



<u>Decision Ref:</u>	2021-0383
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Tracker Mortgage
<u>Conduct(s) complained of:</u>	Failure to offer a tracker rate at point of sale Failure to offer a tracker rate throughout the life of the mortgage
<u>Outcome:</u>	Rejected

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

This complaint relates to a mortgage loan account held by the Complainants with the Provider. The mortgage loan that is the subject of this complaint is secured on the Complainants' private dwelling house.

The loan amount was €60,000 and the term of the loan is 21 years and one month. The particulars of the Offer of Additional Advance dated **29 June 2007** detailed that the interest rate would be fixed at 5.67% until **30 September 2012**.

The Complainants' Case

The Complainants have two mortgage loan accounts with the Provider; their primary mortgage loan sub-account ending **4121(01)** which was drawn down in **July 2004**, and a subsequent 'top-up' mortgage loan sub-account ending **4121(02)**, which is the subject of this complaint and was drawn down in **July 2007**.

The Complainants submit that in or around **July 2007** they had originally queried with the Provider if they could draw down the additional funds by "*topping up [their] original mortgage which was on a tracker rate and were instructed by the Banks representative that this was not possible, and a second loan would have to be taken out.*" They detail that they "*specifically asked for a tracker mortgage as [they] were completely happy with the tracker on the first loan*" and "*were told unequivocally by the Bank Staff member that [the*

*Provider] were no longer offering tracker's as they were making no money from them". They state that as a result they drew down their top-up mortgage loan sub-account ending **4121(02)** in **July 2007**, on a five-year fixed interest rate of 5.67%.*

The Complainants submit that they were in urgent need of finance at that time of the loan application, and they accepted the terms and conditions of the Provider's loan offer dated **29 June 2007** "without question" even though they had "obviously wanted to have a tracker rate also applied to this top-up". They submit further that the Provider did not give them any "alternative arrangement but to accept blindly the offer" of the Provider's five-year fixed interest rate.

When the fixed interest rate period expired in **October 2012**, the Complainants submit that the sub-account ending **4121(02)** defaulted to the Provider's standard variable rate of interest. They submit that the Provider did not give them the option to avail of a tracker interest rate on the sub-account ending **4121(02)** at this time.

The Complainants submit that the Provider has treated them "in a very shabby and unfair manner". They state that they "cannot see why the [Provider] refuse to give [the Complainants] the second mortgage at the same tracker rate as the original mortgage" or why the Provider "could not draft a contract which would incorporate the outstanding balance and the new amount being sought as one sum and at the original rate of interest agreed i.e Tracker Mortgage Rate".

The Complainants detail that during the mortgage application process they "were a lot younger and not nearly as knowledgeable in financial matters as [they] are now" and they "were urgently looking at getting a top up so [they] may not have understood all the small print but were under the impression that the Bank Staff were giving [them] the best guidance".

The Provider's Case

The Provider submits that it had tracker rates available for selection from **late 2001** until **late 2008** when it withdrew them from the market. It details that "at the time of the customers' top-up mortgage loan application in 2007, tracker interest rates were available for customers to select, subject to lending criteria, eligibility and terms and conditions."

The Provider states that in **June 2007** the Complainants applied for an additional advance of €60,000 over a term of 22 years and one month, which they did by completing a Mortgage Application form on **11 June 2007**. The Provider submits that "Whilst tracker interest rates were available for the customers to select in July 2007, there was no

obligation, contractual or otherwise, on the part of the Bank to offer a tracker interest rate to customers at that time."

The Provider submits that in **July 2007** it had a range of interest rate options available including *"fixed, variable and tracker interest rates"*. It asserts that its staff *"were not authorised and did not provide advice to customers as to what interest rate to select."* The Provider further details that it *"has no record of the customers requesting a tracker interest rate on their top-up mortgage loan in June 2007"* and *"no record of the customers having been told that tracker interest rates were not available at that time."*

The Provider details that the Complainants' top-up mortgage loan account drew down in **July 2007** with an applicable interest rate of 5.67% which would be fixed until **30 September 2012**. The Provider submits that the Complainants were *"under no obligation to accept the Offer of Additional Advance"* issued to them on **29 June 2007** and the interest rate was contained within the **Offer of Additional Advance** which was accepted and signed by the Complainants on **4 July 2007** *"on the terms and conditions set out"*.

The Provider submits that there is no reference to a tracker interest rate in the Complainants' **Offer of Additional Advance** and such a reference would be required for a tracker interest rate to apply. It states that the *"Offer of Additional Advance clearly confirmed that their top-up mortgage loan was to draw down on a fixed interest rate and would move thereafter to the [Provider's] Variable Home Loan Rate"*.

The Provider submits that prior to the expiration of the fixed interest rate period on **30 September 2012** it issued correspondence to the Complainants on **14 September 2012** with a form outlining the alternative interest rate options available for selection by the Complainants at that time. The Provider states that the form did not include a tracker interest rate as these rates had been withdrawn from the market in **mid-2008**. The Provider details that the Complainants did not select an interest rate at this time and as a result, the standard variable rate of 4.50% was applied to the Complainants' sub-account ending **4121(02)**.

In response to the Complainants' submission that the Provider should have amalgamated the top-up loan with their existing account ending **4121(01)** in **2007**, the Provider details that *"While both Advances were secured by the same property, each mortgage loan drew down on different terms and conditions as detailed in the separate Offers of Advance for each borrowing"* and the Complainants *"signed separate loan acceptances for each borrowing and in doing so they accepted the different terms and conditions applicable to each mortgage sub-account."*

The Provider states that it is satisfied that the mortgage loan documentation was sufficiently clear as to the Complainants' entitlements with respect to interest rates on their mortgage loan sub-account ending **4121(02)**.

It states that the *"top-up mortgage loan was to draw down on a fixed interest rate and did not contain any special condition specifying that a tracker interest rate would be made available to the customers when the fixed interest rate period expired"*.

The Complaints for Adjudication

The complaints for adjudication are as follows:

- (a) The Provider failed to offer the Complainants a tracker interest rate on their top-up mortgage loan sub-account ending **4121(02)** in **July 2007**;
- (b) The Provider failed to offer the Complainants the option of a tracker interest rate on their mortgage loan sub-account ending **4121(02)** on the expiry of the fixed interest rate period in **October 2012**; and
- (c) The Provider failed to amalgamate the Complainants' mortgage loan sub-account ending **4121(02)** with their original mortgage loan sub-account ending **4121(01)** with a tracker interest rate applicable to the entirety of the borrowings.

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.

/Cont'd...

A Preliminary Decision was issued to the parties on **23 August 2021**, outlining my preliminary determination in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

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

- E-mail from the Complainants to this office dated **9 September 2021**;
- Correspondence from the Provider to this office dated **13 September 2021**;
- E-mail from the Complainants to this office dated **13 September 2021**;
- E-mail from the Complainants to this office dated **19 September 2021**;
- Correspondence from the Provider to this office dated **28 September 2021**;
- E-mail from the Complainants to this office dated **3 October 2021**;
- Correspondence from the Provider to this office dated **5 October 2021**;
- E-mail from the Complainants to this office dated **5 October 2021**; and
- Correspondence from the Provider to this office dated **8 October 2021**.

Copies of these additional submissions were exchanged between the parties.

Having considered these additional submissions and all of the submissions and evidence furnished to this office by both parties, 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' loan documentation. It is also necessary to consider certain interactions between the Provider and the Complainants when the mortgage sub-account ending **4121(02)** was applied for and drawn down in **2007** and when the fixed interest rate period expired in **2012**.

The Provider issued an **Offer of Advance** dated **9 July 2004** for the Complainants' mortgage loan sub account ending **4121(01)** which detailed as follows;

“[The Provider] (the Bank) is pleased to offer you an advance as detailed below subject to the Special Condition(s) and the General Conditions in this document.

...

- | | |
|-------------------------------|-------------------|
| 1. Amount of Credit Advanced: | 160,000.00 Eur |
| 2. Period of agreement: | 25 years 0 months |

/Cont'd...

3. Number of repayment instalments: 300

...

Interest rate: 2.8500%

...

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

The **Special Conditions** attaching to the **Loan Offer** include the following;

*"The rate of the [Provider's] Flexible Mortgage tracks the ECB rate with a margin which is fixed for the life of ... the Home Loan. **The margin for this Home Loan is ECB rate plus 0.85%**. This margin is dependent on the amount borrowed and the value of the property mortgaged."*

The **General Conditions Relating to Home Loan Advances** details as follows;

"1) The Advance is granted for the sole purpose of the acquisition of the Property at the Acquisition Price.

2) Interest is calculated on the balance outstanding on the home loan at the close of business each day from the date of negotiation of the home loan cheque until the home loan is repaid. Interest so calculated is charged on the last day of the calendar month in which negotiation of the home loan cheque takes place and on the last day of each calendar month thereafter until the home loan is repaid. Interest charged to the home loan is included in the outstanding balance on which interest is calculated. The outstanding balance on which interest is calculated will include any overdue repayments and other sums outstanding. Overdue repayments and other sums outstanding will be included in the outstanding balance from the date on which they are debited to the home loan account until the date on which they are discharged.

If redemption of the home loan takes place mid month the amount required to redeem the loan will include interest from the first day of the month in which redemption takes place to the date of redemption. The monthly repayments will vary if changes in the Home Loan Interest Rate occur. Variations in [the Provider's] Home Loan Rate may occur at any time and notice of each variation will be published at least once in a national daily newspaper. Interest is calculated on a compound basis."

/Cont'd...

The Complainants signed the **Acceptance and Authority** on **22 July 2004** on the following terms;

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

It is clear to me that the **Offer of Advance** relating to mortgage loan sub-account ending **4121(01)** envisaged that a tracker interest rate of ECB + 0.85% would apply to the mortgage loan from drawdown and the margin *“is fixed for the life of ... the Home Loan term”*. This was set out in the **Special Conditions** attaching to the **Loan Offer**.

I note that the Complainants completed a **Home Loan – Application for Additional Mortgage** on **11 June 2007** seeking a further mortgage loan in the amount of €60,000. Under the *“Home Loan Requested”* section of the application form, under the heading *“Interest Option Required”* the Complainants ticked the Fixed Rate option and indicated their preference for a 5-year fixed period. I note that there is no reference to a tracker interest rate on the application form.

The Complainants have submitted that they *“specifically asked for a tracker mortgage”* for the top-up mortgage loan and *“were told unequivocally by the Bank Staff member that [the Provider] were no longer offering tracker’s as they were making no money from them”*.

The Complainants, in their post-Preliminary Decision submissions dated **19 September 2021** maintain that they were *“lied to by [the Provider’s] Personnel”* as they were advised tracker mortgages *“were no longer being offered”*. The Provider, in its post-Preliminary Decision submissions dated **28 September 2021** reiterates that *“it has no record of the customers requesting a tracker interest rate on their top-up mortgage loan in June 2007. The Bank also has no record of the customers being told that tracker interest rates were not available at that time.”*

I have not been furnished with any documentary evidence of any discussions which may have taken place between the Provider and the Complainants during the application stage in relation to interest rate options and the Provider states that it has no record of any request made by the Complainants for a tracker rate of interest in respect of their additional borrowings. Furthermore, I have not been provided any evidence that would suggest that the Provider’s staff misled the Complainants in any way.

/Cont’d...

It is difficult to understand how it would have been of benefit to the Provider's personnel to dissuade the Complainant from applying for a tracker rate of interest. In any event, 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.

It is important to note that the Provider was under no obligation to offer the Complainants any mortgage loan or let alone any particular type of loan in **2007**. It was a matter for the Provider to decide firstly, if it was willing to offer the Complainants any additional borrowings at the time and secondly, how that offer would be structured.

It is clear to me that the Complainants applied for a 5-year fixed interest rate, and that is what they were offered by the Provider. Nothing in the evidence submitted indicates that that, if a mortgage application was submitted by the Complainants selecting a tracker interest rate loan as their preference, whether it would have resulted in the Provider acceding to that request and issuing a loan offer on that basis. There was no obligation on the Provider, contractual or otherwise on the Provider, to give the Complainants the option of a tracker interest rate on their mortgage loan when they made their application to the Provider.

In addition, the Complainants have submitted that they cannot see why the Provider "*could not draft a contract which would incorporate the outstanding balance and the new amount being sought as one sum and at the original rate of interest agreed i.e Tracker Mortgage Rate*". In **June 2007** the Complainants were seeking additional lending from the Provider, secured against the equity in the Complainants' property the subject of mortgage loan account ending **4121(01)**. There was no obligation on the Provider to offer the Complainants the amount that they sought to borrow, or to structure the lending arrangement as an addition to their existing home loan under mortgage loan account ending **4121(02)**.

The Provider issued an **Offer of Additional Advance** dated **29 June 2007** to the Complainants in respect of mortgage loan sub account ending **4121(02)** which details as follows:

"[The Provider] (the Bank) is pleased to offer you an additional advance as detailed below subject to the Special Condition(s) and the General Conditions.

...

- | | |
|-------------------------------|-------------------|
| 4. Amount of Credit Advanced: | 60,000.00 Eur |
| 5. Period of agreement: | 22 years 1 months |

/Cont'd...

6. Number of repayment instalments: 265

...

Interest rate: 5.6700%

...

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

The **Special Conditions** attaching to the **Loan Offer** include the following:

"The [Provider's] Home Loan fixed rate of interest applicable at the date of this letter is 5.6700 % per annum and this rate will apply until 30 September 2012. At the end of the fixed rate period the loan will automatically revert to the [Provider's] Variable Home Loan Rate and [the Provider] may offer to continue the Advance at a Fixed Rate of Interest for such a period and at such a rate as it may decide. In the event of the Applicant electing to accept such an offer (if any), he/she must do so in writing, and the agreement must be signed by all parties to the mortgage advance. If no such offer is made by [the Provider] or if an offer is made by [the Provider] and not accepted by the Applicant(s) the [Provider's] Variable Home Loan Rate shall apply from 1 October 2012 and thereafter but otherwise in accordance with General Condition 2 of the Bank's General Conditions Relating to Advances by [the Provider] enclosed herewith, which varies the Interest Rate, and the mortgage conditions incorporated in the mortgage, and the said General Conditions relating to the Advances shall be construed accordingly.

There will be a charge if at any time prior to completion of the Fixed Rate period you prepay the whole or part of your Mortgage or switch to a Variable or other Fixed Rate Mortgage. The charge will be 6 months interest at the Fixed Rate or the Variable Home Loan Rate whichever is higher."

The **General Conditions Relating to Additional Advances** details as follows:

"1. The Additional Advance is granted for the sole purpose of carrying out the home improvement specified in the Application.

2. Interest is calculated on the balance outstanding on the Home Loan at the close of business each day from the date of release of the advance monies until the Home Loan is repaid.

/Cont'd...

Interest so calculated is charged on the last day of the calendar month in which release of the advance monies takes place and on the last day of each calendar month thereafter until the home loan is repaid. Interest charged to the home loan is included in the outstanding balance on which interest is calculated. The outstanding balance on which interest is calculated will include any overdue repayments and other sums outstanding. Overdue repayments and other sums outstanding will be included in the outstanding balance from the date on which they are debited to the home loan account until they date on which they are discharged. If redemption of the home loan takes place mid month the amount required to redeem the loan will include interest from the first day of the month in which the redemption takes place to the date of redemption.

*The monthly repayments will vary if changes in the Home Loan Interest Rate occur. **Variations in [the Provider's] Home Loan Rate may occur at any time and notice of each variation will be published at least once in a national daily newspaper.** Interest is calculated on a compound basis.*

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

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

The Complainants signed the **Acceptance** section of the **Offer of Additional Advance on 4 July 2007** on the following terms:

“I/We the undersigned accept the within Offer of Additional Advance on the terms and conditions set out above and overleaf.”

/Cont'd...

It is clear to me that the Complainants were offered a mortgage loan in the amount of €60,000 on a 5-year fixed interest rate on foot of their **Home Loan – Application for Additional Mortgage on 11 June 2007**. The **Offer of Additional Advance** envisaged that a fixed interest rate of 5.87% would apply to the mortgage loan until **30 September 2012**, and thereafter the Provider's variable home loan would apply from **1 October 2012**. The nature of the variable home loan interest rate was one that could be adjusted by the Provider at any time as opposed to a tracker variable interest rate which fluctuates in line with European Central Bank (ECB) main refinancing interest rate. This was set out in the **Special Conditions Relating** to the mortgage loan and also **General Condition 2** of the **General Conditions relating to Home Loan Advances**.

I note that **General Condition 2**, as quoted above in relation to the mortgage loan account is somewhat lengthy and deals with a number of other matters related to the mortgage loan aside from the nature of the home loan interest rate which was applicable to the mortgage loan.

The section that I have emphasised above in **General Condition 2**, when taken together with the warning in the **Important Information** section of the **Offer of Advance**, outlines the **Home Loan Rate** to be one which may be adjusted by the Provider at any time.

It is clear from the loan documentation that the loan that the Complainants were offered by the Provider in **June 2007**, which was drawn down on mortgage loan account ending **4121(02)**, was an entirely separate loan to the Complainants' original mortgage loan account ending **4121(01)**. Therefore, I am of the view that whether or not a tracker interest rate applied to mortgage loan account ending **4121(01)** was irrelevant to the interest rate applicable to mortgage loan account ending **4121(02)**. The variable interest rate applicable to mortgage loan account ending **4121(02)** following the expiry of the initial fixed interest rate period was clearly outlined in the mortgage loan documentation to be a variable rate which could be adjusted by the Provider.

If the Complainants did not want to pursue this option because they were unhappy with the interest rate applicable to the loan, they could have decided not to accept the Provider's offer. Instead, the Complainants accepted the Provider's offer by signing the **Acceptance** on **4 July 2007**. The mortgage statements provided in evidence indicate that the mortgage loan was drawn down on **12 July 2007**.

The Complainants, in their post-Preliminary Decision submission of **9 September 2021**, indicate that there *"were numerous statements made by [the Provider] at that time such as them stating that [the Complainants] had [their] solicitor present when signing for the second loan , this is completely untrue as [the Complainants] have previously stated and appears to be just brushed over."*

/Cont'd...

The Provider, in its post-Preliminary Decision submission dated **13 September 2021** asserts that the Complainants “*were under no obligation to accept the Offer of Additional Advance dated 29 June 2007*” and they “*were free to obtain independent financial or professional advice at any stage prior to entering into the mortgage loan agreement.*” In this regard, the evidence shows that the Complainants signed the **Offer of Additional Advance** indicating that they accepted the Offer of Additional Advance and the terms and conditions set out in the Offer of Additional Advance, to include the applicable fixed interest rate and what would transpire when the fixed interest period ended. The Complainants were free to decline the additional loan offer if they felt that it did not suit their needs.

The Complainants appear to indicate that their solicitor was not present when they signed their acceptance of the Offer of Additional Advance. In this regard, it was entirely a matter for the Complainants as to whether they wished to seek independent legal advice before signing their acceptance of the terms of the additional loan offer.

Prior to the expiry of the initial fixed interest rate period on **30 September 2012**, the Provider issued correspondence to the Complainants on **14 September 2012** which stated as follows:

*“The fixed rate period on your mortgage is coming to an end on **30/09/2012**, so now it’s time to start thinking about your next mortgage deal. Any borrowings you have on this fixed rate will automatically roll to the **Standard Variable Rate (APR 4.7%)**. Your monthly repayment on this rate is included in the table overleaf.*

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

...”

This letter detailed that if no response was received the interest rate would roll to the Provider’s “*Standard Variable Rate*”. I understand that the Standard Variable Rate is the same as the “*Variable Home Loan Rate*”.

The Provider should have used the same terminology as contained in the Complainants’ mortgage loan documentation when referring to rate choices and options in subsequent correspondence with the Complainants. This would avoid any confusion as to interest rate options (contractual or otherwise) being offered by the Provider.

/Cont’d...

An enclosed **Rate Change Letter of Authority** contained various fixed and variable rate options. I note that the Provider detailed it had decided to withdraw tracker interest rates from the market in late **2008** and consequently, a tracker interest rate product was not available for selection.

It does not appear from the evidence that the Complainants signed or returned the **Rate Change Letter of Authority** selecting an interest rate option. In circumstances where the Complainants failed to exercise their choice, the Provider's Home Loan Rate would apply in accordance with **General Condition 2** of the Complainants' mortgage loan agreement. The Home Loan Rate, in the Complainants' mortgage loan documentation, made no reference to varying in accordance with variations in the ECB refinancing rate, rather it was a variable rate which could be adjusted by the Provider.

The Provider wrote to the Complainants on **25 October 2012** as follows:

"We wrote to you recently to ask which type of interest rate you wanted on your mortgage now that your fixed rate has expired. As we haven't heard from you, we have moved your rate to our Standard Variable Rate of 4.50%.

Your new gross monthly repayment will be 1043.52 EUR. We will reduce this amount if you get Tax Relief at Source (TRS).

Your new repayments will start on 01/NOV/2012."

The mortgage statements provided in evidence show that the standard variable rate of 4.50% was applied to the account from **1 October 2012**.

As outlined above, there was no contractual entitlement to a tracker interest rate on the Complainants' mortgage sub-account ending **4121(02)**. The fact that the Provider offered the Complainants a tracker interest rate for the mortgage loan account ending **4121(01)** in **2004** did not create an obligation (contractual or otherwise) on the Provider to offer or provide a tracker rate to the Complainants on mortgage loan account ending **4121(02)** in **2007**. It was a matter that was within the Provider's commercial discretion as to whether to offer a tracker interest rate on mortgage loan ending **4121(02)** when the Complainants applied for the top up loan in **2007**.

On the expiry of the fixed rate period in **2012**, the Provider was no longer offering tracker rates to customers who did not have a contractual entitlement to a tracker rate. Accordingly, a standard variable rate applied to the Complainants' account in accordance with the terms and conditions of their mortgage loan agreement.

/Cont'd...

Furthermore, it is important for the Complainants to understand that each mortgage loan is governed by the terms and conditions applicable to that particular mortgage loan. The fact that both of the Complainants' mortgage loans were secured on the same property does not entitle the Complainants to the same interest rates on both accounts. The Complainants' two mortgage loan accounts were drawn down at two different points in time (**2004** and **2007**), they commenced on different interest rates (fixed rate and tracker rate) and were subject to different terms and conditions. The evidence shows that the choice to take out both mortgage loans on the terms and conditions offered by the Provider was a choice that was freely made by the Complainants.

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**

29 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,**

/Cont'd...

and

(b) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.

