



<u>Decision Ref:</u>	2021-0353
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Mortgage
<u>Conduct(s) complained of:</u>	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 Complainant with the Provider. The mortgage loan that is the subject of this complaint is secured on the Complainant's private dwelling house.

The loan amount for mortgage account was €291,640.00 and the term of the loan was 37 years. The Offer of Advance which was signed on **9 November 2005** outlined the interest rate that was applicable was a discounted variable rate of 2.95%, which represented a 0.55% reduction from the Provider's "*Variable Home Loan Rate*".

The Complainant's Case

The Complainant submits that she drew down a "*tracker mortgage*" loan with the Provider in **2005**.

The Complainant submits that she "*started a business soon after and felt under pressure financially. So, I asked for an interest-only mortgage on a short-term basis. I was never told I would lose my tracker rate when the interest and capital repayments re-started.*"

The Complainant submits that in **April 2010**, she received a letter from the Provider stating that the interest only repayment period had expired and that her mortgage loan account was on a fixed interest rate of 4.9%. She submits that when she complained to the Provider about this, she was informed that the fixed interest rate was the only rate option available to her.

The Complainant submits that her home *"has been and continues to be in negative equity. So, [she is] effectively trapped and making high repayments every month."*

The conduct complained of is that the Complainant's mortgage loan account was not *"restored"* to a tracker rate at the end of an interest only repayment period in **March 2010**.

The Complainant is seeking;

- a) A tracker rate restored to the mortgage loan account, and
- b) A payment from the Provider for the *"extra money"* she has paid on the mortgage loan account due to the Provider's refusal to reinstate the tracker rate.

The Provider's Case

The Provider submits that the Complainant drew down the mortgage account in **November 2005** on a discounted variable home loan rate of 2.95%, which was a reduction of 0.55% on the Provider's present variable home loan rate. The Provider details that the discounted period would apply to the mortgage loan until **30 November 2006** at which point the Provider's variable home loan rate would apply.

The Provider acknowledges that the Complainant's Offer of Advance dated **04 November 2005** did not contain the term 'Standard Variable Rate'. It states that its variable home loan rate and its standard variable rate are *"one and the same i.e. a rate which can be amended by the Bank at any time."* The Provider submits that the nature of the variable home loan rate was explained in **General Condition 2** of the Offer of Advance.

The Provider states that there was no reference to a tracker interest rate in the Complainant's Offer of Advance dated **04 November 2005** nor did the Offer of Advance contain a special condition specifying that a tracker interest rate would be available at the end of the discounted variable interest rate period. The Provider details that the Complainant signed the Offer of Advance on **09 November 2005** confirming her acceptance of the terms and conditions.

The Provider submits that on the expiry of the discounted variable interest rate period, it wrote to the Complainant outlining that the interest rate options available for selection at that time were a tracker rate, a fixed rate and a standard variable rate. It details that this letter enclosed a *"Flexible Transfer Form, to be completed and signed should the customer have wished to avail of the tracker interest rate option."*

The Provider states however that the Complainant did not choose the tracker rate option. It details that on **17 January 2007** the Complainant chose an interest rate of 4.49% fixed until **30 November 2008**, by completing and signing the **Fixed Rate Mortgages Form** also enclosed with the Provider's letter.

The Provider details that the Fixed Rate Mortgages Form signed by the Complainant made no reference to a tracker interest rate being available at the end of the fixed period. It states that the form outlined that at the end of the fixed rate period, the Provider may decide to offer a further fixed rate or may offer "*alternative available products*", and if no such offer was made or an offer was made and no acceptance was received, then the Provider's home loan rate would apply in accordance with **General Condition 2**.

The Provider details that **General Condition 2** of the Complainant's Offer of Advance dated **04 November 2005**, detailed that the Provider's home loan rate could be "*amended at any time and does not state that the [Provider's] Variable Home Loan Rate is linked to the European Central Bank (ECB) base rate.*"

The Provider submits that in **April 2007** the Complainant availed of an interest only alternative repayment arrangement for a period of 24 months. The Provider states that prior to the expiry of the 24-month interest only period, the Complainant requested a further 12-month interest only period, which was approved until **March 2010**. The Provider states that when the Complainant entered into the interest only arrangement, the fixed interest rate of 4.49% applying to the mortgage was due to expire on **30 November 2008**.

The Provider states that prior to expiry of the fixed interest rate period in **November 2008**, the Complainant opted to avail of a further fixed interest rate of 4.90% to apply until **31 December 2010** by signing a Fixed Rate Mortgages Form on **27 November 2008**. The Provider details that the Fixed Rate Mortgages form outlined that on the expiry of the fixed interest rate the Provider "*may also offer alternative available products*", and in the event that the Complainant did not select an alternative interest rate product the Provider's "*Standard Variable Rate shall apply in accordance with General Condition 2 of the Offer of Advance originally accepted*".

The Provider states that a letter was issued to the Complainant on **22 March 2010** reminding her that the interest only repayment arrangement was due to expire on **30 March 2010**. The Provider states that it "*has no record of the customer requesting a tracker interest rate in March 2010*" and that the "*interest only repayment arrangement did not impact the interest rate of the mortgage loan.*"

The Provider details that it wrote to the Complainant on **15 December 2010**, prior to the expiry of the fixed interest rate period, to inform the Complainant that *“Any borrowing you have on this fixed rate will automatically roll to our Standard Variable Rate (APR 3.9%)”*. The Provider states that a tracker interest rate option was not included in this letter as tracker rates had been withdrawn by the Provider in **late 2008**. The Provider submits that as it did not receive a response from the Complainant, *“her mortgage loan automatically rolled onto the Bank’s Standard Variable Rate”* on the expiry of the fixed rate period in **December 2010**.

The Provider details that the Complainant opted to apply a discounted variable rate to her mortgage on **18 January 2011** by completing a **Rate Change Letter of Authority** and the account has remained on this interest rate since that time.

The Provider details that the Complainant’s mortgage loan account entered into arrears on **01 June 2018**. The Provider details that it is satisfied that it has acted appropriately in respect of the arrears and as the property is the Complainant’s primary dwelling house (it is being managed as per the provisions of the Code of Conduct for Mortgage Arrears (“CCMA”).

The Provider details that when *“taking the customer journey and supporting documentation provided to the customers into account”* it *“does not consider that the customer could have formed any reasonable expectation of defaulting to a tracker interest rate at the end of the initial discounted [Provider’s] Variable Home Loan rate period or on the expiry of the fixed rate periods that the customer entered into in 2007 and 2008.”* It submits that *“throughout [the Complainant’s] mortgage journey the customer was provided with all of the necessary information and documentation in order for her to make informed decisions regarding her interest rate choices.”*

The Complaint for Adjudication

The complaint for adjudication is that the Complainant’s mortgage loan account was not *“restored”* to a tracker rate at the end of an interest only repayment period in **March 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 **04 August 2021**, outlining the preliminary determination of this office 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 Provider made a further submission by way of letter dated **17 August 2021**, a copy of which was transmitted to the Complainant for her consideration.

The Complainant has not made any further submissions.

Having considered the Provider's additional submission and all of the submissions and evidence furnished to this office, I set out below my final determination.

In order to determine the complaint, it is necessary to set out the terms and conditions of the Complainant's mortgage loan documentation. It is also necessary to consider certain interactions between the Provider and the Complainant between **2007 and 2010**.

The Provider issued an **Offer of Advance** dated **4 November 2005** which details as follows:

"Important Information

- 1. Amount of Credit Advanced: 291,640.00 Eur*
- 2. Period of agreement: 37 years 0 months*
- 3. Number of repayments instalments: 444*

...

Interest rate : 2.9500 %

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...

WARNING

...

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

The **Special Conditions Relating to Loan** detail as follows:

"The interest rate as quoted represents a reduction of 0.55% on the present [Provider's] Variable Home Loan Rate. The [Provider's] Variable Home Loan Rate less 0.55% will apply from the initial date of drawdown of your mortgage until 31 November 2006 after which time your interest rate will revert to the then [Provider's] Variable Home Loan Rate."

General Condition 2 of the **General Conditions Relating to Home Loan Advances** reads as follows:

*"2) Interest is calculated on the balance outstanding on the home loan at the close of business each day from the date of release of the advance monies until the home loan is repaid. Interest so calculated is charged on the last date of the calendar month in which release of funds takes place and on the last day of each calendar month thereafter until the home loan is repaid. Interest charged to the home loan is included in the outstanding balance on which interest is calculated. The outstanding balance on which interest is calculated will include any overdue repayments and other sums outstanding. Overdue repayments and other sums outstanding will be included in the outstanding balance from the date on which they are debited to the home loan account until the date on which they are discharged. If redemption of the home loan takes place mid month the amount required to redeem the loan will include interest from the first day of the month in which redemption takes place to the date of redemption. The monthly repayments will vary if changes in the Home Lian Interest Rate occur. **Variations in [the Provider's] Home Loan Rate may occur at any time and notice of each variation will be published at least once in a national daily newspaper.** Interest is calculated on a compound basis.*

Drawdown date of your mortgage will be the date on which the advance monies are issued. If drawdown date is before the date on which direct debits are raised in any given month the first repayment will be on the 1st of the month in which drawdown takes place and will be interest only on the amount drawn down from the date of drawdown until month end.

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This repayment will be in addition to the number of repayment instalments shown on the schedule of important information. If drawdown date is after the date on which direct debits are raised in any given month interest will be charged on the last day of the month on the amount drawn down from date of drawdown until month end. This interest will be added to your first normal repayment on the 1st of the month following the month which follows the month in which drawdown takes place. In this case the total number of repayments will be as shown under the number of repayment instalments in the schedule of important information.

APR calculation assumes that drawdown of the loan will take place on the 15th of the month following the month in which the Offer of Advance issues.” [My emphasis added]

The Complainant signed the **Acceptance and Authority** on **9 November 2005** on the following terms:

“I/We the undersigned accept the within Offer of Advance on the terms and conditions set out above and overleaf and in the Bank’s standard form of Mortgage.”

It is clear that the **Offer of Advance** envisaged that a reduced variable home loan rate would apply to the mortgage loan from drawdown until **31 November 2006** and thereafter the variable home loan rate would apply. This was set out in the **Special Conditions Relating to Loan** to the mortgage loan and also **General Condition 2** of the **General Conditions relating to Home Loan Advances**.

I note that **General Condition 2**, as quoted above in relation to the mortgage loan account is somewhat lengthy and deals with a number of other matters related to the mortgage loan aside from the nature of the home loan interest rate which was applicable to the mortgage loan. The section that I have emphasised above in **General Condition 2**, when taken together with the warning in the **Important Information** section of the **Offer of Advance**, outlines the **Home Loan Rate** to be one which may be adjusted by the Provider at any time. The Complainant was offered a variable rate which could be increased or decreased by the Provider at any time.

The Complainant has submitted that she took out a “*tracker mortgage*” with the Provider. There is no basis for the Complainant to expect the term “*Variable Home Loan Rate*” to relate to a tracker interest rate, given that there is no reference to a tracker or the ECB rate in the mortgage loan documentation.

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In order for the Complainant to have a contractual right to a tracker interest rate on the mortgage loan account at the end of the initial discounted interest rate period, that right would need to have been specifically outlined in the mortgage loan documentation, that was signed by the Complainant. However, no such right was set out in writing in the **Offer of Advance** dated **4 November 2005**, which was signed by the Complainant on **9 November 2005**. It is important for the Complainant to understand that the terms of a mortgage loan are governed by the terms contained in the loan offer which is signed by the parties.

The mortgage loan statements provided in evidence show that the mortgage loan account was drawn down on **29 November 2005**.

Prior to the expiry of the initial discounted interest rate period on the mortgage loan in or around **January 2007**, the Provider submits that it issued a letter to the Complainant detailing the following options;

“Option 1 was the Flexible Mortgage which tracked the European Central Bank base rate.

Option 2 was a Fixed Rate mortgage

Option 3 was the Standard Variable Rate.”

The Provider details that it has *“not been able to locate a customer specific copy of this letter issued to the customer in 2007”* and that *“The reason for a particular document not being retained on the customer’s file may be due to the expiration of the Bank’s agreed period for retention of documents and consequently, the Bank may have securely disposed of the relevant document. The Bank’s agreed period for retention of documents is in line with our obligations under data protection and other legislation.”*

It is disappointing that a copy of the correspondence that purportedly issued to the Complainant prior to the expiry of the initial discounted rate period has not been furnished in evidence to this office.

Provision 49 of the **Consumer Protection Code 2006** (“CPC 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 a copy of the correspondence relating to the interest rate option available in **November 2006**, there was no breach of the **CPC 2006**.

The Provider has furnished this office with a **template letter** which was in use at that time. The **template letter** details as follows:

“The 0.55% Discount off Standard Variable Rate on your mortgage is due to expire on [Blank]. Any borrowings you have on this Discounted Rate will change to our Standard Variable Rate. This is a great opportunity to look at your options as your decision could save you money.

Option 1: Flexible mortgage – this is one of our most popular mortgages. The flexible mortgage tracks the European Central Bank base rate and although the base rate may change, the margin you pay is fixed for the life of the loan. The current rate is 4.65%.

- *You can make overpayments/lumps to reduce the interest you pay and/or your term*
- *You can apply for a six month payment break*
- *No redemption penalties for paying off your mortgage early*

And there are more flexible features – all detailed in the enclosed information sheet.

Option 2: Fixed Rate mortgage – if you’d like the peace of mind of knowing your interest rate will stay the same for a fixed length of time, why not choose from these options?

- *Fixed rate of 4.49% (4.8% APR) until 30/11/2008*
- *Fixed rate of 4.75% (4.8% APR) until 30/11/2009*
- *Fixed rate of 4.99% (5% APR) until 30/11/2011*

Simply choose the fixed rate term that suits you now. And remember, at the end of your fixed rate period you will have the flexibility to explore your options again.

The fixed rates above are subject to availability and may be withdrawn at any time, without prior notice.

Option 3: Standard Variable Rate – if you decide not to take advantage of Option 1 or Option 2, the rate you pay will automatically revert to our Standard Variable Rate of 4.99% (5% APR).

Once you have decided which Option would suit you best, just follow these simple steps:

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- *To take Option 1, sign the Flexible Transfer Form enclosed and return it immediately in the Freepost envelope provided.*
- *To take Option 2, please tick the appropriate box beside the fixed rate you choose on the Fixed Rate Mortgages Form and return it immediately in the Freepost envelope provided.*
- *If you decide Option 3 is for you, this will be taken care of automatically and no further action is required from you."*

The Provider submits that the correspondence had enclosed a **Flexible Transfer Form**. The **template** copy provided in evidence details as follows;

"The rate of the [Provider's] Flexible Mortgage product tracks the European Central Bank Base Rate with a margin which is fixed for the life of the Home Loan.

European Central Bank Base Rate plus a margin of 1.15%.

Interest Rate to be charged 4.65% (based on current European Central Bank Base Rate of 3.5%)."

The Complainant completed and signed a **Fixed Rate Mortgages Form** on **17 January 2007** and indicated her preference for a fixed rate of 4.49% to apply until **30 November 2008**. The Fixed Rate Mortgages Form detailed as follows;

"FIXED RATE MORTGAGES FORM (January 07)

...

A fixed rate mortgage guarantees the rate on your mortgage will remain unchanged for the fixed rate period, although your payments may alter if you receive Tax Relief at Source.

You should bear in mind that if, within the fixed rate period, you are considering discharging your mortgage, lodging capital payments to reduce your mortgage, or transferring your mortgage to a different product, you will incur a charge equal to six months interest at the Fixed Rate, or Standard Variable Rate, whichever is the higher, on any amount prepaid or transferred.

If, within six months of redeeming a fixed rate mortgage, you drawdown a new mortgage with [The Provider] on the same Fixed Rate Terms then, where the amount of drawdown equals or exceeds the amount redeemed the refund will be on a pro rate basis.

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The Fixed Rates currently available are:

- | | | |
|--|-------------------|--------------------------|
| <i>4.49% * Fixed Rate until 30/11/2008</i> | <i>(APR 4.8%)</i> | <input type="checkbox"/> |
| <i>4.75% * Fixed Rate until 30/11/2009</i> | <i>(APR 4.8%)</i> | <input type="checkbox"/> |
| <i>4.99% * Fixed Rate until 30/11/2011</i> | <i>(APR 5%)</i> | <input type="checkbox"/> |

The above APRs are based on a typical mortgage of €100,000 over 20 years.

At the end of the fixed rate period: [The Provider] may offer to continue the advance for such a period and at such a fixed rate as it may decide. It may also offer alternative available products. If such offer is made and you elect to accept then you must do so in writing, your acceptance to be signed by all parties to the mortgage and to be received by [the Provider].

If no such offer is made or if an offer is made and no acceptance received as prescribed above, then, from the day following the expiry of any option selected above, the [Provider's] Home Loan Rate shall apply in accordance with General Condition 2 of the Offer of Advance originally accepted by you being the Bank's General Conditions Relating to Advances by [the Provider's] House Mortgages Section, which varies the Interest Rate, and the said General Conditions relating to the Advances shall be construed accordingly.

If you wish to transfer to one of the fixed rates above, please tick the box opposite your chosen fixed rate, sign the declaration below (must be signed by all borrowers), and return it to us immediately in the enclosed prepaid envelope. Unless you request otherwise, all accounts which are on or eligible for Standard Variable Rate on 1 February 2007 will be transferred to your chosen Fixed Rate Mortgage Scheme.

I/We have read the information above regarding early repayment/conversion to another product within the fixed rate period, and the process at expiry of the fixed rate, and request transfer of my/our mortgage to the fixed rate indicated above, effective from 1 February 2007."

The evidence would indicate that the Complainant did not have a contractual or other entitlement to a tracker interest rate at the end of the discounted variable rate period which applied from **November 2005** to **November 2006**. It appears that the Provider, in line with its own policy at the time, offered the Complainant a tracker interest rate.

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The Complainant elected to apply the fixed interest rate of 4.49% to the loan and this instruction to apply the fixed interest rate was actioned by the Provider on receipt of the Fixed Rate Mortgages Form signed by the Complainant on **17 January 2007**.

The Flexible Transfer Form 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 *"tracks the European Central Bank Base Rate with a margin which is fixed for the life of the Home Loan."* As such, the Complainant ought to have been aware that, in circumstances where she opted for the tracker interest rate, the percentage of 1.15% would not be exceeded during the term of the loan and the ECB rate would fluctuate in accordance with the European Central Bank.

The Complainant of her own volition decided not to choose the option of a tracker interest rate of ECB + 1.15% (4.65%) at the time and instead selected the fixed interest rate offered of 4.49%.

The Fixed Rate Authority Form clearly outlined that if the Complainant chose a fixed interest rate, the *"Home Loan Rate shall apply in accordance with General Condition 2"*. The variable rate, in the Complainant's mortgage loan documentation, 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 **mortgage statements** provided in evidence show that the fixed interest rate of 4.49% was applied to the mortgage loan account on **2 February 2007**.

The Provider has submitted that the Complainant availed of a 24-month interest only repayment arrangement for the mortgage loan account effective from **April 2007**. I am disappointed to note that no correspondence and/or documentation has been provided which evidences this arrangement.

As outlined above, **Provision 49** of the **CPC 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 provide a copy of the correspondence and/or documentation relating to the interest only repayment arrangement entered into by the Complainant in **April 2007**, there was no breach of the **CPC 2006**.

Notwithstanding this, it does not appear to be disputed between the parties that this is what occurred. I note from the **mortgage loan statements** provided in evidence that the monthly mortgage repayment reduced from €1,210.89 to €939.76 in **April 2007**.

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I note from the evidence that at that time the mortgage account remained on the fixed interest rate of 4.49% that was selected by the Complainant in **January 2007**.

I note that prior to the expiry of the fixed interest rate period on **30 November 2008**, the Complainant completed and signed a **Fixed Rate Authority Form** on **27 November 2008**. The form detailed as follows:

“A fixed rate mortgage guarantees the rate on your mortgage will remain unchanged for the fixed rate period, although your payments may alter if you receive Tax Relief at Source.

You should bear in mind that if, within the fixed rate period, you are considering discharging your mortgage early, lodging capital payments to reduce your mortgage, or transferring your mortgage to a different product you will incur an Early Redemption Charge.

The Early Redemption Charge is a sum equal to the lesser of:

- (a) 6 months interest charge*
- or*
- (b) economic breakage charge**

If within three months of redeeming a fixed rate mortgage, you drawdown a new mortgage with [the Provider] on the same Fixed Rate Terms then, where the amount of drawdown equals or exceeds the amount redeemed, the full charge will be refunded. Where the drawdown is for a lesser amount than the amount redeemed the refund will be on a pro rate basis.

The Fixed Rate you have requested is:

4.90% * Fixed Rate until 31/12/2010 (APR 5.6%)

The above APR is based on a typical mortgage of €100,000 over 20 years.

At the end of the fixed period: *[The Provider] may offer to continue the advance for such a period and at such a fixed rate as it may decide. It may also offer alternative available products. If such offer is made and you elect to accept then you must do so in writing, your acceptance to be signed by all parties to the mortgage and to be received by [the Provider].*

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If no such offer is made or if an offer is made and no acceptance received as prescribed above, then, from the day following the expiry of any option selected above, the [Provider's] Standard Variable Rate shall apply. This is in accordance with General Condition 2 of the Offer of Advance originally accepted by you. Please note that your current mortgage product or rate may not be available at the end of your chosen fixed rate period.

If you wish to transfer to the fixed rate above, please tick the box opposite your chosen fixed rate, sign the declaration below (must be signed by all borrowers), and return it to us in the enclosed pre-paid envelope by the 4th of December otherwise this offer will expire. You will then need to contact us again to avail of a rate available at that point and time.

...

I/We have read the information regarding early repayment/conversion to another product within the fixed rate period, and the process at expiry of the fixed rate, and request transfer of my/our mortgage to the fixed rate indicated above."

As outlined above, the Complainant did not have a contractual or other entitlement to a tracker interest rate on her mortgage loan account and accordingly there was no contractual or other obligation on the Provider to offer the Complainant a tracker interest rate on her mortgage loan account in **November 2008**. The evidence shows that the fixed rate of 4.90% was applied to the account on **1 December 2008**.

An internal memorandum between two Provider employees dated **9 March 2009** has been furnished in evidence which details as follows:

"As per telephone conversation, [Complainant's] business has suffered a down turn recently, which has left her in a position of not being able to commence capital and interest repayments at this time. (A position un-foreseen when the mortgage was drawn down 2 years ago).

However, she will be commencing shortly, a contract with [organisation], which will greatly improve her business turnover. Consequently, [Complainant] has requested that her mortgage remain as "interest only" for another 12 months by which time her financial position should have greatly improved.

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We would be very grateful if you would re-assess [Complainant's] request for a 12 month extension of the interest only facility."

I have not been provided with any further documentary evidence to show that a further 12-month interest only repayment period was applied to the Complainant's mortgage loan account in or around **9 March 2009**. Nonetheless, it does not appear to be disputed between the parties that this is what occurred. At that time the mortgage loan account remained on the fixed rate of 4.90% that was applied on **1 December 2008**.

On **31 March 2010** the Provider issued a letter to the Complainant stating:

"The interest only option on your mortgage has expired.

Your revised gross monthly repayment is 1466.84 Eur. You are currently on a 2yr fixed rate (4.90%). If applicable this figure will be reduced by any tax relief at source (TRS) applied to your account.

I would like to take this opportunity to thank you for your mortgage business to date."

The Complainant did not have a contractual or other entitlement to a tracker interest rate on her mortgage loan account and accordingly there was no contractual or other obligation on the Provider to offer the Complainant a tracker interest rate on her mortgage loan account or apply a tracker interest rate at the end of the interest only repayment period in **March 2010**. In any event, there was no obligation on the Provider to offer the Complainant a tracker interest rate on the expiry of the interest only repayment arrangement in **March 2010** in circumstances where the fixed interest rate period of 4.90% applied at the Complainant's request on **1 December 2008** was not due to expire until **31 December 2010**.

I note that Complainant has submitted that she telephoned the Provider on receipt of its letter of **31 March 2010** to complain that the mortgage loan account was not on a tracker rate. There is no evidence before me to suggest that the Complainant contacted the Provider to request a tracker interest rate for the mortgage loan account at that time. In any event, if the Complainant had sought to pursue the option of applying a tracker interest rate to the mortgage account in **March 2010**, it would have been at the Provider's commercial discretion as to whether to offer the Complainant a tracker interest rate. It would have been entirely within the Provider's rights not to accede to a request to apply a tracker interest rate if it was made by the Complainant in **March 2010**.

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The Provider issued a letter to the Complainant on **15 December 2010** which stated as follows;

“THE FIXED RATE PERIOD ON YOUR MORTGAGE IS ABOUT TO END

Dear Customer (s)

*The fixed rate period on your mortgage is coming to an end on **31/12/2010**, so now its time to start thinking about your next mortgage deal. Any borrowings you have on this fixed rate will automatically roll to the Standard Variable Rate (APR 3.9%). Your monthly repayment on this rate is included in the table overleaf.*

Alternatively you might choose a new variable or fixed rate. To help you make an informed decision the table below outlines the advantages and disadvantages of the default Standard Variable Rate compared to other variable and fixed mortgages.

<i>Mortgage Type</i>	<i>Advantages</i>	<i>Disadvantages</i>
...		
<i>Other Variable Rate (Disc Variable/Flexible Variable)</i>	<ul style="list-style-type: none"><i>Your rate may decrease if general market rates decrease.</i>...	<ul style="list-style-type: none"><i>As your rate is not linked to the ECB base rate, your rate can increase at any time even if there is no change in the ECB base rate.</i><i>If the ECB base rate decreases your rate may not decrease.</i>

If you choose one of the interest rate options above other than your Default option, please complete the enclosed Letter of Authority and return it to us within 10 days of the date on this letter. We will then move your existing Mortgage to the option chosen.”

A number of interest rate options were listed including a number of residential fixed rate options and a residential discounted variable rate and a residential flexible variable rate.

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The enclosed **Letter of Authority** provided as follows:

“To avail of either the Flexible Variable under 80% LTV, or the Discounted Variable with [Provider product] discount under 80% LTV, your current LTV must be under 80%. An up to date valuation is required.”

The evidence shows that the standard variable rate of 3.85% was automatically applied to the mortgage account on the expiry of the fixed interest rate period on **1 January 2011**.

The Complainant signed a **Rate Change Letter of Authority** on **18 January 2011** selecting a discounted variable rate of 3.75%. This form detailed as follows;

“Please transfer my/our existing mortgage to the interest rate selected below with immediate effect. I/We wish to apply for the interest rate of:

Rate options	Rate %	Please tick selected rate
<i>Residential Fixed until 31/10/2012 (APR 4.0%) reverting to Standard Variable</i>	4.20%	
<i>Residential Fixed until 31/10/2013 (APR 4.1%) reverting to Standard Variable</i>	4.30%	
<i>Residential Fixed until 31/10/2015 (APR 4.5%) reverting to Standard Variable</i>	4.95%	
<i>Discounted Variable with [product] discount <80% LTV (APR 3.7%) This rate is only available if your LTV is less than 80% and you are a [Provider product] account holder. An up to date valuation is required.</i>	3.65%	
<i>Discounted Variable with [product] discount <80% LTV (APR 3.8%) This rate is only available to [product] account holders</i>	3.75%	✓
<i>Flexible Variable <80% LTV (APR 3.9%) This rate is only available if your LTV is less than 80%. An up to date valuation is required.</i>	3.85%	
<i>Flexible Variable >80% (APR 4.0%)</i>	3.95%	

...

/Cont'd...

I/We acknowledge that my/our mortgage will be transferred to the rate I/We have selected and that the above conditions will apply where I/we have selected a fixed rate.”

The evidence shows that the discounted variable interest rate of 3.75% was applied to the mortgage loan account on **25 January 2011**.

I note that the Complainant was offered a “*Discounted Variable*” rate and a “*Flexible Variable*” rate. The Provider’s letter of **15 December 2010** details that these rates are “*not linked to the ECB base rate*”. In any event I remain of the view that the Complainant did not have a contractual or other entitlement to a tracker interest rate on her mortgage loan account and accordingly there was no contractual or other obligation on the Provider to offer the Complainant a tracker interest rate on her mortgage loan account or apply a tracker interest rate at the end of the fixed interest rate period in **January 2011**.

I note that the Complainant’s mortgage loan account entered into arrears on **1 June 2018**. Correspondence between the Provider and the Complainant in **2018** in relation to the arrears on the mortgage loan account has been submitted in evidence.

As outlined above, I am of the view that there was no contractual or other entitlement to a tracker interest rate at the end of the interest only repayment period in **March 2010**, or at any other time. The Complainant has submitted that she “*was never told that I would lose my tracker rate when the interest and capital repayments re-started*.” For the avoidance of doubt, the evidence shows that mortgage loan account was never on a tracker rate of interest.

In my Preliminary Decision dated **4 August 2021** I stated:

*“I note that the Complainant had twice been given the option of a tracker interest rate, firstly when the initial discounted variable period expired in **2006** and again on the expiry of the fixed rate period in **2011**. She did not pursue this option on either occasion. No evidence has been furnished which shows that the Complainant contacted the Provider in **March 2010** to seek to apply a tracker interest rate to the mortgage loan”.*

The Provider, in its post Preliminary Decision submission dated **17 August 2021**, has pointed out that this is an error of fact and clarifies the matter as follows:

“We would clarify that the second fixed interest rate period applied to the customer’s mortgage loan expired on 31 December 2010.

/Cont’d...

The Bank's Standard Variable Rate (SVR), which was the default interest rate to apply in the absence of any alternative interest rate being selected, was applied with effect from 01 January 2011. We wish to clarify that the customer was not given the option of a tracker interest rate on the expiry of the fixed interest rate period at the end of December 2010.

For the avoidance of any doubt, the Bank would clarify that on 15 December 2010, prior to the expiry of the second fixed interest rate period, the Bank wrote to the customer advising her of the impending expiry of the fixed rate period on 31 December 2010 and confirmed that "Any borrowings you have on this fixed rate will automatically roll to our Standard Variable Rate (APR 3.9%)

The letter outlined the alternative interest rate products available to her at that time. Included with the letter was a Rate Change Letter of Authority form to be completed and signed should the customer have wished to avail of an alternative interest rate option as outlined in the letter. Tracker interest rate products had been withdrawn from the market by [Provider] [in late] 2008, therefore a tracker interest rate option was not included in this letter..."

I welcome the Provider's clarification in this regard and accept that the Complainant was not offered a tracker interest rate on expiration of the fixed interest period in **December 2010** and the Provider's standard variable rate was applied from **1 January 2011**.

In any event, it remains clear to me that the Complainant did not have a contractual entitlement to a tracker interest rate at any stage during the term of her 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

5 October 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.