



<b><u>Decision Ref:</u></b>	2021-0361
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Tracker Mortgage
<b><u>Conduct(s) complained of:</u></b>	Refusal to move existing tracker to a new mortgage product
<b><u>Outcome:</u></b>	Rejected

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

This complaint relates to the Complainants' mortgage loan account ending **4483** held with the Provider. The mortgage loan was secured on the Complainants' private dwelling house (PDH).

The First Complainant previously held the following mortgage loans with the Provider:

- Mortgage loan account ending **4516** which was secured on the First Complainant's then private dwelling house. The loan amount was IR£117,300.00 and the term was 25 years. This mortgage loan was redeemed on **11 February 2013**.
- Mortgage loan account ending **9839** which was also secured on the First Complainant's then private dwelling house. The mortgage loan was redeemed on **11 February 2013**.

In **2013** the Complainants drew down a joint mortgage loan account ending **4483** to fund the purchase of their new primary dwelling house. The Loan Offer dated **12 September 2013** was signed by the Complainants on **19 September 2013** and provided that the loan amount was €330,000 and the term of the loan was 22 years. The interest rate applicable to the loan was a variable rate. The mortgage loan account ending **4483** was redeemed on **6 September 2018**.

### The Complainants' Case

The Complainants outline that the mortgage loan account ending **4516** was drawn down by the First Complainant in **1999** on a one-year fixed rate, following which the account converted to a variable rate of 6.00% in **2000**. A tracker interest rate was applied to the mortgage loan from **May 2006** until the account was redeemed in **February 2013**.

The Complainants submit that when the First Complainant sold the security property for mortgage account ending **4516** in **2013**, they requested "*several times*" at the Provider's branch if they could retain the tracker interest rate for the outstanding balance of €150,000 but they were "*not allowed*" to do so even though "*this was allowable to others at the time*". The First Complainant submits that she "*did not want to lose [her] tracker*" but she was placed "*under duress as we had sale agreed on our house and to organise another application would have resulted in losing it*".

The Complainants subsequently drew down a joint mortgage loan account ending **4483** in **October 2013** on a variable interest rate.

The Complainants submit that due to the loss of the tracker interest rate in **2013** they have had to repay the outstanding balance on mortgage account ending **4516** on a higher variable rate. They further submit that they have had to sell the property securing mortgage account ending **4483** in **2018**, because the variable rate on the loan was "*higher than necessary*".

The Complainants assert that there was "*no reason but [the Provider's] financial gain to insist [that they] moved from tracker*" in **2013**.

The Complainants are seeking a refund of the interest overpaid on the balance of €150,000 of their mortgage loan account ending **4516** since **February 2013**.

### The Provider's Case

The Provider submits that between **February 2013** when the account ending **4483** was redeemed, and **October 2013** when account ending **4516** was drawn down, there were no interactions between the Provider and the Complainants in relation to the retention of the tracker interest rate that applied to mortgage loan account ending **4516**.

The Provider submits that mortgage account ending **4516** was in the sole name of the First Complainant.

It details as follows;

- The First Complainant wrote to the Provider on **5 December 2012** authorising the release of the Title Deeds of the mortgaged property to her solicitor for the purpose of the sale of the property.
- On **14 December 2012** the First Complainant's solicitor wrote to the Provider seeking to redeem mortgage account ending **4516** and "*any other accounts that may be relevant*".
- The Provider issued a letter to the Complainant's solicitor on **17 December 2012** outlining the redemption figures for account ending **4516** and for her top up mortgage account ending **6823**.
- Both mortgage loan accounts ending **4516** and **6823** were redeemed on **11 February 2013**.

The Provider states that on the redemption of mortgage account ending **4516** there was no balance outstanding.

The Provider outlines that the Complainants completed a **Home Loan Application Form** in **May 2013** seeking mortgage finance in the sum of €330,000 for a new property. The Provider submits that it withdrew from the tracker mortgage market in **late 2008** and therefore it was not offering tracker interest rates when the Complainants completed their mortgage application for account ending **4483**. It submits that it was "*not required to nor did it offer a Tracker Retention Rate (TIRR) product*" in **2013**. It further states that "*there was no term/provision in the First Named Complainant's Mortgage Loan Terms and Conditions associated with Mortgage Loan Account ending 4516 that permitted the retention of the Tracker Rate following the redemption of the Mortgage Loan Account in February 2013.*"

The Provider details that the Complainants accepted and signed a Letter of Offer for mortgage loan account ending **4483** on **19 September 2013** which provided for a mortgage loan of €330,000 on a standard variable rate repayable over a term of 22 years. The Provider submits that the Complainants "*had the benefit of obtaining independent legal advice in relation to the terms of the loan.*" It states that the mortgage loan account was drawn down on **3 October 2013** on a standard variable rate of 4.45%.

The Provider states that it introduced a tracker interest rate retention product in **mid-2014** which allowed customers to retain their existing contracted tracker interest rate with an

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additional 1.00% margin for the remaining term and balance of their existing mortgage, and any balance over that would be at the new business rates and term.

It states that when the tracker retention product was introduced in **mid-2014**, the Complainants did not have an existing tracker interest rate mortgage and therefore they were not eligible to avail of that product.

The Provider outlines that mortgage loan account ending **4483** was redeemed in full by the Complainants on **6 September 2018** following the sale of the security property. The Provider submits that the *“decision to sell the property was independently made by the Complainants”* and the Provider has *“no knowledge of any financial difficulty and there is no evidence on file to indicate that the Complainants were having trouble meeting their mortgage repayments.”*

The Provider details that the First Complainant emailed the Provider on **24 July 2017** and *“queried the competitiveness of the variable interest rate of 3.57%”* on mortgage loan account ending **4483**. The Provider states that in its Final Response Letter dated **10 August 2017** it advised the Complainants of the variable rate decreases from **2014** to **2015** and detailed the fixed rate options available to the Complainants on that date. The Provider submits that it has *“no further evidence of the Complainants querying interest rates with the Bank or requesting forbearance due to financial difficulty”* between **25 July 2017** and when mortgage loan account ending **4483** was deemed in full on **6 September 2018**.

### **The Complaint for Adjudication**

The complaint for adjudication is that the Complainants were not permitted to retain the tracker rate on the outstanding balance of the mortgage loan account ending **4516** in **2013**.

### **Decision**

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainants were given the opportunity to see the Provider’s response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

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

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

A Preliminary Decision was issued to the parties on 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.

At the outset, it is important to point out that this Office will not interfere with the commercial discretion of a financial service provider with respect to a decision to accept or reject a consumer's application for credit, unless the conduct complained of is unreasonable, unjust, oppressive or improperly discriminatory in its application to a Complainant, within the meaning of **Section 60 (2) of the Financial Services and Pensions Ombudsman Act 2017**.

In order to adjudicate on this complaint, it is necessary to consider the interactions between the Complainants and the Provider in relation to the Complainants' mortgage loan application in **2013**. At the outset I will also set out the details of the First Complainant's mortgage loan accounts that were held with the Provider.

An **Amended Loan Offer** dated **15 February 1999** issued to the First Complainant in relation to mortgage loan account ending **4516** which outlined as follows:

<i>"Type of Loan:</i>	<i>Repayment</i>
<i>Amount of Loan:</i>	<i>£117,300.00 (EUR 148,940.28)</i>
<i>Monthly Repayment: (Fixed for Year 1)</i>	<i>£612.29 (EUR 777.96)</i>

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<i>Interest Rate: (Fixed for Year 1)</i>	<i>3.900%</i>
<i>After 1 year</i>	<i>Variable Base (currently 04.85%)</i>
<i>Repayment Period (Years)</i>	<i>25 Approx."</i>

**Condition 9** of the **General Conditions** outlines as follows:

***“Fixed Rate Loans:** When the fixed rate period ends, the interest rate will convert to a variable rate, and if [the Provider] is then offering a Fixed Home Loan rate for a defined period the borrower may opt to convert to a fixed rate for that period, and defer conversion to a variable rate. In either case, any margin specified in the offer letter will be applied to the interest rate on the loan.*

*If the loan is repaid in whole or in part before the end of the fixed rate period, then an additional interest charge on the principal sum repaid will be made at the end of the month in which the repayment takes place, as follows:*

- *For 1 or 2 years fixed: three months interest*
- *For 3 or more years fixed: six months interest.*

*The charge will not be applied if another main residence is being purchased by the borrower and the existing fixed rate loan balance is transferred to it with the agreement of [the Provider].”*

It is clear to me that the **Mortgage Loan Offer** envisaged a fixed interest rate for the first 12 months with variable interest rate to apply thereafter, or a further fixed rate at the Provider’s discretion. The loan offer does not contain any reference to the ECB rate.

I note that the First Complainant signed an **Application for a Tracker Mortgage Rate** on **30 May 2006** which detailed as follows:

*“With the tracker mortgage, the margin is linked to a specified Index or indices and remains constant for a specified period.*

*In this case, the tracker mortgage will remain at 1.25% above the ECB Repo Rate for the remaining life of the loan.*

*The rate will apply from the 1st of the month following receipt of this request. When the ECB Repo Rate changes, the rate on the above account will change from the 1st of the month following the ECB rate change.*

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*Please note that you can switch from a tracker loan to a standard variable rate or fixed rate loan on one occasion throughout the life of the loan without penalty. However, once you have chosen to opt out of the tracker mortgage, you can not switch back to this rate option.*

*I/We confirm that we understand the workings of the Tracker Mortgage Rate and wish to proceed with this application.”*

The **mortgage loan statements** show that the tracker interest rate of ECB + 1.25% was applied to the mortgage loan account ending **4516** on **30 June 2006** *“for the remaining life of the loan.”*

The First Complainant’s solicitor wrote to the Provider dated **14 December 2012** as follows:

*“We act for the above named borrower who has agreed to sell the property for the above address.*

*We expect to be in a position to complete this sale shortly, and accordingly, we would be glad if you would let us have details of the amount due to you as of the 5th January under the above accounts (or any other account or accounts that may be relevant) to enable you to release the Vacate on all Mortgages which are directly or indirectly affect the premises in sale. When sending the figures to us, please let us know the amount of interest accruing daily.”*

The Provider responded to the Complainant’s solicitor by letters dated **17 December 2012**. The letter in relation to mortgage account ending **4516** outlined as follows:

*“Further to your recent enquiry we set out hereunder the amount required, at the date specified below, to redeem the above-mentioned loan account.*

...

*The amount required to redeem on 17/12/2012 is EUR 82,942.65 and the daily interest payable each day thereafter is EUR 4.61.*

*Please note: These figures are only valid for seven days and will change in the advent of an interest rate alteration, a returned payment or a further lodgement prior to the redemption of the loan.”*

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The Provider's letter in relation to the First Complainant's mortgage account ending **6823** dated **17 December 2012** outlined as follows:

*"The amount required to redeem on 17/12/2012 is EUR 31,507.56 and the daily interest payable each day thereafter is EUR 3.75."*

The First Complainant's solicitor wrote to the Provider on **11 February 2013** as follows:

*"We refer to the above and previous correspondence herein and in particular to your correspondence dated 17<sup>th</sup> December 2012 enclosing redemption figures for the abovementioned accounts.*

*We confirm that we today attended your [Provider branch] and redeemed the above mortgages (copy receipts enclosed). Can you please revert in writing that both loan accounts have been redeemed in full and paid off in compliance with our undertaking. Please furnish vacates when to hand."*

The Provider has outlined as follows in respect of its tracker interest rate policy for new and existing customers:

- *"The Bank's Tracker Interest Rates were widely available from [mid] 2004 to [late] 2008. The Bank withdrew from the Tracker Mortgage market on [late] 2008 and as such we did not have Tracker Interest Rates available in 2013 for new mortgage applicants. Any existing mortgage that had a Tracker rate prior to removal from the Tracker Mortgage Market was entitled to retain that Tracker Rate on that account until such a time when their account was redeemed or requested to amend rate. Tracker mortgage retention product was not introduced until [mid] 2014.*
- *The Tracker Interest Rate Retention product was introduced by the Bank in [mid] 2014. Tracker Interest Rate Retention product allows existing customers to sell their current home and buy a new home, while still retaining a Tracker interest rate (plus an additional 1% margin) on buying a new Mortgage Loan."*

It appears from the evidence that the First Complainant of her own volition, was selling the security property for mortgage accounts ending **4516** and **6823** in **early 2013** in circumstances where the Complainants were seeking to take out a new joint mortgage loan to buy a new property. It appears to me that the outstanding balance on the mortgage account ending **4516** at that time was approximately €82,000, rather than €150,000 as the First Complainant has submitted. In any event the **mortgage loan statement** for account ending **4516** shows that this account was redeemed in full on **11 February 2013**.

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The Provider has outlined as follows in respect of its tracker interest rate policy for new and existing customers:

- *“The Bank’s Tracker Interest Rates were widely available from [mid] 2004 to [late] 2008.*

*The Bank withdrew from the Tracker Mortgage market on [late] 2008 and as such we did not have Tracker Interest Rates available in 2013 for new mortgage applicants. Any existing mortgage that had a Tracker rate prior to removal from the Tracker Mortgage Market was entitled to retain that Tracker Rate on that account until such a time when their account was redeemed or requested to amend rate. Tracker mortgage retention product was not introduced until [mid] 2014.*

- *The Tracker Interest Rate Retention product was introduced by the Bank in [mid] 2014. Tracker Interest Rate Retention product allows existing customers to sell their current home and buy a new home, while still retaining a Tracker interest rate (plus an additional 1% margin) on buying a new Mortgage Loan.”*

The Complainants have submitted that when they applied for a joint mortgage loan with the Provider in **2013**, they requested “several times” to be permitted to retain the tracker interest rate on the outstanding balance of €150,000 on the First Complainant’s mortgage loan account ending **4516**. I have not been provided with any evidence of any discussions or dialogue between the Complainants and the Provider in **2013** in relation to either the retention of the tracker interest rate that applied to the First Complainant’s mortgage account ending **4516**, or in relation to the type of interest rate that would apply to the new joint mortgage loan account. I am unable to comment further on the asserted discussions in the absence of any contemporaneous notes or other documentation demonstrating that these discussions took place or the date(s) on which they allegedly took place.

Notwithstanding what may have been communicated to the Complainants by the Provider at any such discussions in **2013**, there was no legal obligation on the Provider to allow the Complainants to carry a tracker interest rate from one mortgage loan to another mortgage loan. When the First Complainant redeemed the mortgage loan account ending **4516** that she held in her own name, the contractual entitlement to a tracker rate of interest on that mortgage loan ended. The tracker interest rate retention option was not available at the time the Complainants proceeded with a mortgage application in **May 2013**. The availability or otherwise of this product was a commercial decision the Provider was entitled to make.

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The Complainants signed a **Home Loan Application Form** on **24 May 2013**. The **'Loan Details'** section of the application outlines that the *"Loan Amount Required"* was *"€330,000"* and the *"Term of Loan"* sought was *"22 Years"*.

The form further detailed as follows:

***"APPLICATION FOR A FIXED RATE MORTGAGE***

*I/We wish to apply for a fixed rate for the first            year(s) of my/our mortgage.*

*I/We understand that when this fixed rate period has expired the interest rate will convert to the applicable variable rate then prevailing. The variable interest rate basis will be specified in the loan offer letter issued by [the Provider] (if the loan is approved).*

***IMPORTANT***

*I/We understand that in the event of there being a change in interest rates before [the Provider] have issued our loan cheque, [the Provider] will apply the fixed rate available at the time of cheque issue. If there is no other fixed rate available the variable rate then available will apply.*

*...*

*This document forms part of the application for a mortgage, the conditions and the declaration of which also covers this document.*

*I/We confirm that I/We understand the workings of the Fixed Rate Facility and wish to proceed with this application.*

*..."*

The ***"WARNINGS, DECLARATIONS, AUTHORISATIONS AND CONSENTS"*** section of the form outlined:

***Variable Rate Loans***

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

...

1. *General*

*I/We hereby apply to [the Provider] for a loan secured by a first legal mortgage on the property described in this application form*

*I/WE AGREE*

- *That the loan will be subject to the rates and interest of [the Provider]*

...

*I/WE HEREBY DECLARE*

...

- *That I/we have read ALL warnings set out in this declaration.*

..."

The Provider's lending criteria is a matter for its commercial discretion. There was no obligation on the Provider to offer the Complainants a tracker interest rate on the new mortgage loan. A tracker interest rate did not form part of the Provider's suite of products at the time the Complainants submitted their application and the Provider did not offer a tracker interest rate retention product until **mid-2014**. There is no evidence that the Provider acted in a matter that was unreasonable, unjust, oppressive or improperly discriminatory in not offering the Complainants a tracker interest rate retention product.

The Provider issued a **Suitability Statement** to the Complainants on **11 July 2013** which details as follows:

**"Suitability Statement**

**Important Notice- Statement of Suitability**

***This is an important document which sets out the reasons why the product(s) or services(s) offered or recommended is/are considered suitable, or the most suitable, for your particular needs, objectives and circumstances.***

*Dear [Complainants],*

*You have stated that it is your objective to finance the above mentioned property, thank you for choosing [the Provider] for your Home Loan.*

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*This loan has been individually assessed for affordability and the repayments have been deemed to be sustainable based on the information you have provided and you believe that you will be able to meet these requirements based on your circumstances.*

Loan Type

**Annuity**

*You have opted for an Annuity loan as you have stated that you want to make capital and interest repayments each month in order to repay your loan in full within the selected loan term.*

Loan Term

*You have opted to pay your loan over a term of 22 years as the monthly repayment amounts over this loan term based on current rates are the most suitable for your current circumstances including your age and current financial situation. You may opt to increase your monthly repayments at any time in order to repay your loan over a shorter term if you choose to do so.*

*Equally, subject to you meeting the relevant qualifying criteria, you may be able to reduce your monthly repayments or extend your loan term.*

Interest Rate Type

**Variable Rate**

*You have opted to borrow at a variable rate of interest as you have stated that you wish to avail of prevailing market rates and do not require certainty of repayments. You also wish to have the flexibility to make overpayments without penalty.*

*Please sign the enclosed Acceptance Form in order to accept your loan offer, and to acknowledge and accept the terms of this suitability statement.”*

The Complainants signed the **Acceptance Form** on **19 July 2013** on the following terms:

*“1. I/We the undersigned, accept the offer of an advance made to me/us by [the Provider] on the terms and conditions set out in:*

- (i) This Offer Letter in replacement of all previous offer letters;*
- (ii) The [Provider] Homeloan Conditions;*

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*(iii) The Irish Banking Federations, Housing Loan Mortgage and the General Housing Loan Mortgage Conditions, referred to therein;*

*copies of which I/we have received and in respect of which I/we have been advised upon by my/our solicitor.*

*...”*

A **Loan Offer** dated **11 July 2013** has been provided in evidence. However it does not appear from the evidence that this **Loan Offer** was signed or accepted by the Complainants.

An **Amended Loan Offer** was subsequently issued to the Complainants on **12 September 2013** in respect of mortgage loan account ending **4483** which details as follows:

*“I am pleased to inform you that [the Provider] has approved a Repayment Home Loan of €330,000.00 towards the purchase of the above property at a cost of €368,000.00 subject to the following terms and the attached [Provider] Homeloan Conditions.*

*...*

<i>Type of Loan:</i>	<i>Repayment</i>
<i>Total Amount of Loan:</i>	<i>€330,000.00</i>
<i>Cheque Issue Amount</i>	<i>€330,000.00</i>
<i>Monthly Repayment</i>	<i>€1,926.29</i>
<i>Interest Rate (Variable)</i>	<i>4.45%</i>
<i>Interest Rate Basis:</i>	<i>Variable Rate</i>
<i>Repayment Period (Years)</i>	<i>22 Approx.”</i>

The **Acceptance Form** was signed by the Complainants on **19 September 2013** on the following terms:

*“I/We, the undersigned, accept the offer of an advance made to me/us by [the Provider] on the terms and conditions set out in:*

- (i) this Offer Letter in replacement of all previous offer letters;*
- (ii) the [Provider] Homeloan Conditions;*
- (iii) the Irish Banking Federations, Housing Loan Mortgage and the General Housing Loan Mortgage Conditions, referred to therein;*

*copies of which I/we have received and in respect of which I/we have been advised upon by my/our solicitor.”*

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The Provider **Home Loan Conditions** outline as follows:

**“3. Interest on the Loan:**

- 3.1 *The basis on which the interest rate on the Loan is calculated is stated on the Offer Letter.*
- 3.2 *The interest rate on the Loan may be increased or reduced by [the Provider] from time to time, however no change in the interest rate will be applied to the Loan during any period when the interest rate is a fixed rate.*
- 3.3 *Notice of a change in the interest rate on the Loan will be given by way of a notice in writing sent to the Borrower, or by:*
- (a) a notice exhibited at the registered office of [the Provider], and*
  - (b) a notice in at least two national daily newspapers.*

*The change in the interest rate on the Loan will take effect on the day specified in the notice.*

*...”*

The **Amended Loan Offer** clearly outlined that a variable rate would apply to the mortgage loan account ending **4483**. The variable rate in this case made no reference to varying in accordance with variations in the ECB refinancing rate. Rather it was a variable rate which could be adjusted at the discretion of the Provider. If the Complainants did not want to pursue this option because they were unhappy with the interest rate applicable to the mortgage loan, they could have decided not to accept the Provider’s offer. Instead, the Complainants accepted the Provider’s offer by signing the **Acceptance Form** on **19 September 2013**.

The Provider has furnished in evidence a copy of its **brochure** relating to its **Tracker Interest Rate Retention Product** which it states was available from **mid-2014**. The brochure provided in evidence appears to be date-stamped “07.14”.

The brochure outlines that the product is available for “*existing customers that want to sell their current home, while still retaining a Tracker Interest Rate.*”

**Page 2** of the brochure details as follows:

**“[THE PROVIDER’S] TRACKER INTEREST RATE RETENTION EXPLAINED**

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*Tracker Retention will allow you to keep your Tracker Interest rate with an additional margin on 1% on your current tracker mortgage balance, if you wish to sell your existing property and purchase a new principal private residence.*

#### **WHO IS THIS OFFER FOR?**

*Tracker Retention is only available to existing [Provider] homeloan tracker mortgage customers who are not experiencing difficulties making their existing mortgage repayments.”*

The brochure outlines the “key features and restrictions” of the product, as follows:

“...

- ✓ *If you have sold your home and cleared your mortgage loan, to remain eligible for Tracker Retention, you must reapply for Tracker Retention within 30 days of the expiry of the Letter of Loan Offer. This is subject to [the Provider] still offering the Tracker Retention at that time.*

...

- ✓ *If your existing mortgage is in your sole name and you wish to sell your home and apply for a new joint mortgage with a co-borrower so that you can buy a new home together, you may apply for Tracker Retention subject to the key features and restrictions outlined above.”*

It is evident that for a customer of the Provider to avail of the tracker interest rate retention product in **2014** they were required to have an existing tracker interest rate on the mortgage loan account that was to be redeemed, or in circumstances where the mortgage loan account had already been redeemed, the customer must reapply for the product within 30 days of the expiry of the Loan Offer in order to be eligible for the product. The First Complainant’s mortgage loan account ending **4516** was redeemed in **February 2013**, some 16 months prior to the introduction of the tracker retention product in **mid-2014**.

I note that the First Complainant emailed the Provider on **25 July 2017** as follows:

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“...

*We were with [location] branch which has since closed. In 2012 our mortgage was changed from tracker to variable despite several queries to the manager [Redacted]. I also spoke to the manager in [location] but cannot remember his name. We came under pressure to give up our tracker despite misgivings and staying with [the Provider] for our current home.*

...

*I have also seen online that our 3.57% rate is not competitive and that existing customers are offered less. I am concerned at the lack of interest in our custom over the years at this point and would appreciate written contact.”*

The Provider issued its **Final Response Letter** to the Complainants on **10 August 2017** and stated as follows:

*“In relation to your query regarding your interest rate, you state that your interest rate of 3.57% is not competitive.*

*[The Provider] have reduced the variable rate on 3 occasions since the drawdown of your loan in 2013. I attach a summary of the interest rate decreases for your information.*

- 0.25% December 2014*
- 0.38% June 2015*
- 0.25% October 2015*

*[The Provider] are not in a position to reduce this variable rate at this point in time. However you may be interested in our Fixed interest rates. I attach a table of the current fixed rates available at [the Provider]. Should you wish to avail of one of these Fixed interest rates, please contact your local [Provider] office.*

*Please note these rates are subject to change and are correct as of the date of this letter.*

<i>Fixed Term</i>	<i>Fixed Rate</i>
<i>1 Year</i>	<i>3.50%</i>
<i>2 Year</i>	<i>3.60%</i>
<i>3 Year</i>	<i>3.65%</i>
<i>4 Year</i>	<i>3.75%</i>

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5 Year

3.80%”

I have not been provided with any evidence to indicate that the Complainants requested to apply a fixed interest rate to the mortgage loan account ending **4483**. The **mortgage loan statements** show that the mortgage account continued to operate on the variable rate of 3.57%.

The Provider issued a letter to the Complainants’ solicitor on **28 August 2018** which stated:

*“Further to your recent enquiry we set out hereunder the amount required, at the date specified below, to redeem the above-mentioned loan account.*

*...*

*The amount required to redeem on 28/08/2018 is EUR 280,157.58 and the daily interest payable each day thereafter is EUR 27.88.”*

The Complainants’ solicitor responded to the Provider by letter dated **5 September 2018** as follows:

*“...*

*We now enclose our client account cheque in the sum of €280.603.66 in full and final settlement of all sums due to redeem the Borrowers liabilities to the Bank.”*

I note from the **mortgage loan statements** that the mortgage loan account ending **4483** was redeemed on **6 September 2018**.

Having considered the documentation provided in evidence by both the Complainants and the Provider, it appears that the First Complainant voluntarily chose to redeem her mortgage loan account ending **4516** which was on a tracker interest rate in order to sell the property that was held as security for that loan and by doing so she opted to terminate the mortgage contract with the Provider. There was no contractual or other obligation on the Provider to offer the Complainants a tracker interest rate on the new mortgage loan account ending **4483** in **September 2013**.

The mortgage loan documentation issued to the Complainants in respect of the mortgage account ending **4483** on **12 September 2013** provided for a variable interest rate. If the Complainants did not want to pursue this option as they were unhappy with the rate applicable to the mortgage, they could have declined to accept the Provider’s offer. Instead, the Complainants accepted the Provider’s offer by signing the **Loan Acceptance** on **19 September 2013**. The choice to take out the mortgage loan account ending **4483** on

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the terms and conditions offered by the Provider in **2013** was a choice that was freely made by the Complainants.

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

### **Conclusion**

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

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



**GER DEERING  
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

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.**