the Provider. It is to be noted that this request relates to a separate mortgage loan account ending **6176** which is not the subject of this complaint. Therefore, I do not propose to make any further observations in this regard.

The Provider issued a letter to the Complainants dated **8 January 2011** which details as follows;

*"Here is a sample of the rates currently available on offer from [Provider]. To avail of a fixed rate please complete the attached tear-off section below and return it to [Provider] at the above address, immediately. Please note that the repayment quoted are interest only and will automatically rollover to Annuity (capital and interest) without prior notification...."*

*The breakage cost for early redemption is €0.00. Please note that this figure is quoted as of today's date. This figure is valid for 10 working day's only.*

<u><b>RATE</b></u>	<u><b>%</b></u>	<u><b>APR %</b></u>	<u><b>REPAYMENT</b></u>
<i>End. 1 Year Fixed</i>	<i>3.590</i>	<i>3.3180</i>	<i>805.00</i>
<i>End. 2 Year Fixed</i>	<i>3.690</i>	<i>3.3470</i>	<i>827.31</i>
<i>End. 3 Year Fixed</i>	<i>3.890</i>	<i>3.4000</i>	<i>871.92</i>
<i>End. 4 Year Fixed</i>	<i>4.190</i>	<i>3.4950</i>	<i>938.83</i>
<i>End. 5 Year Fixed</i>	<i>4.390</i>	<i>3.5940</i>	<i>983.43"</i>

/Cont'd...

It would appear that the Complainants did not select a different fixed interest rate at this time therefore the mortgage loan account remained on a fixed interest rate of 3.09%.

The Provider issued the Complainants with a letter dated **7 February 2011** which details as follows;

*“Here is a sample of the rates currently available on offer from [Provider]. To avail of a fixed rate please complete the attached tear-off section below and return it to [Provider] at the above address, immediately.*

<u>RATE</u>	<u>%</u>	<u>APR %</u>	<u>REPAYMENT</u>
<i>Int. Only - 1 Year Fixed Rate</i>	<i>3.590</i>	<i>3.2910</i>	<i>693.44</i>
<i>Int. Only - 2 Year Fixed Rate</i>	<i>3.690</i>	<i>3.3470</i>	<i>827.37</i>
<i>Int. Only - 3 Year Fixed Rate</i>	<i>3.890</i>	<i>3.4010</i>	<i>872.00</i>
<i>Int. Only - 4 Year Fixed Rate</i>	<i>4.190</i>	<i>3.4960</i>	<i>938.94</i>
<i>Int. Only - 5 Year Fixed Rate</i>	<i>4.390</i>	<i>3.5950</i>	<i>983.56</i>
<i>Int. Only - 10 Year Fixed Rate</i>	<i>5.200</i>	<i>4.2760</i>	<i>1164.20”</i>

The Complainants signed and returned the options letter dated **7 February 2011** on **9 February 2011** and confirmed as follows;

*“I/We wish to avail of the Int. Only - 1 Year Fixed Rate which I/we note is subject to variation from the date of this letter”.*

The Provider issued a letter to the Complainants dated **4 March 2011** which details as follows;

*“With reference to your recent request, I confirm that a fixed interest rate of 3.59% (including the existing interest adjustment of 0.00%) will apply to your mortgage loan from 04 March 2011 for a period of 1 year....*

*Please note that your interest only period is due to expire on the 09/08/2011.*

*You will be entitled, with the Bank’s prior consent, to withdraw from the fixed rate agreement either by repayment in full of the Mortgage Loan and interest accrued to the date of repayment or by conversion to the variable interest rate then prevailing...”*

/Cont’d...



The Complainants subsequently sent an instruction to the Provider dated **15 March 2011** which details as follows;

*“As discussed, please arrange to apply a three year fixed rate of 3.89% to the mortgage [mortgage loan account ending 6093 and 6176] [address of mortgaged property]”.*

The Provider issued a letter to the Complainants dated **28 March 2011** which details as follows;

*“With reference to your recent request, I confirm that a fixed interest rate of 3.89% (including the existing interest adjustment of 0.00%) will apply to your mortgage loan from 28 March 2011 for a period of 3 years.*

*You will be entitled, with the Bank’s prior consent, to withdraw from the fixed rate agreement either by repayment in full of the Mortgage Loan and interest accrued to the date of repayment or by conversion to one of the variable interest rates then prevailing...”*

The Provider issued a letter to the Complainants dated **21 February 2012**, detailing a sample of interest rate options available for selection at that time. The letter dated **21 February 2012** details as follows;

*“Here is a sample of the rates currently available on offer from [Provider]. To avail of the rate options below please complete the attached tear-off section below and return it to [Provider] at the above address....*

<u><b>RATE</b></u>	<u><b>%</b></u>	<u><b>APR %</b></u>	<u><b>REPAYMENT</b></u>
<i>a.PDH LTV Var&lt;=50%</i>	<i>2.840</i>	<i>2.8720</i>	<i>1152.25</i>
<i>a.PDH LTV Var &gt;50% &lt;=80%</i>	<i>3.040</i>	<i>3.0770</i>	<i>1180.53</i>
<i>a.PDH LTV Var &gt;80%</i>	<i>3.240</i>	<i>3.2810</i>	<i>1209.19</i>
<i>1 Year Fixed Rate</i>	<i>4.150</i>	<i>3.1310</i>	<i>1344.16</i>
<i>2 Year Fixed Rate</i>	<i>4.650</i>	<i>3.3030</i>	<i>1421.39</i>
<i>3 Year Fixed Rate</i>	<i>4.880</i>	<i>3.4850</i>	<i>1457.62</i>
<i>4 Year Fixed Rate</i>	<i>5.150</i>	<i>3.7080</i>	<i>1500.70</i>
<i>5 Year Fixed Rate</i>	<i>5.350</i>	<i>3.9370</i>	<i>1532.99</i>
<i>10 Year Fixed Rate</i>	<i>5.900</i>	<i>5.0110</i>	<i>1623.36”</i>

/Cont’d...

The Complainants issued a letter to the Provider dated **27 June 2012** which details as follows;

*“As per our earlier conversations, if [Provider] agrees to the following conditions:*

**Condition 1:**

*That there will be no breakage costs associated with moving from our current mortgage fixed rate (3.89%) to the mortgage variable rate (3.24%) &*

**Condition 2:**

*That the variable rate to be applied is 3.24%*

*Then please proceed and adjust the mortgage account from fixed (3.89%) to variable rate (3.24%) [mortgage loan accounts ending 6093 and 6176].*

*If condition 1 and condition 2 are not met above, then [Provider] is not to remove the fixed interest rate on the mortgage accounts outlined above...”*

The Provider issued a letter to the Complainants dated **3 July 2012** to inform the Complainants that it had *“amended the interest rate applying to your loan to the PDH LTV Variable > 80% rate of 3.24%, as requested”*.

The Complainants issued a letter dated **3 October 2012** to the Provider to request the following;

*“Please arrange to fix the mortgage account to the fixed rate of 4.15% on [mortgage loan accounts ending 6093 and 6176]”.*

The Provider issued a letter to the Complainants dated **4 October 2012** which details as follows;

*“With reference to your recent request, I confirm that a fixed interest rate of 4.15% (including the existing interest adjustment of 0.00%) will apply to your mortgage loan from 04 October 2012 for a period of 1 years.”*

Prior to the expiry of this 1-year fixed interest rate period, the Provider sent a letter to the Complainants dated **26 August 2013** which outlined the interest rates available to the Complainants at the end of the fixed rate period.

/Cont'd...

The letter details as follows;

*"I am writing to you to let you know that the fixed rate period on your Home Mortgage Loan Account expires on 4th October 2013. As a result of this, I would be grateful if you could complete the enclosed form detailing the new mortgage rate you wish to avail of and return to us at the above address. Below is a sample of the rates currently on offer..."*

*In the absence of your instruction, [the Provider] Mortgage Bank's Standard Variable Rate of 4.4%, APR 4.473%, with repayments of €1,393.47 will be applied. With agreement, this may be changed to another rate at a later stage.*

<b><u>RATE Description</u></b>	<b><u>%</u></b>	<b><u>APR %</u></b>	<b><u>REPAYMENT</u></b>
<i>a.PDH LTV Var &lt;=50%</i>	<i>4.09</i>	<i>4.153</i>	<i>€1,347.59</i>
<i>a.PDH LTV Var &gt;50% &lt;=80%</i>	<i>4.29</i>	<i>4.359</i>	<i>€1,377.10</i>
<i>a.PDH LTV Var &gt;80%</i>	<i>4.49</i>	<i>4.566</i>	<i>€1,406.94</i>
<i>1 Year Fixed Rate</i>	<i>4.55</i>	<i>4.487</i>	<i>€1,415.95</i>
<i>2 Year Fixed Rate</i>	<i>4.75</i>	<i>4.536</i>	<i>€1,446.21</i>
<i>3 Year Fixed Rate</i>	<i>4.95</i>	<i>4.618</i>	<i>€1,476.77</i>
<i>5 Year Fixed Rate</i>	<i>5.35</i>	<i>4.867</i>	<i>€1,538.83"</i>

I note that the Provider issued a further letter to the Complainants dated **27 August 2013** which outlined the as follows;

*"The fixed rate period on your above mortgage loan expires on 04/10/2013 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] Standard Variable Rate of 4.4%, APR 4.473%, with repayments of €1,393.47 [...] will be applied..."*

*Here is a sample of the rates currently available on offer from [Provider]. Complete the attached tear-off section with your selected description and return it to [Provider] at the above address.*

<b><u>RATE Description</u></b>	<b><u>%</u></b>	<b><u>APR %</u></b>	<b><u>REPAYMENT</u></b>
<i>a.PDH LTV Var &lt;=50%</i>	<i>4.090</i>	<i>4.1560</i>	<i>1347.59</i>
<i>a.PDH LTV Var &gt;50% &lt;=80%</i>	<i>4.290</i>	<i>4.3600</i>	<i>1377.10</i>
<i>a.PDH LTV Var &gt;80%</i>	<i>4.490</i>	<i>4.5650</i>	<i>1406.94</i>
<i>1 Year Fixed Rate</i>	<i>4.550</i>	<i>4.4500</i>	<i>1356.41</i>
<i>3 Year Fixed Rate</i>	<i>4.950</i>	<i>4.6160</i>	<i>1476.77</i>
<i>5 Year Fixed Rate</i>	<i>5.350</i>	<i>4.8630</i>	<i>1538.83</i>
<i>10 Year Fixed Rate</i>	<i>10.000</i>	<i>8.7660</i>	<i>2337.58"</i>

/Cont'd...

I note that the interest rate options offered by the Provider in **August 2013** prior to the expiry of the 1-year fixed rate period are in line with **General Condition 3.2** of the **Letter of Offer of Mortgage Loan** dated **28 June 2005**. In circumstances where the Complainants did not select an interest rate from the above list, the **Mortgage Account Statements** show that mortgage loan account ending **6093** defaulted to the Provider's standard variable rate of 4.4%, which again is in line with **General Condition 3.2**.

The Complainants issued a letter to the Provider dated **4 November 2014** requesting "to fix the mortgage account to the fixed rate of 3.80%".

The Provider responded by way of letter to the Complainants dated **11 November 2014** and stated as follows in relation to mortgage loan account ending **6093**;

*"With reference to your recent request, I confirm that a fixed interest rate of 3.80% will apply to your mortgage loan from 11/11/2014 until 11/11/2016...."*

*You will be entitled, with the Bank's prior consent, to withdraw from the fixed rate agreement either by repayment in full of the Mortgage Loan and interest accrued to the date of repayment or by conversion to one of the variable interest rates then prevailing..."*

The Complainants sent a letter to the Provider dated **20 March 2015**, which is stamped as having been received by the Provider on **16 April 2015**, which details as follows;

*"Please arrange to apply a tracker mortgage, as per the loan document details enclosed.*

*Before this is done, please call to let me know of any breakage costs associated with the current fixed rate".*

The Complainants appear to have enclosed a copy of loan documentation in respect of their other mortgage loan account ending **6176** with this request. The **Letter of Offer of Mortgage Loan** dated **09 August 2007** enclosed with the Complainants' letter dated **20 March 2015** details as follows:

**"PARTICULARS OF OFFER OF MORTGAGE LOAN**

<i>Offer Date</i>	<i>09 August 2007</i>
<i>Customer Name</i>	<i>[Complainants]</i>
<i>Mortgage Loan Amount</i>	<i>€35,000</i>
<i>Loan Term</i>	<i>20 Years/240 months</i>

/Cont'd...

*Repayment Details as at date of Offer*

	<b>Term</b>	<b>Loan Type</b>	<b>Interest Rate Description</b>	<b>Rate</b>	<b>Margin</b>	<b>Net Rate</b>	<b>Amount of Each Instalment</b>
1	1 Years	Variable Annuity	DiscTrkr Home LTV>80% Ln<500K	4%	0.6%	4.6%	€223.08
2	19 Years	Variable Annuity	Tracker Home LTV>80% Ln<500k	4%*	1.10%	5.1%**	€232.20

*\*ECB Rate is the European Central Bank's Main Refinancing Operations Minimum Bid Rate, and will change within 5 working days of an ECB rate change.*

*\*\* Tracker Rate (ECB Rate + Margin)"*

The above mortgage loan documentation relates to the Complainants' mortgage loan account ending **6176** that was drawn down in **2007** on a 1-year discounted tracker interest rate of 4.6% (ECB+0.6%), with a tracker interest rate of 5.1% (ECB+1.1%) to apply thereafter. It is important for the Complainants to understand that the loan documentation and terms and conditions relating to mortgage loan account ending **6176** are entirely distinct and separate to the particulars of mortgage loan account ending **6093** which is the subject of this complaint. Mortgage loan account ending **6176** was drawn down on a tracker interest rate in **2007** whereas mortgage loan account ending **6093** was drawn down on a variable rate of interest of 3.30% in **July 2005**. The nature of the variable interest rate that applied to mortgage loan account **6093** was one that could be adjusted by the Provider as opposed to varying in accordance with variations in the ECB refinancing rate.

The Provider explains that *"in error, this request was not responded to"*. It appears to me that the Provider did not respond to the Complainants' request until **19 May 2015**.

In the intervening period, the Complainants wrote to the Provider on **7 May 2015** to request as follows;

*"If there are no mortgage breakage costs, please arrange to break the remaining fixed term on the mortgage accounts listed below to the variable rate.*

/Cont'd...

*Then with immediate effect please arrange to adjust the mortgage accounts listed below to the fixed rate of 3.5% for one year.*

*The mortgage account details are [mortgage loan accounts ending 6093 and 6176].*

*Please note that the above is not to be action (sic) if there are any breakage costs."*

The Provider issued a letter dated **11 May 2015** to the Complainants stating that "a fixed interest rate of 3.50% will apply to your mortgage loan from 11/05/2015 until 11/05/2016" in relation to mortgage loan accounts ending **6093** and **6176**.

The Provider issued a letter dated **19 May 2015** to the Complainants in response to the Complainants' letter dated **20 March 2015**, which details as follows in relation to mortgage loan account ending **6093**;

*"I refer to your recent query in relation to applying the tracker rate to your mortgage account.*

*I confirm that if you choose to break out of your current fixed rate early, you can only avail of the rates currently offered by [the Provider].*

*I advise that we are unable to action your request to break out of your current fixed rate, which is due to expire on 11/11/2016 and apply a tracker rate, as [the Provider] stopped offering tracker rates in [late] 2008.*

*Please note that prior to the expiry of your existing fixed rate, we will issue confirmation of all rates available to you."*

It is at this time that the Complainants consider that the Provider incorrectly failed to apply a tracker interest rate to their mortgage loan account ending **6093**. I note that the Complainants' mortgage loan account remained on the fixed interest rate of 3.50% as the Provider was unable to accede to the Complainants' request to apply a tracker interest rate to their mortgage loan account. The Provider explains that it made a commercial decision in **late 2008** to withdraw tracker interest rates for new mortgage customers and existing mortgage customers who wished to change from their current contractual interest rate to a tracker interest rate. I note that the Provider states that existing customers with tracker mortgages were not affected by this. The Complainants' mortgage loan account the subject of this complaint was never on a tracker interest rate nor did the Complainants have a contractual entitlement to a tracker interest rate at any stage during the term of their mortgage loan.

/Cont'd...



Therefore, tracker interest rates were no longer available for selection by the Complainants after **late 2008**. It is important to highlight that the availability of tracker interest rates to the Complainants up to that point was subject to the Provider's commercial discretion.

Prior to the expiry of the 1- year fixed interest rate period, the Provider issued a letter dated **4 April 2016** to the Complainants outlining the following interest rates available to them at the end of the fixed interest rate period;

<u>"Rate Description:</u>	<u>%</u>	<u>Repayment</u>
PDH LTV Var <=50%	3.35	€1,248.12
PDH LTV Var >50% <=80%	3.55	€1,274.17
PDH LTV Var >80%	3.75	€1,300.51
1 Year Fixed	3.5	€1,267.63
2 Year Fixed	3.6	€1,280.73
3 Year Fixed	3.65	€1,287.30
5 Year Fixed	3.8	€1,307.14"

This letter dated **4 April 2016** also states as follows;

*"If you do not return the enclosed form, our standard variable rate of 3.65%, will be automatically applied to this mortgage account, with repayments commencing at €1,287.30."*

I note that the interest rate options offered by the Provider in **April 2016** prior to the expiry of the 1-year fixed rate period are in line with **General Condition 3.2** of the **Letter of Offer of Mortgage Loan** dated **28 June 2005**. On **13 May 2016**, a 1-year fixed interest rate of 3.5% was applied to the Complainants' mortgage loan account on foot of a request made by the Complainants on **16 April 2016** which was received by the Provider on **19 April 2016**.

By way of letter dated **20 May 2016** the Complainants wrote to the Provider requesting the following;

*"If there are no mortgage breakage costs, please arrange to have the two mortgage accounts listed below on the current variable rate.*

*The mortgage account details are [mortgage loan accounts ending 6093 & 6176]."*

The Provider issued a letter to the Complainants dated **26 May 2016** detailing that a “*PDH LTV Var>80%*” mortgage product at a rate of 3.75% had been applied to mortgage loan account ending **6093**.

I note that mortgage loan account ending **6093** remained on a standard variable interest rate until it was fully redeemed on **31 July 2018**.

The Complainants appear to be of the view that they were offered “*three interest rate products*” to include a tracker interest rate at the time of drawdown of mortgage loan account ending **6093**. While the document titled “**Repayment Illustration as at 31<sup>st</sup> December 2004**” lists three mortgage products to include a fixed, variable and tracker interest rate, it is the **Letter of Offer of Mortgage Loan** dated **28 June 2005** and the terms and conditions attaching to that loan offer, that were accepted by the Complainants, that form the contractual basis of the agreement between the Provider and the Complainants. The “**Repayment Illustration as at 31<sup>st</sup> December 2004**” that issued in **January 2005** did not constitute a formal offer by the Provider to the Complainants. The Complainants were under no obligation to sign and accept the **Letter of Offer of Mortgage Loan** dated **28 June 2005**, however they did so and are therefore bound by its accompanying terms and conditions.

Having considered the particulars of the **Letter of Offer of Mortgage Loan** dated **28 June 2005**, it is clear to me that a tracker interest rate was never applied to the Complainants’ mortgage loan account and furthermore they had no contractual entitlement to a tracker interest rate during the term of the loan. Therefore, there was no obligation on the Provider, contractual or otherwise, to offer or apply a tracker interest rate to the Complainants’ mortgage loan account in **2015**. I note that the Provider duly acceded to every other request made by the Complainants to amend the interest rate on their mortgage loan account be it to a standard variable rate or a fixed interest rate in line with the terms and conditions of the **Letter of Offer of Mortgage Loan** dated **28 June 2005**.

For the reasons outlined 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**

28 June 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.