



<u>Decision Ref:</u>	2021-0402
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Tracker Mortgage
<u>Conduct(s) complained of:</u>	Failure to offer a tracker rate at point of sale
<u>Outcome:</u>	Rejected

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

This complaint relates to four mortgage loan accounts held by the Complainants with the Provider, as follows:

1. Mortgage loan account ending **3246** was secured on the Complainants' private dwelling house. The loan amount was €370,000 and the term of the loan was 25 years approximately. The Mortgage Loan Offer Letter was accepted by the Complainants on **27 June 2007**. The interest applicable to the mortgage loan was a 5-year fixed rate of 4.99% with a "*Variable Base Rate*" to apply thereafter.
2. Mortgage loan account ending **1191** was secured on the Complainants' buy to let ("BTL") property. The loan amount was €75,000 and the term of the loan was 30 years. The Mortgage Loan Offer Letter was accepted by the Complainants on **11 November 2008**. The interest rate applicable to the mortgage loan was a 3-year commercial fixed rate of 6.15%. with the mortgage loan to convert to the Provider's "*Variable Commercial Base Rate*" thereafter.
3. Mortgage loan account ending **1043** was secured on the Complainants' BTL property. The loan amount was €75,000 and the term of the loan was 30 years. The Mortgage Loan Offer Letter was accepted by the Complainants on **11 November 2008**. The interest rate applicable to the mortgage loan was a "*Variable Commercial Base Rate*" of 5.88%.

4. Mortgage loan account ending **0934** was secured on the Complainants' BTL property. The loan amount was €90,000 and the term of the loan was 30 years. The Mortgage Loan Offer Letter was accepted by the Complainants on **11 November 2008**. The interest rate applicable to the mortgage loan was a "*Variable Commercial Base Rate*" of 5.88%.

The Complainants' Case

The Complainants submit that they "*were led to believe that Tracker Mortgages were not an option and not offered this on an Options form at the time of application or signing for the mortgages*". The Complainants state that neither of them are "*skilled in calculating the amount of money we are owed due to not having been offered 'Tracker options' on any of our 4 mortgages we have with [Provider]*". However, the Complainants maintain that "*the amount involved is a significant amount of money.*"

The Complainants state that they "*have had periods of fixed and Tracker facilities on our 'Home' and 'BTL' mortgages.*" The Complainants maintain that the interest rates applied to their mortgage loan accounts "*were too high*".

The Complainants submit that it is their recollection that the branch manager filled out *the* application form "*hurriedly*". The Complainants submit that they were "*informed a tracker was not available*" and were told that the "*best option*" was a fixed rate of interest. The Complainants assert that they were "*experienced in the mortgage field to the point where we understood the difference a tracker Mortgage made to our monthly repayments.*" The Complainants state that the Provider is insulting their "*intelligence by suggesting that we would choose Fixed over Tracker.*" The Complainants state that they "*accepted that we were told the truth about options available*" and that they were "*clearly misled [sic]*" and signed the application form which was "*not completed by [them] in good faith.*"

The Complainants submit that "*Any time we would have been offered a tracker mortgage rate we would have jumped at the opportunity.*" The Complainants are of the view that they were "*clearly and explicitly told that there was no tracker rate available.*" The Complainants assert that it "*is not unusual for the forms to have been completed by the Mortgage Administrator*" and the rate selection box was ticked "*by the administrator after explaining to us that there was no Tracker available they then turned the form around to us to sign.*" The Complainants submit that they "*knowingly signed for a fixed rate as we had been lied to and told that the tracker was not available.*"

The Complainants do not agree with the Provider's assertion that the Provider is not obliged to offer advice to customers regarding interest rates and submit that that they *"did not require explanation of rate types"* as they had been *"10 years buying and selling properties at that stage."*

The Complainants submit that they were lied to by the Provider regarding the interest rates available to them and that they *"would never have expected that everything we were told was anything but actual fact and thus never questioned the facts as laid out by [Provider]."* The Complainants state that they are *"beyond disappointed"* and have *"endured many years of hardship and ultimately disposed of a property to get some relief because of this."*

The Complainants are of the view that the Provider *"cannot say what an individual mortgage administrator did on any given day"*. The Complainants submit that the Provider *"cannot prove what they are saying is true and thus should acknowledge the reasonable assumption that we would have jumped at the opportunity of a tracker rate with both hands"*.

The Provider's Case

Mortgage loan account ending 3246

The Provider submits that the Complainants applied for mortgage loan account ending **3246** by completing a **Loan Approval Certificate Application Form** on **16 April 2007**. The Provider maintains that the Complainants also completed a **Home Loan Application Form** which included the rate options available to the Complainants to choose from to include variable, tracker, fixed and split interest rates. The Provider states that *"a 5 year Fixed interest rate was selected"* by the Complainants.

The Provider disagrees with the Complainants' assertion that the Provider's staff were *"poorly informed"*. The Provider maintains that their staff *"provide information regarding all applicable rates that are available to customers for each loan type, at application stage and separately during the lifetime of the Mortgage Loan as requested."* The Provider submits that tracker interest rates were *"available at the time for new and existing Home Loans."* The Provider submits that there *"is no evidence to suggest that a Bank staff member advised the Complainants that a Tracker interest rate was not available to them."* The Provider maintains that *"it was not unusual for Bank staff to assist customers in the completion of a Mortgage Application Form"* however it acted on the instruction of the Complainants at all times.

The Provider asserts that if the Complainants wished to avail of the tracker interest rate, they were required to complete a separate **Application to Apply for a Tracker Mortgage Rate** form. The Provider submits however that they have *“no record of the Complainants having requested a Tracker interest rate or having made any application for a Tracker interest rate to be applied to their Mortgage Loan Account ending 3246.”*

The Provider explains that, at the time the Complainants applied for a 5-year fixed rate mortgage, the tracker interest rate on offer for a loan *“greater than or equal to €250,000 and Loan to Value less than or equal to 60% was 4.75% (ECB 3.75% plus Margin 1.00%) and the Bank’s Variable interest rate was 5.0%.”*

The Provider states that a **Mortgage Loan Offer Letter** issued to the Complainants on **12 June 2007** and was signed and accepted by the Complainants on **27 June 2007**. The Provider submits that mortgage loan account ending **3246** drew down on a 5-year fixed interest rate of 5.65% on **18 July 2007**. The Provider states that an **Issue of Loan Cheque Letter** issued to the Complainants informing them that the loan cheque was forwarded to their solicitor. The Provider is of the view that by completing the drawdown of the loan, *“the Complainants demonstrated their acceptance of the Terms and Conditions associated with Mortgage Loan Account ending 3246.”*

The Provider states that **Condition 9** of the **Mortgage Loan Offer Letter** dated **12 June 2007** *“clearly outlined what rate would be applicable at the end of the Fixed rate period”* and that, upon expiry of the fixed rate period, the mortgage loan account ending **3246** *“would convert to the Bank’s Variable Base Rate.”*

In relation to the term *“variable rate”*, the Provider submits that it *“is a long established and widely known phrase, used by Banks and customers alike to describe a variable interest rate.”* The Provider is of the view that that term constitutes *“the use of ordinary, everyday words and is not a phrase using industry specific jargon.”* The Provider states that the phrase *“applicable variable rate than prevailing”* is not *“expressly defined in the Complainants’ Mortgage Loan documentation”* but that *“the phrase contains ordinary, everyday words which are clear in their meaning.”* The Provider maintains that the phrase is not defined as there *“was/is only one Variable interest rate and consequently it did not need to be defined.”*

The Provider submits it issued a conversion letter to the Complainants on **5 July 2012** which notified the Complainants that their fixed interest rate period was coming to an end and the interest rate *“was due to convert to (a Variable interest rate) upon expiry of the fixed rate period, in accordance with the terms of the contract.”*

The Provider states that mortgage loan account ending **3246** converted to a variable base rate of 4.33% on **31 July 2012** and it *“did not receive any instruction from the Complainants with regards to the interest rate to apply to their Mortgage Loan Accounts following the Bank’s letter of 5 July 2012.”*

Mortgage loan account ending 1191

The Provider states that the Complainants submitted a **Buy to Let Application** form which was signed on **7 October 2008** wherein the Complainants requested a loan be *“split into 50% on Variable interest rate and 50% on Fixed interest rate for 3 years”*.

The Provider states that two **Mortgage Loan Offer Letters** issued to the Complainants to accommodate the split loan. The Provider states that, in order to fulfil the split mortgage, a **Mortgage Loan Offer Letter** issued on **4 November 2008** which provided for *“€75,000 over 30 years on a 3 year Commercial Fixed rate of 6.15% after which rate would convert to the Variable Commercial Base interest rate.”*

The Provider submits that this **Mortgage Loan Offer Letter** was signed and accepted by the Complainants on **11 November 2008**. The Provider states that mortgage loan account ending **1191** drew down on **21 January 2009** *“for a total amount of €75,000 on a Fixed interest rate of 4.90%”*. The Provider asserts that at the time the loan was drawn down, variable or fixed interest rate mortgage products were available for customers seeking to finance investment properties. The Provider submits that *“Tracker interest rates were not a product feature of the BTL investment property mortgage product.”*

The Provider submits that on **4 January 2012**, the Complainants were notified by letter that the fixed rate period was coming to an end and the Complainants were also informed of the variable interest rate. The Provider is of the view that the mortgage loan documentation that governs the mortgage loan account ending **1191** *“was sufficiently clear, unambiguous and transparent as to the Complainants’ interest rate entitlements”*. The Provider relies on **Condition 4** of the **Mortgage Loan Offer Letter** dated **4 November 2008** in this regard. The Provider states that on **31 January 2012**, mortgage loan account ending **1191** converted to the variable interest rate of 4.83%.

Mortgage loan account ending 1043

The Provider states that a second **Mortgage Loan Offer Letter** dated **4 November 2008** issued to the Complainants in order to accommodate the split loan for *“€75,000 over 30 years on a Variable Commercial Base rate of 5.88%.”* The Provider maintains that the Complainants signed and accepted this loan offer on **11 November 2008**.

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The Provider states that mortgage loan account ending **1043** drew down on **21 January 2009** *“for a total amount of €75,000 on a Variable Commercial Base interest rate of 5.13%”*. The Provider submits that as mortgage loan account ending **1043** was a BTL investment property, the Complainants were not offered a tracker interest rate as *“Tracker interest rates were not a product feature of the BTL investment property mortgage product.”*

The Provider states that mortgage loan account ending **1043** closed on **14 December 2019**.

Mortgage loan account ending 0934

The Provider states that the Complainants submitted a **Buy to Let Application** form which was signed on **7 October 2008**. The Provider states that the rate options available to the Complainants were *“Variable, Fixed or Split”* and that the Complainants selected the variable interest rate.

The Provider asserts that a **Mortgage Loan Offer Letter** issued to the Complainants on **4 November 2008** *“for €90,000 over 30 years on a Variable Commercial Base rate of 5.88%”*. The Provider submits that the first Complainant signed the acceptance on **6 November 2008** and the second Complainant signed the acceptance on **11 November 2008**.

The Provider states that mortgage loan account ending **0934** drew down on **21 January 2009** for *“€90,000 on a Variable Commercial Base interest rate of 5.13%”*. The Provider submits that *“Tracker rates were not a product feature of the Bank’s BTL mortgage product”*.

The Provider states that mortgage loan account ending **0934** closed on **2 June 2017**.

The Complaints for Adjudication

The conduct complained of is that:

- a) The Provider incorrectly failed to offer the Complainants a tracker interest rate on they applied for mortgage loan account ending **3246** in or around **May 2007**;
- b) The Provider incorrectly failed to offer the Complainants a tracker interest rate on mortgage loan account ending **3246** upon the expiry of the fixed interest rate period in or around **July 2012**;
- c) The Provider incorrectly failed to offer the Complainants a tracker interest rate when they applied for mortgage loan account ending **1043** in or around **November 2008**;

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- d) The Provider incorrectly failed to offer the Complainants a tracker interest rate on when they applied for mortgage loan account ending **1191** in or around **November 2008**;
- e) The Provider incorrectly failed to offer the Complainants a tracker interest rate on mortgage loan account ending **1191** upon expiry of the fixed interest rate period in or around **January 2012**; and
- f) The Provider incorrectly failed to offer the Complainants a tracker interest rate when they applied for mortgage loan account ending **0934** in or around **November 2008**.

The Complainants are seeking compensation for the hardship suffered during the periods that they feel they should have been on a tracker rate of interest.

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, outlining the preliminary determination of this office 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.

In order to determine this complaint, it is necessary to review and set out the relevant provision of the Complainants' mortgage loan documentation. It is also necessary to consider details of certain interactions between the Complainants and the Provider from **2007 to 2012**.

I will consider each of the Complainants' four mortgage loan accounts in turn.

Mortgage loan account ending 3246

The Complainants signed a **Loan Approval Certificate Application Form** on **16 April 2007** wherein they sought a mortgage loan in the amount of €370,000 repayable over a term of 25 years.

The Complainants also signed a **Home Loan Application Form** wherein they sought a mortgage loan in the amount of €370,000 repayable over a term of 25 years.

Page 4 of the **Home Loan Application Form** provides as follows:

“...

INTEREST RATE *Variable **Tracker *** Fixed or Split

* Variable interest rates increase and decrease with changes in market rates.

** Tracker interest rates increase and decrease with changes in market rates. If choosing Tracker, please complete the Tracker form enclosed.

*** If choosing a fixed rate, please complete the Fixed Rate section enclosed which outlines terms of conditions associated with fixed rate loans.

...”

I note that the fixed rate option was selected in the application form.

The Complainants signed an **Application for a Fixed Rate Mortgage** on **25 May 2007**, which details as follows:

“We wish to apply for a fixed rate of 370,000 for the first 5 year(s) of our mortgage.

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

..

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

...”

I have not been furnished with evidence to suggest that the Complainants completed a tracker form which appears to have been required if the Complainants wished to explore the option of applying for a tracker interest rate. It appears to me that the Complainants not apply for a tracker interest rate and instead pursued the option of applying for a 5-year fixed interest rate.

The Provider subsequently issued **Mortgage Loan Offer Letter** dated **12 June 2007** to the Complainants which details as follows:

“Type of loan:

<i>Total Amount of loan:</i>	<i>€370,000.00</i>
<i>Monthly Repayment: (Yrs 1-5)</i>	<i>€2,160.83 (See Important Note)</i>
<i>Interest Rate (Yrs 1-5):</i>	<i>4.99% (See Important Note)</i>
<i>After 5 years:</i>	<i>Variable Base (currently 05.00 %)</i>
<i>Repayment Period (Years):</i>	<i>25 Approx.</i>

Important Note on Fixed Rate:

The fixed rate shown is the current rate. It there is an interest rate change before the main loan cheque is issued, the rate will be altered to the fixed rate on offer at the date of cheque issue and this is the rate that will apply to the loan account. If no fixed rate is available at that time, the variable rate will apply. (See General Conditions – 9)

...”

I note that the Complainants signed the **Acceptance** on **27 June 2007** on the following terms:

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

- (i) this Offer Letter in replacement of all previous offer letters;*
- (ii) the General Conditions for [Provider] Home Loans;*
- (iii) the [Provider] Mortgage Conditions;*
- (iv) the [Provider] standard Form of Home Loan Mortgage; and*
- (v) the Rules of [Provider].*

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

The **General Conditions** for the Provider's Home Loans provide as follows:

3. Acceptance of terms and conditions: *By taking the loan from [Provider], the borrower accepts all the terms and conditions set out in the application form, offer letter, these general conditions and the mortgage.*

...

9. Fixed Rate Loans: *Where a member applies for a fixed rate, it will be for a set period of time. When the fixed rate period ends, the loan will convert to a variable interest rate. If [Provider] is then offered a Fixed Home loan rate for a variety of defined periods, the borrower may opt to convert to a fixed rate again at that point, and defer conversion to a variable rate."*

A **File Summary – Completed Loan** dated **16 July 2007** has been submitted in evidence by the Provider, which outlines as follows:

"...

Reference Number: ****3246
Date: 16/07/07
Name/s: [First Complainant]
[Second Complainant]
Mortgage Address: [Redacted]

Original Address: [Redacted]

Total	<u>€370,000.00</u>
Net Loan Cheque	<u>€370,000.00</u>

Solicitors: [Redacted]
Address: [Redacted]

Rate Basis: 5.65% (Fixed Yrs1-5). After 5 years Variable Base Rate
Term: 25 Years

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...”

The Provider issued an **Issue of Loan Cheque** letter to the Complainants dated **16 July 2007** which details as follows:

“I refer to our letter of the 12/06/07. I am pleased to inform you that your loan cheque has been forwarded to your solicitors [Redacted]. I understand that an appointment has been made with your solicitor to complete the transaction.

...

After 5 years the Interest Rate will be: Variable Base Rate (currently 05.25%) (APR 5.6%)

...”

It is clear to me that the **Mortgage Loan Offer Letter** dated **12 June 2007** envisaged that a 5-year fixed interest rate of 4.99% would apply to the Complainants’ mortgage loan account with a “*variable base*” interest rate to apply thereafter. The “*variable base*” interest rate in the Complainants’ mortgage loan documentation made no reference to varying in accordance with variations in the ECB refinancing rate. Mortgage loan account ending **3246** was drawn down on **18 July 2007** on a fixed interest rate of 5.650%.

The evidence suggests that tracker interest rates were on offer generally by the Provider as part of its suite of products when the Complainants applied for their mortgage loan in **April 2007**. However, there was no obligation on the Provider to provide the Complainants with advice on which interest rate they should choose. If the Complainants wished to seek a tracker interest rate on the mortgage loan at the time, the Complainants could have explored this option with the Provider. However, the Complainants opted for a 5-year fixed interest rate.

There is no evidence to suggest that the Complainants were informed by the Provider that the tracker interest rate was not available. The Complainants applied for a mortgage loan with a fixed interest rate and the Provider subsequently offered the Complainants a fixed interest rate. If it was the case that the Complainants were of the view that a fixed interest rate loan was not suitable for them, then the Complainants could have decided not to sign the acceptance or the **Mortgage Loan Offer Letter** or ultimately draw down the loan. The Complainants could have sought an alternative rate with the Provider or with another mortgage provider. However, they did not do so.

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Prior to the expiry of the 5-year fixed interest rate, the Provider issued a letter dated **5 July 2012** to the Complainants which details as follows:

“At the end of this month the fixed rate term of your loan will expire. Your repayment will revert automatically to the current variable rate, you are not required to do anything. The table below illustrates your repayment details. Please note that these figures are based on the applicable variable rate which is subject to change. The repayment amount detailed below is not inclusive of Tax Relief at Source.

Option	Interest Rate	Monthly Repayment	Monthly Insurance Premium	Total Monthly Repayment
Variable	4.330	2,124.79	54.56	2,179.35

If you have any questions please phone a member of our team...”

The Complainants had no contractual entitlement to be offered a tracker interest rate at the end of the fixed interest rate period. I note that the Complainants were offered a variable interest rate on the expiry of the 5-year fixed interest rate period, in line with the terms and condition of their mortgage loan. The mortgage loan account statements submitted in evidence that the Complainants’ mortgage loan account converted to a variable interest rate of 4.33% on **31 July 2012**, in accordance with **General Condition 9** of their mortgage loan documentation.

Mortgage loan accounts ending 1191 and 1043

The Complainants signed a **Buy to Let Application Form** on **7 October 2008** in respect of **mortgage loan accounts ending 1191** and **1043**. Page 4 of the **Buy to Let Application Form** details as follows:

“LOAN DETAILS cont.

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Loan Type (please tick one) *Interest only Repayment/Annuity
Endowment Pension **Variable 50%

***Fixed 50% 3 yrs or Split

*Interest only loans are approved on the basis of the first 5 years subject to review at [Provider] discretion thereafter. Interest only term is available where to Loan to Value is 75% or less.

**Variable interest rates increase and decrease with changes in market rates.

***If choosing a fixed rate, please complete section below which outlines terms of conditions associated with fixed rate loans.

Please give details as to how you wish to split our loan.

Half Tracker Variable
other Half Fixed 3yrs TBA.

...

Important

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

The application form shows that the Complainants applied for a 50% tracker variable rate and a 50% fixed interest rate for 3 years.

The Provider subsequently issued a **Mortgage Loan Offer Letter** dated **4 November 2008** in respect of mortgage loan account ending **1043**, which details follows:

- "1. Amount:** €75,000.00 (seventy five thousand euro)
1. Term & Nature: 30 year Repayment Loan

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- 2. Purpose of Loan:** *Equity release of €150,000 secured against unencumbered residential investment property at [Redacted], €85,000 of which is to clear home loan top-up account ****2246.*
- 3. Rate of Interest:** *Variable at 5.88% p.a.
Rate Basis: Variable Commercial Base Rate"*

The **Principal Details of the Loan** details as follows:

"THE PAYMENT RATES ON THIS COMMERCIAL LOAN MAY BE ADJUSTED BY [PROVIDER] FROM TIME TO TIME"

I note that the Complainants signed the **Acceptance** of mortgage loan account ending **1043** on **11 November 2008** on the following terms:

"We accept your foregoing offer of loan facilities dated 4 November 2008 on the terms thereof.

...

We confirm that we have read the suitability letter which sets out the reasons why the mortgage options selected by us are considered suitable, and agree that the options are appropriate for us and suit our personal circumstances. We also acknowledge that any subsequent changes to any of the options will be made by us on an execution-only basis which means that we will have selected the revised options without having received any advice as to the suitability of the new options."

Mortgage loan account ending **1043** was drawn down on **21 January 2009** on a variable commercial base interest rate of 5.13%.

It is clear to me that the **Mortgage Loan Offer Letter** dated **4 November 2008** in relation to mortgage loan account ending **1043**, envisaged that a variable commercial base interest rate would apply to the Complainants' mortgage loan account. The variable commercial base interest rate in the Complainant's mortgage loan documentation made no reference to varying in accordance with variations in the ECB refinancing rate but rather was one that could be adjusted by the Provider from time to time.

The Complainants contend that the Provider did not offer them a tracker interest rate on mortgage loan account ending **1043** in **2008**. While I note that the Complainants requested a tracker variable interest rate to apply to a portion of their split mortgage loan as part of their application, the Provider submits that tracker interest rates were not available in terms of BTL investment properties and that the main options available to the Complainants were fixed rates, variable rates or a split mortgage. It is important to note

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that the Provider's decision not to offer tracker rates as part of its BTL mortgage products was a business decision that the Provider was entitled to make.

If the Complainants did not want to pursue the option of a variable commercial base rate because they were unhappy with the rate applicable to the BTL mortgage loan, they could have decided not to accept the Provider's offer of this product.

The Provider also issued a **Mortgage Loan Offer Letter** dated **4 November 2008** to the Complainants in respect of mortgage loan account ending **1191** and to fulfil the second part of their request for a split mortgage loan.

Mortgage Loan Offer Letter dated **4 November 2008** details as follows:

- 1. Amount:** €75,000.00 (seventy five thousand euro)
- 2. Term & Nature:** 30 year Repayment Loan.
- 3. Purpose of Loan:** Equity release of €150,000 secured against unencumbered residential investment property at [Redacted], €85,000 of which is to clear home loan top-up account ****2246.
- 4. Rate of Interest:** **Years 1-3 (incl.):**
Fixed at 6.15% p.a.
Rate Basis: 3 year Commercial Fixed Rate
- After year 3:**
Rate Basis: Variable Commercial Base Rate (currently 5.88%p.a.).
- Important Notice:**
The actual rate applicable shall be the rate available from [Provider] on the date of drawdown. using the Rate Basis shown and may be higher or lower than that quoted above.
(See Standard Commercial Loan Condition -16)"

The **Principal Details of the Loan** detail as follows:

"THE PAYMENT RATES ON THIS COMMERCIAL LOAN MAY BE ADJUSTED BY [PROVIDER] FROM TIME TO TIME"

Condition 16 of the Provider's **Standard Commercial Loan Conditions** provides as follows:

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“On expiry of the fixed rate period, the interest rate will convert to the variable rate set out in the Offer Letter. If, at the end of the fixed rate period, [Provider] is offering a fixed rate for a defined period, the borrower may opt to convert to this rate for that period, and defer conversions to a variable Rate.”

I note that the Complainants signed the **Acceptance** of mortgage loan account ending **1191** on **11 November 2008** on the following terms:

“We accept your foregoing offer of loan facilities dated 4 November 2008 on the terms thereof.

...

We confirm that we have read the suitability letter which sets out the reasons why the mortgage options selected by us are considered suitable, and agree that the options are appropriate for us and suit our personal circumstances. We also acknowledge that any subsequent changes to any of the options will be made by us on an execution-only basis which means that we will have selected the revised options without having received any advice as to the suitability of the new options.”

Mortgage loan account ending **1191** was drawn down on **21 January 2009** on a fixed interest rate of 4.90%.

It is clear to me that the **Mortgage Loan Offer Letter** dated **4 November 2008** in relation to mortgage loan account ending **1191**, envisaged that a 3-year fixed interest rate would apply to the Complainants' mortgage loan account with the Provider's variable commercial interest rate to apply thereafter.

The variable commercial base interest rate in the Complainant's mortgage loan documentation made no reference to varying in accordance with variations in the ECB refinancing rate.

The Complainants contend that the Provider did not offer them a tracker interest rate on mortgage loan account ending **1191** in **2008**. As outlined above, tracker interest rates were not available for BTL investment properties and that the main options available to the Complainants were fixed rates, variable rates or a split mortgage. The application form submitted by the Complainants shows that the Complainants requested that a 3-year fixed interest rate be applied to a portion of the split mortgage loan. The Provider subsequently issued a **Mortgage Loan Offer Letter** to the Complainants offering a 3-year fixed interest rate on a portion of their split BTL mortgage loan. If the Complainants did not want to pursue this option because they were unhappy with the rate applicable to the mortgage loan, they could have decided not to accept the Provider's offer.

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Prior to the expiry of the 3 -year fixed interest rate period on mortgage loan account ending **1191**, the Provider issued a letter to the Complainants dated **4 January 2012** which details as follows:

“ ...

At the end of this month the fixed term of your loan will expire. Your repayment will revert back automatically to the current variable rate, you are not required to do anything. The table below illustrates your repayment details. Please note that these figures are based on the applicable rate which is subject to change. The repayment amount detailed below is not inclusive of Tax Relied at Source.

Option	Interest Rate	Monthly Repayment	Monthly Insurance Premium	Total Monthly Repayment
Variable	4.830	295.67	0.00	295.67

If you have any questions please phone a member of our team...”

The Complainants had no contractual entitlement to be offered a tracker interest rate at the end of the fixed interest rate period. I note that the Complainants were offered a variable interest rate on the expiry of the 3-year fixed interest rate period, in line with the terms and condition of their mortgage loan.

The mortgage loan account statements submitted in evidence show that the Complainants’ mortgage loan account converted to a variable interest rate of 4.83% on **31 January 2012**, in accordance with **General Condition 9** of their mortgage loan documentation.

Mortgage loan account ending 0934

The Complainants signed a **Buy to Let Application Form** on **7 October 2008** in relation to mortgage loan account ending **0934**, which details as follows:

“LOAN DETAILS cont.

Loan Type (please tick one) *Interest only Repayment/Annuity
Endowment Pension **Variable

/Cont’d...

***Fixed or Split

**Interest only loans are approved on the basis of the first 5 years subject to review at [Redacted] discretion thereafter. Interest only term is available where to Loan to Value is 75% or less.*

***Variable interest rates increase and decrease with changes in market rates.*

****If choosing a fixed rate, please complete section below which outlines terms of conditions associated with fixed rate loans.*

Please give details as to how you wish to split our loan.

....

Important

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

A variable interest rate option was selected by the Complainants.

The Provider issued a **Suitability Statement** dated **04 November 2011** to the Complainants which provides as follows:

Interest Rate Type

Standard Variable Rate

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

..."

/Cont'd...

The Provider issued a **Mortgage Loan Offer Letter** dated **4 November 2008**, which details as follows:

- | | |
|------------------------------|---|
| 1. Amount: | €90,000.00 (ninety thousand euro) |
| 2. Term & Nature: | 30 year Repayment Loan |
| 3. Purpose of Loan: | Towards the purchase of a new residential investment property at [Redacted] |
| 4. Rate of Interest: | Variable at 5.88% p.a.
Rate Basis: Variable Commercial Base Rate" |

The **Principal Details of the Loan** detail as follows:

"THE PAYMENT RATES ON THIS COMMERCIAL LOAN MAY BE ADJUSTED BY [PROVIDER] FROM TIME TO TIME"

The first Complainant signed the acceptance of mortgage loan account ending **0934** on **6 November 2008** and the second Complainant signed the acceptance on **11 November 2008** on the following terms:

"We accept your foregoing offer of loan facilities dated 4 November 2008 on the terms thereof.

The anticipated drawdown date of the loan facility is end of January 2009.

We confirm that we have read the suitability letter which sets out the reasons why the mortgage options selected by us are considered suitable, and agree that the options are appropriate for us and suit our personal circumstances. We also acknowledge that any subsequent changes to any of the options will be made by us on an execution-only basis which means that we will have selected the revised options without having received any advice as to the suitability of the new options."

The Complainants contend that the Provider did not offer them a tracker interest rate on mortgage loan account ending **0934** in **2008**. As previously mentioned, tracker interest rates were not available for BTL investment properties and that the main options available to the Complainants were fixed rates, variable rates or a split mortgage. The application form submitted by the Complainants shows that the Complainants applied for a variable interest rate. The Provider subsequently issued a **Mortgage Loan Offer Letter** to the Complainants offering variable commercial base rate. If the Complainants did not want to pursue this option because they were unhappy with the rate applicable to the mortgage loan, they could have decided not to accept the Provider's offer.

/Cont'd...

It appears from the Complainants' submissions that they are of the view that the Provider's employees advised them that tracker interest rate options were not available in respect of all four mortgage loan accounts. The Complainants appear to suggest that they were dissuaded in some way by the Provider from choosing a tracker interest rate on mortgage loan account ending **3246** in **June 2007**. I have been provided with no evidence that the Provider's employees advised the Complainants against selecting a tracker interest rate during the mortgage application process in **2007**. Moreover, it is difficult to understand how it would have been of benefit to the Provider's employees to seek to dissuade the Complainants from applying for a tracker rate of interest. In any event, if indeed 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 and not from the Provider.

It is clear to me that the Complainants applied for a mortgage loan on a fixed interest rate and the Provider offered the Complainants a fixed interest rate, which was accepted by the Complainants. If it was the case that the Complainants were of the view that the fixed interest rate loan was not suitable for them, then the Complainants could have decided not to accept the loan offer and ultimately draw down mortgage loan account ending **3246** and instead, seek an alternative rate with the Provider or with another mortgage provider. However, the Complainants did not do so.

The Provider submits that at no point did it offer tracker interest rates on BTL mortgage loan products. In this regard, I accept that the Provider operates as a business and is entitled to offer products and set interest rate options based on its own commercial discretion. The Provider's decision to not offer tracker interest rates on BTL mortgage loan products in **2008** or at any other time was a commercial decision the Provider was entitled to make. Therefore, I am of the view that the Provider was not under any obligation to offer the Complainants a tracker interest rate option on the mortgage loan accounts ending **1043**, **1191** and **0934** in **November 2008**, or at any other time.

The evidence shows that the choice to take out the four mortgage loans on the terms and conditions offered by the Provider in **2007** and **2008** was a choice that was freely made by the Complainants.

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

Conclusion

/Cont'd...

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

4 November 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.