An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2021-0387
Sector:	Banking
Product / Service:	Tracker Mortgage
Conduct(s) complained of:	Failure to offer a tracker rate throughout the life of the mortgage
Outcome:	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 was secured on the Complainants' principal private residence.

The loan amount was €240,000 and the term of the loan was 35 years. The particulars of the Letter of Approval dated **16 September 2004** detailed that the loan type was a *"1 Year Fixed Rate Home Loan."*

The Complainants' Case

The Complainants explain that the First Complainant was employed by the Provider and they opted to apply the Provider's staff interest rate of 3% to their mortgage loan in **January 2006**. The First Complainant states that he understood that the interest rate *"was fixed unless [he] opted to change it"*.

The First Complainant contends that *"the crux of the entire situation"* is that he was not informed of the interest rate options available to him in **May 2006** when he ceased employment with the Provider. The First Complainant maintains that the *"nub of this issue revolves around the fact that NOTHING was offered to [him] in May 2006 – no rates were offered."*

The First Complainant details that *"nowhere was [he] informed of the options on leaving the company or what would happen"*. The First Complainant maintains that he *"was never issued with documentation or explanations or terms and conditions"*.

In response to the Provider's assertion that the First Complainant had access "*to the staff policies on the staff intranet in 2006",* the First Complainant contends that *"if there was access to Chinese language lessons would that mean [he] would be expected to be fluent from having access to it".* The First Complainant maintains that he was "*not given any advice"* in relation to the interest rate available to him in **May 2006** and questions whether he waives his *"common rights as a customer because [he is] a staff member".* He asserts that he would have been *"able to avail of a tracker rate or another rate in 2006"* however he was *"not changed off the staff rate"*.

The Complainants state that the staff fixed rate was removed from their account in **2010** which was *"over 4 years after [the first Complainant] left the company"*. They submit that they did not receive any prior notification from the Provider that the staff rate would be removed from the mortgage loan account in **July 2010**. The Complainants further submit that they did not receive any correspondence from the Provider regarding the rate change in **July 2010** because the Provider did not record their updated postal address when requested to do so.

The Complainants outline that they were not given the option to apply a further fixed interest rate or a tracker interest rate to their mortgage loan account in **2010** as the "*option of a tracker rate / cheaper fixed rates were not available to [them] but conveniently for [the Provider] a higher variable rate was available"*.

The First Complainant asserts that the Provider's actions *"have meant [he] could not avail of cheaper rates internally with [the Provider] and missed out on other institutions offers elsewhere at this time".* The Complainants outline that as a result of the *"extortionate rate increase"* on their account they *"have been forced to opt for interest only on this loan"*. The Complainants further submit that they *"had to avail of multiple forbearance arrangements because of this issue"*. The Complainants note that from **2006** when they were on the "*normal rate*", they experienced no missed payments and did not make any requests for forbearance. However, when the interest rate changed in **July 2010**, the Complainants state that they "*went into arrears and commenced forbearance the following month for almost 2 years*".

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The Complainants maintain that they were "*forced into a rate in 2010 when it was economically beneficially*" to the Provider but it "*crucified*" them. The Complainants assert that the Provider has to realise that the problems relating to their mortgage loan account were caused by the Provider's actions to withdraw the staff rate in **2010** and move their mortgage loan account to an expensive variable interest rate. The Complainants are of the view that this contravenes the **Code of Conduct of Mortgage Arrears** as it was "*purely economic opportunism*" on behalf of the Provider that resulted in the Complainants' "*financial misery and mental strain*".

The Complainants are seeking that the Provider offers them the interest rate options for the mortgage loan account which were available at the time the First Complainant's employment with the Provider ceased in **May 2006**, or alternatively, to restore the staff interest rate of 3% to the mortgage loan account.

<u>The Provider's Case</u>

The Provider submits that it issued the Complainants a **Letter of Approval** dated **16 September 2004** for a 1-year fixed rate home loan in the amount of €240,000 over a 35-year term on an initial fixed interest rate of 2.74%.

The Provider explains that prior to the expiry of the initial fixed interest rate period, it issued a **rate options letter** to the Complainants which included a variable interest rate option of 3.55% and a number of fixed interest rate options. The Provider states that it applied a variable interest rate of 3.55% to the Complainants' mortgage loan account on the expiry of the fixed interest rate period on **4 November 2005**. The Provider notes that this was in line with **Condition 5** of the **General Mortgage Loan Approval Conditions** in the **Letter of Approval** dated **16 September 2004.**

The Provider submits that the First Complainant requested to apply the "*staff home loan preferential variable rate of 3%"* to the Complainants' mortgage account by way of email dated **17 January 2006**. The Provider notes that the Complainants "*were not required to sign any documentation in order to convert to the staff rate*". The Provider states that the preferential variable interest rate of 3% was applied to the mortgage loan account on **19 January 2006** until **1 July 2010**, when a "*LTV variable rate of 4.15%*" was applied.

The Provider notes that the First Complainant ceased employment with the Provider in **May 2006**, a few months after switching to the staff variable rate. The Provider states that, in accordance with the **Staff Credit Policy**, the Complainants' mortgage loan account should have then switched to the standard variable rate. However, the Provider explains that the Complainants' mortgage loan account remained on the staff variable rate from **May 2006** to **July 2010**.

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The Provider states that the Complainants had the benefit of a staff rate until **2010**, although the First Complainant ceased employment with the Provider in **2006**. The Provider states that "*it has no record of the first-named Complainant contacting the mortgage department on or after the cessation of his employment regarding the staff rate applying to his loan*".

The Provider states that the Complainants *"were not offered a tracker interest rate for their mortgage account in May 2006 when the first-named Complainant's employment with the Bank ceased as they did not have a contractual entitlement to be offered a tracker rate of interest."* The Provider explains that the Complainants' mortgage loan account *"was due to mature to a standard variable rate when the employee left the company and was no longer entitled to a staff rate"* and *"it was not due to mature to a tracker rate".* The Provider explains that during the period in which the mortgage loan account remained on the staff variable interest rate (**May 2006** to **July 2010**), it was open to the Complainants to request a fixed or tracker rate option for their loan. The Provider further states that *"[i]n accordance with Staff Credit Policy when leaving the Bank's employment the onus is on the staff member to contact the relevant department within the Bank informing them to switch the interest rate from the staff variable rate to the standard variable rate."* The Provider details that *"[w]hile the Bank did not inform the Complainants of this in 2006, the Bank does not accept that the Complainants were not aware that a staff loan was no longer available after [the first Complainant] left the employment of the Bank."*

The Provider contends that *"[a]t no time did a tracker rate of interest apply to the account of the Complainants such that there could have been contemplation by them or the Bank of the account 'reverting' to a tracker rate."* The Provider asserts that it is *"satisfied that the information available to the Complainants relating to their mortgage loan account was sufficiently clear and transparent with respect to the consequences of applying a staff rate to their mortgage loan in 2006."* The Provider further asserts that given the First Complainant was a staff member of the Provider, he had *"full access to the credit policy for staff lending via the Bank's intranet website."*

The Provider explains that when the Complainants' mortgage loan account was being transferred from a staff variable rate to a variable rate (as the First Complainant was no longer a staff member), it was "*inadvertently*" amended to the LTV variable rate of 4.15%. However, the Provider submits that, in accordance with its **Staff Credit Policy**, a standard variable interest rate of 3.69% should have been applied to the account at that point in time. The Provider states that it acknowledges its "*genuine error*" in applying a LTV variable rate instead of a standard variable rate in **2010** and has offered to remediate this error by refunding interest in the sum of €2,065.39 (inclusive of time value for money amount) as of **14 August 2019** to the Complainants.

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The Provider explains that this represents the difference between the interest rate that that was applied to the Complainants' mortgage loan account in **July 2010** and the interest rate that should have been applied in **July 2010**.

The Provider states that it wrote to the Complainants on **18 August 2010** to confirm a rate change had taken place and that the new interest rate on the mortgage loan account was 4.65%. The Provider states that it acknowledges that "*notification of the change from staff rate to a variable rate was not issued prior to the implementation of the rate change"* in **July 2010** and "*in recognition of this service issue the Bank would like to offer the Complainants a gesture of goodwill in the sum of €500.00*". The Provider also notes that it accepts that it failed to issue the letter dated **18 August 2010** notifying the rate change from the staff rate to the Complainants' new correspondence address and indicated by way of letter to this office dated **16 October 2019** that a "*gesture of goodwill in the amount of €500 has been offered to the Complainants*".

On **8 September 2010**, the Provider states that it received a request from the Complainants for a restructure on their monthly repayments as they were both out of work. The Provider notes that it approved a "*Capital Payment Holiday*" for 6 months commencing **1 October 2010** and as a result, monthly repayments were reduced. The Provider details that the Complainants wrote to the Provider's branch on **8 February 2011** to request an additional 12-month period of interest only repayments. The Provider states that it approved a 6-month "*Capital Payment Holiday*" on **1 April 2011** which was due to finish on **1 September 2011**. On **15 September 2011**, the Provider states that it approved a further 6-month "*Capital Payment Holiday*" which would commence on **1 October 2011**. The Provider details that the Complainants wrote to the Provider's branch on **8 February 2012** to request an additional 12-month period of interest only repayments and the Complainants completed a Standard Financial Statement ("SFS") on **7 March 2012**. The Provider states that it wrote to the Complainants on **15 March 2012** "*confirming the SFS has been assessed by the Arrears Support Unit and at the time an alternative repayment arrangement could not be offered as the SFS indicated affordability for a higher repayment amount than proposed*". The Provider notes that there has been no further communication with the Complainants in relation to "*restructures*" on their mortgage loan account since **March 2012**.

<u>The Complaint for Adjudication</u>

The complaint for adjudication is that the Provider switched the Complainants' mortgage loan account from the staff interest rate to an expensive variable interest rate in **2010**, without any prior notification to the Complainants.

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

In the absence of additional submissions from the parties, within the period permitted, I set out below my final determination.

The issue to be determined is whether the Provider incorrectly applied a variable interest rate to the Complainants' mortgage loan account in **2010** without any prior notification to the Complainants. In order to determine this, 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 from **2006** to **2010**.

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The Provider issued a **Letter of Approval** to the Complainants dated **16 September 2004** which details as follows:

"Loan Type:	*1 Year Fixed Rate Home Loan*

Purchase Price / Estimated Value:	*EUR 255,000.00*
Loan Amount:	*EUR 240,000.00*
Interest Rate:	*2.74%*
Term:	*35 year(s)"*

The **Special Conditions** attaching to the **Letter of Approval** dated **16 September 2004** detail as follows:

> ***"Special Conditions***
>
> *A. GENERAL MORTGAGE LOAN APPROVAL CONDITION 5 "CONDITIONS RELATING TO FIXED RATE LOANS" APPLIES IN THIS CASE. THE INTEREST RATE SPECIFIED ABOVE MAY VARY BEFORE THE DATE OF COMPLETION OF THE MORTGAGE."*

General Condition 5 of the **General Mortgage Loan Approval Conditions** details as follows:

> ***"CONDITIONS RELATING TO FIXED RATE LOANS***
>
> *5.1 The interest rate applicable to this advance shall be fixed from the date of the advance for the period as specified on the Letter of Approval, and thereafter will not be changed at intervals of less than one year.*
>
> *5.2 The interest rate specified in the Letter of Approval may vary before the date of completion of the Mortgage.*
>
> *…*
>
> *5.4 Notwithstanding Clause 5.1 [the Provider] and the applicant shall each have the option at the end of each fixed rate period to convert to a variable rate loan agreement which will carry no such redemption fee."*

The **General Mortgage Loan Approval Conditions** also outline as follows:

> *"IF THE LOAN IS A VARIABLE RATE LOAN THE FOLLOWING APPLIES:*

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

Condition 23 of the Provider's **Mortgage Conditions 2002** states as follows:

"23 Notices

23.1 Any notice required hereunder or by Statute or under the terms of the Letter of Approval to be given by [the Provider] in writing shall be sufficiently given if sent by ordinary pre-paid post addressed to the addressee by name at his address last known to the [Provider] or in the case of a notice to the Mortgagor at the address of the Property and all notices so given shall be deemed to have been received 24 hours after posting.

23.2 Where there are joint Mortgagors a notice shall be sufficiently given if it is given to the Mortgagor whose name is entered first in [the Provider's] records."

The **Acceptance of Loan Offer** was signed by the Complainants and witnessed by a solicitor on **13 October 2004.** The **Acceptance of Loan Offer** states as follows:

"1. I/we the undersigned accept the within offer on the terms and conditions set out in

i. Letter of Approval
ii. the General Mortgage Loan Approval conditions
iii. [the Provider] Mortgage Conditions

copies of the above which I/we have received, and agree to mortgage the property to [the Provider] as security for the mortgage loan.
…
4. My/our Solicitor has fully explained the said terms and conditions to me/us."

It is clear to me that the **Letter of Approval** envisaged a fixed interest rate of 2.74% for a period of one year with a variable interest rate to apply thereafter. 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 by the Provider. The Complainants accepted the Letter of Approval on **13 October 2004**, having confirmed that the terms and conditions of the loan offer had been explained to them by their solicitor.

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Prior the expiry of the initial fixed interest rate period on **4 November 2005**, the Provider states that it issued a **rate options from** to the Complainants. I am disappointed that the Provider has not furnished a copy of this rate options form in evidence however the contents of the form do not appear to be in dispute between the parties. The Provider states that the options form included the following interest rates that were available for selection by the Complainants at that time:

"Variable Rate	*3.55%*
1 Year Fixed Rate	*3.25%*
2 Year Fixed Rate	*3.39%*
3 Year Fixed Rate	*3.55%*
5 Year Fixed Rate	*3.79%*
7 Year Fixed Rate	*3.99%*
10 Year Fixed Rate	*4.39%"*

The Provider states that a variable rate of 3.55% was applied to the Complainants' mortgage loan account on **4 November 2005**.

It appears from the evidence submitted that the Complainants requested a redemption quote from the Provider in early **January 2006**. The Provider issued a letter to the Complainants dated **4 January 2006** which details as follows:

> *"As requested I confirm that the amount necessary to redeem the Company's Advances on the above property on the 04/01/2006 is as set out below:*

Loan Number	***Amount €***	***Daily Accrual €***
[Account ending 6521]	*224429.42*	*21.19"*

The First Complainant sent an e-mail to the Provider on **17 January 2006** which details as follows:

> *"Hi, I have a query in relation to my family home mortgage- I am enquiring as to what the benefit in kind due on this would be if I transferred this mortgage onto the current staff rate.*
>
> *My current rate is 3.45% and the repayments are €936.56 on the above loan.*
>
> *I would be grateful if you could come back to me as soon as possible as I am in the process of redeeming this loan with [third party provider] and I am trying to see if it would be more beneficial to keep it…"*

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The Provider responded on **17 January 2006** as follows:

> *"As far as I am aware the BIK implications re minimal if any in the current low interest rate environment. Generally you only get hit with BIK when rates are high. But you should wait for an official answer on this.*
>
> *When you want it changed to the staff rate drop [redacted] an email and he will arrange this for you."*

The First Complainant subsequently made the following request by e-mail on **17 January 2006**:

> *"…can I get this mortgage transferred to a staff rate please".*

The Provider has submitted a copy of its **Staff Credit Policy** that was applicable in **2006** into evidence. The **Staff Credit Policy** details as follows:

Transferring Existing Facilities to Staff Rates

Transferring from a Customer Rate to Staff Rate

Where a staff member wishes to transfer for an existing mortgage into a staff facility, the change over will be handled by Staff Mortgage Transfer Section.

In order for them to complete the process the following steps must be taken.

Step	Action
1	Calculate the amount you are eligible to borrow at staff rate. The eligible amount is subject to the Staff Banking Credit Policy.
2.	Send an e-mail to the Staff Mortgage Transfer mailbox with the following details • Name on the existing Mortgage • Existing Mortgage Account number • Amount to be transferred to Staff Rate • Salary Details (annual salary of all parties to the mortgage)
3	The Staff Mortgage Transfer Section will forward to you a pack containing • 2 copies of a Transfer Request letter • Direct Debit Mandate • TRS Form
4	These forms must be signed by all parties to the mortgage and forward to Staff Mortgage Transfer Section [redacted]
5	The Staff Mortgage Transfer Section will perform the following • Set up a new Staff Mortgage for a term the same as the remaining term on the existing mortgage • Drawdown the new loan for the amount requested • Lodge the funds to the existing mortgage • Reschedule the existing mortgage – reduce the repayments • Forward a letter confirming the new mortgage account details and the new repayment details on the existing mortgage.

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Staff Banking & Credit Policy - excerpt

Please contact any branch to take advantage of the benefit of staff banking.

Definition

All employees who receive a salary from [redacted] Payroll (whether permanent, part-time or on contract) are considered staff, and all preferential accounts held in the bank should be marked as staff. You must make sure that all your staff accounts are properly marked as staff. This will allow you to receive the staff banking benefits.

Staff accounts

The branch manager must make sure that all staff follow this policy.

If you leave the company, you cannot continue to hold a staff loan or account at preferential rates. You should tell your branch the date your employment will end. They will amend the interest rate to the standard variable loan or overdraft rates from the day after you leave the company.

Benefit In Kind

Staff facilities sanctioned at rates which are more beneficial than those available to customers are subject to benefit in kind:

Benefit in Kind is applied monthly in arrears and it is the responsibility of [redacted] and [redacted] to collect benefit in kind payments through the payroll system.

Staff credit policy overview

Application process

- You must have your [redacted] marked "Z".
- We can decide whether to provide staff credit facilities.

Managing your accounts

- You are responsible for managing your accounts in line with the original terms of our approval and within approved limits.

Rescheduling, restructuring and freezing your accounts

- In some circumstances, we may decide to reschedule, restructure or freeze your accounts.

If you leave the company

- If you leave the company, for whatever reason, you must arrange to convert your facilities to normal customer accounts.
- You can keep your staff entitlement on your accounts if you retire.
- You cannot apply for staff facilities if you are on a career break.

Summary staff banking products

Product	Who qualifies?	Terms	Contact
Home Loans	You must have at least one year's service. Note: A borrowing capacity calculator is available on the HR Intranet site under 'S'	You can borrow up to 4 times your salary at the staff rate, provided you can afford the repayments **Staff:** Min € 150,000 Max € 166,600 **Managers:** Max €253,900 Staff Preferential Rate - currently 3.00% variable Max term 35 years You may apply to borrow additional amounts at normal customer rates	Any branch

*(For [redacted] staff salary is defined as basic salary plus 7.7% fixed bonus)

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Home loans

All permanent staff can use the home loan scheme to buy their main home. We will consider each application individually. You cannot apply for a home loan for property you are planning to let or sublet. You should not use the staff home loan facility for business purposes.

To qualify for staff home loan facilities, you must have one years' continuous satisfactory service with the company. This can include temporary employment, provided there was no break in service. Our normal loan policy and procedures apply.

We will need to see a recent payslip to confirm your income. If you are applying for a home loan in joint names, and your spouse / partner is not a staff member, we will need to see a salary certificate from his or her employer and payslips or his or her P60. We may also ask to see your salary certificates if we need to check the bonus payments you have received. You can get these certificates from Group Payroll.

We may carry out standard credit checks when you apply.

The product on offer is an annuity loan for buying your home (houses, bungalows or purpose built apartments), or to help you build you own home (you must own the deeds to the land you intend to build on).

The current interest rate is 3.0%. The bank has the right to vary this rate.

The maximum term for mortgages at the preferential rate is 35 years, but this depends on the age at which you apply.

The amount that you may borrow is determined using the same criteria as for customers i.e. "nets".

The staff preferential rate applies on amounts up to four times the staff members basic annual salary *subject to a maximum of:

- €166,600 for staff; or
- €253,900 for managers

There is one preferential rate entitlement per transaction.

The Provider states that the **Staff Credit Policy** as outlined above was available on the Provider's intranet website. The First Complainant contends that he heard about the staff preferential rate *"from colleagues and did not go into the intricacies of the staff policies*". I find it difficult to understand why the First Complainant in particular, would not have read the **Staff Credit Policy** given he specifically requested a staff preferential rate and therefore should have familiarised himself with the Provider's policy on staff lending.

I am satisfied that the **Staff Credit Policy** was available to staff customers of the Provider, including the First Complainant.

The Provider has stated that the Complainants did not have to sign any documentation to transfer their mortgage loan account to a staff variable interest rate which is at odds with steps 3 and 4 of the steps outlined in the Staff Credit Policy. I find it difficult to understand why the Provider did not follow its own steps as outlined in the **Staff Credit Policy** in relation to transferring existing facilities to staff rate. The Provider notes that that the email received from the First Complainant on **17 January 2006** was sufficient to action the Complainants' request to switch the applicable interest rate to a staff preferential variable rate. The Provider states that no new terms and conditions issued after the Complainants converted to a staff variable interest rate therefore the terms and conditions attached to the original Letter of Approval still applied.

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A staff preferential variable interest rate of 3.0% was applied to the Complainants' mortgage loan account on **19 January 2006**. The Complainants appear to be of the view that the staff rate was a "*fixed*" interest rate and "*assumed*" it was fixed unless they opted to change it. However, the evidence demonstrates that the nature of the staff rate was in fact a variable interest rate.

The First Complainant ceased employment with the Provider in **May 2006**. The **Staff Credit Policy** states that a standard variable interest rate will apply if a staff customer leaves the company as staff customers cannot continue to hold a staff loan or account at preferential rates if they no longer work for the Provider. The Provider has furnished a sample copy of a letter that it issues to all staff members who have ceased employment with the Provider. I have not been provided with the specific letter that issued to the First Complainant in **May 2006** however the copy of the letter submitted in evidence details as follows:

> *"If you have an outstanding mortgage or loan account with staff rates, please notify the appropriate Department of your new account number for deduction purposes and to have the loan reset at customer rates."*

It appears to me that the Provider puts the onus on its staff customers to notify their branch of the date their employment will end, however the Complainants, in particular the First Complainant, did not do so. The **Mortgage Loan Statements** submitted in evidence show that the Complainants' mortgage loan account remained on the staff preferential variable rate of 3.0% for some 4 years after the First Complainant ceased employment with the Provider. The **Mortgage Loan Statement** from **July 2010** shows that the interest rate on the Complainants' mortgage loan account switched to a "*New Product*" at a rate of 4.150% on **1 July 2010**.

While the **Staff Credit Policy** placed an obligation on the Complainants to inform the relevant department within the Provider to make the relevant change to the applicable interest rate on their mortgage loan account, I believe it would have been prudent for the Provider to undertake certain checks to ensure that the Complainants' mortgage loan account was updated after the First Complainant ceased employment.

During the Provider's internal investigation of this complaint in **early 2018**, a number of internal e-mails were exchanged within the Provider's organisation in relation to the delay in moving the Complainants' mortgage loan off the staff variable interest rate. An internal email dated **30 January 2018** details as follows:

> *"…The current process is HR notify us when a staff member leaves and they get 30 days' notice before the rate switches. HR might be able to confirm if or why there was a delay in the letter going out.*

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> *I spoke to [redacted]on this and she advised tracker rates were not being offered to staff leavers at this time. It was only fixed or variable rates in 2006…from our understanding, no signed documentation was required to go on the staff rate at that time. The rate was 3% and it was a variable…the customer requested the rate and same was applied".*

An internal email dated **30 January 2018** details as follows:

> "*We have calculated the interest difference on the above account between 01/08/2006- 30/06/2010 based on the account being switched to the SVR rate when the customer left the company. We have to give at least 30 days' notice of a change to the interest rate/ product so as the customer left the company on the 16/06/2006 we wouldn't have switched them off the staff rate until the 01/08/2006.*
>
> *The customer would have paid approximately €14,319.80 more in interest between the dates above had we switched them from the staff rate*".

The Complainants contend that they "*would have been able to avail of a tracker rate or another rate in 2006*" after the First Complainant ceased employment with the Provider. However, I note that in circumstances where the Complainants mortgage loan account was on a preferential staff variable rate, the **Staff Credit Policy** provides that the staff loan was due to mature to a standard variable rate as opposed to a tracker interest rate when the First Complainant left the Provider's employment.

While I note that the Complainants state that they did not read the **Staff Credit Policy**, it is important to note that the terms of the Complainants' original **Letter of Approval** dated **16 September 2004**, which remained in place after a staff rate was applied, do not provide for an entitlement to a tracker interest rate that varies in accordance with the ECB rate at any point during the term of the loan. Therefore, I am satisfied that there was no obligation on the Provider, contractual or otherwise, to offer the Complainants a tracker interest rate in **2006**.

The Complainants were free to contact the Provider at any point after the First Complainant left the Provider's employment to discuss their interest rate options. If the Complainants wished to explore potential tracker interest rates or fixed interest rates with the Provider in **2006**, they could have done so. It is important to note that the Complainants continued to receive monthly mortgage statements after the First Complainant's employment ceased which showed that the staff preferential rate of 3.0% still applied, however the Complainants do not appear to have questioned this.

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The Provider issued a letter to the Complainants on **7 July 2010** to the address of the Complainants' mortgaged property which outlined as follows:

> *"A review of our records shows that your mortgage account has remained on the staff preferential rate of 3.0% since the date of your departure from the Company. As staff rates are reserved for current staff I wish to advise that the interest rate on your account has been amended to the bank's appropriate LTV variable rate of 4.15%. Your new monthly repayment will be €1,040.50 (includes TRS and insurance where relevant).*
>
> *I am also attaching a list of our current fixed rate options. Should you wish to choose to fix your rate please tick the rate you would like and return the form signed to: [the Provider's address].*
>
> *We recommend that you consider your options carefully before choosing a rate. At the end of the fixed rate period we will send you a list of the product options available to you which may or may not include a tracker option. Our rates at that time could be higher or lower than our current rates depending on market factors and as a consequence you may incur higher interest over the term of the loan*
>
> *….*
>
> *We strongly suggest you consult your financial or legal advisor before making a decision on this matter".*
>
> *"*

The **rate options form** enclosed with the letter offered the following fixed interest rate options:

"Current Rate 4.15% €1,040.50

<u>Please tick the option you want below</u>

Approximate repayment	***eur €***
2 year fixed rate Mortgage currently - currently 5.25%	*€1,174.87*
5 year fixed rate Mortgage currently - currently 5.75%	*€1,239.09*
7 year fixed rate Mortgage currently - currently 6.10%	*€1,284.98*

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10 year fixed rate Mortgage currently - currently 6.10%   €1,284.98

- *The above figures only give you an idea of your revised monthly repayment, and may change.*
- *We will send you details of your actual repayment shortly.*
- *If you choose a fixed rate, the standard fixed rate conditions will apply – see overleaf*
- *The above fixed rates are valid for 7 working days*
- *Please enclose your €100.00 rate transfer fee with his form."*

The Provider has submitted a copy of its **Lending Interest Rates** effective from the start of business on **8 June 2010** which detail as follows in relation to home loan rates for existing business:

Home Loans Rates for Existing Business

LTV Variable applicable to existing Home Loans since 01/02/2010. LTV Tracker Maturity Rates applicable to existing Home Loans since 31/08/08	RATE	APR
Variable Rate LTV <80%	4.05%	4.1%
Variable Rate LTV >80%	4.15%	4.2%
Tracker Rate LTV <80%	4.25%	4.3%
Tracker Rate LTV >80%	4.25%	4.3%

Fixed Rates Applicable to Existing Home Loans	RATE	APR
2 Year Fixed *	5.25%	4.5%
5 Year Fixed *	5.75%	5.0%
7 Year Fixed	6.10%	6.5%
10 Year Fixed *	6.10%	5.9%

Existing business LTV Variable rates pre 01/02/10 and existing business LTV Tracker rates pre 31/08/08 available on request. The rate applicable to individual customers is determined in accordance with their loan documentation.

It appears to me that the Provider changed the interest rate on the Complainants' mortgage loan account from a staff interest rate to a LTV variable interest rate in **July 2010** after carrying out a review of their mortgage loan account. In circumstances where the Complainants' mortgage loan account was in fact supposed to change from a staff rate to a variable rate in **May 2006**, it is reasonable to conclude that the Provider's notification of **7 July 2010** came as a surprise to the Complainants. This notification was issued by the Provider after the event, that is after the Provider switched the Complainants' mortgage loan account from a staff variable interest rate to a LTV variable interest rate. The Provider accepts that it did not issue a notification of the change from a staff interest rate to a LTV variable interest rate prior to the implementation of that change on **1 July 2010** and has offered the Complainants' a gesture of goodwill in the sum of €500.00.

/Cont'd…

Provision 14 of the **Consumer Protection Code 2006** provides as follows:

> *"Where a regulated entity intends to amend or alter the range of services it provides, it must give notice to affected consumers at least one month in advance of the amendment being introduced".*

It is disappointing that the Provider failed to notify the Complainants that their mortgage loan account was being switched to a LTV variable rate, however I note that the Provider has accepted its failings in this regard.

In circumstances where the Provider did not receive a signed rate options form from the Complainants together with a transfer fee, the Complainants' mortgage loan account remained on a LTV variable interest rate of 4.15% up until **August 2010** when the variable interest rate changed to 4.650%. The **Mortgage Loan Statements** record a "*Rate Change*" to 4.650% on **3 August 2010**.

The Provider has submitted a copy of its **Lending Interest Rates** effective from the start of business on **3 August 2010** which provides for a "*Variable Rate LTV>80%*" at a rate of 4.65%.

The Complainants contend that they were not offered fixed interest rates or tracker interest rates on their mortgage loan account in **July 2010**. The rate options form however shows that various fixed interest rate options were offered to the Complainants. In relation to the Complainants' contention that the Provider did not offer them a tracker interest rate in **July 2010,** it is important for the Complainants to understand that while tracker interest rates may have been available for selection by other customers, there was no obligation on the Provider, contractual or otherwise, to offer the Complainants a tracker interest rate in **2010**. As previously outlined, there is no provision in the **Letter of Approval** and terms and conditions attaching to the mortgage loan for a tracker rate of interest to be applied to the Complainants' mortgage loan account.

The Provider issued a letter to the Complainants dated **18 August 2010** to notify them of an increase on the variable interest rate applicable to their account. Again, this letter was sent to what the Complainants' state was their old correspondence address. The letter was stamped as *"Gone Away"* and is date stamped on **25 August 2010**. The letter details as follows;

> *"I am writing to inform you that due to a recent interest rate change, the monthly repayment on your loan has changed. The new interest rate is 4.65% and is applicable from August 3, 2010.*

/Cont'd…

Your new scheduled mortgage payment starting from this month, is shown below:

Total Mortgage Payment	*EUR1073.21*
*Total Insurance**	*EUR26.73*

Total Repayment	*EUR1099.4*
Due Date	*September 1, 2010"*

While the interest rate change that was notified in the letter aligns with the interest rate set out in the **Lending Interest Rates** document effective from the start of business on **8 June 2010,** the Provider explains that that the Complainants' mortgage loan account should have been amended to the Provider's standard variable rate of 3.69% and not the LTV variable rate of 4.15%. I accept that this is the case given the **Staff Credit Policy** states that a standard variable rate is to apply after a staff customer ceases employment.

The Provider accepts its error in this regard and has offered to remediate this error by refunding interest in the sum of €2,065.39 (inclusive of time value for money amount) as of **14 August 2019** to the Complainants.

A further letter dated **12 April 2011** issued to the Complainants notifying the Complainants of an increase in the interest rate. The letter details as follows:

> *"…As a result of this change your current rate of 5.65% will now increase to 5.9% and is applicable from 16th May 2011."*

The letter was stamped as *"Gone Away"* and is date stamped on **14 July 2011**.

A further letter dated **18 July 2011** issued to the Complainants notifying the Complainants of an increase in the interest rate. The letter details as follows:

> *"…As a result of this change your current rate of 5.9% will now increase to 6.15% and is applicable from 22nd August 2011."*

The letter was stamped as *"Gone Away"* and is date stamped on **21 July 2011**.

The Complainants sent a letter to the Provider dated **5 September 2011** to request as follows:

> *"I refer to the above mortgage account and wish to confirm that our correspondence address has changed to "[new correspondence address]".*

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> *I would be grateful if you amend your records appropriately. Also I would be grateful if you could order me a cert of interest for 2010".*

The Provider issued a letter to the Complainants dated **12 September 2011** to the Complainants' new correspondence address which details as follows:

> *"I refer to your recent letter requesting change of correspondence address on the above mortgage accounts. I wish to confirm your change of address had now been processed".*

The Complainants contend that they did not receive the Provider's letter of **7 July 2010** which issued to the address of the mortgaged property the subject of this complaint. The Complainants state that this was in fact their former correspondence address.

Given the letters dated **18 August 2010**, **12 April 2011** and **18 July 2011** were marked as **"***Gone Away*", it is reasonable to conclude that the Complainants also did not receive those letters. The First Complainant submits that he informed the Provider of his "*new family home and correspondence address and all current accounts etc. were coming to this address*". The First Complainant also explains that a "*change of address was given to the branch Manager in the [location] branch of [Provider] in circa 2007*". While I have not been provided with a change of address form to this effect, I have no reason to doubt that a request was made by the Complainants in **2007** to update their correspondence address. I acknowledge that under the terms of the Complainants' loan offer, the Provider is obliged to send notices by ordinary pre-paid post to the last address known to the Provider or to the address of the mortgaged property, which the Provider in this case had done. While I note that the Complainants did not make a specific request to the Provider's mortgage department to change their correspondence address until **September 2011**, I find it difficult to understand why the Provider continued to send letters to the same address when letters were constantly being returned. This should have been flagged internally to the Provider's mortgage department which in turn should have, at least, prompted a telephone call to be made to the Complainants.

The Provider's failure to update the Complainants' address appropriately and ensure that all correspondence issued to the Complainants' correct address are in my view further failures by the Provider to comply with the **Consumer Protection Code 2006**. The Provider failed to act with due skill, care and diligence by issuing correspondence to an incorrect address. This was particularly unsatisfactory in circumstances where the Complainants had requested the Provider's branch to amend their correspondence address in **2007**, however the Provider continued to issue correspondence to the incorrect address.

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In these circumstances I am of the view that the Provider did not maintain an up-to-date record of the Complainants' address for correspondence, as is required by the **Consumer Protection Code**. However, the Provider has recognised its shortcomings in this regard and by way of letter to this office dated **16 October 2019** stated that it offered the Complainants a gesture of goodwill in the sum of €500.00 for its failure to update the Complainants' correspondence address. It appears to me that this goodwill offer of €500.00 is additional to the gesture of goodwill in the sum of €500.00 offered by the Provider on foot of its failure to issue the notification of the change from staff rate to a variable rate prior to the implementation of the rate change.

I note that the Complainants are seeking that the Provider offers them the interest rate options for the mortgage loan account which were available at the time the First Complainant's employment with the Provider ceased in **May 2006.**

I have considered the Complainants' mortgage loan documentation in its entirety and it appears to me that the Provider was under no obligation to offer the Complainants a tracker interest rate when they were due to mature from the staff variable rate in **May 2006**. The Complainants' mortgage loan account should have switched to the Provider's standard variable rate shortly after the First Complainant ceased employment with the Provider in **May 2006**, however the mortgage loan account remained on the lower staff preferential rate until **July 2010**. I find that both parties have responsibility for this delay. The Complainants failed to notify the Provider that the First Complainant had ceased employment with the Provider, however the Provider equally did not take any action in respect of the Complainants' mortgage loan account until some 4 years later when it came to light that the mortgage loan account had remained on the preferential staff rate. It is worthwhile noting however that the Complainants appear to have benefitted from a lower interest rate by being allowed to stay on the staff preferential rate, although in error, after the First Complainant ceased employment with the Provider. If the Complainants were moved to a standard variable rate in **2006**, they would have paid considerably more in the way of interest.

I do not consider the Provider's decision to withdraw the staff rate in **2010** to be a contravention of the **Code of Conduct of Mortgage Arrears**, as asserted by the Complainants. The Provider, having discovered the error on the Complainants' mortgage loan account in **2010**, decided to take action by removing the staff preferential rate. Further, I do not consider it reasonable for the Complainants to be of the view that they were entitled to remain on the staff preferential rate after the First Complainant ceased being a staff customer.

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I note that there were failures on the Provider's part in its dealings with the Complainants under the **Consumer Protection Code 2006** however the Provider has already offered the Complainants the total sum of €1,000 as a gesture of goodwill in respect of its failings in relation to (i) notifying the Complainants that it intended to change the interest rate applicable to their account from a staff interest rate to a standard variable rate in **July 2010** in advance of implementing that change (€500) and (ii) updating the Complainants' correspondence address (€500). I note that this offer of €1,000 remains open to the Complainants to accept.

It is disappointing that when the Provider eventually discovered the error that had occurred on the Complainants' mortgage loan account, it switched the mortgage loan account to a LTV variable rate of 4.15% when a standard variable interest rate of 3.69% should have been applied to the account.

The Provider has offered to remediate this error by refunding interest in the sum of €2,065.39 (inclusive of time value for money amount) as of **14 August 2019** to the Complainants. It is unclear whether the Complainants have accepted this offer, however I note that this offer remains open to the Complainants to accept, and the Provider has agreed to restore the Complainants' mortgage loan account from **1 July 2010** to the appropriate standard variable rate as opposed to the LTV variable rate and refund any interest owed (inclusive of time value for money amount).

In light of the foregoing, I consider these offers (totalling €3,065.39) taken together with the fact that the Complainants had the benefit of the staff interest rate for a considerable period when they did not have an entitlement to it, to be a reasonable attempt to resolve this complaint in the context of the Provider's errors. Therefore 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

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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.