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| <b><u>Decision Ref:</u></b>             | 2021-0359   |
| <b><u>Sector:</u></b>                   | Banking   |
| <b><u>Product / Service:</u></b>        | Tracker Mortgage  |
| <b><u>Conduct(s) complained of:</u></b> | Failure to offer a tracker rate throughout the life of the mortgage |
| <b><u>Outcome:</u></b>                  | Rejected  |

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

This complaint relates to 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 principal private residence.

The loan amount was €200,000 and the term of the loan is 25 years. The particulars of the Mortgage Loan Offer Letter dated **13 October 2004** detailed that the type of loan was "Repayment" and the interest type was "2.750% Fixed" for a period of one year. The Complainant accepted and signed the mortgage loan offer letter on **20 October 2004**.

**The Complainant's Case**

The Complainant submits that as he was building a house, he drew down his mortgage loan of €200,000 with the Provider in staged payments, on an initial one-year fixed rate of 2.750%. He details that he received the first stage payment of €25,000 in **December 2004**.

Prior to the expiration of the initial fixed rate period in **December 2005**, the Complainant submits that he received a letter from the Provider in **November 2005** outlining the various rate options, which he states did not include the option of a tracker rate of interest. He submits that he would have selected the tracker interest rate, had this option been made available to him.

He details that he “*mislaid*” this correspondence and consequently he attended the Provider’s local branch to select an interest rate within the specified timeframe.

The Complainant submits that at his local branch of the Provider he signed a “*standard generic form*” selecting a three-year fixed rate at 3.49%, which was applied to his mortgage loan account on **8 December 2005**. He states that again, this form did not include the option of a tracker interest rate.

The Complainant states that “*A Tracker rate option was not included in the Product Review Notice OCT 2005 and [the Provider] have not provided evidence to the contrary*” and the form “*provided in local branch again didn’t offer the Tracker rate option.*” The Complainant asserts that therefore, he “*was not afforded the opportunity to avail of a tracker rate on two occasions*”.

The Complainant submits that he contacted the Provider in **March 2018** to request a copy of the rate options letter that was issued to him prior to the expiry of the fixed rate period in **December 2005**. He submits that the Provider has failed to provide him with a copy of this document.

The Complainant states that he would like the Provider “*to acknowledge that they denied me a Tracker rate on my mortgage since 2005 and breached their contract*”.

The Complainant is seeking;

- (a) A tracker interest rate to be “*reinstated*” on the mortgage loan account from **2005**;
- (b) A refund of the overpaid interest, consisting of the difference in the interest paid versus interest that would have been paid on a tracker rate of ECB + 1.3%; and
- (c) An “*explanation*” as to why the Provider has reinstated tracker rates to and refunded other customers of the Provider in a “*similar situation*” to the Complainant.

### **The Provider’s Case**

The Provider submits that the Complainant drew down a mortgage loan of €200,000 on **8 December 2004**, pursuant to a **Mortgage Loan Offer Letter** dated **13 October 2004** which was signed and accepted by the Complainant with the benefit of legal advice on **20 October 2004**.

The Provider details that the term of the mortgage was 25 years and the interest rate was a fixed rate of 2.75% applicable for 12 months, with a standard variable rate to apply thereafter.

The Provider states that there *“is no contractual entitlement within the Offer Letter for a tracker rate of interest.”* In this regard the Provider details that **General Condition 7(b)** of the Offer Letter *“states that the Provider has sole discretion upon expiry of the fixed rate period to provide a further fixed rate period, or a choice of interest rates and if either of these is not selected, then the mortgage loan account will move to a standard variable rate.”* The Provider asserts that within **General Condition 6(a)** of the Offer Letter the standard variable rate is described as varying *“at the Lender’s discretion upwards or downward.”*

The Provider details that it introduced tracker interest rates as a product in **mid-2001** until **late 2008** when the product was withdrawn by the Provider. It states that tracker interest rates were on offer to new and existing customers at the time the Complainant’s mortgage loan was rolling off the fixed rate on **8 December 2005**. The Provider states that *“it did not have any specific policy in place in respect of tracker interest rate offerings in relation to existing customers in place from October 2004 to date”* and its position is that *“it was at all times open”* between **late 2004** and **late 2008** *“for a customer to approach the Provider with a request to move their mortgage loan account to a tracker rate of interest. The Complainant did not take up such an opportunity.”*

The Provider submits that prior to the expiry of the fixed rate in **December 2005**, it issued a **Product Review Notice** and a **Mortgage Form of Authorisation (MFA)** to the Complainant on **8 November 2005**. It details that the Product Review Notice contained *“details of various interest rate options available to the Complainant on expiry of the fixed rate period, including a tracker rate of ECB + 1.30%.”* The Provider states that it cannot produce a copy of the Product Review Notice that issued to the Complainant on **8 November 2005** but can confirm that mortgage loan accounts *“subject to the same product coding as the Complainant’s mortgage loan account”* were offered the following interest rate options at that time:

|                                     |               |
|-------------------------------------|---------------|
| <i>“Homeloan Variable rate</i>      | <i>3.600%</i> |
| <i>2 Year Fixed Rate</i>            | <i>3.390%</i> |
| <i>3 Year Fixed Rate</i>            | <i>3.490%</i> |
| <i>5 Year Fixed Rate</i>            | <i>3.850%</i> |
| <i>10 Year Fixed Rate</i>           | <i>4.490%</i> |
| <i>1 Year Fixed Rate</i>            | <i>3.290%</i> |
| <i>Tracker Variable ECB + 1.30%</i> | <i>3.30%”</i> |

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The Provider states that the choice of rates offered in the Product Review Notice in **November 2005** accurately reflects its obligations under **General Condition 7(b)** of the Offer Letter and there was no contractual obligation to offer the Complainant a tracker rate on expiry of the fixed rate on **8 December 2005** or at any time.

The Provider states that the Complainant accepted and signed a **Mortgage Form of Authorisation (MFA)** on **23 November 2005** in his local branch, opting to apply a three-year fixed rate of 3.49%, and this interest rate was applied to the Complainant's mortgage loan account on **8 December 2005**. The Provider states that there is "*no ambiguity, lack of clarity or vagueness*" contained in the **November 2005 MFA**, when read in conjunction with the Offer Letter, concerning the rate to which the mortgage loan account would revert to upon expiry of the fixed rate period. It states that the Complainant could not reasonably have expected to move to a tracker rate upon expiry of the 3-year fixed rate period. It states that in signing the **November 2005 MFA** accepting the 3-year fixed rate, the Complainant "*rejected the Provider's offer of a tracker rate of interest as set out in the Product Review Notice issued to the Complainant on 8 November 2005*".

The Provider details that on expiry of the three-year fixed interest rate on **8 December 2008** "*the mortgage loan account rolled to a variable standard rate at 4.79% in accordance with the terms and conditions of the Offer Letter.*"

The Provider submits that the Complainant signed a further MFA on **6 April 2010** where he opted to apply a fixed interest rate of 3.60% for a period of three years, which was applied to the Complainant's mortgage loan on **13 April 2010**.

The Provider details that the fixed rate period expired on **15 April 2013** and "*the mortgage loan account reverted to a variable rate at 4.35%.*"

The Provider states that the Complainant accepted and signed a further MFA on **5 September 2015** selecting a three-year fixed interest rate of 3.60%, which was applied to the Complainant's account on **5 October 2015**.

The Provider detail that a further Product Review Notice was issued to the Complainant on **5 September 2018** offering a range of available rates on expiry of the fixed period on **5 October 2018**. The Provider submits that "*The Complainant contacted the Provider seeking available discounted rates as he was considering switching providers*" and the Provider approved a discounted variable rate of 3.30%, which was applied to the Complainant's mortgage loan account on **12 October 2018**.

The Provider details that the Complainant accepted and signed a further MFA to apply a five-year fixed interest rate of 2.80% which is applicable until **19 December 2023**.

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### **The Complaint for Adjudication**

The complaint for adjudication for is that the Provider failed to offer the Complainant a tracker rate of interest on his mortgage loan account on expiry of the fixed interest rate period in **December 2005**.

### **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.

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 15 September 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.

The issue to be determined is whether the Provider failed to offer the Complainant a tracker interest rate on his mortgage loan account on the expiry of the initial fixed interest rate period in **December 2005**.

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In order to determine the complaint, it is necessary to review and set out the relevant provisions of the Complainant's mortgage loan documentation and to consider the interactions between the Provider and the Complainant in and around **December 2005**.

The Provider's internal document entitled **Info Note – Mortgage Application Details** dated **28 April 2004** has been provided in evidence and details as follows;

“ ...

**Proposition:**

*[Complainant] is building a house in a site he has inherited, value E60k. Construction will be e225k.*

*He requires E200 by way of mortgage, & has E31k in savings to contribute himself.*

*This house will be his PDH ...*

**Recommendation:**

*Recommended = Ltv low, ndi more than sufficient, salary mandated. Long standing customer with excellent savings built up, no borrowings ...*

...  
Approved

Decision: Offer Sanctioned Amount: 200,000”

**Part 1 – The Statutory Loan Details** of the Mortgage Loan Offer Letter dated **13 October 2004** sets out the following:

|     |                                  |                           |          |                   |
|-----|----------------------------------|---------------------------|----------|-------------------|
| “1. | <i>Amount of Credit Advanced</i> |                           | €200,000 |                   |
| 2.  | <i>Period of Agreement</i>       |                           | 25 years |                   |
| 3.  | <i>Number of</i>                 |                           | 4.       | <i>Amount</i>     |
|     | <i>Repayment</i>                 |                           |          | <i>of each</i>    |
|     | <i>Instalments</i>               | <i>Instalment</i>         |          | <i>Instalment</i> |
|     | 12                               | <i>Type</i>               |          | €921.98           |
|     |                                  | <i>Fixed at 2.750%</i>    |          |                   |
|     | 288                              | <i>Variable at 3.600%</i> |          | €1,007.67”        |

**Part 2 – The Additional Details** of the Mortgage Loan Offer describes the loan type as “*Repayment*” and outlines that the interest rate is “*2.750% Fixed*”.

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**General Condition 1 of Part 5 – The General Conditions** details as follows;

**“ 1. Interpretation and General**

...

- (d) *This Offer Letter replaces and supersedes all earlier versions of this Offer Letter”*

**General Condition 6 of Part 5 – The General Conditions** details 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. [My emphasis]*

- (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.*
- (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).”*

**General Condition 7 of Part 5 – The General Conditions** details as follows;

**“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.*

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*The fixed rate of interest set out in this Offer Letter is the fixed rate which would apply where 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 applicable to the Loan will be a variable interest rate."*

The **Consumer Credit Act Notices** section on **page 11** of the Mortgage Loan Offer details as follows:

*"If your mortgage loan is at any time at a variable rate, please note:*

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

The Complainant signed the **Borrower's Acceptance and Consents** section of the Mortgage Loan Offer on **20 October 2004** on the following terms:

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

The Complainant accepted the Mortgage Loan Offer, having confirmed that he had read and fully understood the terms and conditions attaching to the **Mortgage Loan Offer** dated **13 October 2004**.

It is clear to me that the Loan Offer Letter envisaged a fixed interest rate of 2.75% for a period of 12 months with a variable interest rate applying thereafter. The section that I have emphasised above in **General Condition 6**, when taken together with the warning in the **Consumer Credit Act Notices** section of the loan offer, outlines the variable rate to be one which may be adjusted by the Provider at any time.



There is no mention in the **Offer Letter** about the application of a tracker interest rate to the Complainant's mortgage loan. I am of the view that in order for the Complainant to have a contractual right to a tracker interest rate on the mortgage loan at the end of the initial fixed interest rate period, that right would need to have been specifically outlined in the mortgage loan documentation, that was signed by the parties. However, no such right was set out in writing in the **Offer Letter** which was signed by the Complainant on **13 October 2004**.

I note from the **mortgage loan statements** provided in evidence that the Complainant's mortgage loan account was drawn down from **9 December 2004** in stages, as follows;

| <b>Date</b>              | <b>Draw Down Amount</b> |
|--------------------------|-------------------------|
| <b>09 December 2004</b>  | €25,000                 |
| <b>18 March 2005</b>     | €30,000                 |
| <b>05 May 2005</b>       | €30,000                 |
| <b>20 June 2005</b>      | €30,000                 |
| <b>05 September 2005</b> | €25,000                 |
| <b>18 October 2005</b>   | €50,000                 |
| <b>17 January 2006</b>   | €10,000                 |

The Provider has submitted that prior to the expiry of the initial 12-month fixed interest rate period on the mortgage loan account in **December 2005**, it issued a **Product Notice Review letter** to the Complainant on **8 November 2005**. I am disappointed to note that a copy of the **Product Notice Review letter** has not been provided in evidence to this office, nor has the Provider submitted any explanation 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 CPC 2006.

In any event it does not appear to be disputed between the parties that the Complainant received the **Product Review Notice** letter from the Provider in or around **8 November 2005**. I note that the Provider's internal letter history log shows that a "*Product Review Notice*" was issued on **8 November 2005**.

The Complainant has submitted that "*A Tracker rate option was not included in the Product Review Notice OCT 2005 and [the Provider] have not provided evidence to the contrary*". The Provider states that the **Product Notice Review** letter which purportedly issued to the Complainant on **8 November 2005** contained the option of a tracker interest rate of 3.30% (ECB + 1.30%).

The Provider has furnished in evidence a **template Mortgage Form of Authorisation** which it states was issued to other mortgage loan account holders "*subject to the same product coding as the Complainant's mortgage loan account*".

**Page 1** of the MFA details as follows;

*"I/we wish to apply for the interest rate indicated below for my/our Mortgage Loan (the "Loan") upon the expiry of my/our existing rate.*

...

| <i>Selected Rate</i>     | <i>Description</i>                  | <i>Rate</i>   |
|--------------------------|-------------------------------------|---------------|
| <input type="checkbox"/> | <i>HOMELoAN VARIABLE RATE</i>       | <i>3.600%</i> |
| <input type="checkbox"/> | <i>2 YEAR FIXED</i>                 | <i>3.390%</i> |
| <input type="checkbox"/> | <i>3 YEAR FIXED RATE</i>            | <i>3.490%</i> |
| <input type="checkbox"/> | <i>5 YEAR FIXED RATE</i>            | <i>3.85%</i>  |
| <input type="checkbox"/> | <i>10 Year Fixed</i>                | <i>4.490%</i> |
| <input type="checkbox"/> | <i>1 Year Fixed</i>                 | <i>3.290%</i> |
| <input type="checkbox"/> | <i>TRACKER VARIABLE ECB + 1.30%</i> | <i>3.300%</i> |

The **Consumer Credit Act Notices** section on **page 2** of the MFA details as follows;

*"If your mortgage is at any time at a variable rate, please note: THE PAYMENT RATES ON THIS HOUSING LOAN MAY BE ADJUSTED BY THE LENDER FROM TIME TO TIME."*

/Cont'd...

The **Acknowledgement and Agreement** section on **page 2** of the MFA details as follows;

*"I acknowledge that **following the acceptance by the Lender of this application**, the terms and conditions applicable to the Loan shall be amended/ varied by the terms and conditions set out in this Form of Authorisation, and I accept the said conditions and agree to be bound by them.*

*I acknowledge and agree that:-*

- 1. **If I have applied to convert** to a fixed rate loan, the interest rate shall be fixed from the date of the expiry of my existing rate. The fixed rate of interest that shall apply shall be the Lender's fixed rate available for the fixed period selected by the Borrower at the date of the expiry of the existing interest rate.*
- 2. In the case of a fixed rate loan, in the event of early repayment of the Loan in whole or in part for any reason, or conversion to a variable interest rate, or other fixed rate within the initial fixed rate period or any further or subsequent fixed rate period, the Borrower shall pay a funding fee to be calculated in accordance with the formula set out above under "Early Repayment".*
- 3. **If I have applied to convert** to a tracker variable rate, agree that the interest rate applicable to the Loan is a variable interest rate and may vary upwards or downwards. The interest rate shall be no more than the percentage indicated on the previous page above the prevailing European Central Bank Main Refinancing Operations Minimum Bid Rate ("Repo Rate") for the term of the Loan. Any variation in interest rate shall be implemented by the Lender not later than close of business on the 5<sup>th</sup> working day following a change in the Repo rate by the European Central Bank. Notification shall be given to the Borrower of any variation in interest rates either by notice in writing served on the Borrower, or first named borrower where there is more than one borrower, or by advertisement published in at least one national daily newspaper. In the event that, or at any time, the Repo rate is certified by the Lender to be unavailable for any reason, the interest rate applicable to the Loan shall be the prevailing Home Loan Variable Rate.*
- 4. **If I have applied to convert to a Home Loan Variable** rate the payment rate on the Loan may be adjusted by the Lender from time to time.*
- 5. Save as set out in this Form of Authorisation, all the terms and conditions applicable to the Loan remain unchanged." [my emphasis]*

It is not disputed between the parties that the Complainant did not sign or return a copy of this **Mortgage Form of Authorisation**.

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Having considered the mortgage loan documentation, it is clear to me that the Complainant did not have a contractual entitlement to a tracker interest rate at the end of the fixed rate period.

I note that the Complainant has submitted that *“A Tracker rate option was not included in the Product Review Notice OCT 2005 and [the Provider] have not provided evidence to the contrary”*. It appears to me that the Provider, in line with its own commercial discretion and policy at the time, offered the Complainant the option of a tracker interest rate on the mortgage loan. In any event, it is not disputed that the Complainant did not sign or return the MFA, so there were no amendments or variations to the **Mortgage Loan Offer**.

It is important for the Complainant to understand that while tracker rate options may have been available as a product option from the Provider at the time, the Complainant was not contractually entitled to be offered a tracker interest rate.

I accept that the MFA contained sufficient detail about the available tracker interest rate, such that the Complainant could have made an informed decision as to which interest rate to choose at the time or made further enquiries if he was in doubt. The Provider had set out in a clear and comprehensible manner that if the Complainant selected the tracker variable rate *“The interest rate shall be no more than the percentage indicated on the previous page above the prevailing European Central Bank Main Refinancing Operations Minimum Bid Rate (“Repo rate”) for the term of the Loan”*.

Therefore, the Complainant ought to have been aware that if he had opted to select the tracker variable rate the margin of 1.30% would be fixed for the term of the loan and the ECB element would fluctuate in accordance with the European Central Bank rate.

The MFA is clear that its purpose was to make an application for a particular rate type and then if the application was accepted by the Provider, then the terms and conditions applicable to the Loan would be amended/varied by the terms and conditions set out in the MFA. The application of **Clause 1, 3 or 4** are clearly dependent on the interest rate that the Complainant elected to select.

The Complainant has submitted that he attended his local branch of the Provider to select a new interest rate, in circumstances where he *“mislaid”* the Mortgage Form of Authorisation. No evidence has been provided to me of any discussions or dialogue between the Provider and the Complainant at this time.

A new **Mortgage Form of Authorisation** was signed and dated by the Complainant on **23 November 2005** which details as follows:

“...

**1. Changing from one interest Rate to Another**

*I wish to apply for the interest rate indicated below for my Mortgage Loan. I understand this rate will apply to my Mortgage Loan from the expiry date of my current fixed rate period (if applicable).*

Standard Variable Rate \_\_\_\_\_  5 year fixed Rate: \_\_\_\_\_  
 3 year fixed Rate 3.49  10 year fixed Rate: \_\_\_\_\_  
 Other Rate \_\_\_\_\_ (Please tick as appropriate)

...

**I agree to the following terms:**

(i) *The interest rate I have chosen on this form will apply to my Mortgage loan from the expiry of my current fixed rate (if applicable).*

...

(ii) ...

*I confirm that my Home Loan Letter of Offer as amended by this Authorisation remains in force.”*

The Complainant selected a three-year fixed interest rate of 3.49%. The **mortgage loan statement** shows that this rate was applied to his mortgage loan account on **8 December 2005**.

It appears that the Complainant’s account defaulted to a standard variable interest of 4.79% on **8 December 2008** when the fixed interest rate period expired.

The Provider wrote to the Complainant by letter dated **31 March 2010**, as follows:

*“Further to your request to change your current mortgage product, I am very pleased to offer you the following range of attractive options:-*

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| <b>Description</b>        | <b>Rate</b>   | <b>*Projected Standard Repayment</b> |
|---------------------------|---------------|--------------------------------------|
| <i>2 Year Fixed (PDH)</i> | <i>3.150%</i> | <i>€976.04</i>                       |
| <i>3 Year Fixed</i>       | <i>3.600%</i> | <i>€1,015.28</i>                     |
| <i>5 Year Fixed (PDH)</i> | <i>4.250%</i> | <i>€1,073.47</i>                     |

*\* This is estimated only and may be higher on the actual date that the rate is changed on your account*

*To avail of your selected option, please tick the relevant rate on the enclosed Mortgage Form of Authorisation. Please sign and date this form and return it to us at [address] before 14/04/2010. Unfortunately, we cannot hold the above choice of rates open after this date.*

*...*

*If I do not hear from you by 14/04/2010, your current mortgage product and rate will continue to apply in accordance with your loan offer until we receive further instructions from you.*

*..."*

The evidence shows that the Complainant did not have a contractual or other entitlement to a tracker interest rate on his mortgage loan account and accordingly there was no contractual or other obligation on the Provider to offer the Complainant a tracker interest rate on the mortgage loan account in **April 2010**.

The Complainant applied a 3-year fixed rate of 3.60% by accepting and signing an MFA dated **6 April 2010**. The mortgage statement indicates that the rate of 3.60% was applied to the account on **13 April 2010**.

The Provider issued a letter to the Complainant dated **14 March 2013** detailing as follows;

*"I am writing to let you know that your current rate will expire on 13/04/2013. Your current rate is Repayment, 3.60% and your current repayment is €1,016.19. The following table sets out the choice of rates available to you. The table also contains an indicative estimate of the cost of repayments for each rate being offered which you should compare to your current repayment which we have quoted above;*

| <b>Description</b>                    | <b>Rate</b>  | <b>* Estimated Standard Repayment</b> |
|---------------------------------------|--------------|---------------------------------------|
| <i>Existing Variable LTV Rate PDH</i> | <i>4.35%</i> | <i>€1,074.48</i>                      |

/Cont'd...

|                    |       |           |
|--------------------|-------|-----------|
| 2 Year Fixed (PDH) | 4.69% | €1,101.57 |
| 3 Year Fixed (PDH) | 4.89% | €1,117.68 |
| 5 Year Fixed (PDH) | 5.29% | €1,150.27 |
| 10 YEAR FIXED RATE | 6.19% | €1,225.42 |

**\* PLEASE NOTE: These estimates are calculated for your mortgage account AS IT IS TODAY.**

..."

As outlined above I am of the view that the Complainant did not have a contractual or other entitlement to a tracker interest rate on his mortgage loan account and accordingly there was no contractual or other obligation on the Provider to offer the Complainant a tracker interest rate on the mortgage account on the expiry of the fixed interest rate period in **April 2013**. The **mortgage statement** shows that the rate of 4.35% was applied to the mortgage account on **15 April 2013**.

The Provider wrote to the Complainant dated **1 September 2015** as follows:

*"Further to your request to change your current mortgage rate, I am pleased to offer you the following range of attractive options. Your current rate is Existing Variable LTV Rate PDH, 4.350% and your current repayment is €1,066.58. The following table sets out the choice of rates available to you. The table also contains an indicative estimate of the cost of repayments for each rate being offered which you should compare to your current repayment which we have quoted above;*

| Description              | Rate   | * Estimated Standard Repayment |
|--------------------------|--------|--------------------------------|
| 2 Year Fixed LTV 61%-80% | 3.600% | €1,025.57                      |
| 3 Year Fixed LTV 61%-80% | 3.600% | €1,025.57                      |

**\* PLEASE NOTE: These estimates are calculated for your mortgage account AS IT IS TODAY.**

..."

The Complainant accepted and signed the attached Mortgage Form of Authorisation on **5 September 2015** indicating his preference for a 3-year fixed rate of 3.60%. The mortgage statement indicates that the rate of 3.60% was applied to the account on **5 October 2015**.

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The Provider issued a letter to the Complainant dated **5 September 2018** detailing as follows;

*"I am writing to let you know that your current rate will expire on 5/10/2018. Your current rate is Repayment, 3.600% and your current repayment is €1,030.88. The following table sets out the choice of rates available to you. The table also contains an indicative estimate of the cost of repayments for each rate being offered which you should compare to your current repayment which we have quoted above:*

| Description               | Rate   | * Estimated Standard Repayment |
|---------------------------|--------|--------------------------------|
| VARIABLE LTV 61%-80%      | 4.200% | €1,053.01                      |
| 1 Year Fixed LTV 61%-80%  | 3.000% | €988.39                        |
| 2 Year Fixed LTV 61%-80%  | 3.000% | €988.39                        |
| 3 Year Fixed LTV 61%-80%  | 3.000% | €988.39                        |
| 5 Year Fixed LTV 61%-80%  | 3.000% | €988.39                        |
| 10 Year Fixed LTV 61%-80% | 3.300% | €1,004.32                      |

**\* PLEASE NOTE: These estimates are calculated for your mortgage account AS IT IS TODAY.**

..."

The Provider's internal note dated **19 September 2018** details:

*"Customer reviewing rate options as current rate expiring early Oct. Customer looking at 2.3% rate with [third party Provider] & considering switching. Can you please advise re lowest rates that can be offered here? Thanks"*

A further letter issued from the Provider to the Complainant dated **20 September 2018** as follows;

*"Further to your enquiry regarding the current rate on your mortgage account with us, I am very pleased to offer you the following rate.*

**Mortgage Product Description: Variable Discount Rate.**

**Interest Rate: 3.30%**

**Mortgage Product Description: 1, 2, 3, 5 Year Fixed Discount Rate.**

**Interest Rate: 2.80%**

**Mortgage Product Description: 10 Year Fixed Discounted Rate.**

/Cont'd...



**Interest Rate: 3.20%**

*To avail of this rate, please complete the enclosed Mortgage Form of Authorisation (MFA).*

*..."*

It does not appear from the evidence before me that the Complainant signed or returned the MFA.

The Provider wrote to the Complainant on **12 October 2018** detailing as follows;

*"I confirm that the agreed changes to your mortgage have been applied to your account. The updated details for your account are as follows.*

|                             |                    |
|-----------------------------|--------------------|
| <b>Mortgage Type:</b>       | Repayment          |
| <b>Mortgage Rate Type:</b>  | VARIABLE LTV <=60% |
| <b>Interest Rate:</b>       | 3.300%             |
| <b>Repayment Frequency:</b> | Monthly            |
| <b>Next Repayment Date:</b> | 4/11/2018          |
| <b>Mortgage Repayment:</b>  | €1,005.10          |
| <b>Maturity Date:</b>       | 4/01/2030          |

*The payment rates on this mortgage may be adjusted by us from time to time. If there are any changes in mortgage interest rates we will advise you immediately."*

The mortgage statement indicates that the variable rate of 3.30% was applied to the mortgage loan account on **12 October 2018**.

A further letter issued from the Provider to the Complainant dated **30 November 2018** as follows;

*"Further to your enquiry regarding the current rate on your mortgage account with us, I am very pleased to offer you the following rate.*

**Mortgage Product Description: Variable Discount Rate.**

**Interest Rate: 3.30%**

**Mortgage Product Description: 1, 2, 3, 5 Year Fixed Discount Rate.**

**Interest Rate: 2.80%**

**Mortgage Product Description: 10 Year Fixed Discounted Rate.**

**Interest Rate: 3.20%**

/Cont'd...

*To avail of this rate, please complete the enclosed Mortgage Form of Authorisation (MFA).*

*...”*

The Complainant accepted and signed the enclosed MFA on **18 December 2018** electing to apply a 5-year fixed discount rate of 2.80%. The mortgage statement indicates that this rate was applied to the mortgage loan account on **19 December 2018**.

It is important for the Complainant to understand that there was no commitment or obligation on the Provider, contractual or otherwise, to provide him with a tracker variable rate option either in **December 2005** or in the future. The Complainant had no contractual or other entitlement to a tracker interest rate when the fixed interest rate period concluded in **December 2005** or at any other time.

However, it appears that in accordance with its own policy at that time the Provider did offer the Complainant the option of a tracker interest rate in **December 2005**. The Complainant did not accept the tracker rate, at that time, and instead chose a 3 year fixed interest rate.

The Complainant was not entitled as a matter of policy or contract to a tracker interest rate on the mortgage loan at the end of the fixed interest rate period in **December 2008** or at any other time.

I also note that the Complainant has submitted that the Provider has reinstated tracker rates to and refunded other customers of the Provider who are in a “*similar situation*” to the Complainant. The Complainant’s mortgage loan is governed by the terms and conditions of the Complainant’s mortgage loan documentation. In adjudicating on this complaint, it is not relevant to consider the entitlements (contractual or otherwise) of other individuals who hold mortgage loans with the Provider. For the avoidance of doubt, the Complainant never had a tracker interest rate on his mortgage loan account.

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**

11 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.