



<u>Decision Ref:</u>	2021-0313
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Tracker Mortgage
<u>Conduct(s) complained of:</u>	Refusal to move existing tracker to a new mortgage product
<u>Outcome:</u>	Rejected

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

This complaint relates to a mortgage loan account held by the Complainants with the Provider. The mortgage loan is secured on the Complainants' Principal Private Residence.

The loan amount was €226,500 and the term of the loan was 20 years. The particulars of the mortgage loan offer accepted by the Complainants on **26 August 2010** detailed that the loan type was "*Repayment*" and the interest rate was a fixed rate of 3.500% for a period of 2 years, with a variable rate applying thereafter.

The Complainants' Case

The Complainants submit that in **2010** they applied for a mortgage loan to facilitate the purchase of a new house. At the time of the application, the Complainants already held three mortgage loans with the Provider which were all secured on their then primary residence and all operating on tracker interest rates of ECB + 1.25%.

The Complainants submit that when they were applying for the new mortgage in **2010**, they were advised by the Provider that they would be required to redeem their existing mortgage loans and draw down a new mortgage loan (account ending **6548**), which is the subject of this complaint.

The Complainants state that they were not permitted to “*carry over [their] tracker mortgage*” and that the instruction to redeem their existing tracker rate loans was “*the only option given*” to them by the Provider.

The Complainants assert that they ought to have been able to “*maintain the current tracker loan and receive an additional loan for the remaining balance*”. They state that they “*trusted the advisor of [the Provider] and did not know what our options/rights were*” at the time.

The Complainants submit that instead, when they “*moved into our new house we were put on a variable rate*” which they state is “*extremely high compared to other institutions*”.

The Provider’s Case

The Provider submits that the Complainants were not offered a tracker interest rate when they applied for their mortgage loan account **6548** in **2010** because tracker interest rates were withdrawn as a product by the Provider in **late 2008** and “*were not available for new lending after that date.*”

The Provider submits that at the time of the Complainants’ loan application in **2010**, the Complainants were seeking a mortgage loan for €210,000 for a term of 30 years on a 2-year fixed rate, to assist in the purchase of their new family home. The Provider details that at that point in time the Complainants held three mortgage loans with the Provider which were all secured on their then primary residence and all on a tracker interest rate of ECB + 1.25% when they were redeemed on **28 September 2010**.

The Provider has outlined the following interactions with the Complainants:

- The Provider issued a **Mortgage Loan Offer Letter** to the Complainants on **9 March 2010** for a property that the Complainants intended to purchase as their primary residence. It states that the cover letter enclosing the Loan Offer detailed that while fixed and variable rate options were discussed with the Complainants, they chose the “*2 year fixed rate option as [they] wanted [their] repayments to remain the same over this period.*” The Provider submits that **General Condition 9(c)** of the mortgage loan agreement stated that the loan must be drawn down within 3 months of the date of issue.
- The Complainants contacted the Provider on **29 July 2010** to inform them that they had “*misplaced the offer letter and asked for the Provider to reissue same.*”

- The Provider reissued the **Mortgage Loan Offer Letter** to the Complainants on **9 August 2010** and again the cover letter advised that fixed and variable options were discussed with the Complainants but they had opted for the 2-year fixed rate option.
- On **17 August 2010** the Complainants contacted the Provider and advised that they now intended to purchase a different property.
- On **18 August 2010** the Complainants requested a 20-year term for the mortgage.
- On **19 August 2010** the Provider issued a new **Mortgage Loan Offer Letter** to the Complainants. It states that as with the previous Offer Letters, the cover letter advised that the Complainants opted for a 2-year fixed interest rate option after having discussed alternative variable and fixed rate options with the Provider.
- The Complainants contacted the Provider on **20 August 2010** seeking to increase the mortgage loan amount to €226,500 on the basis that they were *“unaware that their credit card need to be repaid from mortgage drawdown”*.
- The Provider advised the Complainants on **24 August 2010** that it did not require the credit card to be cleared prior to mortgage draw down, however the Complainants indicated that they would prefer to include their credit card debt with the mortgage and were therefore seeking an increased mortgage approval of €226,500. The Provider outlines that the Complainants agreed to reduce their credit card limit to €2,000.

The Provider submits that on **26 August 2010** it issued a further **Mortgage Loan Offer Letter** to the Complainants. It states that again, the cover letter advised that fixed and variable options were discussed with the Complainants, but they opted for the 2-year fixed rate option.

The Provider details that the Offer Letter provided for a 2-year fixed rate of 3.5%, *“further to which period the mortgage loan account would move to the standard variable rate, which was 3.35% as at the date of Offer Letter.”* The Provider submits that there was no contractual entitlement to a tracker interest rate in the Offer Letter which the Complainants accepted and signed on **27 August 2010**.

The Provider outlines that the new mortgage loan account **6548** was drawn down on **4 October 2010** and the three mortgage loans which were secured on the Complainants' previous primary residence were redeemed on **28 September 2010**.

The Provider outlines as follows with respect to these accounts:

- *“Mortgage loan account [ending 1227] had a balance of €86,625.14 at the date of redemption and the interest rate applicable was a tracker rate of interest ECB + 1.25%.*

/Cont'd...

- *Mortgage loan account [ending **1004**] had a balance of €8,112.08 at the date of redemption and the interest rate applicable was a tracker rate of interest ECB + 1.25%.*
- *Mortgage loan account [ending **8797**] had a balance of €29,377.92 at the date of redemption and the interest rate applicable was a tracker rate of interest ECB + 1.25%.”*

The Provider submits that it does not hold notes of the conversations between the Complainants and the Provider in relation to the Complainants’ mortgage loan application, however, it does have internal records of the application on its system. In this regard, the Provider submits that *“there was no regulatory requirement in 2005 for mortgage lenders to retain such conversations with customers”* and it is *“not aware of any industry practice to retain conversations or documentation relating to mortgage loan applications at that time and is satisfied that the documents exhibited, provide clarity on the interactions at that time.”*

The Provider submits that it provides customers with *“a range of available and applicable interest rates at the application stage of the mortgage loan”*. It states that various fixed and variable rates are discussed and it is *“for the customer to choose the rate that best suits their needs at that point in time.”* The Provider submits that its internal notes detail that the Complainants’ mortgage loan application specifically sought a 2-year fixed interest rate. It further notes that its letter to the Complainants dated **26 August 2010** states that fixed and variable rates were discussed with the Complainants, however they opted for the 2 year fixed rate option in order for their *“repayments to remain the same”*.

The Provider submits that the application for mortgage loan account ending **6548** was a *“new lending application which contained different terms and conditions to the Complainants previous mortgage loan accounts”* and the Provider could only offer interest rates which were available to new customers in **2010**. It details that tracker rates were withdrawn as a product in **late 2008**. It further details that its Tracker Mover product, which could *“move an existing tracker rate of interest from one mortgage loan account to another in the event of a customer moving house”*, was not introduced until **early 2014**. Therefore, the Provider submits that there was no option available to the Complainants in **2010** to ‘move’ the tracker interest rate that applied to any of their previous mortgage loan accounts to the mortgage account ending **6548**.

The Provider outlines that on the expiry of the 2-year fixed interest rate on **4 October 2012**, the account *“moved to a standard variable rate in accordance with the terms and conditions of the Offer Letter”* and has remained on that rate to date.

The Complaint for Adjudication

The complaint for adjudication is that the Complainants were not permitted to move the tracker interest rate from their initial mortgage loan accounts to the new mortgage loan account ending **6548** in **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 Complainants were given the opportunity to see the Provider's response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

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

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

A Preliminary Decision was issued to the parties on 19 August 2021, outlining my preliminary determination in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

In the absence of additional submissions from the parties, within the period permitted, I set out below my final determination.

In order to determine the complaint, it is relevant to consider the interactions between the Complainants and the Provider in **2010** when the Complainants applied for mortgage loan account ending **6548**. It is also necessary to review and set out the relevant provisions of the Complainants' mortgage loan documentation.

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The Provider has submitted that it does not hold a copy of the Complainants' mortgage loan application for the mortgage loan account ending **6548**, if one was completed by the Complainants in **2010**.

However, an undated copy of the Provider's internal notes relating to the mortgage loan application have been provided in evidence and state as follows:

"Existing Mortgage Accounts

[Account ending 1227]

[Account ending 1004]

[Account ending 8797]

...

FURTHER APPLICATION DETAILS

...

[The Complainants] are [Provider] customers. Accounts are held with us since 2000.

...

Proposition

TUB 210K over 30yrs 2 yr fixed rate.

Recommendation

I would recommend this application customers of [Provider] since 2000

LTV is 73.33%

NDI is 3291 vs 2725

Income multiples are positive

Recommended"

A document has been furnished in evidence titled "*Rationale for Application [ending] 6548*" which details:

"...

/Cont'd...

Meets all criteria but I have a concern over the fact that app[licant]s are increasing their existing mortgage facilities by EUR 90k, yet have no savings, a substantial credit card balance and a current account with only satisfactory operation. I would like the branch to comment on where the scope is for the apps to make repayments on the proposed higher mortgage.

Decision: Under Negotiation

..."

The Provider's internal notes on **9 March 2010** state as follows;

"...app[licant] 2 has been funding evening course fees (he will graduate from [Redacted] this summer with [course title]) - satisfied to proceed here

Decision: Offer Sanctioned Amount: 220,000"

The Provider issued a letter to the Complainants on **9 March 2010** which outlined:

"I am delighted to let you know that [the Provider] has approved your mortgage application. This approval is subject to the terms and conditions contained in the enclosed Mortgage Loan Offer ("Offer Letter").

Based on the information you provided to us, we believe that the enclosed loan offer will meet your requirements and is suited to your needs as a customer who is moving house.

While details of fixed and variable rate options were discussed with you, we note that you have chosen the 2 year fixed rate option as you wanted your repayments to remain the same over this period. A number of repayment options were also discussed with you and you have chosen a repayment mortgage where both interest and capital are paid over the term of the loan, thus reducing the capital balance outstanding.

You have selected to pay your mortgage over 30 years, as this is the term that suits your requirements."

The enclosed **Mortgage Loan Offer Letter** dated **9 March 2010** details as follows;

***"PART 1 – THE STATUTORY LOAN DETAILS
IMPORTANT INFORMATION AS AT 09 March 2010***

/Cont'd...

- | | |
|-------------------------------|-------------|
| 1. Amount of Credit advanced: | €220,000.00 |
| 2. Period of Agreement: | 30 Years |

3. Number of Repayment Instalments	Instalment Type	4. Amount of each Instalment
24	Fixed at 2.990%	€925.46
336	Variable at 2.600%	€882.61

I note that the Provider's internal note dated **2 July 2010** details:

*"Please note that the current completion date is 01/08/2010 and our records indicate that not all conditions have been met.
..."*

The Provider's internal email dated **29 July 2010** details;

"Could you please reissue letter of offer as customers have misplaced same. Many Thanks."

A further internal email dated **4 August 2010** details:

"please advise of any changes in the app's financial circumstances etc. as case will be reviewed accordingly."

The Provider issued a letter to the Complainants on **9 August 2010** which was identical to its letter of **9 March 2010** set out above. For the sake of brevity, I have not requoted it here.

The Provider enclosed a **Mortgage Loan Offer Letter** dated **9 August 2010** with its letter which detailed as follows;

**"PART 1 – THE STATUTORY LOAN DETAILS
IMPORTANT INFORMATION AS AT 09 August 2010**

- | | |
|-------------------------------|-------------|
| 1. Amount of Credit advanced: | €220,000.00 |
| 2. Period of Agreement: | 30 Years |

/Cont'd...

3. Number of Repayment <u>Instalments</u>	<u>Instalment</u> <u>Type</u>	4. Amount of each <u>Instalment</u>
24	Fixed at 3.490%	€985.43
336	Variable at 3.100%	€940.99”

The Provider’s internal notes dated **17 August 2010** details:

“Customers have changed property address, new address is:

[Redacted]

...

All other circumstances have not changed.

Can you please issue new letter of offer to customers and their solicitor.”

The Provider’s internal note dated **19 August 2010** details:

“Customers want a term of 20 years on mortgage”

The Provider issued a letter to the Complainants on **19 August 2010**. Again, the text of the letter was identical to the Provider’s letter of **9 March 2010** quoted above, other than the last line of the letter which stated as follows:

“You have selected to pay your mortgage over 20 years, as this is the term that suits your requirements.”

A further **Mortgage Loan Offer Letter** was issued to the Complainants on **19 August 2010** which detailed as follows:

***“PART 1 – THE STATUTORY LOAN DETAILS
IMPORTANT INFORMATION AS AT 09 August 2010***

1. Amount of Credit advanced:	€220,000.00	
2. Period of Agreement:	20 Years	
3. Number of Repayment <u>Instalments</u>	<u>Instalment</u> <u>Type</u>	4. Amount of each <u>Instalment</u>
24	Fixed at 3.500%	€1,274.76

/Cont’d...

216

Variable at 3.350%

€1,259.45”

In circumstances where none of the above mortgage loan offers of **9 March 2010**, **9 August 2010** and **19 August 2010** respectively were signed and accepted by the Complainants, I accept that that these mortgage loan offers did not form the contractual basis of any loan agreement between the Provider and the Complainants and have no application or relevance to the Complainants’ mortgage. In any event, I note that none of the above mortgage loan offers provided for an entitlement to a tracker rate of interest.

The Provider’s internal email on **20 August 2010** details:

“Customers wish to increase mortgage amount to E226500 as they say they were unaware that their credit card needed to be repaid from mortgage drawdown.

All still within guidelines.

LTV 80%

Income multiples E226500 V's E276k.

Can you please issue new letter of offer to customers for higher amount?”

A further internal email sent on **24 August 2010** at **09:03am** states:

“There appears to have been a mix up here - we will not insist on the Credit Card debt being cleared. I can reissue the offer without this condition if the customers wish.”

A further internal email sent on **24 August 2010** at **10:10am** states:

“Just spoke with customers and they would prefer now to include this in the mortgage and increase mortgage amount to E226500.

Can you approve same and issue letter of offer?”

A further internal email sent on **25 August 2010** details:

As per telephone conversation this morning can you please issue new letter of offer to customers to include credit card debt.

New mortgage amount E226,500.

/Cont’d...

Customers have agreed to reduce credit card limit to E2000 and i will personally ensure limit is reduced.

The Provider's internal notes dated **26 August 2010** outline the following:

"Additional EUR 6.5k required as apps want to clear [third party Provider] credit card and reduce limit to EUR 2k. LTV still less than 80% and no material change to overall credit. Will agree to same.

Decision: Offer Sanctioned Amount: 226,500"

The Provider issued a letter to the Complainants on **26 August 2010** which outlines as follows:

"I am delighted to let you know that [the Provider] has approved your mortgage application. This approval is subject to the revised terms and conditions contained in the enclosed Mortgage Loan Offer ("Offer Letter").

Based on the information you provided to us, we believe that the enclosed loan offer will meet your requirements and is suited to your needs as a customer who is moving house.

While details of fixed and variable rate options were discussed with you, we note that you have chosen the 2 year fixed rate option as you wanted your repayments to remain the same over this period. A number of repayment options were also discussed with you and you have chosen a repayment mortgage where both interest and capital are paid over the term of the loan, thus reducing the capital balance outstanding.

...

This Offer Letter supersedes and replaces all previous versions of this Offer Letter issued to you in respect of this loan"

The **Mortgage Loan Offer Letter** dated **26 August 2010** which was enclosed with the letter details as follows:

***"Part 1 – The Statutory Loan Details
Important Information as at 26 August 2010***

/Cont'd...

1. Amount of Credit advanced:		€226,500.00
2. Period of Agreement:		20 Years
3. Number of Repayment Instalments	Instalment Type	4. Amount of each Instalment
24	Fixed at 3.500%	€1,312.42
216	Variable at 3.350%	€1,296.65”

...

Part 2 – The Additional Loan Details

11. Type of Loan:	Repayment
12. Interest Rate:	3.500% Fixed

...

This is an important legal document. You are strongly recommended to seek independent legal advice before signing it. This Offer Letter is regulated by the Consumer Credit Act, 1995 and your attention is drawn to the Notices set out on the last page of this Offer Letter.”

The relevant sections of the **General and Special Conditions** to the **Mortgage Loan Offer** detail as follows:

“6. Variable Interest Rates

- (a) *Subject to clause 6 (c), at all times when a variable interest rate applies to the Loan the interest rate chargeable will vary at the Lender’s discretion upwards or downwards. If at any time a variable rate of interest applies, repayments in excess of those agreed may be made at any time during the term of the Loan without penalty.*
- (b) *The Lender shall give notice to the Borrower of any variation of the interest rate applicable to the Loan, either by notice in writing served on the Borrower in accordance with clause 1 (c) above, or by advertisement published in at least one national daily newspaper. Such notice or advertisement shall state the varied interest rate and the date from which the varied interest rate will be charged.*

/Cont’d...

- (c) *Notwithstanding anything else provided in this Offer Letter, the varied applicable interest rate shall never, in any circumstances, be less than 0.1% over one month's money at the Euro Inter Bank Offered Rate (EURIBOR).*

7. Fixed Interest Rates

- a) *The Lender may at its absolute discretion permit the Borrower to avail of a fixed interest rate in respect of all or any part of the Loan. In the case of a fixed rate loan, the interest rate shall, subject to these Conditions, be fixed from the date of draw down for the fixed period stated in this Offer Letter.*

The fixed rate of Interest set out in this Offer Letter is the fixed rate which would apply were the Loan drawn down today. There is no guarantee that the fixed rate so stated will be available when the Loan is in fact drawn down. The actual fixed rate that shall apply shall be the Lender's fixed rate available for the fixed period selected by the Borrower at the date of draw down.

- b) *The Lender shall have sole discretion to provide any further or subsequent fixed rate period. If the Lender does not provide such a further or subsequent fixed rate period or if the Lender offers the Borrower a choice of interest rate at the end of any fixed rate period and the Borrower fails to exercise that choice, then in either case the interest rate applicable to the Loan will be a variable interest rate."*

The **Acceptance and Consents** section of the **Mortgage Loan Offer** was signed by the Complainants on **27 August 2010**, which states as follows:

"Acceptance of this Offer Letter must reach the Lender within 30 days of the date of this Offer Letter or the offer will lapse. (The Lender may, at its absolute discretion, extend this period). To signify your Acceptance of these terms and conditions, you must complete this Acceptance and Consents and return one part of the Offer Letter, duly completed, to the Lender. Where there is more than one borrower, references to "I" or "my" are to be construed as references to "we" or "our" respectively.

- 1. I confirm that I have read and fully understand the Consumer Credit Act notices, set out above, and the term and conditions contained in this Offer Letter and I confirm that I accept this Offer Letter on such terms and conditions."*

It is clear to me that the **Mortgage Loan Offer** envisaged a fixed rate of 3.5% for a period of two years with a variable rate applying thereafter. The variable rate in this case made no reference to varying in accordance with variations in the ECB refinancing rate, rather it was a variable rate which could be adjusted at the discretion of the Provider.

The Provider has submitted as follows with respect to tracker interest rate offerings to its customers at the time the Complainants applied for their mortgage loan in **2010**:

“Tracker rates were withdrawn as a product by the Provider on [late] 2008. As a result, tracker rates were not available to new customers, or existing customers in respect of new mortgage lending, after that date.

Existing customers could only avail of tracker rates where they had a contractual entitlement to a tracker rate contained in their offer letter or an entitlement to a tracker interest rate was created by way of a subsequent MFA. The Complainants have no contractual entitlement to a tracker rate on the mortgage loan account.”

The Provider further outlined as follows:

“The Tracker Mover product, which would move an existing tracker rate of interest from one mortgage loan account to another in the event of a customer moving house, was not introduced until April 2014. Therefore there was no option available to the Complainants in 2010 to 'move' the tracker rate from any of the previous mortgage loan accounts of the Complainants to this new mortgage loan application in 2010.”

I have not been furnished with any documentary evidence of any discussions which may have taken place between the Provider and the Complainants during the application stage in relation to the option of a tracker interest rate for the mortgage loan account ending **6548**. Notwithstanding this, it is important for the Complainants to be aware that the Provider was under no obligation to offer them any mortgage or any particular type of mortgage in **2010**. In any event, it is clear that tracker interest rates were no longer an option available on new mortgages from the Provider when the Complainants applied for the mortgage loan in **2010**.

If the Complainants did not want to pursue this option because they were unhappy with the interest rate applicable to the mortgage loan, they could have decided not to accept the Provider's offer. Instead, the Complainants accepted the Provider's offer by signing the **Acceptance and Consents** section of the **Mortgage Loan Offer** on **27 August 2010**, having confirmed that they fully understood the terms and conditions set out in the Offer Letter.

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It is important for the Complainants to understand that the mortgage loan account ending **6548**, was an entirely separate loan to the Complainants' original mortgage loan accounts ending **1277, 1004 and 8797**. Each mortgage loan is governed by the terms and conditions applicable to that particular mortgage loan. Therefore, I am of the view that whether or not a tracker interest rate applied to those mortgage loan accounts is irrelevant to the interest rate applicable to mortgage loan account ending **6548**. The interest rate applicable to mortgage loan account ending **6548** was clearly outlined in the mortgage loan documentation to be a fixed rate and thereafter a variable rate which could be adjusted by the Provider.

The Provider has submitted that the Complainants' mortgage loan accounts ending **1277, 1004 and 8797** were redeemed on **28 September 2010**. While no evidence of this has been provided, it is not in dispute that this is what occurred.

I note from the **mortgage loan statements** that the mortgage loan account ending **6548** was drawn down on **4 October 2010** on a fixed interest rate of 3.500%.

A screenshot of the Provider's internal system recording of the **Letter History** on the Complainants' mortgage loan account, shows that a "*Product Review Notice*" letter setting out the interest rates available on the expiry of the fixed rate period was issued to the Complainants on **4 September 2012** and a "*Product Rollover*" letter was issued to the Complainants on **4 October 2012**. Copies of these letters have not been provided in evidence.

Provision 11.5 and 11.6, Chapter 11 of the Consumer Protection Code 2012 (which was effective from **01 January 2012**) outlines as follows;

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

- a) a copy of all documents required for consumer identification and profile;*
- b) the consumer's contact details;*
- c) all information and documents prepared in compliance with this Code;*
- d) details of products and services provided to the consumer;*
- e) all correspondence with the consumer and details of any other information provided to the consumer in relation to the product or service;*
- f) all documents or applications completed or signed by the consumer;*
- g) copies of all original documents submitted by the consumer in support of an application for the provision of a service or product; and*

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h) all other relevant information [and documentation] concerning the consumer.

11.6 A regulated entity must retain details of individual transactions for six years after the date on which the particular transaction is discontinued or completed. A regulated entity must retain all other records for six years from the date on which the regulated entity ceased to provide any product or service to the consumer concerned.

The Complainants' mortgage loan was inceptioned in **2010** for a term of **20 years** and the letters purportedly issued in **September 2012** and **October 2012**. The Provider is obliged to retain that documentation on file for six years from the date the relationship with the mortgage holder ends. It appears that the mortgage loan account remains presently active with the Provider. In the absence of any explanation, it is unclear to me why this correspondence has not been submitted by the Provider. This is disappointing.

Nevertheless, a screenshot of the Provider's internal system recording the **rate history** of the mortgage loan has been provided in evidence which shows that on the expiry of the two-year fixed interest rate period on **4 October 2012**, the mortgage loan switched to the Provider's home loan variable rate and has remained on that rate to date.

Having considered the documentation provided in evidence by both the Complainants and the Provider, it appears to me that the Complainants voluntarily chose to redeem their mortgage loan accounts (ending **1277**, **1004** and **8797**) which were on tracker interest rates in order to sell the property that was held as security for those loans. By doing so, the Complainants opted to terminate those mortgage contracts with the Provider. The Complainants applied for a new mortgage loan in **2010** to facilitate the purchase of their new principal private residence. At the time of application, the Provider was no longer offering tracker rates for new mortgage lending. Furthermore, the Provider's tracker portability product did not become available as part of the Provider's product offering until some four years later in **2014**.

I have been provided with no evidence that the Complainants had a contractual or other entitlement to a tracker interest rate on mortgage loan account ending **6548**. The evidence shows that the choice to take out the mortgage loan account ending **6548** on the terms and conditions offered by the Provider was a choice that was freely made by the Complainants. In light of all the foregoing, I accept that there was no obligation on the Provider to offer the Complainants a tracker rate for their mortgage loan in **2010** or at any other time.

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

Conclusion

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is rejected.

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



**GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

13 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.