



<u>Decision Ref:</u>	2021-0309
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Tracker Mortgage
<u>Conduct(s) complained of:</u>	Failure to offer a tracker rate throughout the life of the mortgage
<u>Outcome:</u>	Partially upheld

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

This complaint relates to a mortgage loan account held by the Complainant with the Provider. The mortgage loan that is the subject of this complaint was secured on the Complainant's residential investment property.

The loan amount is €310,000 and the term of the loan is 20 years. The particulars of the Letter of Approval dated **3 October 2005** detail that the loan type was a "Tracker Mortgage (ECB + max 1.10%) – Investment Loan".

The Complainant's Case

In **November 2005**, the Complainant's mortgage loan account was drawn down on a tracker interest rate of ECB + 1.10%. On **1 December 2005**, the Complainant opted to apply a five-year fixed interest rate of 3.94% to the mortgage loan account "to afford [her] a sense of security over those five years".

The Complainant submits that "My difficulties arose in 2010 as regards the information provided about my options, which resulted in my reluctantly opting for a further five-year fixed rate option when my preferred option would have been a 'tracker variable rate'".

The Complainant submits that prior to the expiry of the fixed interest rate period, she contacted the Provider in **October 2010**. She outlines that *"The reason why I wrote to [the Provider] in October 2010 was because of the degree of financial instability in the country at that time especially in relation to the Irish Banking sector ... Then in November 2010 the Bailout happened and the IMF took charge. This provided some stability, but I was still very concerned that interest rates could rise considerably and all financial advisers in the media were advising mortgage holders to 'fix'."* She states however that she felt that the tracker interest rate *"was the best option – it would provide more security as it was determined by the ECB rate."* A rate options letter and form were issued to the Complainant from the Provider on **29 October 2010** containing fixed and variable interest rate options.

The Complainant details that she received a further rate options letter and form from the Provider dated **15 December 2010**, which contained fixed and variable rate options and a tracker variable rate option. The letter detailed that the fixed interest rate period on the mortgage loan account had expired on **01 December 2010** but due to an administrative error an options letter had not issued outlining the current rate options, so the mortgage loan had defaulted to a variable interest rate. The letter detailed that the rate option selected by the Complainant would therefore be backdated to **01 December 2010**.

The Complainant submits that she attended her local branch of the Provider on **22 December 2010** to discuss the rate options. She states that she was informed that *"the tracker variable rate option, although listed, was not available to me. I was advised that it should not have been listed as the bank no longer provided this type of mortgage – it was claimed by the mortgage advisor that apparently this was an administrative error. I queried this as the terms of my mortgage suggested that I could switch to a tracker rate when my fixed rate expired and this was very much my preferred option. However I was informed that when I took out my mortgage in 2005 [the Provider] had been offering tracker variable rate mortgages but that they had now ceased doing so."*

The Complainant outlines that *"This was quite a blow to me as the tracker variable rate quoted on the Options' form was very definitely my preferred option – firstly it was linked with the ECB rate which was important due to the precarious nature of the financial institutions of the state that pertained at that time and secondly this was by far the most favourable repayment schedule. However, due to the time sensitivity of the issue together with the advice provided by the mortgage advisor I felt obliged to make my decision there and then – it was important that I submit my form to the bank to ensure that I would meet the deadline of 31st December"*.

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The Complainant submits in respect of the remaining interest rate options on the form that *“Due to the aforementioned financial instability, the variable rate was not attractive”*. She states that two-year fixed interest rate option was *“way too expensive due to wrong information provided on the form”*. In this regard she details that the Provider has since furnished her with a copy of the completed rate options form and she notes that the 2-year fixed rate option was amended by hand to reduce the monthly payments from the printed figure of €3,044.84 to a handwritten figure of €2,044.84. The Complainant submits that she was not made aware of this reduction in **December 2010** and consequently she was given incorrect information by the Provider at that time which it failed to bring to her attention.

The Complainant states that in **December 2010** she *“had no option but to choose the five-year fixed rate option because of [her] concerns that interest rates might rise in respect of the variable rate option.”* She further submits that, due to the Provider’s failure to issue the rate options letter before the expiry of the fixed rate period as it should have, she had a considerably reduced deadline between **15 December** and **31 December 2010** to select a new interest rate, which *“was further exacerbated by the fact that the Christmas period intervened during which period [the Complainant’s] local Branch’s normal opening hours were understandably considerably reduced.”* The Complainant submits that she *“should have been provided with a longer timeframe to afford [her] the opportunity to seek independent advice as the advice of the mortgage advisor was at variance with the details set out in the correspondence dated 15th December 2010.”*

The Complainant states that her *“meeting with the mortgage advisor on December 22nd, 2010 was not an impromptu meeting or a ‘casual visit’. It was not held at the customer service area or any public area within the Bank. Instead it was a one-to-one meeting in a private office”*. She further states that on any occasion when she attended the Provider branch for meetings *“I was always asked my name and the person on the customer service desk checked that I had a scheduled meeting prior to the meeting taking place. Therefore I cannot accept the bank’s claim that they had no record of this meeting and I believe that the bank’s statement “At the time, it was not the Bank’s practice to document such visits and no protocol existed in 2010 for documenting such visits” lacks credibility.”*

The Complainant further submits that *“the Bank claims that they have no documentary evidence”* of her meeting at the branch on **22 December 2010**. She states that *“I believe that this claim is blatantly untrue as they have documentary evidence in relation to the bank draft in the amount of €100 which was drawn on my current account on that date.*

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This was the amount erroneously requested by the Bank in respect of their fixed rate administration fee.”

In this regard the Complainant states that the Provider incorrectly charged her a fee of €100.00 for selecting the five-year fixed interest rate in **December 2010** which it later offered to refund to her together with a goodwill gesture of €400.00.

The Complainant states that she considers this offer *“to be an insult considering the amount of money, stress and worry their repeated errors, failures and downright incompetence have cost [the Complainant].”* She further queries *“Considering that this fee was requested in December 2010, why did it take until November 2016 for the Bank to inform me that I was charged the fee “erroneously”?”*

The Complainant states that she *“believed”* the advice given at that meeting that the tracker interest rate option was not available to her *“and did not become aware that it may have been incorrect until [she] received the rate options form in 2015.”*

In **November 2015**, prior to the expiry of the interest fixed rate period, the Complainant received a rate options letter from the Provider which included a tracker interest rate. The Complainant submits that it then became apparent to her that *“either I had been provided with incorrect advice by [the Provider’s] mortgage advisor on 22nd December 2010 or incorrect information was being provided on the Options form received in November 2015”*. The Complainant submits that she selected the tracker interest rate at that time and it continues to apply to her mortgage loan account.

The Complainant asserts that *“It was not possible for [her] to make an informed decision based on the repeated errors on behalf of the Bank as outlined previously.”*

The conduct complained of is as follows:

- (a) The Provider failed to issue a rate options letter to the Complainant 30 days before the fixed interest rate period expired on **01 December 2010**
- (b) The Provider provided incorrect advice to the Complainant on **22 December 2010** in relation to the availability of a tracker interest rate option of ECB + 1.10% on her mortgage loan account at that time
- (c) The Provider issued a rate options letter dated **15 December 2010**, which contained incorrect information as to the monthly repayment for the 2-year fixed rate option.

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(d) The Provider incorrectly charged the Complainant a fixed rate option fee in **December 2010**.

The Complainant is seeking to be reimbursed by the Provider for interest overcharged on her mortgage loan account while it was on a fixed interest rate between **December 2010** and **December 2015**.

The Provider's Case

The Provider submits that the Complainant drew down her mortgage loan account on **09 November 2005**.

The Provider details that the Complainant opted to apply a five-year fixed rate of 3.94% to her mortgage loan in **December 2005**.

The Provider submits that the Complainant contacted the Provider in or around **October 2010** and an options letter and form issued to the Complainant on **29 October 2010**. The Provider states that the correspondence which issued to the Complainant contained a list of the then available interest rate options and also included details of the payment of €771.91 which would be required to break out of the fixed rate period that currently applied to the mortgage loan account. The Provider details that the rate options form of **29 October 2010** included the following interest rate options;

<i>"LTV Variable Rate</i>	<i>4.55%</i>
<i>2 Year Fixed Rate</i>	<i>5.25%</i>
<i>5 Year Fixed Rate</i>	<i>5.75%</i>
<i>7 Year Fixed Rate</i>	<i>6.10%</i>
<i>10 Year Fixed Rate</i>	<i>6.10%"</i>

The Provider states that it has no record of information provided to the Complainant in **October 2010** in respect of the interest rates that would become available at the expiry of the fixed rate period in **December 2010**. The Provider submits that *"This matter may have been discussed when the Complainant contacted the Bank regarding her fixed interest rate at the end of October 2010 resulting in the issue of the letter of 29 October 2010."*

The Provider states that the fixed rate period on the Complainants' mortgage loan was due to expire on **1 December 2010** and the LTV variable rate of 5.45% was applied to the Complainant's mortgage loan account as the default option. The Provider submits that *"a fixed rate maturity letter should have been sent to the Complainant on or about 11 November 2010"* but this did not happen due to an administrative error. The Provider

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outlines that it wrote to the Complainant on **15 December 2010** giving the Complainant the option to apply the then available interest rate options, which included a tracker interest rate of 2.10% (ECB + 1.10%).

The Provider states that the Complainant selected a further fixed rate period of 5 years and this rate was applied to the mortgage loan account effective from **1 December 2010**.

The Provider indicates that the standard timeframe a customer normally has in which to return a rate option form is 18 to 19 days, as *“an options letter was issued 20 days in advance of fixed rate maturity.”* The Provider details that the letter of **15 December 2010** *“provided a shorter period in which to return the completed Rate Options form”* and *“it required that the Complainant confirm her preference and return the form on or before 31 December 2010.”*

The Provider does not accept that it misinformed the Complainant that the tracker interest rate option was not available to her in **December 2010** when the Complainant submits she visited the Provider’s branch. The Provider confirmed that the Complainant paid the fixed rate administration fee of €100.00 at one of its branches on **22 December 2010**. However the Provider states it *“is not at this remove in time in a position to provide details of any discussions between the Complainant and branch staff in the branch on 22 December 2010.”* The Provider further states that *“Irrespective of whether or not the Bank accepts this submission, the Bank did in fact provide the Complainant with the tracker rate option to which she was entitled in its letter of 15 December 2010.”*

The Provider acknowledges that there was a typographical error in the rate options form that issued to the Complainant in **December 2010**, where the repayment amount quoted for the 2-year fixed rate read €3,044.84 instead of €2,044.84. The Provider submits that they received the signed options form from the Complainant on **22 December 2010** where she had elected to select the 5-year fixed rate and the *“image of the returned form held by the Bank contains the handwritten amendment.”*

The Provider states that there *“was sufficient information in the rate options form, irrespective of the typographical error, which enabled the Complainant to choose a rate option and she did in fact choose a rate option based on that information.”* The Provider asserts that the Complainant *“selected the five year fixed rate option in 2010. This was a choice made by the Complainant from options provided to her which included a tracker rate option.”*

The Provider details that between **late 2010** until **early 2019** *“any customer whose account was already on a variable rate, and who was requesting to switch their rate of interest to a fixed rate of interest, was required to pay an administration fee of €100.00 in order to fix*

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the rate." The Provider submits that it "*erroneously charged*" the Complainant a fixed rate administration fee of €100.00 on **23 December 2010**.

The Provider submits that "*The reason for this error is that the request of the Complainant was erroneously not considered by the Bank to be an election of a maturity option in respect of the 1 December 2010 maturity of the fixed rate period but was instead regarded as a rate switch request made in the course of a variable rate applying to the account.*"

The Provider initially offered the Complainant a refund of the €100.00 and a goodwill gesture of €50.00 in its correspondence of **9 November 2016**. The Provider in its formal response to the Summary of Complaint dated **24 July 2019**, has offered the Complainant a refund of €100.00 and an increased goodwill gesture of €400.00 for this service failure.

The Complaints for Adjudication

The complaints for adjudication are;

- (a) The Provider failed to issue a rate options letter to the Complainant 30 days before the fixed interest rate period expired on **01 December 2010**;
- (b) The Provider provided incorrect advice to the Complainant on **22 December 2010** in relation to the availability of a tracker interest rate option of ECB + 1.10%, on her mortgage loan account at that time;
- (c) The Provider issued a rate options letter dated **15 December 2010**, which contained incorrect information as to the monthly repayment for the 2-year fixed rate option.
- (d) The Provider incorrectly charged the Complainant a fixed rate option fee in **December 2010**.

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.

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

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

A Preliminary Decision was issued to the parties on **02 July 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 Complainant made a post Preliminary Decision submission dated **16 July 2021**.

A copy of the Complainant's additional submission was exchanged with the Provider. The Provider has not made any further submission.

Following consideration of that additional submission and all submissions and evidence furnished by both parties to this Office, I set out below my final determination.

In order to determine the complaint, it is necessary to review and set out the relevant provisions of the Complainant's mortgage loan documentation. It is also necessary to consider details of certain interactions between the Complainant and the Provider in **2010** when the five-year fixed rate period on the mortgage loan account was expiring.

A **Letter of Approval** dated **03 October 2005** was issued to the Complainant for mortgage loan account ending **6495** which details as follows;

<i>"Loan Type:</i>	<i>Tracker Mortgage (ECB + max 1.10%) – Investment Loan</i>
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<i>Purchase Price / Estimated Value:</i>	<i>EUR 400,000.00</i>
<i>Loan Amount:</i>	<i>EUR 310,000.00</i>
<i>Interest Rate:</i>	<i>3.10%</i>
<i>Term:</i>	<i>25 year(s)"</i>

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Condition A of the **Special Conditions** attaching to the **Letter of Approval** dated **03 October 2005** detailed as follows;

“Special Conditions

...

- D. THE INTEREST RATE APPLICABLE TO THIS TRACKER MORTGAGE LOAN MAY BE VARIED FROM TIME TO TIME BY [the Provider] PROVIDED THE INTEREST RATE WILL NOT EXCEED 1.10% OVER THE EUROPEAN CENTRAL BANK REFINANCING RATE (THE “ECB RATE”).*
- E. THE ECB RATE MAY BE VARIED FROM TIME TO TIME BY THE EUROPEAN CENTRAL BANK (“THE ECB”). IN THE EVENT OF ANY VARIATION OF THE ECB RATE, THE INTEREST RATE APPLICABLE TO THIS LOAN WILL BE NOT MORE THAN 1.10% OVER THE ECB RATE AS VARIED BY THE ECB AND THE REVISED INTEREST RATE FOR THE LOAN WILL APPLY NOT LATER THAN ONE CALENDAR MONTH FROM THE DATE PROVIDED BY THE ECB AS THE DATE ON WHICH THE VARIATION TO THE ECB RATE WILL TAKE EFFECT.*
- F. IF, FOR WHATEVER REASON, AN EVENT OCCURS WHICH FUNDAMENTALLY AFFECTS THE USE OF THE ECB RATE AS A REFERENCE RATE FOR THIS LOAN, [the Provider], IN ITS SOLE DISCRETION, SHALL BE ENTITLED TO USE SUCH OTHER REFERENCE RATE OR OTHER METHOD OR BASIS OF CALCULATION AS IT DEEMS FAIR AND REASONABLE AND NOT WITHSTANDING THE USE OF SUCH OTHER REFERENCE RATE OR METHOD OR BASIS OF CALCULATION, THE RATE SO CALCULATED BY [The Provider] SHALL BE AND APPLY AS THE REFERENCE RATE APPLICABLE TO THIS LOAN IN PLACE OF THE ECB RATE.*
- G. THE INTEREST RATE AND MORTGAGE REPAYMENT INDICATED IN THE LETTER OF APPROVAL ARE BASED ON THE ECB RATE APPLICABLE AT THE DATE OF THE LETTER OF APPROVAL AND MAY CHANGE ON OR BEFORE DRAW DOWN.*
- H. PLEASE NOTE THAT WHERE THE APPLICANT SWITCHES THE RATE ON THIS LOAN TO A RATE WHICH IS FIXED FOR A CERTAIN PERIOD, THE APPLICANT MUST INFORM [the Provider], ON EXPIRY OF THE FIXED RATE PERIOD, WHETHER THE RATE ON THE LOAN IS TO REVERT TO A TRACKER MORTGAGE LOAN AS DESCRIBED ABOVE. IN THE ABSENCE OF INSTRUCTIONS FROM THE APPLICANT AT THE EXPIRY OF THE FIXED RATE PERIOD, THE INTEREST RATE WILL SWITCH*

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TO THE THEN CURRENT VARIABLE INTEREST RATE AND AS MAY BE VARIED FROM TIME TO TIME THEREAFTER.

- I. WHERE MORE THAN ONE TRACKER MORTGAGE LOAN IS ADVANCED ON THE SECURITY, THE TRACKER MORTGAGE LOANS WILL NOT BE AGGREGATED FOR THE PURPOSES OF APPLYING A DIFFERENT RATE OVER THE ECB RATE.”

General Condition 5 of the **General Mortgage Loan Approval Conditions** provides that;

“CONDITIONS RELATING TO FIXED RATE LOANS

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

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

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

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

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

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The **General Mortgage Loan Approval Conditions** also outline;

"IF THE LOAN IS A VARIABLE RATE LOAN THE FOLLOWING APPLIES:

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

It is clear that the Letter of Approval envisaged a tracker interest rate of 3.10% (ECB + 1.10%). The **Special Conditions** attached to the Letter of Approval provide that the interest rate applicable to the loan would not be more than 1.10% over the ECB rate, as varied by the ECB. It is further provided that where the applicant switches the rate on the loan to a rate which is fixed for a certain period, the applicant must inform the Provider on the expiry of the fixed rate period whether the rate on the loan is to revert to the tracker mortgage loan, and in the absence of instructions from the applicant at the expiry of the fixed rate period the interest rate will switch to the then current variable interest rate and as may be varied from time to time thereafter.

I have not been provided with evidence that the Complainant signed and accepted the Letter of Approval. Nonetheless it does not appear to be disputed between the parties that the Complainant accepted this Letter of Approval on the terms and conditions set out in the loan offer.

I note that the Complainant signed a **Fixed Interest Rate Offer** on **17 November 2005** opting to apply a 5-year fixed interest rate of 3.79% to the mortgage loan account.

The **Fixed Interest Rate Offer** detailed:

"...

NOTE – THE EARLY REDEMPTION OF A FIXED INTEREST RATE LOAN GIVES RISE TO A REDEMPTION FEE. SEE CLAUSE 3 OVERLEAF."

The reverse of the **Fixed Interest Rate Offer** details the same wording as was contained in **Condition 5.3** of the **General Mortgage Loan Approval Conditions** in relation to fixed rate loans.

The following page of the **Fixed Interest Rate Offer** details;

"1) The appropriate rate of interest applicable to this advance shall be fixed from the effective date of this agreement for the period specified overleaf and hereafter may not be changed at intervals of less than 1 year.

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2) *The interest rate specified overleaf may vary if the [Provider] is not in receipt of your acceptance of this Offer within 7 days of the date of this offer.*

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

(a) a sum equal to one half of the amount of interest (calculated on a reducing balance basis) which would have been payable on the principal sum desired to be repaid, for the remainder of the Fixed Rate Period, or

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

4) *Notwithstanding clause 3 [the Provider] and the Mortgagor(s) shall each have the option at the end of each fixed rate period to concert to a variable rate loan agreement which will carry no such redemption fee.*

5) *Nothing herein should effect the validity of [the Provider] security and their power of sale hereunder.*

6) *This offer is fixed for 7 days only and [the Provider] must be in receipt of an acceptance of same, signed by all parties to the loan within this period. If the acceptance is not received within 7 days as aforesaid it may be accepted by the [Provider] at its discretion and at the interest rate and terms applicable shall be the interest rate and terms then currently applicable to this type of loan.*

7) *The conditions of your existing mortgage, save those altered in this offer APPLY.*

8) *A fee of €100 is payable on return of your acceptance of this offer.*

ACCEPTANCE

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I/We the undersigned, having duly considered the terms and conditions of this OFFER hereby accept the offer on the terms and conditions set out herein.”

The Provider issued correspondence to the Complainant dated **23 November 2005** detailing:

“Further to your request to have the above loan switched from a Variable Rate loan to a Fixed Rate Loan, I attach herewith a New Loan Offer in duplicate, one of which should be signed by all parties to the mortgage and returned to [the Provider’s address], clearly marked for the attention of [employee of Provider].

Kindly note, that in order to ensure your loan is fixed at the rate quoted in the loan offer, your acceptance of the loan offer must be received by [the Provider] WITHIN 7 DAYS OF THE DATE OF THIS LETTER. Please note that in order for this form to be valid, your signature(s) must be witnessed where indicated.

Finally, I confirm there is an administration fee of €100 payable on acceptance of this loan offer.”

The Provider wrote to the Complainant by letter dated **7 December 2005** as follows:

“ ...

I refer to your request to amend the rate on the above account. I would like to confirm that I have no record of payment of the administration fee of €100.00 for conversion of the account from a variable to a fixed rate Loan.

If you would like to proceed with the conversion, I would be grateful if you could arrange to send me a cheque for €100.00 and I will advise you of your revised repayment at the new fixed rate. Please quote your mortgage reference number on all correspondence.

Kindly note that in order to ensure your loan is fixed at the rate quoted in the loan offer, your €100.00 must be received by [the Provider] WITHIN 7 DAYS OF THE DATE OF THIS LETTER or otherwise the [Provider] will have no alternative but to maintain the Loan at a Variable Rate of Interest.

I trust the above explains the matter and await your reply.”

I note that the Provider issued correspondence to the Complainant dated **29 October 2010** detailing as follows:

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“ ...

I refer to your recent query in relation to switching out of your fixed rate mortgage contract.

I am attaching a list of our current rate options. Please note that the fixed rates listed are valid for 7 days. Please tick the rate you would like and return it, signed to: [Provider's address].

A consequence of your wish to break out of your fixed rate agreement is that funding arrangements that the bank has put in place for your mortgage will have to be unwound. The cost to the bank of doing this is €771.91 and to allow us to proceed with your switch request we require payment of this amount.

Payment can be sent to us by cheque or can be lodged directly to your mortgage account. This quote is valid for 10 business days after which a fresh quotation must be obtained.

Please note that if you apply to switch to a different mortgage repayment type for a limited period and the Bank has agreed to such a change, e.g. from a fixed rate to a variable rate or vice versa, your interest rate may not revert to that applicable prior to the change and that any commitment on our part to a future interest rate or percentage margin which may have been specified in the Special Conditions of your Mortgage may no longer apply. You may be disadvantaged by breaking your current fixed rate contract early. As a consequence we strongly suggest you consult your financial or legal advisor before making a decision on this matter.

To discuss your options with a mortgage advisor please drop into your local [Provider's] branch or contact us on [number] to arrange an appointment. You should be aware that advice cannot be given at this phone number. We may record or monitor phone calls for training purposes and to improve our service.”

The enclosed **rate options form** detailed:

<i>“Option</i>		<i>Monthly Repayment</i>
<i>LTV Variable Rate **</i>	<i>Currently 4.55</i>	<i>1,940.79</i>
<i>2 Year Fixed Rate</i>	<i>Currently 5.25</i>	<i>2,033.09</i>

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5 Year Fixed Rate	Currently 5.75	2,100.52
7 Year Fixed Rate	Currently 6.10	2,148.44
10 Year Fixed Rate	Currently 6.10	2,148.44

...

*** In calculating your loan to value ("LTV") ratio, we use the current loan balance and the most recent valuation on file for this mortgage."*

The reverse side of the options letter under the heading "**Fixed Rate Loans**" contained text which relates to repaying the loan in full or in part during a fixed interest rate period.

Under the heading "**Tracker Mortgage Loans**" the reverse of the options letter contained the following;

"1. The interest rate applicable to Tracker Mortgage Loans is made up of the European Central Bank Refinancing Rate ("the ECB Rate") plus a percentage over the ECB Rate. The amount of the percentage will not be exceeded during the term of the loan.

2. The ECB rate may be increased or decreased from time to time by the European Central Bank (ECB). We will apply all increases or decreases within one month from the date announced by the ECB as the effective date.

3. If we cannot use the ECB Rate for this loan, we will use another reference rate or calculation that is fair and reasonable.

4. If more than one Tracker Mortgage Loan exists on the property, these loans cannot be added together to get a different interest rate over the ECB rate."

There is no evidence to indicate that the Complainant replied to this correspondence.

The Complainant's **mortgage statements** indicate that the LTV variable rate of 4.55% was applied to the mortgage loan account when the fixed interest rate period expired on **1 December 2010**.

The Provider has submitted that due to an "*administrative error*" it did not issue a rate options letter and form to the Complainant 30 days prior to the expiry of the fixed rate period on **01 December 2010**. As a result, the Complainant submits that she had a considerably reduced deadline between **15 December** and **31 December 2010** within

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which to select an interest rate option. This administrative error on the part of the Provider is most disappointing.

Notwithstanding this error on the Provider's part, the Provider subsequently issued correspondence to the Complainant on **15 December 2010** to outline the interest rate options available to her which included the tracker interest rate option of 2.10% (ECB + 1.10%). This letter detailed as follows:

“ ...

It has come to our attention that your 5 year fixed rate expired on the 1st of December 2010. Due to an administration error an options letter was not issued to you outlining your current options, therefore your loan defaulted on the LTV variable rate for private residential Home loans. Please now find attached a list of Residential Investment options available to you.

I can confirm that your loan is currently on the residential Investment LTV variable rate of 5.45%. If you wish to select another option from the enclosed list, please tick your preferred option and return the completed form to us on or before the 31st of December 2010. Please be advised that your selected option will be applied to your account as of the 1st of December 2010.

We recommend that you consider your options carefully before you make a decision. If you choose a fixed rate option, we will again send you an options letter near the end of the fixed rate period. The list of product options and interest rates available to you at that time will depend on market factors then pertaining and may not include options or rates available in the options letter. Note however that the original tracker margin over the ECB rate, as specified in your Letter of Approval will still be available to you as an option subject, in the case of the ECB rate, to variations as announced from time to time by the ECB and in the case of the original tracker rate margin, subject to any variations as may be agreed between you and the Bank.

To discuss your options with a mortgage advisor please drop into your local [Providers] branch or contact us on [number] to arrange an appointment. This number is a customer information line only and we cannot give financial advice on this number. To help us improve our customer service we, we may record and monitor calls.

Important: Please read the information relating to housing loans printed on the back of this letter.”

/Cont'd...

The reverse of the correspondence dated **15 December 2010** details the same wording as was contained in **Condition 5.3** of the **General Mortgage Loan Approval Conditions** in relation to fixed rate loans.

The reverse reads as follows in relation to 'Tracker Mortgage Loans':

"1. The interest rate applicable to Tracker Mortgage Loans is made up of the European Central Bank Refinancing Rate ("the ECB Rate") plus a percentage over the ECB Rate. The amount of the percentage over the ECB Rate will depend on the amount of the loan and that percentage will not be exceeded during the term of the loan.

2. The ECB rate may be increased or decreased from time to time by the European Central Bank (ECB). We will apply all increases or decreases within one month from the date announced by the ECB as the effective date.

3. If we cannot use the ECB Rate for this loan, we will use another reference rate of calculation that is fair and reasonable.

4. If more than one Tracker Mortgage Loan exists on the property, these loans cannot be added together to get a different interest rate over the ECB rate."

The enclosed rate option form detailed as follows:

"Options available (as at 15/12/2010) :

Please tick the option you want below. You may only pick one option and each party to the mortgage must sign this form.

Account Number: [ending 6495]

Option	Monthly Repayment	Office Use	✓
<i>Tracker Rate* - Currently 2.10% ECB (Currently 1.00%) + margin 1.10%</i>	<i>€1,639.72</i>	<i>...</i>	
<i>LTV Variable Rate** - Currently: 5.45%</i>	<i>€2,058.14</i>	<i>...</i>	
<i>2 Year Fixed Rate – Currently: 5.35%</i>	<i>€3,044.84</i>	<i>...</i>	
<i>5 Year Fixed Rate – Currently: 5.85%</i>	<i>€2,111.82</i>	<i>...</i>	

/Cont'd...

In choosing the options above I/We acknowledge that I/We may incur higher interest over the term of the Loan.

I/We have read the warnings, the contents of the covering letter attached and any other information relating to housing loans printed on the back of this form.

[...]

- *Please note, if you choose a fixed rate, the standard fixed-rate conditions will apply (see over the page).*
- ** Original Tracker Margin.*
- *** In working out your loan to value ("LTV") ratio, we use the current loan balance and the most recent valuation we have on file for this mortgage."*

The reverse of the form contains the same wording as the reverse of the Provider's letter dated **15 December 2010**.

The Complainant signed the rate options form on **22 December 2010** indicating her preference for the 5-year fixed rate of 5.85%. I note that a handwritten note on the signed options form provided in evidence states "*Fee Received [illegible] 23/12/10*".

Having considered the mortgage loan documentation, it is clear that the Complainant had a contractual entitlement to a tracker interest rate of ECB + 1.10% at the end of the fixed rate period. I note that the rate options letter and form of **15 December 2010** outlined the tracker interest rate option of 2.10% (ECB + 1.10%) in accordance with the terms of the loan. The Provider's letter further detailed that in the event the Complainant selected a fixed interest rate option "*the original tracker margin over the ECB rate, as specified in your Letter of Approval will still be available to you as an option subject*".

The reverse side of the options form which the Complainant signed on **22 December 2010**, contained detail about the tracker interest rate offering, such that the Complainant could have made an informed decision as to which interest rate to choose at the time. The Provider had set out in a clear and comprehensible manner that the interest rate applicable to a tracker mortgage loan is made up of "*the European Central Bank Refinancing Rate ("the ECB Rate") plus a percentage over the ECB Rate*". As such, the Complainant ought to have been aware that, in circumstances where she opted for the tracker interest rate, the percentage of 1.10% would not be exceeded during the term of the loan and the ECB rate would fluctuate in accordance with the European Central Bank.

/Cont'd...

The Complainant has submitted that at a meeting at the Provider's branch on **22 December 2010**, the Provider's representative advised her that the tracker interest rate option detailed on the rate options form "*was no longer available*" which resulted in the Complainant selecting the 5-year fixed rate in **December 2010**. The Provider has submitted that it "*is not at this remove in time in a position to provide details of any discussions between the Complainant and branch staff in the branch on 22 December 2010.*" Whilst I have no reason to doubt the Complainant's recollection, in the absence of evidence I am unable to comment on any discussions which purportedly took place between the Complainant and a representative of the Provider in **December 2010**.

In her post Preliminary Decision submission dated **16 July 2021** the Complainant has submitted as follows:

"Initially [the Provider] repeatedly denied that I had even visited the [Location] Branch of their Bank on 22nd December, 2010 until they realized that I actually had documentary evidence to support my claim. Then they claimed that they have no evidence that I met with a mortgage advisor on that date – despite the fact that the Rate Options' Form had been partially completed by the mortgage advisor on that date together with the information on the Bank Draft Application and Withdrawal Form which had also been largely completed by [the Provider]. In fact, I only signed both and clicked [sic] the 5 year fixed rate on the Rate Options' Form. I wish to state categorically that I most certainly had a meeting with a senior mortgage advisor on that date – in fact it was the actual Branch Manager with whom I met. Our meeting took place in the second office on the left- hand side after you enter the branch.

I provided him with all the correspondence I had received in relation to my mortgage. He informed me that the information was incorrect and that I was not entitled to a tracker rate. I now believe that he did so on the basis that my mortgage had incorrectly been changed to a variable rate on 1st December. I also believe that he requested that I pay the €100 fee on this basis because he appeared to be of the opinion that I was seeking to switch from a variable rate to a fixed term rate. However, surely such a senior bank official should not have made such an error based on the information contained in the letter issued on 15th December 2010. Should someone of his experience and expertise not have noticed that there was no mention in the letter dated 15th Dec. 2010 of the requirement for me to pay this €100 fee? Yet, [the Provider] accepted this payment and did not notice or admit this 'error' until I contacted them in 2016.

/Cont'd...

I also do not accept that [the Provider] do not keep records of meetings having taken place. Could they really be that incompetent? (I also, in my own personal work, engaged in meetings with members of the public both before and since 2010. I always made a note of such meetings having taken place and a summary of the substance the meetings.)”

Again, I am not disputing the Complainant’s recollection of events. Nonetheless, the fact remains that there is no documentary evidence on the file in relation to any discussions which may have taken place between the Complainant and the Provider’s representative.

Furthermore the evidence does not support the Complainant’s submission that she would have chosen the tracker interest rate at that time if not for the advice she purportedly received from the Provider’s employee. The Complainant has submitted that she opted for the five-year fixed interest rate due to her *“concerns that interest rates might rise in respect of the variable rate option.”* She further submitted that the variable rate option was *“not attractive”* due to the current *“financial instability”*.

The Complainant was thus aware of the moving nature of variable type rates and elected to apply the fixed interest rate period in **2010**, to protect herself from the uncertainty of a variable type rate. The Complainant of her own volition decided not to choose the option of a tracker interest rate of ECB + 1.10% (2.10%) at the time and instead selected the higher five-year fixed interest rate offered (5.85%).

In her post Preliminary Decision submission of **16 July 2021**, the Complainant submitted as follows:

“I have already explained why I chose the five year fixed term rate based on the advice received. In 2009, approximately 15 months earlier, I had switched another mortgage I had with [the Provider] to a tracker rate with [a third party Provider]. I did discuss with them the likelihood that I would also switch the mortgage under dispute to them. They advised me to contact [the Provider] to check what the redemption fee would be if I were to break my fixed term. I did so, but the amount of the fee was so expensive that it proved not to be feasible to do so. Unfortunately, by December 2010 it was no longer possible to switch to Tracker Rates with [the third party Provider].

I also believe that it would have been very difficult for me to have selected the Tracker Rate option on the Options’ form with the Branch Manager seated across the desk from me. After all, he had been insistent that, despite the documentary evidence to the contrary, I was not entitled to a Tracker Rate.

/Cont’d...

I believed and accepted this advice and never questioned it or thought about it until I received the letter from [the Provider] in November, 2015. Why would I? (I had previously been provided with very sound advice by [Provider employee] of [the Provider] in 2001 when I took out a mortgage on [property] and again in 2005 when I took out a mortgage on [property].) I never questioned the advice I had received in 2010 until the fixed-term was due to expire in 2015 when I received correspondence from [the Provider]."

I do not consider any communications which took place between the Complainant and a third party Provider in relation to an mortgage loan account held with that third party Provider in or around **2009**, to be relevant to, or have any bearing whatsoever, on this complaint.

It appears from the Complainant's submissions that she is of the view that if not for the advice she received from the Provider's representative at the meeting which purportedly took place in **December 2010** that the tracker interest rate option was no longer available, she would have proceeded to select the tracker interest rate option for her mortgage loan account at that time. I am of the view that it was reasonable for the Complainant to believe that she was receiving advice from the Provider's representative at that time. However, given that the representative was a person employed by the Provider and selling the Provider's mortgage products, I am of the view that it was not reasonable for the Complainant to expect that any advice or information given to her was independent. If the Complainant wanted independent advice about interest rates available in the market, the Complainant should have been aware that she could only get that advice from an independent third party advisor.

In any event, the fact remains that the rate options letter and form of **15 December 2010** outlined the tracker interest rate option of 2.10% (ECB + 1.10%) in accordance with the terms of the loan. The Complainant did not select that option.

I note that there is a handwritten amendment on the signed **options form** provided in evidence, whereby the monthly repayment amount for the 2-year fixed rate option was amended from €3,044.84 to €2,044.84 by striking out '3' and writing '2' next to it. The Complainant asserts that the Provider did not bring this amendment to her attention when she signed the form opting to select the 5-year fixed interest rate and as a consequence she did not wish to select the 2-year fixed interest rate option. The Provider has stated that there "*was sufficient information in the rate options form, irrespective of the typographical error, which enabled the Complainant to choose a rate option and she did in fact choose a rate option based on that information.*" It is not clear to me, based on the evidence before me, whether this amendment was brought to the Complainants' attention before she signed the rate options form on **22 December 2010**.

/Cont'd...

The **mortgage loan statement** indicates that an interest rate of 5.85% was applied to the mortgage loan account on **23 December 2010**.

The Provider wrote to the Complainant on **02 September 2015** as follows:

“ ...

As a fixed rate customer of [the Provider] you can apply to have the interest rate which you pay on your mortgage switched to an MVR. The exact MVR that will apply will vary depending on what percentage of the current value of the home is accounted for by the outstanding mortgage (referred to as “Loan to Value” (LTV) ratio).

MVR mortgages offer a lower rate of interest to customers whose mortgage borrowings represent a smaller percentage of the value of the property. For instance where the outstanding amount in the mortgage represents 50% of the current value of the home, the interest rate will be lower than where the outstanding amount represents 90% of the current value of the home.

You can apply to switch your mortgage rate to an MVR by:

- 1. Applying for an MVR at the end of your agreed fixed rate period, or*
 - 2. Exiting from your fixed rate before the end of your agreed fixed rate period.*
- Please note that if you exit from your fixed rate before the end of your agreed fixed rate period you may incur a fixed rate fee.”*

I stated in my Preliminary Decision that it did not appear from the evidence that the Complainant responded to this letter. I note that the mortgage loan account remained on the fixed interest rate.

In her post Preliminary Decision submission of **16 July 2021** the Complainant submitted:

“In your Preliminary Decision you reference a letter I received from [the Provider] dated 02/09/2015 in relation to the announcement by [the Provider] of plans to extend its range of Managed Variable Rate (MVR) mortgages to existing customers. You note that I did not reply to this letter. However, having read this letter I did contact [the Provider] in October 2010 seeking information about exiting from my fixed rate before the end of my agreed fixed rate period. However, they wrote back in October 2010 and the fee was unacceptable to me so I did not proceed with this.”

/Cont’d...

I note the Complainant's submission that she contacted the Provider in **October 2010** to seek information about exiting from the fixed interest rate but that the breakage fee quoted by the Provider was "unacceptable" to her. **General Condition 5.3** of the **General Mortgage Loan Approval Conditions** provided that a fee would be payable in the event of a break from a fixed interest rate period before the expiration date of that fixed rate period.

It does not appear to me in any event that this matter is of particular relevance to the conduct complained of.

Prior to the expiry of the fixed rate period in **December 2015**, the Provider wrote to the Complainant on **23 November 2015** and detailed as follows:

"...

I am writing to remind you that the current rate option on your mortgage account will end on 23 Dec 2015.

Please find attached the current options available to you.

We recommend that you consider your options carefully before making your selection. If you choose a fixed rate (where available), then at the end of the fixed rate period we will send you a list of the product options available to you. Our rates at that time could be higher or lower than our current rates depending on market factors and as a consequence you may incur higher interest over the term of the loan.

*If we do not receive a written instruction from you in relation to the above on or before the 23 Dec 2015 the interest rate on your mortgage will be the LTV Variable Rate **.*

Switched to Variable or Other Rates

If you avail of or default to a Variable Rate (currently LTV variable) or Other Rate, our tracker rate commitment remains in place but can only take effect at the end of a fixed rate period. For the avoidance of doubt, you should be aware that the commitment on the part of the bank to offer you a tracker rate at the end of the fixed rate period does not take effect while your mortgage is on a Variable Rate or where you have chosen to switch into a Variable rate. The bank does not guarantee that fixed rate options will be available in future if you subsequently wish to switch out of a variable rate.

/Cont'd...

We strongly suggest you consult your financial or legal advisor before making a decision regarding mortgage options.”

The enclosed **rate options form** outlined:

“Current Rate and repayment – 5.75% €2,098.33

Please tick the option you want below. You may only pick one option and everyone signed up to the mortgage must sign.

Account Number: [ending **6495**]

<i>Option</i>		<i>Monthly Repayment (EUR)</i>		<i>Office Use</i>	<i>✓</i>
<i>LTV Variable Rate **</i>	<i>CURRENTLY</i>	<i>4.50%</i>	<i>1,980.08</i>	<i>[...]</i>	
<i>Tracker Variable Rate*</i>	<i>CURRENTLY</i>	<i>1.15%</i>	<i>1,686.20</i>	<i>[...]</i>	
<i>2 Year Fixed Rate</i>	<i>CURRENTLY</i>	<i>7.25%</i>	<i>2,243.03</i>	<i>[...]</i>	
<i>5 Year Fixed Rate</i>	<i>CURRENTLY</i>	<i>8.75%</i>	<i>2,394.46</i>	<i>[...]</i>	

[...]

In choosing the option above I/We acknowledge that I/We may incur higher interest over the term of the loan.

I/We have read the content of this letter and the information relating to housing loans printed on the reverse side of this form, together with “INFORMATION REGARDING YOUR MORTGAGE OPTIONS”

*If we do not receive a written instruction from you in relation to the above on or before 23 Dec 2015, the interest rate on your mortgage will be the LTV Variable Rate**.*

[...]

- If you choose a fixed rate (where available), the standard fixed rate conditions will apply ~ see over leaf*
- The above fixed rates are valid for 30 days from the date of this letter.*

/Cont'd...

***In calculating your loan to value (“LTV”) ratio, we use the current loan balance and the most recent valuation on file for this mortgage.*

**The interest rate that applies to this Tracker Mortgage Loan will never be more than the European Central Bank Refinancing Rate (the “ECB Rate”) plus a margin of*

% 1.10%

See over the page for more details on Tracker Mortgage Loans.”

The reverse of the rate option form under the heading ‘Tracker Mortgage Loans’ detailed as follows;

“1. The interest rate applicable to Tracker Mortgage Loans is made up of the European Central Bank Refinancing Rate (“the ECB Rate”) plus a percentage over the ECB Rate. The amount of the percentage over the ECB Rate will depend on the amount of the loan and that percentage will not be exceeded during the term of the loan.

2. The ECB rate may be increased or decreased from time to time by the European Central Bank (ECB). We will apply all increases or decreases within one month from the date announced by the ECB as the effective date.

3. If we cannot use the ECB Rate for this loan, we will use another reference rate of calculation that is fair and reasonable.

4. If more than one Tracker Mortgage Loan exists on the property, these loans cannot be added together to get a different interest rate over the ECB rate.”

The Complainant signed the form on **07 December 2015** and ticked the option selecting the tracker mortgage rate of 1.15%.

The Provider wrote to the Complainant on **15 December 2015** detailing as follows;

“...

I am writing to you to confirm we have received the completed Options Form, a copy of which is enclosed.

If you have any further questions, please do not hesitate in contacting our [Named services] Mortgage Servicing on [phone number] Monday-Friday 9am to 5.30pm.”

/Cont’d...

The Provider wrote to the Complainant again on **23 December 2015** detailing as follows;

"I write to confirm that the rate of interest applicable to your account has been switched from a 5 Year Fixed Rate to a Tracker Variable Rate at 1.150%

We will shortly write to you confirming your revised repayments and the date from which they are applicable"

The **mortgage loan statements** provided in evidence indicate that an interest rate of 1.15% was applied to the Complainant's mortgage loan account on **23 December 2015**.

Further correspondence issued from the Provider to the Complainant dated **30 December 2015** detailing as follows;

"...

I am writing to inform you that due to a recent interest rate change, the monthly repayment on your loan has changed. The new interest rate is 1.15% and is applicable from DECEMBER 23, 2015.

Your new scheduled mortgage payment starting from this month, is shown below:

<i>Total Mortgage Payment</i>	<i>EUR1688.94</i>
<i>Total Insurance*</i>	<i>EUR0.00</i>
	<i>-----</i>
<i>Total Repayment</i>	<i>EUR1688.94</i>
<i>Due Date</i>	<i>JANUARY 9, 2016"</i>

In her post Preliminary Decision submission of **16 July 2021**, the Complainant has submitted:

"In November 2015, exactly one month before my fixed-rate was due to expire, I received a letter from [the Provider] advising me of this and enclosing a Rate Options' Form. It is interesting how this letter differed so much to that dated 15th December, 2010. In the former the following was stated "we strongly suggest you consult your financial or legal advisor before making a decision regarding mortgage options" whereas in the latter it stated that "To discuss your options with a mortgage advisor drop into your local [Provider] branch or contact us on [telephone number] to arrange an appointment".

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On receipt of the letter in November 2015 I phoned a friend, who had some financial experience, to seek advice. I explained that I had been advised by the branch manager of [Provider branch] in December 2010 that I was not entitled to select the Tracker Rate, although it was listed on the Rate Options' Form and yet now in 2015 the Rate Options' Form again listed this option. Something was clearly amiss. As I had time on my side, I decided to return the Rate Options' Form selecting my preferred option i.e. the Tracker Rate. I registered the letter (tracking number) and posted it on 7th December, 2015. I also phoned the branch on 14th December, 2015 and spoke with [Provider employee] who verified that the documentation had been received. I went to these lengths as I no longer had faith in the bank. Either I had been provided with incorrect information in 2010 or the information on the 2015 Rate Options' Form was incorrect. It was only when [the Provider] applied the Tracker Rate that I suspected that the advice of the branch manager to me in December, 2010, was incorrect."

It is not disputed that the Provider received the Complainant's signed rate options form in which she selected the tracker interest rate option in **December 2015**.

It appears to me that in accordance with the **Special Conditions** attached to the **Letter of Approval** dated **3 October 2005** that the Complainant was entitled to a tracker interest rate of ECB + 1.10% on the expiry of the fixed interest rate period in **December 2015**. I note that the rate options form signed by the Complainant on **7 December 2015** provided for a tracker interest rate option of ECB + 1.15%. The form went on to detail that *"The interest rate that applies to this Tracker Mortgage Loan will never be more than the European Central Bank Refinancing Rate (the "ECB Rate") plus a margin of % 1.10%".*

The lack of clarity from the Provider in the above correspondence with the Complainant is concerning. I find it difficult to understand how this did not come to light when the Provider was investigating this complaint before it issued its Final Response Letter.

In the Complainant's post Preliminary Decision submission of **16 July 2021**, she submitted:

"You note on page 23 of your preliminary decision your concern at the lack of clarity in correspondence from [the Provider] issued on 23rd November, 2015. You stated that you "find it difficult to understand how this did not come to light when the Provider was investigating this complaint before it issued its Final Response Letter". I believe that this is just further evidence of incompetence on the part of [the Provider] and their inability to admit this. You noted that I did not complain about this. Should I really need to have complained about this as my complaint was in relation to information provided both written and verbally to me in December 2010?"

/Cont'd...

It is important for the Complainant to understand that it is a matter for the Complainant herself to specify in her complaint to this office, any specific conduct in relation to her mortgage loan account that she wishes to complain about, the dates on which that conduct is alleged to have occurred, and any other information which she believes to be relevant to her complaint. The Complainant has submitted that her complaint to this office relates to the conduct of the Provider in or around **December 2010**.

It is not the role of this Office to conduct an audit of the Complainant's account to verify that the correct tracker interest rate has been applied by the Provider to the mortgage loan account at all points in time. In the event that the Complainant is dissatisfied with the conduct of the Provider in or around **December 2015** she has the option of making a complaint.

As stated in my Preliminary Decision, this matter has not been raised by the Complainant as part of the complaint being investigated and adjudicated on by this office. I note that an interest rate of 1.10% was subsequently applied to the mortgage loan account some three months later, on **31 March 2016**.

To conclude, I accept that the Provider offered the Complainant a tracker interest rate of ECB + 1.10% on the expiry of the initial fixed interest rate period in **December 2010**. However, the Complainant did not select this option and instead opted for a five-year fixed interest rate. There is no evidence before me to support the Complainants' submission that she was advised by the Provider at that time that the tracker interest rate option was no longer available to her.

However, the evidence shows that the Provider failed to send a **rate options letter and form** to the Complainant 30 days in advance of the expiry of the fixed interest rate period in **December 2010** due to an "*administrative error*". The evidence further shows that when the Provider did send a rate options letter and form to the Complainant on **15 December 2010**, incorrect information was provided in respect of the repayment amount on the two-year fixed interest rate option. I accept that mistakes can occur. Nonetheless it is very disappointing that the Provider would allow such incorrect information to be given to the Complainant. It is important that all information furnished by the Provider to the Complainant is clear and accurate.

In her post Preliminary Decision submission of **16 July 2021**, the Complainant has submitted:

"I am hugely disappointed that you do not accord these errors greater significance. Personally, I find this to be further evidence of incompetence on the part of the Bank.

/Cont'd...

The fact that they never made any attempt to rectify the situation by providing me with a Rate Options' Form with the correct information is of great significance and shows a lack of respect. These errors, together with incorrect advice from [the Provider] have cost me thousands of euro in interest payments over a five year period. I would not use the term "disappointing" to describe how I feel about this. Is a document such as a Rate Options' Form containing significant incorrect information even legally binding?"

I accept that the Provider made an error in relation to the repayment amount for the two-year fixed interest rate period in its correspondence with the Complainant on **15 December 2010**. Errors of this nature should not happen. Notwithstanding this, I do not accept the Complainant's submission that she has overpaid "thousands of euro" in interest during the five-year period that her mortgage loan account was on the fixed interest rate instead of a tracker interest rate. As outlined above the Provider offered the Complainant a tracker interest rate of ECB + 1.10% on the expiry of the initial fixed interest rate period in **December 2010**. However, the Complainant did not select this option, and instead opted for a five-year fixed interest rate.

The Provider accepts that it erroneously charged the Complainant a fixed rate option fee of €100.00 in order to apply the fixed interest rate which was paid by her on **22 December 2010**. In its correspondence to the Complainant dated **9 November 2016** the Provider offered to refund the Complainant the €100.00 fee together with a goodwill gesture of €50.00. The Provider, in its formal response to the complaint dated **24 July 2019**, again offered the Complainant the fixed rate option fee refund of €100.00 together with an increased goodwill gesture of €400.00 in recognition of the service failure. I understand that this offer remains open to the Complainant to accept.

However, I am of the view that the failures on the part of the Provider in relation to inconsistencies and inaccuracies in the information given to the Complainant in or around **December 2010** and the inconvenience caused to the Complainant merits a larger sum of compensation. For this reason, I partially uphold this complaint. To mark the Provider's shortcomings, I indicated in my Preliminary Decision, my intention to direct that the Provider pay to the Complainant a sum of €1,250.00 compensation. For the avoidance of doubt this sum is inclusive of the sum of €400.00 already offered to the Complainant.

In the Complainant's post Preliminary Decision submission of **16 July 2021** she states:

"I hope I am interpreting this correctly – [the Provider] already offered to pay me €400 in respect of incorrectly charging me a €100 fee in December 2010.

/Cont'd...

Therefore, you appear to be offering me €850 in respect of the failures on the part of the Provider in relation to inconsistencies and inaccuracies in the information provided to me in December 2010 and in inconvenience this has caused me. You did not mention the financial significance this caused to me. For a period of five years i.e. 60 months I paid [the Provider] €28,326 in interest i.e. the difference in total payments between the Tracker Rate and the 5 year fixed-rate. I believe this money was not due to them. €850 falls well short of this figure.

...

As €850 is approximately 3% of €28,326 it appears that you consider that I am 97% responsible and [the Provider] is 3% responsible. Is this correct? Does this really reflect the Provider's shortcomings?

Words fail me to express my disappointment at your preliminary decision and I only hope that when you consider the information provided above that your final decision will differ significantly."

The Complainant seems to have completely misunderstood my Preliminary Decision.

Again, for the reasons outlined above, and for the avoidance of doubt, I must point out in the clearest possible terms that I do not accept the Complainant's submission that she has overpaid €28,326.00 in interest during the five-year period that her mortgage loan account was on the fixed interest rate instead of a tracker interest rate.

Therefore, the Complainant's interpretation of the compensation directed is not correct.

I remain of the view that the sum of €1,250.00 compensation (inclusive of the sum of €400.00 already offered to the Complainant) is reasonable in all the circumstances.

Conclusion

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

I direct the Respondent Provider to make a compensatory payment to the Complainant in the sum of €1,250 (inclusive of the sum of €400 already offered to the Complainant), to an account of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainant to the Provider.

/Cont'd...

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

The Provider is also required to comply with **Section 60(8)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.



GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

8 September 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.