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| <u>Decision Ref:</u> | 2021-0320 |
| <u>Sector:</u> | Banking |
| <u>Product / Service:</u> | Tracker Mortgage |
| <u>Conduct(s) complained of:</u> | Failure to offer a tracker rate at point of sale Failure to offer a tracker rate throughout the life of the mortgage |
| <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 that is the subject of this complaint was secured on the Complainants' private dwelling house.

The loan amount was €257,600 and the term of the loan was 35 years. The Letter of Approval signed by the Complainants on **22 March 2004** detailed that the loan type was a "1 Year Fixed Rate Home Loan". The Complainants' mortgage loan account was fully redeemed on **22 February 2019**.

The Complainants' Case

The Complainants submit that they have "*been on a variable from the first time [she] took out [her] mortgage in 2002 and from [her] two remortgages in 2004.*" The Complainants detail that the Provider did not offer them the option to switch to a tracker rate, or any rate other than a variable rate, at any point during the lifetime of the mortgage.

The Complainants assert that they were "*never offered any tracker or tracker information by the bank at any time.*" The Complainants state that they were advised by the Provider that because they took out their mortgage with a broker, they are not entitled to a tracker rate of interest.

The Complainants note that the Provider has indicated that *“this was not up to [the Provider] even though [the Complainants’] mortgage and repayments were with [the Provider]”*.

The Complainants contend that they had to switch their mortgage to a different Provider in **January 2019** as they could not afford the mortgage repayments any longer.

The Complainants are seeking:

- a) A tracker rate be applied to their mortgage loan account; and
- b) A refund of the interest they have overpaid on the mortgage loan account, backdated to the date they should first have been offered a tracker rate.

The Provider’s Case

The Provider states that the Complainants completed a mortgage application form on **10 November 2003** with an independent broker who discussed their financial requirements with them at that time. The Provider asserts that it *“did not engage directly with the Complainants during their mortgage application process.”* The Provider details that in circumstances where the mortgage application was made independently on the Complainants’ behalf by the Complainants’ broker *“the Bank provides information through its dedicated broker portal [broker portal name] which contains comprehensive information relevant to the Bank’s mortgage loans, rates, and document requirements”*.

The Provider submits that on **15 March 2004**, it issued a loan offer to the Complainants in respect of their application. The Provider further submits that the Letter of Approval offered them a home loan of €257,600.00 repayable over a 35-year term with the first year’s interest fixed at 2.75% (APR 3.60%) and an option of a variable interest rate to apply thereafter.

The Provider states that the Complainants signed an Acceptance of Loan Offer on **22 March 2004** and confirmed that their solicitor had explained the terms and conditions of the loan offer fully to them. The Provider details that the Complainants’ mortgage account was drawn down on **01 April 2004** at a fixed interest rate of 2.75%.

The Provider states that *“[i]t subsequently came to light in January 2005 that the Bank’s 1 Year interest rate had reduced to 2.54% prior to loan drawdown of the loan”*. The Provider explains that *“[a]s it is the Bank’s policy to pass on such reductions to its customers notwithstanding a higher rate having previously been agreed, this error was corrected in January 2005 and a refund of €405.89 for the interest overpayment was issued to the Complainants”*.

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The Provider asserts that the Complainants were not offered a tracker interest rate on their mortgage loan account at inception in **2004** as they had *“applied for a different loan type”*. The Provider submits *“At the time of completion of the mortgage application by the Complainants, the Bank had not yet introduced tracker interest rates for new business.”* The Provider further submits that it *“launched tracker interest rates for new business [in early] 2004.”*

The Provider maintains that *“[t]he Complainants were not offered a tracker interest rate on the mortgage loan account at the end of the fixed rate period because the Complainants had no contractual entitlement to be offered a tracker rate at any time on the mortgage loan account.”*

The Provider states that the Complainants’ mortgage was redeemed on **22 February 2019** and the interest rate applicable at the date of closure was 4.50%. The Provider explains that the last interest rate change prior to that was on **10 June 2014**.

The Complaints for Adjudication

The Complaints for adjudication are as follows:

- a) The Provider incorrectly failed to offer the Complainants a tracker interest rate when they applied for and drew down their mortgage in **2004**, and
- b) The Provider incorrectly failed to offer the Complainants a tracker interest rate, or any interest rate other than a variable rate, at any other point during the lifetime of the mortgage.

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.

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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 23 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.

Before dealing with the substance of the complaint, I note the application for the mortgage loan was submitted by the Complainants to the Provider through a third-party Broker. As this complaint is made against the Respondent Provider only, it is the conduct of this Provider and not the Broker which will be investigated and dealt with in this Decision. The Complainants were informed of the parameters of the investigation by this office, by way of letter dated **26 April 2019**, which outlined as follows:

“In the interests of clarity, the complaint that you are maintaining under this complaint reference number is against [the Provider] and this office will not be investigating any conduct of the named Broker in the course of investigating and adjudicating on this complaint.”

Therefore, the conduct of the third-party Broker engaged by the Complainants, does not form part of this investigation and decision for the reasons set out above.

In order to determine this complaint, it is necessary to review and set out the relevant provisions of the Complainants’ mortgage loan documentation. It is also necessary to consider the details of certain interactions between the Complainants and the Provider in **2004**.

The Complainants applied for a mortgage loan in **November 2003** by completing a **loan application form** with a third-party broker. The *“Mortgage Details”* section of the loan application form submitted in evidence, and which was signed by the Complainants on **10 November 2003** details as follows:

| | |
|---|-----------------------|
| <i>“Purpose of Loan</i> | <i>Renovations</i> |
| <i>Purchase price/Value of property</i> | <i>EUR 290,000.00</i> |
| <i>Amount of Loan required</i> | <i>EUR 257,600.00</i> |
| <i>Repayment Term required</i> | <i>35 Years”</i> |

The *“Type of Rate”* selected on the loan application form is a 1-year discounted fixed interest rate and the *“Type of Loan”* selected is a *“Home Loan”*.

The Provider has submitted a copy of a published marketing document entitled **Lending Interest Rates** in evidence, which is noted as being *“effective from the start of business on the 21st August 2003”*.

This document outlines as follows:

LENDING INTEREST RATES

EFFECTIVE FROM THE START OF BUSINESS ON THE 21ST AUGUST 2003

| | RATE | APR |
|--|--------|------------------------------|
| Repayment Home Loans | | |
| Variable Rate | 3.55% | 3.6% |
| 1 Year Fixed Rate | 3.49% | 3.6% |
| 2 Year Fixed Rate | 3.89% | 3.7% |
| 3 Year Fixed Rate | 4.25% | 3.8% |
| 4 Year Fixed Rate | 4.59% | 4.0% |
| 5 Year Fixed Rate | 4.75% | 4.2% |
| 7 Year Fixed Rate | 4.99% | 4.5% |
| 10 Year Fixed Rate | 5.29% | 5.0% |
| Rates applicable to new Home Loans | | |
| 1 Year Discounted Variable Rate | 2.69% | 3.5% |
| 1 Year Discounted Variable Rate (when borrowing <50% of the property value) | 2.49% | 3.5% |
| 1 Year Fixed Rate | 2.59% | 3.5% |
| 2 Year Fixed Rate | 3.49% | 3.6% |
| Endowment Home Loans Rates applicable to Endowment Home Loans are the same as the above. | | |
| Equity Release / Secured Personal Loans | | |
| Variable Rate | 3.55% | 3.6% |
| Secured Personal Loan Variable Rate | 5.05% | 5.1% |
| Secured Personal Loan 1 Year Fixed Rate (for new business) | 4.09% | 5.1% |
| Secured Personal Loan 1 Year Fixed Rate (for existing business) | 4.99% | 5.1% |
| Secured Personal Loan 5 Year Fixed Rate | 6.25% | 6.4% |
| Secured Personal Loan 10 Year Fixed Rate | 6.79% | 6.6% |
| Bridging Loans | | |
| Variable Rate | 5.20% | |
| Residential Investment Property Loans & Commercial Mortgages | | |
| Rates available on request. | | |
| For existing variable rate customers, interest rates are effective from start of business on 23rd June 2003. The rate applicable to individual customers is determined in accordance with loan documentation. | | |
| Variable Rate Personal Loans | | |
| New Applications | | |
| €9,000 or more | 8.60% | 8.9% |
| €5,000 to €8,999 | 9.40% | 9.8% |
| Less than €5,000 | 10.60% | 11.1% |
| The rates applying to existing loans appear on loan statements. | | |
| Authorised Overdrafts | | |
| Loyalty Current Account, Current Account Plus, Current Account, Prestige, Merit & Connect | 10.75% | 11.2% |
| Cashflow Account, Cashline Account | 12.25% | 12.8% |
| In the case of an unauthorised overdraft , an additional 6% per annum will be charged. | | |
| Visa (rate per month) (effective from August 2001 statement date) | 1.375% | 17.8% |
| If ancillary charges are incurred as a direct result of a loan agreement, the quoted APR will be higher. Lending criteria, terms & conditions apply. The above lending interest rates are a guide and may be subject to change. Please ask a member of staff if you require further information. | | |
| | | Publication date: 21/05/2003 |

I note that tracker interest rates were not on offer generally by the Provider when the Complainants applied for a mortgage loan in **November 2003**. The **Lending Interest Rates** document detailed above clearly outlines the types of interest rates that were available to new home loan customers, to include a fixed interest rate which the Complainants applied for.

I have not been provided with any evidence of any discussions in relation to interest rate options which may have taken place between the Provider and the Complainants and/or the third-party broker during the application stage.

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 **2003**. It was a matter for the Provider to decide firstly, if it was willing to offer the Complainants any borrowings at the time and secondly, how that offer would be structured.

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The Provider issued a **Letter of Approval** to the Complainants dated **15 March 2004** which detailed as follows:

| | |
|-------------------|--------------------------------------|
| <i>Loan Type:</i> | <i>One Year Fixed Rate Home Loan</i> |
|-------------------|--------------------------------------|

| | |
|---|-----------------------|
| <i>“Purchase Price/Estimated Value:</i> | <i>EUR 345,000.00</i> |
| <i>Loan Amount</i> | <i>EUR 257,600.00</i> |
| <i>Interest Rate:</i> | <i>2.75%</i> |
| <i>Term:</i> | <i>35 year(s)”</i> |

The **Special Conditions** attached to the Letter of Approval detail as follows:

“Special Conditions

- A. *General Mortgage Loan Approval condition 5 “conditions relating to fixed rate loans” applies in this case. The interest rate specified above may vary before the date of completion of the mortgage.”*

General Condition 5 of the **General Mortgage Loan Approval Conditions** details as follows:

“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*

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(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 to that 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."

The **General Mortgage Loan Approval Conditions** also detail as follows:

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."

The **Acceptance of Loan Offer** was signed by the Complainants and witnessed by a solicitor on **22 March 2004**.

I note that the Acceptance of Loan Offer states as follows:

"1. I/we the undersigned accept the within offer on the terms and conditions set out in

- i. Letter of Approval*
- ii. the General Mortgage Loan Approval conditions*
- iii. [the Provider's] Mortgage Conditions.*

copies of the above which I/we have received, and agree to mortgage the property to [the Provider] as security for the mortgage loan.

...

4. My/our Solicitor has fully explained the said terms and conditions to me/us."

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It is clear to me that the **Letter of Approval** envisaged a 1-year fixed rate of 2.75% and thereafter a variable rate of interest. 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 by the Provider. The Complainants accepted the **Letter of Approval** having confirmed that the terms and conditions of the Letter of Approval had been explained to them by their solicitor in **March 2004**.

I note from the **mortgage loan statements** provided in evidence that the Complainants' mortgage loan account was drawn down on **01 April 2004** on a fixed interest rate of 2.75%. I note that it subsequently came to light in January 2005 that the Provider's 1-year fixed interest rate had reduced to 2.54% prior to the drawdown of the Complainants' mortgage loan account. The Provider issued a letter to the Complainants' dated **12 January 2005** explaining this error and enclosed a refund of €405.89 and noted that "*we have amended your interest rate to 2.54% for the remainder of the fixed rate period*".

While I acknowledge that tracker interest rates were made available by the Provider from early **2004**, prior to the Provider issuing the Letter of Approval to the Complainants, the Provider was under no obligation, contractual or otherwise, to offer the Complainants the option of a tracker interest rate on their mortgage loan.

The Complainants applied for a mortgage loan on a fixed interest rate in **November 2003**, the Provider offered the Complainants a fixed interest rate in **March 2004**, which was accepted by the Complainants, having acknowledged that the terms and conditions of the mortgage loan were explained to them. If the Complainants wished to pursue the potential option of applying for a tracker interest rate mortgage loan in **2004**, the Complainants could have indicated to the Provider that they had a preference for a tracker rate of interest as opposed to a fixed interest rate which they were ultimately offered.

If the Complainants were not happy with the terms of the Letter of Approval, including the type of interest rate offered, the Complainants could have decided not to accept the offer made by the Provider. The Complainants however did not do so.

Prior to the expiry of the 1-year fixed interest rate period in **April 2005**, the Provider submits that it issued an **options letter** to the Complainants informing them of the rate choices available to them at the end of the fixed interest rate period.

The Provider has submitted a list of the following interest rates which were offered to the Complainants prior to the expiry of the 1-year fixed interest rate on **01 April 2005**:

| | |
|---------------------------|--------------|
| <i>“Variable Rate</i> | <i>3.55%</i> |
| <i>1-Year Fixed Rate</i> | <i>3.60%</i> |
| <i>2-Year Fixed Rate</i> | <i>3.74%</i> |
| <i>3-Year Fixed Rate</i> | <i>3.95%</i> |
| <i>5-Year Fixed Rate</i> | <i>4.44%</i> |
| <i>7-Year Fixed Rate</i> | <i>4.99%</i> |
| <i>10-Year Fixed Rate</i> | <i>5.35%</i> |

The Provider has also submitted a copy of its **Lending Interest Rates** document in evidence, which is noted as being *“effective from the start of business on the 11th March 2005”*. This document outlines as follows:

LENDING INTEREST RATES

EFFECTIVE FROM THE START OF BUSINESS ON THE 11TH MARCH 2005

| | RATE | APR | | | |
|--|-----------------------|------------|--------------------|-----------------------|------------|
| Repayment Home Loans | | | | | |
| Variable Rate | 3.55% | 3.6% | | | |
| 1 Year Fixed Rate | 3.60% | 3.6% | | | |
| 2 Year Fixed Rate | 3.74% | 3.7% | | | |
| 3 Year Fixed Rate | 3.95% | 3.7% | | | |
| 4 Year Fixed Rate | 4.20% | 3.9% | | | |
| 5 Year Fixed Rate | 4.44% | 4.1% | | | |
| 7 Year Fixed Rate | 4.99% | 4.5% | | | |
| 10 Year Fixed Rate | 5.35% | 5.1% | | | |
| Rates applicable to new Home Loans | | | | | |
| 1 Year Discounted Variable Rate | 2.69% | 3.5% | | | |
| 1 Year Discounted Variable Rate (when borrowing <50% of the property value) | 2.49% | 3.5% | | | |
| 1 Year Fixed Rate | 2.74% | 3.5% | | | |
| 2 Year Fixed Rate | 3.55% | 3.6% | | | |
| 3 Year Fixed Rate | 3.70% | 3.7% | | | |
| Tracker Mortgage (Home Loan and Residential Investment Property) | | | | | |
| Loan Amount €150,000 - €249,999 | 3.40% | 3.5% | | | |
| Loan Amount of €250,000 or more | 3.10% | 3.1% | | | |
| Endowment Home Loans | | | | | |
| Rates applicable to Endowment Home Loans are the same as the above. | | | | | |
| Equity Release / Secured Personal Loans | | | | | |
| Variable Rate | 3.55% | 3.6% | | | |
| Secured Personal Loan Variable Rate | 5.05% | 5.2% | | | |
| Secured Personal Loan 1 Year Fixed Rate | 5.10% | 5.2% | | | |
| Secured Personal Loan 5 Year Fixed Rate | 5.94% | 6.1% | | | |
| Secured Personal Loan 10 Year Fixed Rate | 6.85% | 7.1% | | | |
| Bridging Loans | | | | | |
| Variable Rate | 5.20% | 5.2% | | | |
| Residential Investment Property Loans & Commercial Mortgages | | | | | |
| Rates available on request. | | | | | |
| The rate applicable to individual customers is determined in accordance with loan documentation. | | | | | |
| Variable Rate Personal Loans | | | | | |
| New Applications | | | | | |
| €9,000 or more | 8.60% | 8.9% | | | |
| €5,000 to €8,999 | 9.40% | 9.8% | | | |
| Less than €5,000 | 10.60% | 11.1% | | | |
| The rates applying to existing loans appear on loan statements | | | | | |
| Authorised Overdrafts | | | | | |
| Switch Current Account, ATM Account, Loyalty Current Account, Current Account Plus, Current Account, Prestige, Merit & Connect | 10.75% | 13.0%* | | | |
| Cashflow Account, Cashline Account | 12.25% | 14.7%* | | | |
| In the case of an unauthorised overdraft , an additional 6% per annum will be charged. | | | | | |
| * The APR for an overdraft facility is calculated based on a limit of €1,270 and an annual overdraft fee of €20. | | | | | |
| Visa | | | | | |
| Classic Card | RATE PER MONTH | APR | ICE Card*** | RATE PER MONTH | APR |
| Purchases | 1.298% | 16.7% | Purchases | 0.79% | 9.9% |
| Cash Advance | 1.272% | 18.1%* | Cash Advance | 0.79% | 11.6%* |
| Balance Transfer | 0.241% | 2.9%** | Balance Transfer | 0.241% | 2.9%** |
| * Typical APR based on a cash advance fee of €2.00 | | | | | |
| ** Balance transfer rate is for a period of 6 months after which time the rate will revert to the then standard rate for this product. | | | | | |
| *** Principal Card Holder must have gross income of €30,000 per annum | | | | | |
| If ancillary charges are incurred as a direct result of a loan agreement, the quoted APR will be higher. Lending criteria, terms & conditions apply. The above lending interest rates are a guide and may be subject to change. Please ask a member of staff if you require further information. | | | | | |

I am disappointed to note that a copy of the **options letter** purportedly issued by the Provider to the Complainants has not been provided in evidence to this office. The Provider has provided no reason as to why it does not hold a copy of this letter.

Provision 49 of the **Consumer Protection Code 2006** governs retention of records and was not effective until **01 July 2007**. In these circumstances, while I am disappointed that the Provider has failed to retain records, there was no breach of the Consumer Protection Code 2006.

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In any event it does not appear to be disputed between the parties that the mortgage loan account was switched to the Provider's standard variable rate on the expiry of the initial fixed interest rate period in **April 2005**. The Provider states that in circumstances where it did not receive a signed rate options form from the Complainants and in the absence of a rate selection by the Complainants, a variable rate of 3.55% was applied to the mortgage loan account. I note from the mortgage loan statements submitted in evidence that the Complainants' mortgage loan account switched to an interest rate of 3.55% on **01 April 2005**.

General Condition 5 of the **General Mortgage Loan Approval Conditions** accepted by the Complainants states that a variable rate of interest will apply to the Complainants' mortgage loan account upon the expiry of the fixed interest rate. As previously outlined, the nature of the applicable variable interest rate was one that could be adjusted by the Provider as opposed to an interest rate that varied in accordance with variations in the ECB refinancing rate. I am therefore satisfied that a variable interest rate of 3.55% was applied to the Complainants' mortgage loan account in line with **General Condition 5**.

The **Lending Interest Rates** document referred to above which was effective from **11 March 2005** shows that tracker interest rate options were available as a product option to customers in or around the time of expiry of the Complainants' fixed interest rate period however a tracker rate option was not included as a rate for selection in the **options letter**.

While the Provider has informed this office that it does not hold an individual policy document in relation to its tracker rate offering, it has summarised its policy as follows:

"The Bank introduced tracker interest rate loans for new mortgage business in early January 2004. This meant that in addition to the other fixed and variable rates which the Bank was then offering as an initial rate of interest to mortgage loan applicants, the Bank could offer an applicant a tracker rate of interest which would vary in accordance with variations in the ECB refinancing rate.

From [late] 2004 to [mid]2008, the Bank provided a facility to switch an existing account to a tracker rate. This meant that certain existing account types which had previously been offered with a standard variable rate could be switched to a tracker rate on request.

In [mid] 2006, the Bank introduced a policy of offering a tracker rate of interest to its existing customers who were maturing from a period of a fixed rate of interest although their loan contract did not specify an entitlement to be offered a tracker rate at maturity (this initiative was taken against the backdrop of the competitive mortgage market at that time).

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Therefore, a tracker mortgage rate was included in the list of options in the automated options letter issued to a customer in the month prior to the date of maturity of the fixed rate period. In the absence of a customer selection, the tracker rate was applied to the mortgage. The Bank also provided in options letters issued from [mid] 2006 that, in default of selection of one of the offered options, the loan would default to the tracker rate of interest on maturity of the fixed rate period.

While the Bank commenced the withdrawal of its tracker mortgage interest rate offering in [mid] 2008 it continued until [mid] 2009 its policy of offering a tracker interest rate maturity option to existing fixed rate customers whose contracts did not contain an entitlement to be offered a tracker rate at maturity of an existing fixed rate period.

After [mid] 2009, the Bank continued to offer and / or apply Tracker rates to maturing loans where customers had a contractual right to a tracker rate.”

I note that the Complainants' mortgage loan account was fully redeemed on **22 February 2019**.

The Complainants contend that they were only ever offered a variable interest rate that was not a tracker interest rate during the lifetime of the loan. Having carefully considered the Complainants' mortgage loan documentation, it is clear to me that the Complainants did not have any contractual entitlement to switch their mortgage loan account to a tracker interest rate upon expiry of the fixed interest period or indeed at any time during the term of the loan. It is important for the Complainants to understand that while tracker rate options may have been available as a product option from the Provider at the time, the Complainants were not contractually entitled to be offered a tracker interest rate. Further, there was no obligation on the Provider to contact the Complainants at any stage to offer a tracker interest rate to the Complainants on their mortgage loan. Nonetheless, it was open to the Complainants to contact the Provider at any stage to explore the option of applying a tracker rate of interest on their mortgage loan account. It would then have been a matter of commercial discretion for the Provider as to whether it wished to accede to any such request made by the Complainants to apply a tracker interest rate to their mortgage loan.

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

Conclusion

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

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



GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

15 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.