



<u>Decision Ref:</u>	2021-0372
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Tracker Mortgage
<u>Conduct(s) complained of:</u>	Failure to offer a tracker rate at point of sale
<u>Outcome:</u>	Rejected

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

This complaint relates to a mortgage loan account held by the Complainants with the Provider. The mortgage loan is secured on the Complainants' principal private residence.

The loan amount was €250,000 and the term of the loan was for 25 years. The particulars of the Mortgage Loan Offer Letter dated **28 May 2008** provided for a 12-month discounted variable interest rate of 4.94%, with the Provider's "*then prevailing Home Loan variable rate*" to apply thereafter. The mortgage loan account was drawn down in **August 2008**.

The Complainants' Case

The Complainants detail that when they applied for a mortgage loan with the Provider on **28 May 2008**, they were never advised that they had the option of choosing a tracker rate of interest. They contend that a variable rate of interest "*was our only offer*".

The Complainants maintain that "*at no time*" were they offered a tracker interest rate or indeed "*advised on what a Tracker Mortgage was*" when they applied for their mortgage loan in **2008**. The Complainants contend that had they been made aware of a tracker interest rate option, they would have availed of such a rate at that time as they were getting married, trying to build their home, and both of them had just commenced full-time employment therefore "*every penny saved would have been advantageous to them at the time*".

The Complainants submit that they sought the *“best available option”* from the Provider at that time however they were not offered a tracker mortgage which they now understand was the *“best available option...which would have given a lesser interest rate for the duration of [their] mortgage”*. The Complainants assert that they were *“not in the business of selling mortgages”* therefore *“[t]hey placed their faith and their trust in [Provider] and their personnel in advising on the best available options to them”*.

The Complainants further detail that they were never provided with a mortgage form of authorisation from the Provider to *“convert”* their variable interest rate mortgage to a tracker interest rate, nor were they informed that this option was available to them.

The Complainants disagree with the Provider’s assertion that the Complainants *“exercised their discretion in selecting an interest rate and accepting the terms and conditions applicable to the relevant interest rate when they signed and accepted the offer letter”*. The Complainants maintain that they *“did not exercise discretion and could not do so, if they were not given all the options”*.

The Complainants submit that in **2017** *“there was a lot of talk in the media surrounding issues in relation to Tracker Mortgages”* and therefore they received a copy of their loan pack *“in order to make sure that they were on the tracker rate and then realised they were not”*.

The Complainants stated that they want to know if they are entitled to a tracker interest rate, and if so, whether any monies are owed to them.

The Provider’s Case

The Provider submits that the Complainants signed a Mortgage Loan Offer Letter dated **28 May 2008** on **12 June 2008** and drew down mortgage loan account ending **3867** in **August 2008** for a term of 25 years. The Provider explains that a discounted standard variable interest rate of 4.94% applied to the Complainants’ mortgage loan account for a period of 12 months, *“after which the interest rate would move to a standard variable interest rate”*. The Provider asserts that there was no contractual entitlement to a tracker rate of interest in the Mortgage Loan Offer Letter that issued to the Complainants.

The Provider states that tracker interest rates were available to new and existing customers at the time of the Complainants’ mortgage loan application in **May 2008**. The Provider submits that the Complainants *“could have requested that the Offer Letter was reissued with a tracker rate of interest”* at any time prior to drawdown, however they did not do so. In addition, the Provider states that post drawdown *“the Complainants could have opted to switch the mortgage loan account to a tracker rate of interest”*.

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The Provider does not agree with the Complainants' assertions that they were not provided with all options when they submitted their mortgage loan application. The Provider submits that at the time of the mortgage loan application stage, the customer is provided with a range of available and applicable interest rates that *"best suits their needs at that point in time"*. The Provider asserts that the *"ultimate decision regarding interest rate application was that of the Complainants"*.

The Provider submits the tracker rate product was withdrawn in **late 2008** and thereafter was not available to new customers however existing customers could only avail of tracker rates where the customer had a contractual entitlement to a tracker rate. The Provider contends that there was no *"regulatory requirement"* in **2008** for mortgage lenders to warn specifically that a tracker rate might no longer be available for selection in the future. The Provider also notes that *"there was no known prospect at that time of the Provider discontinuing to offer a tracker rate of interest"*.

The Provider states that it was at all times open to the Complainants to approach the Provider between **August 2008**, when the loan was drawn down and **late 2008**, when tracker interest rates were withdrawn by the Provider, to switch the mortgage loan account to a tracker rate of interest, however the Complainants *"did not take up such an opportunity"*.

The Provider notes that a Product Review Notice letter and Mortgage Form of Authorisation issued to the Complainants on **20 July 2009** offering the Complainants a number of fixed interest rate options to choose from on the expiry of the initial discounted rate period. The Provider states that it has no record of receiving a completed Mortgage Form of Authorisation from the Complainants opting for a different interest rate therefore the mortgage loan account switched to the *"standard Homeloan variable interest rate"* of 2.7% on **19 August 2009** in accordance with **Special Condition 4(a)(i)** of the Mortgage Loan Offer Letter.

On **13 December 2009**, the Provider explains that the Complainants completed an application at its branch to move the mortgage loan account to a 5-year fixed rate of interest of 4.25%. The Provider states that the Complainants subsequently signed a Mortgage Form of Authorisation on **20 December 2009** to implement this change. The Provider notes that the Complainants mortgage loan reverted to the then prevailing standard variable rate as per the contractual terms of the Mortgage Loan Offer Letter on **23 December 2014**. The Provider submits that the Complainants signed a further Mortgage Form of Authorisation on **11 May 2015** to convert the mortgage loan to a fixed rate of 3.1% for a period of 3 years and the mortgage loan account has remained on that rate.

The Complaint for Adjudication

The complaint for adjudication is that the Provider incorrectly failed to offer the Complainants a tracker interest rate on their mortgage loan account from inception in **2008** or at any other stage during the term of the loan.

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

Following the issue of my Preliminary Decision, the following submissions were received from the parties:

1. Letter from the Complainants' representative to this office dated **16 August 2021**;
and
2. Letter from the Provider to this office dated **27 August 2021**

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Copies of these additional submissions were exchanged between the parties. Following the consideration of the additional submissions from the parties and all of the submissions and evidence furnished by both parties to this office, I set out below my final determination.

In order to determine this complaint, it is necessary to review and set out the relevant provisions of the Complainants' mortgage loan documentation. It is also necessary to consider the details of certain interactions between the Complainants and the Provider in **2008**.

On foot of the Complainants' mortgage loan application, the Provider issued a **Mortgage Loan Offer Letter** dated **28 May 2008** to the Complainants under cover of letter dated **28 May 2008**. The Provider's letter to Complainants dated **28 May 2008** enclosing the **Mortgage Loan Offer Letter** details as follows:

"Dear [Complainants],

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

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

While details of fixed, variable and tracker rate options were discussed with you, we note that you have chosen the variable rate option as you are satisfied to accept that your repayments may change in line with the market interest rate movement. A number of repayment options were also discussed with you and you have chosen a repayment mortgage where both interest and capital are paid over the term of the loan, thus reducing the capital balance outstanding. [My emphasis]

You have selected to pay your mortgage over 25 years, as this is the term that suits your requirements.

Could I ask you to refer to the information in Part 1 (Statutory Loan Details) Section 1, 3 & 4 and Part 2 (Additional Loan Details) Section 11 and 12 of the enclosed Letter of Offer which detail your chosen options.

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Step 1 – WHAT SHOULD BE DONE NOW

(a) Please make sure that all Applicants sign and date one copy of the Offer Letter and return it to your mortgage adviser. You should retain the other copy for your records. This is an important legal document, which forms the legal basis for the loan. It also sets out the security required by the [Provider]. You are strongly recommended to seek legal advice prior to accepting the Offer Letter.

(b) Make sure that all documents attached are fully completed and returned to your mortgage adviser.

[...]

If you have any questions, please do not hesitate to contact us. Please have your application number handy to help us identify your specific application. You can find this number at the top of this letter.”

Part 1 – The Statutory Loan Details of the Mortgage Loan Offer Letter dated 28 May 2008 sets out the following:

“1. Amount of credit advanced:	€300,000.00
2. Period of Agreement:	25 Years
3. Number of	4. Amount
Repayment Instalment	of each
<u>Instalments</u> <u>Type</u>	<u>Instalments</u>
12 Variable at 4.940%	€1,739.76
288 Variable at 5.440%	€1,824.42 ...”

Part 2 –The Additional Details of the Mortgage Loan Offer Letter details as follows:

“11. Type of Loan: Repayment
12. Interest Rate: 4.940% Variable”

Part 4 – The Special Conditions of the Mortgage Loan Offer Letter details as follows:

“The Loan is subject to the following special conditions (the “Special Conditions”) which, unless stated to the contrary, must be complied with in full to the Lender’s satisfaction before the Loan, or any part of it, can be drawn down:

a) The following Special Conditions apply to the Loan:

- (i) *The interest rate applicable to the loan has been discounted by 0.50% per annum on the amount of the Loan for a period of 12 months from the date of drawdown of the Loan. At the end of the said discount period the reduction shall cease and the interest rate applicable to the Loan shall revert to the then prevailing Home Loan variable rate. The discount set out in this special condition is the discount which would apply if the Loan were drawn down today. There is no guarantee that this discount will be available when the loan is in fact drawn down. The actual discount that will apply shall be the discount then offered by the Lender at the date of drawdown."*

The notice at the end of the page containing **Part 4 –The Special Conditions** details as follows:

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

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.*
- (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)."*

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The **Acceptance and Consent** section of the **Mortgage Loan Offer Letter** was signed and accepted by the Complainants on **12 June 2008** 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 Complainants’ representative, in her post Preliminary Decision submission dated **16 August 2021**, submits as follows:

“An error of fact

We submit that the preliminary Decision has outlined an incorrect understanding as to the existences of certain facts in this matter.

....

The Complainants have no such letter and have seen no such letter. We confirm that neither of our clients were provided with a copy of any such letter.

The Provider it appears desires to create an impression that tracker options were discussed with our Complainants, when in fact, it was not.

The text quoted and printed in bold at the bottom of page 4 and the top of page 5 of the preliminary decision is not to be found within the text of the offer letter itself as stated in the preliminary decision.

Therefore, it is our submission that the preliminary decision is incorrect in its understanding on a twofold basis.

- *First, that said letter was received by our clients, when in fact it was not,*
- *and second, that tracker options were discussed with our client, either verbally or in writing, which our clients also contend that no said discussions of tracker options available to them, ever took place.*

...The fact that this said letter was not received by our clients, and tracker options were not provided as suggested, has serious misleading consequences to the Ombudsman, as the tracker options being incorrectly confirmed by the provider as being discussed with our clients, when our client contends that same was not discussed with them at any stage”.

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I note that the Provider furnished a copy of the cover letter dated **28 May 2008** to this office as part of its submission to this office dated **14 February 2020**. A copy of this letter was exchanged with the Complainants' representative under cover of letter and email from this office dated **14 February 2020**.

The Provider, in its post Preliminary Decision submissions dated **27 August 2021**, submits as follows:

"Having checked the records, the Provider can confirm that the cover letter and Offer Letter issued to the Complainants on 28 May 2008. The Provider further confirms that it discussed all available and applicable rates with the Complainants prior to the issue of the Offer Letter. The Provider denies that there are any "serious misleading consequences" arising from the Provider's submission in this regard."

It is clear to me that contrary to the Complainants' representative's assertion, the Complainants received the Mortgage Loan Offer Letter dated **28 May 2008** as they signed and accepted the loan offer on **12 June 2008**. Therefore, I have no reason to believe that the Complainants did not receive the cover letter dated **28 May 2008** that accompanied the loan offer. I further note that both the cover letter and Mortgage Loan Offer Letter were sent to the same postal address.

The Complainants' representative appears to suggest that I have stated that the following text appears in the Mortgage Loan Offer Letter dated **28 May 2008**:

"While details of fixed, variable and tracker rate options were discussed with you, we note that you have chosen the variable rate option as you are satisfied to accept that your repayments may change in line with the market interest rate movement".

I note that that the above paragraph is contained within the cover letter dated **28 May 2008** enclosing the Mortgage Loan Offer Letter dated **28 May 2008** and not the actual Mortgage Loan Offer Letter dated **28 May 2008**, as is suggested by the Complainants' representative. The above paragraph confirms that the Complainants chose a variable rate option to apply to their mortgage loan. The Mortgage Loan Offer Letter dated **28 May 2008**, the document governing the contractual mortgage loan agreement between the parties, explains that the nature of the variable rate is one that can be adjusted at the Provider's discretion.

The Complainants' representative, in her post Preliminary Decision submission dated **16 August 2021**, appears to submit that no discussions whatsoever took place between the Complainants and the Provider's representatives regarding tracker rate options.

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The Provider was under no obligation to discuss or offer any specific advice on tracker interest rate mortgages. It was for the Complainants to choose the interest rate that best suited their needs and circumstances at that time. If the Complainants wished to explore the option of applying for a tracker interest rate mortgage loan with the Provider, they were free to do so. However, the evidence shows that the Provider issued a loan offer to the Complainants on foot of reviewing their mortgage loan application wherein they applied for a variable interest rate.

It is important to note that the role of the Provider's representatives is to sell the Provider's mortgage products. If the Complainants wanted independent advice about rates available in the market or the market generally, the Complainants could only get that advice from an independent third-party advisor. Therefore, I do not consider it appropriate for the Complainants' representative to suggest that any lack of discussion in relation to tracker interest rate options at the application stage has "*serious misleading consequences*".

The Complainants ultimately accepted the **Mortgage Loan Offer**, having confirmed that they had read and fully understood the terms and conditions attaching to the **Mortgage Loan Offer Letter** dated **28 May 2008**. The **Mortgage Loan Account Statements** submitted in evidence show that the Complainants' mortgage loan account was subsequently drawn down on **20 August 2008**.

It is clear to me that the Mortgage Loan Offer Letter envisaged a discounted standard variable interest rate of 4.94% to apply for the first 12 months of the term of the loan and a standard variable rate of interest to apply thereafter.

The variable rate, in the Complainants' mortgage loan documentation, made no reference to varying in accordance with variations in the European Central Bank refinancing rate, rather it was a variable rate which could be adjusted by the Provider. The Complainants accepted the Mortgage Loan Offer Letter on those terms.

While I acknowledge that tracker interest rates, where the interest rate varies in line with the rate set by the European Central Bank, were on offer by the Provider at the time the Complainants applied for their mortgage loan with the Provider, I accept that the **Mortgage Loan Offer** dated **28 May 2008** did not contain a contractual entitlement to a tracker interest rate or an expectation that a tracker interest rate would apply either at the time of drawdown or at any time during the term of the mortgage loan. In order for the Complainants to have a contractual right to a tracker interest rate on expiry of the discounted standard variable interest rate period, that right would need to be specifically provided for in the Complainants' mortgage loan documentation.

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However, no such right was set out in writing in the **Mortgage Loan Offer** dated **28 May 2008**, which was signed by the Complainants on **12 June 2008**.

If the Complainants were of the view that the nature of the interest rate provided for in the **Mortgage Loan Offer** dated **28 May 2008** was not suitable for them, the Complainants could have decided not to accept the offer made by the Provider or sought to have a different interest rate applied. However, the Complainants signed and accepted the **Mortgage Loan Offer** on **12 June 2008** acknowledging that they fully understood the terms and conditions attaching to the loan offer.

It is important to note that even if a request or application was made by the Complainants to have a tracker interest rate applied to their mortgage loan at draw down, it would then have been a matter of commercial discretion for the Provider as to whether it wished to accede to any such request made by the Complainants to apply a tracker interest rate to the mortgage loan following a consideration of the Complainants' needs and circumstances. It was entirely within the Provider's rights not to accede to such a request, if it was made by the Complainants.

The Provider details that it issued a **Product Review Notice** enclosing a **Mortgage Form of Authorisation** to the Complainants on **20 July 2009** outlining the interest rate options available to the Complainants upon expiry of the initial discounted standard variable interest rate period. The Provider states that it *"cannot produce an exact copy of this Product Review Notice"*.

It is disappointing that the Provider has not furnished a copy of the Product Review Notice and Mortgage Form of Authorisation that issued to the Complainants on **20 July 2009**. If correspondence issues by the Provider to a mortgage holder during the term of a loan and that loan remains active with the Provider, the Provider should retain that documentation on file for six years from the date the relationship with the mortgage holder ends. In this regard, **Provision 49 of the Consumer Protection Code 2006** outlines as follows:

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

- a) a copy of all documents required for consumer identification and profile;*
- b) the consumer's contact details;*
- c) all information and documents prepared in compliance with this Code;*
- d) details of products and services provided to the consumer;*
- e) all correspondence with the consumer and details of any other information provided to the consumer in relation to the product or service;*

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- f) all documents or applications completed or signed by the consumer;*
- g) copies of all original documents submitted by the consumer in support of an application for the provision of a service or product; and*
- h) all other relevant information [and documentation] concerning the consumer.*

Details of individual transactions must be retained for 6 years after the date of the transaction. All other records required under a) to h), above, must be retained for 6 years from the date the relationship ends. Consumer records are not required to be kept in a single location but must be complete and readily accessible.”

In this regard, the Complainants’ mortgage loan was incepted for a term of **25 years** commencing from **August 2008** and the **Product Review Notice** letter enclosing a **Mortgage Form of Authorisation** purportedly issued in **July 2009**. In circumstance where the Provider states that the mortgage loan remains active with the Provider it is unclear to me why a copy of this documentation has not been retained by the Provider.

The Complainants’ representative, in her post Preliminary Decision submission dated **16 August 2021**, submits as follows:

“An error of law;

*Furthermore, and with respect we also submit that the preliminary decision of the adjudication is in fact fundamentally flawed as it appears to be lacking the fundamental evidence and documents that it is relying on in support its findings. [..]the adjudication has partially based its decision on documentation such as the Product Review Notice, **but** this is in circumstances where the provider cannot produce a copy of same to our client.*

In circumstances where our clients were not in receipt of such notice, we not only concur with the Ombudsman’s conclusion expressing the disappointment of these circumstances but that furthermore submit that there are statutory obligations on the provider to retain all relevant documentation on file for period of 6 years from the date of the mortgage provided. As the Product Review Notice has not been received by our client, and the unusual circumstances where a copy is not available from the Provider, it is our submission that the preliminary decision is fundamentally flawed in this regard, where it is lacking the fundamental evidence and documentation that it is relying on to support its findings”.

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The Provider, in its post Preliminary Decision submissions dated **27 August 2021**, submits as follows:

“The Provider notes its obligation to retain all relevant documentation on file for a period of six years from the date from the date [sic] the relationship with the mortgage holder ends pursuant to Provision 49 of the Consumer Protection Code 2006. The Provider apologises for its failure to meet its obligation in this regard, however, the Provider denies that this renders the Preliminary Decision “fundamentally flawed” as contended. The Provider refers to the Proxy Product Review notice and the [internal notes] letter history, both of which have been provided in the Schedule of Evidence”.

The Provider has submitted what it describes as a “proxy” **Mortgage Form of Authorisation** in evidence which purportedly issued to customers “with the same product coding as the Complainants’ mortgage loan account” and 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. (Please Note: If you move out of a fixed rate before the expiry of the fixed rate period, you may be liable to pay a funding sum to the lender. See full conditions overleaf.)

<i>Selected Rate</i>	<i>Description</i>	<i>Rate</i>
<input type="checkbox"/>	<i>Existing Variable LTV Rate PDH</i>	<i>2.700%</i>
<input type="checkbox"/>	<i>2 Year Fixed (PDH)</i>	<i>3.150%</i>
<input type="checkbox"/>	<i>3 Year Fixed (PDH)</i>	<i>3.600%</i>

The Provider has also submitted a copy of its internal notes showing the “Letter History” on the Complainants’ mortgage loan account. The “Letter History” notes detail as follows:

<i>“Opt Date</i>	<i>Time</i>	<i>Description</i>
<i>-19/08/2009</i>	<i>21:30:57</i>	<i>Product Rollover</i>
<i>-20/07/2009</i>	<i>21:29:48</i>	<i>Product Review Notice”</i>

The Provider has also submitted a copy of its internal notes showing the “Repayment Change History” on the Complainants’ mortgage loan account.

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The “Repayment Change History” notes detail as follows:

“Change Option	Reason Date	Code	Mortgage Type	Product	Tranche	Term	Interest Rate
-	19/06/2009	PR	R 1	LT3	1139	289	2.700”

I cannot accept the Complainants’ representative’s submission that my Preliminary Decision is “*fundamentally flawed*” because it is lacking “*fundamental evidence and documentation*” that I seek to rely on to support my findings. The evidence submitted shows that a **Product Review Notice** issued to the Complainants on **20 July 2009**. The Provider has submitted a copy of a proxy **Mortgage Form of Authorisation** that issued to customers who were on a similar product to the Complainants. The Mortgage Form of Authorisation submitted in evidence refers to an existing variable LTV rate of 2.700%. This aligns with the variable interest rate applicable to the Complainants’ mortgage loan account as of **19 June 2009**. Furthermore, the **Mortgage Loan Offer** dated **28 May 2008** which was accepted by the Complainants clearly set out that the Complainants’ mortgage loan would switch to the Provider’s home loan variable rate at the end of the discounted period. I have not been provided with any evidence to indicate that the Complainants contacted the Provider before the expiry of the discounted interest rate period in **July/August 2009** noting that they were not satisfied with the Provider’s “*prevailing Home Loan variable rate*” and wished to explore other interest rate options with the Provider.

I note that **Mortgage Form of Authorisation** was issued after the Provider withdrew tracker interest rates from its product offerings to existing customers who did not have a contractual entitlement to a tracker interest rate. Therefore, a tracker interest rate was not listed as an interest rate available for selection by the Complainants in the **Mortgage Form of Authorisation**.

The evidence shows that in circumstances where the Complainants did not return the completed **Mortgage Form of Authorisation**, a standard variable rate of 2.70% was applied to the Complainants’ mortgage loan account on **20 August 2009**. I am of the view that this switch to the Provider’s standard variable rate was in line with **Part 4- The Special Conditions (a) (i)** attaching to the **Mortgage Loan Offer** dated **28 May 2008** which states that the mortgage loan would revert to the Provider’s home loan variable rate at the end of the discounted period.

It is important for the Complainants to be aware that although tracker interest rates were on offer generally by the Provider as part of its suite of products when the Complainants applied for the mortgage loan in **May 2008**, there was no obligation on the Provider to offer a tracker interest rate to the Complainants at that time or indeed any time up to which the Provider decided to withdraw tracker interest rate products.

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It was open to the Complainants to approach to Provider at any stage from drawdown of the loan up until **late 2008**, when the Provider withdrew tracker interest rates, to apply to switch their standard variable interest rate loan to a tracker interest rate loan. However, I have not been provided with any evidence to suggest that the Complainants were proactive in taking any steps to change the interest rate applicable to their loan during this time.

As outlined above, the Complainants did not have a contractual or other entitlement to a tracker interest rate in their mortgage loan documentation therefore there was no contractual or other obligation on the Provider to apply a tracker interest rate on their mortgage loan account in **August 2008** or at any other stage during the term of the loan. If the Complainants were not satisfied with the standard variable that was offered to them in the **Mortgage Loan Offer** dated **28 May 2008**, the Complainants could have discussed this with the Provider or indeed could have decided not to accept the offer made by the Provider and sought to have the terms of the loan offer amended.

Rather, the Complainants signed and accepted the terms of the **Mortgage Loan Offer** on **12 June 2008** confirming that they understood the terms and conditions of the **Mortgage Loan Offer** dated **28 May 2008**.

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

18 October 2021

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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.

