



<b><u>Decision Ref:</u></b>	2021-0388
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Tracker Mortgage
<b><u>Conduct(s) complained of:</u></b>	Failure to offer a tracker rate at point of sale
<b><u>Outcome:</u></b>	Rejected

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

This complaint relates to three mortgage loan accounts held by the Complainant with the Provider. The three mortgage loan accounts that are the subject of this complaint were secured on the Complainant's buy-to-let properties and are detailed below:

- Mortgage loan account ending **6066** was for the sum of IR£52,500 and a term of 15 years. The **Letter of Offer of Mortgage Loan** dated **22 August 1994** provided for a variable rate of 7.25%. The loan was drawn down on **19 September 1994** and was redeemed on **16 September 2009**.
- Mortgage loan account ending **0007** was for the sum of IR£78,000 and a term of 14 years. The **Letter of Offer of Mortgage Loan** dated **30 April 1997** provided for a standard variable rate of 7.350%. Mortgage loan account ending **0007** was drawn down in stages between **25 July 1997** and **28 October 1997**, when final drawdown was issued. This loan account was redeemed on **13 November 2006**.
- Mortgage loan account ending **5053** was for the sum of IR£115,000 and a term of 15 years. The **Letter of Offer of Mortgage Loan** dated **16 February 1998** provided for a 1-year fixed interest rate of 5.85% with the Provider's standard variable interest rate to apply thereafter. Mortgage loan account ending **5053** was drawn down on **24 April 1998** and was redeemed on **24 April 2013**.

### **The Complainant's Case**

The Complainant submits that she requested a tracker interest rate of 2.95% (ECB plus margin of 0.95%) to be applied to her mortgage loan accounts ending **5054, 0007** and **6066** in **June 2005**

The Complainant asserts that she was wrongly denied a tracker interest rate of 2.95% on her three mortgage loans. The Complainant submits that the Provider informed her that the tracker interest rate of 2.95% could not be applied to loans that were secured on investment properties. The Complainant contends that *"this is incorrect as many customers did avail of a tracker rate at this margin and other margins for investment properties"*.

The Complainant explains that she worked in the lending department of the Provider at the time and submits that *"such rates were available and sanctioned"* on other loans that were secured on investment properties. The Complainant asserts that tracker interest rates applicable to mortgage loans for private dwelling houses were also applied to mortgage loans for buy-to-let properties. The Complainant contends that tracker interest rates advertised by the Provider in **2005** *"were not strictly adhered to"* and *"flexibility and discretion was applied"* by the Provider.

The Complainant states that she feels that she was *"discriminated against"* given the circumstances.

The Complainant is seeking the following:

- a) A refund for the amount overcharged; and
- b) A compensatory payment for the inconvenience caused.

### **The Provider's Case**

The Provider explains that tracker interest rates had not yet been introduced to the market between **1994** and **1998** when the Complainant applied for her mortgage loans. The Provider states that the only available rates at that time were fixed or variable interest rates.

The Provider submits that when the Complainant applied for her mortgage loan accounts ending **5053, 0007** and **6066**, she indicated on each application form that the purpose of the mortgage loans was to finance the purchase of investment properties, for the purpose of renting them to third parties.

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The Provider explains that when tracker mortgage interest rates were introduced to the market in **late 2002**, different rates were available for private dwelling house loans and buy-to-let loans *“to reflect the level of risk associated between private ownership and that of an investment venture”*.

The Provider states that the Complainant emailed the Provider on **17 June 2005** requesting to apply a tracker interest rate of 2.95% to her mortgage loan accounts ending **5053, 0007** and **6066**. The Provider explains that the tracker interest rate of 2.95% only applied to loans secured on private dwelling houses and *“the margin of ECB plus 0.95% was not available in June 2005 when the Complainant made her request for an overall rate of 2.95%”*.

The Provider notes that it wrote to the Complainant separately in relation to each of her three mortgage loan accounts to inform her that it would not be able to facilitate her request. The Provider submits that it wrote to the Complainant on **21 June 2005** in relation to mortgage loan account ending **0007** and on **22 June 2005** in relation to mortgage loan accounts ending **5053** and **6066**, notifying her that *“the rate 2.95% does not apply to loans secured on investment properties”*. The Provider further submits that it informed the Complainant that the applicable tracker interest rate for buy-to-let loans was 3.50% (ECB + 1.50%). The Provider states that it also advised the Complainant that each mortgage loan account was currently on the standard variable rate of 3.30%. The Provider states that it is satisfied that the letters that were sent to the Complainant in **June 2005** regarding her request to change the interest rate on her mortgage loan accounts were sufficiently *“clear and transparent”*.

The Provider submits that it was *“open to Complainant, following receipt of those letters, to request the Bank to apply the Buy to let Tracker interest rate of 3.50% to her BTL Loan Accounts if she so wished, however the Bank has no record of receiving any such request”*. The Provider explains that the Complainant’s mortgage loan accounts remained on the lower standard variable rate of 3.30% for the remainder of the term, even though buy-to-let tracker interest rates remained available for the Complainant to choose from until **late 2008**.

The Provider states that the Complainant *“was not treated unfairly or discriminated against in any way by the Bank”*. The Provider explains that the Complainant *“had rates available that were applicable to the type of loan classification and the description of the rate itself supported this”*. The Provider further states that the Complainant *“was accorded the rate options which were offered by the Bank generally in accordance to the mortgage loan classification”*.

### **The Complaint for Adjudication**

The complaint for adjudication is that the Provider incorrectly failed to offer the Complainant a tracker interest rate of 2.95% (ECB plus margin of 0.95%) on her mortgage loan accounts ending **6066, 0007** and **5053** in **June 2005**.

### **Decision**

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

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

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

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

Following the issue of my Preliminary Decision, the Complainant made a further submission by way of email to this office dated **03 October 2021**, a copy of which was transmitted to the Provider for its consideration. The Provider has not made any further submission.

Following the consideration of the Complainant's additional submission and all of the submissions and evidence furnished by both parties to this office, I set out below my final determination.

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In order to determine this complaint, it is necessary to review the Complainant's mortgage loan documentation and consider details of certain interactions between the Provider and the Complainant in **2005**.

The Complainant drew down three mortgage loan accounts with the Provider during **1994** and **1998**.

I will now deal with each mortgage loan account in turn below:

**Mortgage loan account ending 6066**

The Complainant applied for mortgage loan account ending **6066** by completing a **Mortgage Application Form** which was signed by the Complainant on **15 August 1994**. The Complainant selected a "*Variable rate*" option under the "*Interest option required*".

The Provider subsequently issued a **Letter of Loan Offer** dated **22 August 1994** to the Complainant in relation to mortgage loan account ending **6066**, which detailed as follows:

"Amount of Loan:	£52,500
Term:	15 years
Appropriate Interest rate (at date of Offer):	7.250 (A.P.R. 7.449) varying"

**Schedule B** of the **Letter of Loan Offer**, signed by the Complainant and witnessed by her solicitor on **22 August 1994**, states as follows:

*"1. I/We the undersigned wish to obtain a Home Loan from [Provider], on the terms and conditions set out in:*

- (a) The foregoing pages*
- (b) The Particulars of Home Loan*
- (c) The Special Conditions (if any)*
- (d) The General Conditions of Home Loan: copies of which (I/we have received.*

*2. I/We have been advised by you as my/our Solicitor in relation to the said terms and conditions."*

Mortgage loan account ending **6066** was subsequently drawn down on **19 September 1994** on a variable interest rate and was secured on a buy-to-let property held by the Complainant.

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The Complainant sent a letter to the Provider on **9 April 1996** requesting that her mortgage loan account be amended to a *“5 year fixed interest rate, presently 8.2%”*.

The Complainant sent a further letter dated **09 October 1998** to the Provider which states as follows:

*“We should be obliged if you would kindly arrange to break the above Fixed Interest rate loan and add the cost on the interest accrued”.*

The Provider responded to the Complainant’s request by way of letter dated **14 October 1998** which details as follows:

*“I refer to your recent request to break out of the fixed interest rate on your above homeloan.*

*The interest rate now applicable is the variable interest (currently 7.85%). The breakage cost of £1,849.91 has been added to the interest accrued on your homeloan as requested...”*

I note that mortgage loan account ending **6066** was moved to the Provider’s standard variable rate until the mortgage loan account was closed on **16 September 2009**.

**Mortgage loan account ending 0007**

The Complainant applied for mortgage loan account ending **0007** by completing a **Mortgage Application Form** which was signed by the Complainant on **28 April 1997**. The Complainant selected a *“Variable rate”* option under the *“Interest option required”*.

The Provider subsequently issued a **Letter of Loan Offer** dated **20 April 1997** to the Complainant in relation to mortgage loan account ending **0007**, which detailed as follows:

<i>“Mortgage Loan Amount</i>	<i>£78,000</i>
<i>Loan Term</i>	<i>14 years/168 months</i>
<i>...</i>	
<i>Applicable Interest rate (at Offer date)</i>	<i>7.350% varying – includes margin of 0.000% over Standard Home Mortgage Variable rate). APR 7.567%”</i>

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**General Condition 3.2** of the **Letter of Loan Offer** stipulates as follows:

*“The Bank in its sole discretion, at the end of any fixed interest rate period, may provide any further fixed interest rate period, but if it elects not to do so or the Bank offers the customer a fixed interest rate choice at the end of any fixed interest rate period and the customer fails to exercise this choice then the mortgage loan will convert to a variable interest rate mortgage loan.”*

**General Condition 3.5** of the **Letter of Loan Offer** details as follows:

**“VARIBALE INTEREST RATE MORTGAGE LOAN**

*In the case of a variable interest rate mortgage loan the interest rate applicable, at any time, will vary according to the prevailing rates set generally by the Bank from time to time, subject to these conditions.”*

**Part 5** of the **Letter of Loan Offer** details the following under **Statutory Notices and Other Notices**:

*“THE PAYMENT RATES ON THIS HOUSING LOAN MAY BE ADJUSTCED BY THE LENDER FROM TIME TO TIME.”*

The **Acceptance and Consent** which was signed by the Complainant on **15 May 1997** detailed as follows:

*“I/We accept the conditions of this Offer and agree to mortgage the property to the Bank as Security for the mortgage loan.”*

Mortgage loan account ending **0007** was drawn down in stages between **25 July 1997** and **28 October 1997** and was secured on a buy-to-let property held by the Complainant.

The Complainant sent a letter to the Provider dated **13 June 2002** requesting to apply a 3-year fixed interest rate to mortgage loan account ending **0007**.

The Provider responded to the Complainant’s request by way of letter dated **18 June 2002** which details as follows:

*“With reference to your recent request, I confirm that a fixed interest rate of 5.42% (including the existing interest adjustment of 0.00%) will apply to your home loan from 18 June 2002 for a period of 3 years....*

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*You will be entitled, with the Bank's prior consent, to withdraw from the fixed rate agreement either by repayment in full of the Home Mortgage and interest accrued to the date of repayment or by conversion to the variable interest rate then prevailing..."*

Prior to the expiry of the 3-year fixed interest rate period on the Complainant's mortgage loan account ending **0007**, the Provider issued a letter to the Complainant dated **08 June 2005** outlining the variable interest rate and other fixed interest rates available to the Complainant. The letter details as follows:

*"The fixed period on your above home mortgage expires on 18/06/2005 and I should be obliged for your further instructions as to the rate you wish to avail of from that date. In the absence of any reply the Bank's current standard Variable rate (plus the existing agreed adjustment of 0.00%) will be applied but may subsequently be revised at your request to any fixed rate option in the future.  
....*

*Here is a sample of the rates on offer from [Provider]. To avail of a fixed rate please complete the attached tear-off section below..*

<u>Rate</u>	<u>%</u>
<b>Variable</b>	<b>3.300</b>
<b>1 Year Fixed</b>	<b>3.300</b>
<b>3 Year Fixed</b>	<b>3.750</b>
<b>5 Year Fixed</b>	<b>4.150"</b>

In circumstances where the Provider did not receive a completed form from the Complainant, mortgage loan account ending **0007** moved to the Provider's standard variable rate. I note that the mortgage loan account remained on the Provider's standard variable rate until it was closed on **13 November 2006**.

#### **Mortgage loan account ending 5053**

The Complainant applied for mortgage loan account ending **5053** by completing a **Mortgage Application Form** which was signed by the Complainant on **10 February 1998**. The Complainant selected a "fixed rate" option under the "Interest option required". Under the "Purpose of loan" section of the Mortgage Application Form, the Complainant selected "Investment property".

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The Provider subsequently issued a **Letter of Loan Offer** dated **16 February 1998** to the Complainant in relation to mortgage loan account ending **5053**, which detailed as follows:

*"Mortgage Loan Amount: £115,000.00*  
*Loan Term: 15 years/180 months.*  
...  
*Applicable Interest Rate (at Offer Date) 5.85% Fixed for 1 year after which the rate will revert to the Bank's Variable Interest Rate, unless borrower(s) avail(s) of another interest rate option then on offer by the Bank. (Rates include margin of 0.00%) APR 7.7653%"*

**General Condition 3.2** of the **Letter of Loan Offer** stipulates that:

*"The Bank in its sole discretion, at the end of any fixed interest rate period, may provide any further fixed interest rate period, but if it elects not to do so or the Bank offers the customer a fixed interest rate choice at the end of any fixed interest rate period and the customer fails to exercise this choice then the mortgage loan will convert to a variable interest rate mortgage loan."*

**General Condition 3.4** of the **Letter of Loan Offer** details as follows:

**"FIXED INTEREST RATE MORTGAGE LOAN**

*In the case of a fixed interest rate mortgage loan, the interest rate is fixed for the period of time stated in the Particulars, subject to these conditions".*

**Part 5** of the **Letter of Loan Offer** details the following under **Statutory Notices and Other Notices**:

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

The **Acceptance and Consent**, which was signed by the Complainant on **15 April 1998** and witnessed by her solicitor, details as follows:

*"I/We accept the conditions of this Offer and agree to mortgage the property to the Bank as Security for the mortgage loan."*

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Mortgage loan account ending **5053** was subsequently drawn down on a 1-year fixed interest rate on **24 April 1998** and was secured on a buy-to-let property held by the Complainant.

Prior to the expiry of the 1-year fixed interest rate, the Provider issued a letter dated **10 April 1999** to the Complainant outlining the variable rate and other fixed interest rates available to the Complainant. The letter details as follows:

*“The fixed period on your above home mortgage expires on 24/04/1999 and I should be obliged for your further instructions as to the rate you wish to avail of from that date. In the absence of any reply the Bank’s current standard Variable rate (plus the existing agreed adjustment of 0.00%) will be applied but may subsequently be revised at your request to any fixed rate option in the future.*

....

*Here is a sample of the rates on offer from [Provider]. To avail of a fixed rate please complete the attached tear-off section below..*

<u>Rate</u>	<u>%</u>
<b>Variable</b>	<b>5.50</b>
<b>1 Year Fixed</b>	<b>5.50</b>
<b>3 Year Fixed</b>	<b>5.00</b>
<b>5 Year Fixed</b>	<b>5.00</b>
<b>10 Year Fixed</b>	<b>5.75”</b>

I have not been provided with any evidence to indicate that the Complainant selected a further fixed interest rate therefore her mortgage loan account defaulted to the Provider’s standard variable interest rate of 5.50% on **24 April 1999**.

The Complainant sent a letter to the Provider dated **13 June 2002** requesting to apply a 3-year fixed interest rate to mortgage loan account ending **5053**.

The Provider responded to the Complainant’s request by way of letter dated **18 June 2002** which details as follows:

*“With reference to your recent request, I confirm that a fixed interest rate of 5.42% (including the existing interest adjustment of 0.00%) will apply to your home loan from 18 June 2002 for a period of 3 years....*

*You will be entitled, with the Bank's prior consent, to withdraw from the fixed rate agreement either by repayment in full of the Home Mortgage and interest accrued to the date of repayment or by conversion to the variable interest rate then prevailing..."*

Prior to the expiry of the 3-year fixed interest rate period on the Complainant's mortgage loan account ending **5053**, the Provider issued a letter to the Complainant dated **08 June 2005** outlining the variable rate and other fixed interest rates available to the Complainant. The letter details as follows:

*"The fixed period on your above home mortgage expires on 18/06/2005 and I should be obliged for your further instructions as to the rate you wish to avail of from that date. In the absence of any reply the Bank's current standard Variable rate (plus the existing agreed adjustment of 0.00%) will be applied but may subsequently be revised at your request to any fixed rate option in the future.  
....*

*Here is a sample of the rates on offer from [Provider]. To avail of a fixed rate please complete the attached tear-off section below..*

<u>Rate</u>	<u>%</u>
<b>Variable</b>	<b>3.300</b>
<b>1 Year Fixed</b>	<b>3.300</b>
<b>3 Year Fixed</b>	<b>3.750</b>
<b>5 Year Fixed</b>	<b>4.150"</b>

I note that the Complainant subsequently sent a letter dated **16 June 2005** to the Provider requesting a tracker interest rate of 2.95% to be applied to all three mortgage loan accounts. The Complainant's letter dated **16 June 2005** details as follows:

*"Account: [ending 0007]  
                  [ending 5053]  
                  [ending 6066]*

*Dear Sir,*

*I refer to our telephone conversation of today's date and confirm request to place the above Home Loans on Tracker rate presently 2.95%, until further notice".*

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The Complainant sent an email to the Provider on **17 June 2005** at **23:27** in relation to her three mortgage loan accounts which details as follows:

*“Further to our telephone conversation of today's date please apply Tracker interest rate, presently 2.95% p.a. to the above Home Loans until further notice. Please confirm”.*

The Provider responded to the Complainant by way of separate letter in relation to each mortgage loan account. The Provider issued a letter dated **21 June 2005** in relation to mortgage loan account ending **0007** which detailed as follows:

*“I refer to your recent e-mail request regarding the above Home Mortgage.*

*I advise that the Tracker <60% LTV (ECB plus margin of 0.95%), currently 2.95%, does not apply to loans secured by investment properties. The Buytolet Tracker rate is currently 3.5% this loan is subject to the standard variable rate of 3.3%.*

*I regret I am unable to facilitate your request on this occasion, I trust the above is in order”.*

The Provider issued similar letters to the Complainant in respect of mortgage loan accounts ending **5053** and **6066** on **22 June 2005** informing the Complainant that the tracker interest rate of ECB + 0.95% was not available in relation to loans secured on investment properties.

The Provider's letters dated **21** and **22 June 2005** clearly outline that the Complainant's three mortgage loan accounts were not eligible for the tracker interest rate of 2.95% (ECB + 0.95%), which applied only to loans secured on private dwelling houses. The letters also stated that the appropriate tracker interest rate for mortgages secured on investment properties, similar to the Complainant's buy-to-let mortgage loans, was 3.50%. I note that the Complainant's three mortgage loan accounts which were secured on investment properties were on the Provider's standard variable rate of 3.30% which was 0.20% lower than the applicable tracker interest rate.

The Provider has submitted a copy of the interest rates applicable as of **17 May 2005** in relation to private dwelling house loans as follows:

**PDH Rates**

<b>Date</b>	<b>ECB Base Rate</b>	<b>PDH Tracker &lt;=60% LTV &amp; &lt;€250k</b>	<b>PDH Tracker &lt;=60% LTV &amp; &gt;=€250k</b>	<b>PDH Tracker &gt;60% LTV &amp; &lt;€250k</b>	<b>PDH Tracker &gt;=60% LTV &amp; &gt;=€250k</b>
17-May-05	2.00%	Rate 2.95% includes margin of 0.95%	Rate 2.95% includes margin of 0.95%	Rate 3.25% includes margin of 1.25%	Rate 3.10% includes margin of 1.10%

The Provider has submitted a copy of the interest rates applicable as of **17 May 2005** in relation to the buy-to-let loans as follows:

**Buy to Let Rates**

<b>Date</b>	<b>ECB Base Rate</b>	<b>BTL Tracker &lt;= 60% LTV &amp; &lt;€250k</b>	<b>BTL Tracker &lt;= 60% LTV &amp; &gt;=€250k</b>	<b>BTL Tracker &gt; 60% LTV &amp; &lt;€250k</b>	<b>BTL Tracker &gt; 60% LTV &amp; &gt;= €250k</b>
17-May-05	2.00%	Rate 3.50% includes margin of 1.50%	Rate 3.50% includes margin of 1.50%	Rate 3.50% includes margin of 1.50%	Rate 3.50% includes margin of 1.50%

The above rate tables show that a tracker interest rate of 2.95% (ECB + 0.95%) was available in respect of private dwelling house loans in the amount of €250,000 or under and a tracker interest rate of 3.50% (ECB + 1.50%) was available in respect of buy-to-let loans in the amount of €250,000 or under when the Complainant made a request for a tracker interest rate in **June 2005**. The Provider explains that the above interest rates were publicly available on the Provider's website and in its branches at the time of the Complainant's request in **June 2005**.

The Provider issued letters to the Complainant dated **09 August 2005** in relation to mortgage loan accounts ending **5053** and **0007** which detail as follows:

*"I refer to your recent e-mail regarding the above Home Mortgage and advise that the 3 Year Fixed Rate of 5.42% expired on the 18/06/2005.*

*The rate rolled over to the bank's standard variable rate of 3.3%..."*

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The Provider issued a letter to the Complainant dated **09 August 2005** in relation to mortgage loan account ending **6066** which details as follows:

*"I refer to your recent e-mail regarding the above Home Mortgage and advise that this loan has been subject to the bank's standard variable rate since the 5 Year Fixed Rate of 8.2% expired on the 14 10 1998.*

*The repayments are currently €546.61, based on the bank's standard variable rate of 3.3%".*

I note that all three mortgage loan accounts remained on the Provider's standard variable rate until they were all fully redeemed between **2006** and **2013**.

Having considered the evidence before me, it is my view that the Complainant did not have a contractual entitlement to a tracker interest rate when she made a request to the Provider to apply a tracker interest of 2.95% (ECB + 0.95%) to her three buy-to-let mortgage loans in **June 2005**. At the time, the Complainant was contractually entitled to a variable interest rate on mortgage loan account ending **6066** and a variable or fixed interest rate on mortgage loan accounts ending **5053** and **0007**. It appears that the Provider, in line with its own commercial discretion and policy at the time, offered the Complainant a tracker interest rate option of 3.50% (ECB + 1.50%) in **June 2005** as that was the tracker interest rate option it states was available in relation to buy-to-let mortgage loans. While I note that a tracker interest rate of 2.95% (ECB + 0.95%) was available in respect of private dwelling house mortgage loans, this rate option did not appear to apply to the Complainant's three mortgage loan accounts as they were classified as buy-to-let mortgage loans. It is important for the Complainant to understand that while tracker rate options may have been available as a product option from the Provider at the time, the Complainant was not contractually entitled to be offered a tracker interest rate by the Provider.

In her post Preliminary Decision submission dated **03 October 2021**, the Complainant states that she *"refute[s] the claim that Mortgage Loan accounts were not eligible for the Tracker Interest Rate plus margin on investment properties"*. The Complainant also submits that she accepts that tracker rates *"were not available when loans were drawn down and that [she] did not have a contractual entitlement to Tracker interest rate"* however the Complainant maintains that *"many precedents of adjusting to Tracker rate were applied, similar to [her] request"*.

The Complainant appears to be of the view that a tracker interest rate of ECB + 0.95%) was applied to other customers' mortgage loans that were secured on investment properties.

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The Complainant is therefore of the view that she was “*discriminated*” by the Provider on foot of the Provider’s refusal to apply a tracker interest rate of 2.95% (ECB + 0.95%) to her three mortgage loan accounts in **June 2005**.

As outlined above, the Provider in line with its own commercial discretion and policy at the time, offered the Complainant a tracker interest rate option of 3.50% (ECB + 1.50%). For the avoidance of any doubt, the Provider’s policy at the time was to only offer a tracker interest rate option of 2.95% (ECB + 0.95%) on private dwelling house mortgage loans and not buy-to-let properties. Therefore, the Complainant’s three mortgage loan accounts were not eligible for the lower tracker interest rate of (ECB + 0.95%). This office will not interfere with a financial service provider’s commercial discretion in this regard, other than to ensure that the Provider complies with relevant codes and regulations and does not treat the Complainant unfairly or in a manner that is unreasonable, unjust, oppressive or improperly discriminatory.

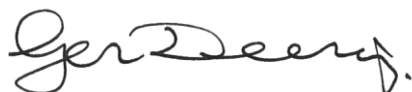
I have not been provided with any evidence that would indicate that the Provider’s conduct was discriminatory in relation to the Complainant or was in any way unreasonable. It is important to note that each of the Complainant’s mortgage loans are governed by the terms and conditions applicable to each mortgage loan, none of which include a contractual entitlement to a tracker interest rate. If the Complainant wished to pursue the option of applying a tracker interest rate to her mortgage loan accounts in **June 2005**, the Complainant could have opted for a tracker interest rate of 3.50% (ECB + 1.50%) as opposed to 2.95% (ECB + 0.95%). However, the Complainant chose to remain on the standard variable interest rate of 3.30% which, as it transpires, was lower than the tracker interest rate applicable to buy-to-let mortgage loans. It was the Complainant’s choice not to accept the tracker mortgage rate offered to her.

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,**
- and**

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