



<u>Decision Ref:</u>	2021-0480
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Tracker Mortgage
<u>Conduct(s) complained of:</u>	Failure to offer a tracker rate throughout the life of the mortgage
<u>Outcome:</u>	Rejected

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

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

The loan amount was €317,400 and the term of the loan was 35 years. The Mortgage Loan Offer Letter which was signed by the Complainant on **17 September 2006** detailed that the interest rate was "3.500% Variable".

**The Complainant's Case**

The Complainant details that he signed and accepted a loan offer from the Provider on **17 September 2006** in the amount of €317,500 over a term of 35 years on a staff interest rate of 3.5%.

The Complainant submits that when he was applying for the mortgage loan account in **2006**, there were "6 or 7 alterations" made to the offer letter before the final offer letter was issued. He states that the sixth version provided for a tracker interest rate, but the seventh and final version provided for a staff rate. The Complainant contends that he is "almost 100% sure" that he was offered a tracker interest rate on all of the previous versions.



The Complainant states that he does not understand why the interest rate would have been amended in this manner on the final offer letter as he *“never asked for an amendment to the offer letter from a pricing perspective as I think the main adjustments related to security requirements or preconditions.”* He asserts that he can *“only deduce that the final offer letter was sent to [him] in error with the incorrect rate attached”*. He further submits that he can *“only assume that [he] did not pay attention to the 7th draft of the offer letter when [he] previously had signed version 6 with the expectations that there would be no changes to version 7.”* He further states that *“I can also assume that if I did notice the error that I was not worried about the change as I had intended to fix my mortgage anyway and knew that I would be rolling to a tracker rate at the end of the fixed period given that [the Provider] had clearly stated that moving to the 2 year fixed rate would mean that I would automatically roll to a tracker on maturity.”*

The Complainant states that he is *“sure that [he] would have spoken to [his] solicitor in the early stages of the application process but by the time version 7 of the offer letter was issued, there would have been no point to go through the documents in detail with [his] solicitor.”*

The Complainant states that in **November 2006**, the Provider issued a notice on its staff intranet which offered a 2-year staff fixed interest rate mortgage that would roll on to a tracker interest rate of ECB + 0.75% at the end of the fixed period. The Complainant submits that this offer was available to all staff members of the Provider regardless *“of whether they had ever availed of a tracker rate before that point”*.

The Complainant states that consequently he signed a **Mortgage Form of Authorisation** (“MFA”) applying the 2-year staff fixed interest rate of 3.95% to the mortgage loan account in or around **January 2007**. He details that prior to him signing the MFA in or around **January 2007**, Provider’s staff were *“consistently and clearly told”* by the Provider that they would have the option to roll on to the tracker interest rate on the expiry of the fixed rate period.

The Complainant submits that *“... [the Provider] heavily pushed the staff 2 year fixed rate and as mentioned previously, that product was to roll to a tracker rate on maturity. [The Provider] assume in their response that I selected the 2 year fixed rate because it offered the lower rate at the time”*. He states that *“I can confirm that I selected the 2 year fixed rate because I wanted assurances over my mortgage payments for the 1<sup>st</sup> two years of my mortgage and I also wanted assurances that I knew the product would roll to a tracker rate on maturity.”*



The Complainant submits that the Provider issued a further notice on the staff intranet on **9 October 2008** to state that it was withdrawing tracker mortgages but confirming that *"Staff who are currently on the Staff 2-year Fixed Rate- currently 3.95% - will roll to ECB +0.75% ... as per their original signed mortgage agreement"*. The Complainant contends that the intranet notice from **November 2006** did not mention that staff would roll onto the tracker rate at the end of the fixed rate period *"as per original signed mortgage agreement"*.

He outlines that *"[Provider] senior management made a decision to withdraw the tracker on the 10/10/08 but they didn't seem to tell their mortgage staff this decision who told [Provider] members in the days running up to and including the 10/10/08, in writing and verbally that they would roll to a tracker on the same day the tracker was supposed to be withdrawn. This provided other staff members (who didn't have direct engagement with [Provider] mortgage staff in this period) comfort that there was no need to break out of the 2 year fixed product as staff members speak to each other."* He further states that *"It must be noted that numerous staff called [Provider] mortgage staff in early Oct 08 (as there was a rumour the tracker option would be withdrawn) to receive assurances that the tracker was still available at the end of the 2 year fixed term. In some of these conversations staff members were told by [Provider] mortgage staff to look at the mortgage link system as proof you automatically rolled to a tracker."*

The Complainant states that the Provider has submitted that he could have changed to a tracker rate up to **October 2008** when the product was withdrawn. He states that *"This is incorrect as [the Provider] had clearly informed all staff that were in the staff 2 year fixed rate, that they would roll to a tracker rate on maturity of the fixed rate product. I have to ask the question, why would I request a tracker when the 2 year fixed was supposed to "automatically roll to a tracker"?"* He submits that *"Otherwise hundreds of staff would have accepted the minimal break out fee to ensure they switched to a tracker. But the reason this didn't happen was because [Provider] staff misled staff and told them to stay in the 2 year fixed, as there was no need to break out because you automatically would roll to a tracker."* He states that consequently, he had no incentive to request to break from the fixed interest rate early to apply a tracker interest rate to the mortgage loan account.

The Complainant states that in **November 2008** he received a letter from the Provider *"stating that they were going to offer [him] a tracker rate at the end of [his] fixed rate period"*. The Complainant submits however that the Provider subsequently *"withdrew"* this offer.



On the expiry of the fixed rate period in or around **January 2009**, the Complainant states that the Provider did not offer him a tracker interest rate. He states that *"[The Provider] noted that my mortgage rolled to a variable rate of 3.75% in Jan 2009 in the absence of selecting a suitable option. [The Provider] didn't mention in the response that I had sent a complaint to them at that time about the rate offered as I was sure that I should have been offered the tracker option based on all the information that they provided to staff"*.

The Complainant states that he and other staff of the Provider *"have proof that we had a reasonable expectation of a tracker from advertisements and staff engagements and its important these are taken into consideration by the FSO. [The Provider] have left all this information out of their response because when all this is considered along with other items mentioned above and [the Provider's] transparency obligations are taken into account any reasonable person would have an expectation of a tracker."*

The Complainant states that the Provider has breached the **Consumer Protection Code** by not offering him a tracker interest rate on the expiry of the fixed rate period.

The Complainant submits that he has been *"under severe financial pressure for the last 5 years"* and has had to sell his family home. He is seeking *"compensation for all losses that [he] has incurred"*.

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

The Provider states that in **2006** the Complainant made an application for a loan in the amount of €310,000 on a staff tracker rate of ECB + 0.85% in order to purchase a new primary dwelling house. It outlines as follows:

- A loan offer letter was issued to the Complainant on **11 April 2006** which provided for a loan in the amount of €310,000 over a term of 30 years on a staff tracker rate of 3.35% (ECB + 0.85%). The Provider states that the Complainant did not sign or return this offer letter.
- A further loan offer letter was issued to him on **24 April 2006** which provided for a loan in the amount of €317,400 over a term of 35 years on a staff tracker rate of 3.35% (ECB + 0.85%). The Provider states that the Complainant did not sign or return this offer letter.
- A further loan offer letter was issued to him on **28 April 2006** which provided for a loan in the amount of €322,000 over a term of 35 years on a staff tracker rate of 3.35% (ECB + 0.85%). The Provider states that the Complainant did not sign or return this offer letter.



The Provider submits that the Complainant signed and accepted a **Mortgage Loan Offer Letter** on **17 September 2006**, which provided for a loan in the amount of €317,400 over a term of 30 years. The Provider states that the interest rate applicable to this loan was a staff non-standard rate of 3.50%, and that the Offer Letter did not contain a contractual entitlement to a tracker rate of interest.

The Provider details that the Complainant drew down the initial stage payment of €201,900 on **23 October 2006** and the remaining amount of €115,500 on **10 November 2006**.

The Provider details that the applicable tracker interest rate increased from 3.35% in **April 2006** to 3.85% in **September 2006** due to an increase in the ECB Repo rate to 3% on **3 August 2006**. It therefore submits that it is its *“respectful view”* that this change in the applicable tracker rate may have been a factor in the Complainant’s decision to amend his interest rate preference from a tracker rate to a staff non-standard variable rate, which was 3.50% in **September 2006**. The Provider asserts that the decision in respect of the choice of interest was *“a matter entirely for the Complainant and based on his determination of the rate which best suits his needs at that time”*.

The Provider details that if the Complainant was unsure about the interest rate applicable to the mortgage loan account at drawdown, *“the Complainant had the benefit of independent legal advice”* during the application process. The Provider submits that should the Complainant have had any queries about the terms and conditions of the Offer Letter, he was in a position to seek independent advice from his solicitor in that regard. It further states that it was *“entirely open to the Complainant to request the Offer Letter to be reissued (clearly being familiar with such requests) with a tracker rate of interest prior to signing and accepting the terms and conditions of the Offer Letter, including the staff non-standard variable interest rate”*.

The Provider submits that **General Condition 7(b)** of the Offer Letter *“clearly and unequivocally”* states that the Provider has the *“sole discretion”* upon expiry of any fixed rate period, to provide *“a further fixed rate period, a choice of rates and if either of these is not selected, then the mortgage will revert to a variable rate”* described in **Special Condition 4(a)(vi)**. It states that should the Complainant cease to be employed by the Provider, the mortgage loan account would move to the *“prevailing home loan variable rate”*. It states that a variable rate has been defined in **General Condition 6(a)** and it is *“clear”* that it does not include a tracker rate of interest.



The Provider states that **Special Condition 4(a)(vi)**, and **General Conditions 6(a)** and **7(b)** are clear, concise and comprehensible, and the Complainant accepted those conditions when he signed and accepted the Offer Letter. It states that he was on notice of the fact that *“a variable interest rate which could be amended with reference to the BIK reference rate or the cost of funds reference rate, rather than a tracker interest rate, would apply to the mortgage loan account in default of an alternative interest rate being offered and/or selected upon expiry of any fixed rate period.”*

The Provider states that further to the **2006** budget, the BIK reference rate, which the staff non-standard variable rate tracks, was changed from 3.50% to 4.50% with effect from **1 January 2007**. It states that in response to this, the Provider offered a number of alternative staff rates, specifically a staff tracker rate of ECB + 0.75% (4.25% at the time) and the staff two-year fixed rate of 3.95%. It states that the new staff preferential interest rates were offered by way of a notice published to the Provider’s intranet on **21 December 2006**.

The Provider submits that of the three options, including the option to remain on the staff preferential rate of 4.50%, the staff fixed rate of 3.95% was the lowest rate on offer at that time. It states that it is *“reasonable to assume that this would have factored into the Complainant’s decision to download and completed [sic] the January 2007 MFA instructing the Provider to switch his mortgage loan account to the staff 2 year fixed rate”*.

The Provider states that it is satisfied that the notice advertising the staff 2-year fixed rate, and the **MFA** to switch to the fixed rate were both *“clear and transparent”* with respect to the interest rate that would apply on expiry of the fixed rate period in **January 2009**, when read in conjunction with the Offer Letter itself. It further states that at no point in the notice of **21 December 2006** is it suggested that by moving to the staff 2-year fixed rate, an entitlement to roll on to a tracker rate thereafter is created. It submits that the terms and conditions expressed in the notice state that *“Staff will be advised of their rollover options a number of weeks prior to the expiry of the fixed term.”* The Provider further submits that it is *“satisfied that this does not give rise to any expectation that the staff 2 year fixed rate would roll to a tracker rate.”*

The Provider details that the **Mortgage Form of Authorisation (MFA)** signed and accepted by the Complainant on **3 January 2007** switched the mortgage loan account to the staff 2-year fixed rate of 3.95%. It states that the MFA provided that *“Save as set out in this Form of Authorisation, all the terms and conditions applicable to the Loan remain unchanged.”*



The Provider states that there is “no ambiguity, lack of clarity or vagueness contained in” the **January 2007 MFA** “when read in conjunction with the Offer Letter, concerning the rate which the Complainant’s mortgage loan account would revert to upon expiry of the fixed rate period.”

The Provider submits that on **5 January 2009**, the mortgage loan account rolled to a variable rate of 3.75% in accordance with the terms and conditions of the Offer Letter and in the absence of the Complainant selecting an alternative rate option.

The Provider states that the Complainant signed and accepted an MFA on **20 April 2010**, which applied a 2-year fixed rate of 3.15% to the Complainant’s mortgage loan account.

The Provider details that by way of MFA signed and accepted by the Complainant on **10 April 2011**, the mortgage loan account moved to a 3-year fixed rate of 4.2%.

The Provider details that on **22 April 2014**, the mortgage loan account rolled to the variable rate of 4.50% in accordance with the terms and conditions of the Offer Letter and in the absence of the Complainant selecting an alternative rate option.

The Provider submits that in **April 2018**, the Complainant’s mortgage loan account was partially redeemed when the security address was sold at a shortfall. It submits that on **21 June 2018**, the mortgage loan account was switched to a 10-year fixed residual debt rate of 0.0005% which it remains on to this date.

The Provider submits that it was “at all times open between January 2007 and 10 October 2008 for a customer to approach the Provider with a request to move their mortgage loan account to a tracker interest rate.”

### **The Complaints for Adjudication**

The complaints for adjudication are that:

- (a) The Provider failed to advise the Complainant that the MFA signed in or around **January 2007** in respect of mortgage loan account ending **6968** did not provide for a tracker interest rate on the expiry of the fixed interest rate period;
- (b) The Provider failed to offer the Complainant a tracker interest rate on mortgage loan account ending **6968** on the expiry of the 2-year fixed interest rate period in or around **January 2009**; and



- (c) The Provider failed to convert the mortgage loan account ending in **6968** to the tracker interest rate when requested to do so in or around **April 2009**.

### **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 do 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 are sufficient to enable a Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties on **05 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.

Following the issue of my Preliminary Decision, the Complainant made further submissions under cover of e-mails to this office dated **22 October 2021** and **11 November 2021**, copies of which were transmitted to the Provider for its consideration. The Provider has not made any further submission.

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

I note from the outset that the Complainant, in his post Preliminary Decision submission dated **11 November 2021**, submits that *"the complaint that [he] clarified in February 2020 is not what is up for adjudication by the Ombudsman."*

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I have reviewed the Complainant's email to this office dated **25 February 2020** whereby he stated that *"In summary in the period before entering the product and up to 22 months into a 24-month product, [the Provider] at all stages re-assured [him] that [he] would have the option to roll to a tracker product at the end of [his] fixed rate period" and "As such [he] had no incentive to break out of the fixed rate product (at any time before mid-October 2008 – over 90% of duration of Fixed rate period) given these continued assurances"*.

The Complainant, in his post Preliminary Decision submission dated **11 November 2021**, submits that his *"complaint focuses on my rights under the Consumer protection code and details what [he] was told, where [he] was misled, where it was confusing and where [he] wasn't given sufficient time to make a decision"*.

Having considered the communications between the Complainant and this office during the investigation and adjudication process of the Complainant's complaint, I am satisfied that the complaints for adjudication as set out in my Preliminary Decision dated **05 October 2021** and as detailed above on page 7 of this Decision, are an accurate reflection of the complaints for adjudication and detailed in the Summary of Complaint that issued from my office on **03 March 2020** and as set out in the Complainant's email to this office on **25 February 2021**. For the avoidance of any doubt, I can confirm that I have had due regard to all applicable legislation, codes of conduct, standards and regulations in my determination of this complaint.

In order to determine this complaint, it is necessary to review the relevant provisions of the Complainant's mortgage loan documentation and to consider certain interactions between the Complainant and the Provider between **2006** and **2009**.

At the outset I note that the Complainant has furnished into evidence an internal publication of the Provider dated **16 February 2006** which details;

*"Attn: Mortgage Origination Staff – [Provider] Network – Republic Only*

*Re: [Provider] Mortgage Rates – Thursday 16 February*

...

*Attractive New Tracker Mortgage for Home Loan Customers*

*We are delighted to introduce a new home loan tracker mortgage offering customers the choice of a 1-year discounted ECB + 0.85% rolling to ECB + 1.25% (APR 3.5%) or a 2-year discount ECB + 0.95% rolling to ECB + 1.25% (APR 3.5%).*

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*This new mortgage offering is available to all new mortgage customers irrespective of loan amount and loan-to-value.*

...

*It is important to note that all new products (discount tracker and fixed) will now roll to ECB + 1.25%. This eliminates the current scenario whereby all fixed rates roll to the standard variable rate (3.7% APR 3.8%). From now on, the letter of offer will reflect this change and make the quoted APR more competitive.*

...

*Other home loan fixed rates will increase as follows:*

<i>Product</i>	<i>Rate</i>	<i>...</i>
<i>1 year fixed rolling to ECB + 1.25% (new)</i>	<i>3.65%</i>	
<i>1 year fixed rolling to ECB + 1.25% (existing)</i>	<i>3.99%</i>	
<i>2 year fixed rolling to ECB + 1.25% (existing)</i>	<i>4.21%</i>	
<i>3-year fixed rolling to ECB + 1.25% (new &amp; existing)</i>	<i>4.25%</i>	
<i>4-year fixed rolling to ECB + 1.25% (new and existing)</i>	<i>4.35%</i>	
<i>5 year fixed rolling to ECB + 1.25% (new and existing)</i>	<i>4.45%</i>	<i>...</i>

..."

In my view the above publication is not relevant to the Complainant's mortgage loan account, in circumstances where the Complainant's signed **Mortgage Loan Offer Letter** dated **12 September 2006** did not provide for either an initial fixed interest rate or an initial discounted tracker interest rate.

The Complainant has submitted that there were "6 or 7 alterations" made to the offer letter before the final offer letter was issued.

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I note that a **Mortgage Loan Offer Letter** was issued to the Complainant dated **11 April 2006** which provided for a loan amount of €310,000 over a term of 30 years.

**Part 1 – The Statutory Loan Details of the Mortgage Loan Offer Letter** details as follows:

"1. Amount of credit advanced:		€310,000
2. Period of Agreement:		30 Years
3. Number of Repayment Instalments	Instalment Type	4. Amount of each Instalment
360	Variable at 3.350%	€1,364.61
...		
APR*:	3.4%	
...		

\*Annual Percentage Rate of Charge"

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

"11. Type of Loan: Repayment  
12. Interest Rate: 3.350% Variable"

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

"(a) The following Special Conditions apply to the Loan:

....

(iii) The interest rate applicable to the Loan is a variable interest rate and may vary upwards or downwards. The interest rate shall be no more than 0.85% above the European Central Bank Main Refinancing Operations Minimum Bid Rate ("Repo Rate") for the term of the loan."

It is clear that the Loan Offer Letter dated **11 April 2006** provided for a tracker interest rate of ECB + 0.85% (3.35%). However, it does not appear from the evidence that the Complainant signed or accepted this loan offer or that the loan proceeded to drawdown.

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The Provider's internal mail dated **20 April 2006** states:

*"Purchase of [redacted address] has fallen through and customer now looking to purchase new property ...*

*Purchase Price e350K*

*Looking for new mortgage of e322k (over 35 year term if possible)  
..."*

It appears that the Complainant sought to increase the loan amount on **20 April 2006** in circumstances where the details of the proposed security property had changed.

A further **Mortgage Loan Offer Letter** was issued to the Complainant dated **24 April 2006** which provided for a loan amount of €322,000 over a term of 35 years.

**Part 1 – The Statutory Loan Details** of the **Mortgage Loan Offer Letter** details as follows:

"1. Amount of credit advanced:		€322,000
2. Period of Agreement:		35 Years
3. Number of Repayment <u>Instalments</u>	<u>Instalment Type</u>	4. Amount of each <u>Instalment</u>
420	Variable at 3.350%	€1,301.24

...

APR\*: 3.4%

...

*\*Annual Percentage Rate of Charge"*

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

"11. Type of Loan:	Repayment
12. Interest Rate:	3.350% Variable"

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

*“(a) The following Special Conditions apply to the Loan:*

*....*

- (iii) This offer replaces our offer of 24/04/2006.*
- (iv) The interest rate applicable to the Loan is a variable interest rate and may vary upwards or downwards. The interest rate shall be no more than 0.85% above the European Central Bank Main Refinancing Operations Minimum Bid Rate (“Repo Rate”) for the term of the loan.”*

It is clear that the Loan Offer Letter dated **24 April 2006** provided for a tracker interest rate of ECB + 0.85% (3.35%). Again, it does not appear from the evidence that the Complainant signed or accepted this loan offer on the above referenced terms and conditions.

The Provider’s internal mail dated **24 April 2006** states:

*“...*

*Purchase price is e345K ... New Loan amount sought is e317,00.*

*Please issue revised offer letter.”*

The Provider’s internal mail dated **27 April 2006** states:

*“Hi ... address has changed again in this case ...*

*Please issue revised offer letter.”*

It appears that the Complainant sought to amend the required loan amount on **24 April 2006**.

Consequently, a third **Mortgage Loan Offer Letter** was issued to the Complainant dated **28 April 2006** which provided for a loan amount of €317,400 over a term of 35 years.

**Part 1 – The Statutory Loan Details of the Mortgage Loan Offer Letter** details as follows:

<i>“1. Amount of credit advanced:</i>	<i>€317,400</i>
<i>2. Period of Agreement:</i>	<i>35 Years</i>

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<i>3. Number of Repayment <u>Instalments</u></i>	<i><u>Instalment Type</u></i>	<i>4. Amount of each <u>Instalment</u></i>
420	Variable at 3.350%	€1,282.65

...

APR\*: 3.4%

...

*\*Annual Percentage Rate of Charge"*

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

<i>"11. Type of Loan:</i>	<i>Repayment</i>
<i>12. Interest Rate:</i>	<i>3.350% Variable"</i>

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

*"(a) The following Special Conditions apply to the Loan:*

*....*

- (iii) This offer replaces our offer of 25/04/2006.*
- (iv) The interest rate applicable to the Loan is a variable interest rate and may vary upwards or downwards. The interest rate shall be no more than 0.85% above the European Central Bank Main Refinancing Operations Minimum Bid Rate ("Repo Rate") for the term of the loan."*

It is clear that the Loan Offer Letter dated **28 April 2006** provided for a tracker interest rate of ECB + 0.85% (3.35%). The Complainant signed and accepted this loan offer on the above referenced terms and conditions on **02 May 2006**. However, it appears that the loan did not proceed to drawdown.

The Provider's internal mail dated **8 September 2006** states:

*"Please confirm set up for stage payments*

*Please reissue offer at 3.5%"*

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It appears that the loan offer was re-issued in **September 2006** to allow for the provision of stage payments and to amend the interest rate from the tracker interest rate to the staff non-standard variable rate of 3.5%. No evidence has been provided to me of any discussions or dialogue between the Provider and the Complainant at this time in relation to the interest rate that would apply to the mortgage loan account.

A **Mortgage Loan Offer Letter** was issued to the Complainant dated **12 September 2006** which provided for a loan amount of €317,400 over a term of 35 years.

**Part 1 – The Statutory Loan Details of the Mortgage Loan Offer Letter** details as follows:

"1. Amount of credit advanced:		€317,400
2. Period of Agreement:		35 Years
3. Number of Repayment <u>Instalments</u>	<u>Instalment Type</u>	4. Amount of each <u>Instalment</u>
420	Variable at 3.500%	€1,309.91

...

APR\*: 3.5%

...

*\*Annual Percentage Rate of Charge"*

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

"11. Type of Loan:	Repayment
12. Interest Rate:	3.500% Variable"

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

*"(a) The following Special Conditions apply to the Loan:*

....

*(iv) This offer replaces our offer of 28/04/2006.*

...

/Cont'd...



(vi) In the event of the Borrower (or both Borrowers where both are members of the permanent staff of the Bank or [Provider] Group) ceasing to be employed by the Bank or [Provider] Group the Staff Mortgage Rate shall cease and the interest rate applicable to the Loan shall immediately revert to the prevailing Homeloan Variable Rate or such other rate which the Bank may, at its absolute discretion, offer to the Borrower. The interest rate applicable to the Loan is a variable interest rate and may vary upwards or downwards. The rate shall be the higher of the two following indicators: (1) the prevailing Revenue Commissioners BIK (Benefit in Kind) reference rate; (2) the one month Cost of Funds reference rate (which is equivalent to the one month EURIBOR rate issued by Bank of Ireland Global markets on a daily basis). In the event that the Staff Mortgage Rate is certified by the Bank to be unavailable for any reason the interest rate applicable to the Loan shall be the prevailing Home Loan Variable Rate.”

The **Mortgage Loan Offer Letter** also details the following:

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

**General Condition 5 of Part 5 – The General Conditions of the Mortgage Loan Offer Letter** details as follows:

**“5. General Interest Rate Provisions**

- (a) Interest at the fixed or variable interest rate prevailing from time to time during the term of the Loan, shall be calculated on the daily balance outstanding and shall be compoundable at such monthly, quarterly or other periodic rests as the Lender shall, from time to time and at any time, at its absolute discretion, determine.
- (b) Any variation in the interest rate (whether an adjustment of interest rate as between one fixed rate period and another fixed rate period or any variation in the variable rate) may be accommodated at the discretion of the Lender by way of: (i) an adjustment to the amount of the regular repayments during the remaining term of the Loan; or (ii) an adjustment to the number of repayments within the remaining term of the Loan; or (iii) an adjustment in the amount of the final repayment; or (iv) an adjustment in the term of the Loan.

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- (c) *Any sum not paid by the Borrower to the Lender by its due date shall be subject to an additional interest charge of 0.5% per month or part of a month (i.e. 6% per annum) subject to a minimum charge of €2.54 per month from such due date until payment and is charged monthly on the arrears balance at the end of that month. This is in addition to the relevant interest charge and shall accrue both before and after any judgement and shall be charged to the Borrower's accounts and payable at the same time and in the same manner as the relevant interest charge. The said rate or minimum charge may at any time and from time to time be changed by the Lender at its absolute discretion. The Lender shall give the Borrower at least one month's prior notice in the event of any such change occurring during the term of the Loan.*

*Any such additional interest charge is intended to constitute liquidated damages to the Lender including the Lender's increased administration and related charges due to the Borrower's default. Notwithstanding clause 1(c) the Lender may give notice to the Borrower under this clause by any means it considers reasonable."*

**General Conditions 6 and 7 of Part 5 – The General Conditions of the Mortgage Loan Offer Letter** detail as follows:

**"6. Variable Interest Rates**

- (a) *Subject to clause 6(c), at all times when a variable interest rate applies to the Loan the interest rate chargeable will vary at the Lender's discretion upwards or downwards. If at any time a variable rate of interest applies, repayments in excess of those agreed may be made at any time during the term of the Loan without penalty.*
- (b) *The Lender shall give notice to the Borrower of any variation of the interest rate applicable to the Loan, either by notice in writing served on the Borrower in accordance with clause 1(c) above, or by advertisement published in at least one national daily newspaper. Such notice or advertisement shall state the varied interest rate and the date from which the varied interest rate will be charged.*
- (c) *Notwithstanding anything else provided in this Offer Letter, the varied applicable interest rate shall never, in any circumstances, be less than 0.1% over one month's money at the Euro Inter Bank Offered Rate (EURIBOR)."*

/Cont'd...



## **7. Fixed Interest Rates**

- (a) *The Lender may at its absolute discretion permit the Borrower to avail of a fixed interest rate in respect of all or any part of the Loan. In the case of a fixed rate loan, the interest rate shall, subject to these Conditions, be fixed from the date of draw down for the fixed period stated in this Offer Letter. **The fixed rate of interest set out in this Offer Letter is the fixed rate which would apply were the Loan drawn down today. There is no guarantee that the fixed rate so stated will be available when the Loan is in fact drawn down.***

***The actual fixed rate that shall apply shall be the Lender's fixed rate available for the fixed period selected by the Borrower at the date of draw down.***

- (b) *The Lender shall have sole discretion to provide any further or subsequent fixed rate period. If the Lender does not provide such a further or subsequent fixed rate period or if the Lender offers the Borrower a choice of interest rate at the end of any fixed rate period and the Borrower fails to exercise that choice, then in either case the interest rate applicable to the Loan will be a variable interest rate.*
- (c) *In the case of a fixed rate loan, in the event of early repayment of the Loan in whole or in part for any reason, or conversion to a variable interest rate, or other fixed rate within the initial fixed rate period or any further or subsequent fixed rate period, the Borrower will be liable today a sum to be calculated in accordance with the following formula:  $(\text{Amount} \times (R - R1) \times \text{Time})$  divided by 36500 and for the purpose of this formula, the variables are defined as follows: "Amount means the average balance of the amount repaid early or converted from the date of repayment or conversion to the end of the fixed rate term, allowing for scheduled repayments; in the case of an endowment loan, this will equal the full amount of the early repayment or conversion. "R" means the cost of funds for the Lender for the fixed rate period as incorporated in the existing interest rate applying to the Loan. "R1" means the interest rate available to the Lender for funds placed in the money market on the date of early repayment or conversion for the remainder of the relevant fixed rate period. "Time" means the number of days from the date of early repayment or conversion to the end of the relevant fixed rate period.*



(d) *At the Borrower's request, the Lender may, at its absolute discretion agree to add any sum payable in accordance with clause 7(c) to the principal amount from time to time owing and this may be accommodated at the discretion of the Lender by way of: (i) an adjustment to the amount of the regular repayments during the remaining term of the Loan; or (ii) an adjustment to the number of repayments within the remaining term of the Loan; or (iii) an adjustment in the amount of the final repayment; or (iv) an adjustment in the term of the Loan AND it shall be a condition of any such adjustment that then Borrower shall immediately effect, maintain and assign to the Lender a suitably amended Life Policy (of Endowment Policy as appropriate) in respect of this additional amount."*

The Complainant signed the **Borrower's Acceptance and Consents** of the **Mortgage Loan Offer Letter** on **17 September 2006** on the following terms:

*"I confirm that I have read and fully understand the Consumer Credit Act notices, set out above, and the terms and conditions contained in this Offer Letter and I confirm that I accept this Offer Letter on such terms and conditions."*

It is clear to me that the **Mortgage Loan Offer Letter** provided for a variable interest rate of 3.5% which *"may vary upwards or downwards"*. If the Complainant ceased to be employed by the Provider, then the applicable staff mortgage interest rate would no longer apply and the Provider's Homeloan variable rate would apply instead.

The **Special Conditions** attached to the Mortgage Loan Offer Letter state that the offer replaced the offer of **28 April 2006**. There is no mention in the Mortgage Loan Offer Letter of **12 September 2006** about the application of a tracker interest rate to the Complainant's mortgage loan. For the Complainant to have a contractual right to apply a tracker interest rate to the mortgage, that right would have to have been specifically outlined in the mortgage loan documentation, that was signed by the parties. However, no such right was set out in writing in the **Mortgage Loan Offer Letter** dated **12 September 2006**.

The Complainant, in his post Preliminary Decision submission dated **22 October 2010**, submits that *"the bank provided no proof that [he] requested an amendment to the rate for [his] new offer letter in Sept 2006."*

I would point out that the **Special Conditions** of the **Mortgage Loan Offer Letter** dated **12 September 2006** clearly detailed that the **Mortgage Loan Offer Letter** dated **12 September 2006** replaced the previous loan offer that issued to the Complainant.



If the Complainant was not happy with or did not fully understand the terms of the revised facility letter, including the type of interest rate that would apply, the Complainant could have decided not to accept the offer made by the Provider, or he could have requested a tracker interest rate for the mortgage loan before accepting the offer. Instead, the Complainant signed the **Borrower's Acceptance and Consents** on **17 September 2006** confirming that he had read and fully understood the terms and conditions contained in the **Mortgage Loan Offer Letter** dated **12 September 2006**.

The Provider was free to exercise its commercial discretion in making a loan offer to the Complainant providing for such terms and conditions that it considered appropriate; equally, it was open to the Complainant to decline the offer if he was dissatisfied with the interest rate that would apply.

I note from the **mortgage loan statement** that the amount of €201,900.00 was drawn down on **24 October 2006** on the staff rate of 3.5% and the remaining balance of €115,500.00 was drawn down on **13 November 2006**.

The Provider issued an internal communication through its staff intranet on **21 December 2006** which detailed as follows:

*"Staff 2 year Fixed Rate*

*Information on the staff 2 year fixed rate- The closing date for applications has passed*

*...*

***Will there be Benefit-in-Kind?***

*Yes, you will be liable for Benefit-in-Kind (BIK) if you opt for new staff 2 year fixed rate mortgage. BIK will be charged at the appropriate rates ...*

***Terms & Conditions***

- *This product is available on both PDH and RIL mortgages/properties in the Republic of Ireland*
- *This product is not available for new staff applications submitted via a Broker or Mortgage Intermediary.*
- ***Staff will be advised of their rollover options a number of weeks prior to the expiry of the fixed rate term.*** [my emphasis]

/Cont'd...



- *If you are currently on the 4.00% preferential fixed staff rate and opt for this product, you will have the option to switch back to the preferential rate once per tax year.*
  - *If you are currently on the 3.00% preferential staff fixed rate you will NOT have the option to switch back to this rate. If you want to keep your 3.00% fixed rate do not take out our new staff 2 year fixed rate mortgage,*
  - *If you are currently on a fixed rate and would like to break out of that fixed rate to avail of the staff 2 year fixed rate mortgage then a funding fee may be applicable.*
- ..."

This notice provides that staff selecting the 2-year fixed interest rate would be *"advised of their rollover options a number of weeks prior to the expiry of the fixed rate term"*. It does not state that staff availing of the 2-year fixed interest rate would roll on to a tracker interest rate of ECB + 0.75% at the end of the fixed period.

I note that on **02 January 2007** the staff non-standard variable rate applying to the mortgage account increased from 3.50% to 4.50%.

The Complainant completed a **Mortgage Form of Authorisation** on **03 January 2007** selecting the 2-year staff fixed interest rate of 3.95%. This **Mortgage Form of Authorisation** detailed as follows:

*"APPLICATION FOR CHANGE OF INTEREST RATE:*

*I/We wish to apply for the Staff 2 Year Fixed Rate 3.95% Mortgage Rate as detailed above for my/our mortgage loan (the "Loan")*

*\*Note: If you change from a fixed rate during the fixed rate period, you may be liable to pay a funding sum to the Bank. See conditions overleaf."*

The **Acknowledgement and Agreement** section of the Mortgage Form of Authorisation signed by the Complainant on **03 January 2007** details as follows:

*"I acknowledge and agree that:-*

*In converting the Loan from a fixed rate to the Staff 2 Year Fixed Mortgage Rate, I understand that I will be liable to pay a funding sum to the Society calculated in accordance with the formula set out above under 'Early Repayment'.*

/Cont'd...



1. *In the event of the Borrower (or both Borrowers where both are members of the permanent staff of [the Provider]) ceasing to be employed by [the Provider] the Staff Mortgage Rate shall cease and the interest rate applicable to the Loan shall immediately revert to the prevailing Homeloan Variable Rate or such other rate which the Bank may, at its absolute discretion, offer to the Borrower.*
2. ***If the loan is to be converted to a Tracker Mortgage Loan**, I agree that the interest rate applicable to the Loan is a variable interest rate and may vary upwards or downwards. The interest rate shall be no more than the rate notified above the prevailing European Central Bank Main Refinancing Operations Minimum Bid Rate ("Repo rate") for the term of the Loan. Variation in interest rate shall be implemented by [the Provider] not later than close of business on the 5th working day following a change in the Repo rate by the European Central Bank.*

*Notification shall be given to the Borrower of any variation in interest rate either by notice in writing served on the Borrower, or first named borrower where there is more than one borrower, or by advertisement published in at least one national daily newspaper. In the event that, or at any time, the Repo rate is certified by [the Provider] to be unavailable for any reason the interest rate applicable to the Loan shall be the prevailing Home Loan Variable Rate.*
3. *Save as set out in this Form of Authorisation all the terms and conditions applicable to the Loan remain unchanged."*

I note that the staff fixed rate of 3.95% was applied to the mortgage loan account on **4 January 2007**.

It is clear to me that the **Mortgage Form of Authorisation**, as accepted and signed by the Complainant on **03 January 2007**, envisaged a 2-year fixed rate of 3.95% to apply to the Complainant's mortgage loan account. The **Mortgage Form of Authorisation** further detailed that if the Complainant, who was employed by the Provider, ceased to be employed by the Provider, then the staff interest rate would no longer apply and the interest rate applicable to the loan would switch to the "*prevailing Homeloan Variable Rate*" or such other rate which the Provider may, at its absolute discretion, offer to the Complainant. I note that the Mortgage Form of Authorisation also outlined what would transpire if the Complainant chose to convert his mortgage loan to a tracker mortgage loan.

/Cont'd...



I do not consider that this reference to a tracker mortgage loan in the Mortgage Form of Authorisation is sufficient to amount to a contractual entitlement on the part of the Complainant to a tracker rate of interest. Rather, the Provider was setting out the terms and conditions applicable to a tracker mortgage loan if the Provider offered a tracker interest rate to the Complainant.

The Provider issued an internal communication through its staff intranet on **9 October 2008** which detailed as follows:

***“An update on staff mortgage options***

*[The Provider] no longer offers customer or staff tracker mortgages with effect from start of business Friday 10 October 2008*

***An announcement from Consumer Banking***

*Staff trackers are therefore not available for any new or existing staff mortgages, with the exception of those that are currently either on the staff tracker mortgage of ECB +0.75% or those rolling to ECB +0.75% as per their original signed mortgage agreement (see existing staff mortgage section below).*

***1. New staff mortgage applications***

*New staff applications are entitled to avail of the best customer rates available on the matrix. Currently the best rates are:*

- *2-Year Fixed Rate (currently 5.20%)*
- *Variable LTV products. The best available rates are: for residential property, 5.30%, or for investment property, 5.65%*

***2. Existing staff mortgage accounts***

- *Staff 2-Year Fixed Rate: rate currently 3.95%*

*Staff who are currently on Staff 2-Year Fixed Rate – currently 3.95% - will roll to ECB +0.75% with no BIK implications as per their original signed mortgage agreement at the end of their 2-year fixed period. Staff will receive notification 30 days prior to the end of their fixed rate term. This notification will also offer a range of fixed and variable rate products. If you do not respond to this notification, your account will automatically default to the Staff Tracker ECB + 0.75%.*

/Cont'd...



- *Staff Tracker Mortgage: ECB + 0.75%*

*Staff that are currently on the Staff Tracker of ECB +0.75% will remain on this product. This product does not attract BIK.*

### **3. Existing staff wishing to switch to alternative product options**

*To avail of any of the Variable LTV based product options (5.30% for Residential property and 5.65% for investment properties) staff will need to complete a Mortgage Form of Authorisation (MFA) for either Bank or [Provider] depending on where the account is held. The MFA will need to be completed and signed by all parties on the mortgage account.*

*Please print off and complete the appropriate Mortgage Form of Authorisation below to switch to either of these options."*

It appears to me that the purpose of this notice was to inform staff customers that the Provider was removing staff tracker interest rates from its suite of mortgage products available to new and existing staff customers except for those staff customers who were (i) already availing of a tracker interest rate and (ii) were due to roll-over to a tracker interest rate on the expiry of a fixed interest rate period in line with the terms of their individual mortgage loan agreements. Upon considering the Complainant's mortgage loan documentation, I note that the mortgage loan account was never on a tracker interest rate of ECB + 0.75% at any stage and there was no contractual provision in the mortgage loan agreement to stating that the mortgage loan account would roll-over to a tracker interest rate at any stage.

A letter from the Provider dated **20 November 2008** has been furnished in evidence. The recipient details are redacted. Nonetheless it does not appear to be disputed between the parties that this letter was sent to the Complainant.

The letter details as follows:

*"Re: Staff Fixed Rate Mortgage 3.95%*

*Dear [redacted]*

*I am writing to let you know about Staff Fixed Rate Mortgage rollover options, which came into effect on the 7<sup>th</sup> November 2008.*

/Cont'd...



As you may be aware, [the Provider] removed tracker mortgage products for new customers on the 10<sup>th</sup> October 2008. All major financial institutions have also removed their tracker products at this stage. We then assessed the impact of the removal of trackers on Fixed Rate customers at the time of their roll-over.

The key finding is that those currently on a fixed rate fall into one of two categories

1. Those who opened their mortgage account on a fixed rate, or took the option of further fixed rates at previous roll-over times, will have a Tracker option on their roll-over letter, as per the terms and conditions of their Letter of Offer.

2. Those who moved into a fixed rate from another product, by signing a Mortgage Form of Authorisation, will not have a tracker option on their roll-over letter. The signed Mortgage Form of Authorisation supersedes the original Letter of Offer.

As, according to our records, your mortgage(s) is currently on the 3.95% staff fixed rate, you will fall into one of the two categories above. As per our contractual commitments to you and the terms and conditions of your agreement with us, this letter outlines your options.

It is very important to note that as we have introduced similar steps for customers, if we were to treat you as a staff member differently, it would be deemed preferential and would incur BIK. The options available to you now (with the exception of the Staff Preferential 4%) are all exempt from BIK.

As outlined above

- If you are in category 1 you will receive your roll-over letter with the staff tracker (ECB+0.75%) option, as well as the options offered below.
- If you are in category 2 you will receive your roll-over letter with the options outlined below.

### **Homeloans**

Staff Preferential Rate (for all loan amounts)	4% (subject to BIK)
Highly Competitive 2 year fixed rate	Currently 4.75%*
Variable LTV Rate	Currently 4.50%*

/Cont'd...



*If you do not respond to the roll-over letter, we will automatically roll your mortgage to the Variable LTV based rate, currently 4.50%.*

*Please note only staff on the 3.95% fixed rate can move the full amount of their mortgage into the 4%. This is an exception for this group of staff. For staff on all other products, normal limits apply.*

***RIL (Residential Investment Loan)***

<i>Highly Competitive 2 year fixed rate</i>	<i>Currently 4.95%*</i>
<i>Variable LTV Rate</i>	<i>Currently 4.85%</i>

*If you do not respond to the roll-over letter, we will automatically roll your mortgage to the Variable LTV based rate, currently 4.85%.*

*These rates above are highly competitive and we continue our policy of offering our staff the best available customer rates.*

*A communication was issued on [Provider's intranet] on the 9th of October indicating that the Tracker Mortgage would be available on roll over – this preceded our final assessment on our withdrawal from Tracker Mortgages and represented the most accurate information available at the time. The subsequent assessment of the impact of the decision to remove the Tracker Mortgages has led to the outcome outlined in this letter. We apologise for any confusion this has caused.*

*This letter is for your information only. There is no action required by you at this time. Your roll-over letter will issue about 4 weeks before you are due to roll off your fixed rate."*

The Complainant, in his post Preliminary Decision submission dated **11 November 2021**, has stated that the Provider "*did not comply with the Consumer Protection Code 2006*". The Complainant has submitted that he "*was consistently told that [he] would rol[l] to a tracker on expiry of the fixed rate but [he] was never told that if [he] wanted to get a tracker rate, [he] would need to break out of the fixed rate.*" The Complainant further submitted that "*There is no consistency here from [the Provider], the information provided to [him] was not clear and comprehensible, and key items were not brought to [his] attention.*"

/Cont'd...



The Provider's letter to the Complainant dated **20 November 2008** clearly outlined that given the Complainant *"moved into a fixed rate from another product"*, being the staff non-standard variable rate of 3.5%, by signing a Mortgage Form of Authorisation, he fell into category 2, as outlined above and therefore he would not in fact have a tracker option on his *"roll-over letter"*. The Provider's letter dated **20 November 2008** clearly informed the Complainant of the interest rate options that would be available to him at the end of the fixed interest rate period to include a staff preferential rate, a further 2-year fixed interest rate or a LTV variable rate. The contents of the Provider's letter dated **20 November 2008** could not therefore have reasonably led the Complainant to believe that he would roll-over to a staff tracker interest rate option of (ECB +0.75%).

The Complainant, in his post Preliminary Decision submission dated **11 November 2021**, also submits that the Provider did not provide him with *"sufficient time to make a decision on whether [he] should break out of the fixed rate product or not"* and that *"As per the CPC, a regulated entity must supply information to a consumer on a timely basis."* The Complainant further states that *"In doing so, the regulated entity must have regard to the following: a. the urgency of the situation; and b. the time necessary for the consumer to absorb and react to the information provided."* The Complainant believes that *"This did not happen."*

**Provisions 13 and 14 of Chapter 2 of the Consumer Protection Code 2006** provide as follows in relation to the provision of information to a consumer:

- "13. A regulated entity must supply information to a consumer on a timely basis. In doing so, the regulated entity must have regard to the following:*
- a) the urgency of the situation; and*
  - b) the time necessary for the consumer to absorb and react to the information provided.*
- 14. 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 important to note that the Complainant never had an entitlement, contractual or otherwise, to a tracker interest rate, therefore there was no obligation on the Provider to inform the Complainant that it was withdrawing tracker interest rates from the market as the Complainant was not an *"affected"* consumer. Therefore, I do not consider there to be any breach of the **Consumer Protection Code 2006** on the part of the Provider in this regard.

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The Complainant's mortgage loan account was on a fixed interest rate and the fixed interest rate period was due to expire in **January 2009**. The letter dated **20 November 2008** therefore correctly informed the Complainant that a *"roll-over letter will issue about 4 weeks before you are due to roll off your fixed rate"*.

I note from the *"Letter History"* screenshots from the Provider's internal system submitted in evidence that a *"Product Review Notice"* and *"Product Rollover"* letter issued to the Complainant on **05 December 2008** and **05 January 2009**.

I am disappointed to note that the Provider has not submitted in evidence, a copy of the *"roll-over"* letter and options form that appear to have issued to the Complainant in **December 2008** and **January 2009**. The Provider submits that upon the expiry of the 2-year staff fixed rate in **2009**, the Complainant's mortgage loan account defaulted to a variable rate of 3.75% *"in the absence of the Complainant selecting an alternative option."*

In any event, it is not disputed between the parties that the Complainant was not offered a tracker interest rate when the fixed interest rate period on the mortgage loan account expired.

Following consideration of the Complainant's mortgage loan documentation, it is clear to me that the **Mortgage Loan Offer Letter** dated **12 September 2006** did not contain a contractual entitlement to a tracker interest rate at inception of the loan or indeed during the term of the loan. Rather, the **Mortgage Loan Offer Letter** dated **12 September 2006** provided for a staff non-standard variable interest rate of 3.50%. The Complainant subsequently signed a **Mortgage Form of Authorisation** on **03 January 2007** to apply a staff 2-year fixed rate of 3.95% to the Complainant's mortgage loan account until **January 2009**. Again, I do not consider the Mortgage Form of Authorisation to have conferred any entitlement to a tracker interest rate mortgage on the Complainant.

However, prior to the expiry of the 2-year fixed interest rate, the Provider issued an internal communication to its staff customers through its staff intranet on **9 October 2008**.

It appears to me that the purpose of the Provider's internal communication was to notify its staff customers that it intended to withdraw its tracker interest rate offerings from **10 October 2008**, the day after the Provider circulated its internal communication. The Provider's staff intranet notice specifically outlined what would happen to existing staff customers who were on a 2-year fixed interest rate of 3.95% at that time. The staff notice stated that staff who were currently on a staff 2-year fixed interest rate of 3.95% would *"roll to ECB +0.75% with no BIK implications as per their original signed mortgage agreement at the end of their 2-year fixed period"*.

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The staff notice also advised staff customers that they would receive a notification 30 days prior to the end of their fixed rate term which would offer a range of fixed and variable rate products, however, if they did not respond to this notification their mortgage loan account would *"automatically default to the Staff Tracker ECB + 0.75%"*. The Complainant's mortgage loan account was never on a tracker interest rate of ECB + 0.75% at any stage. Therefore, it would appear to me that the Provider's reference to mortgage loans on the 2-year staff interest rate, which would *"roll to ECB + 0.75% with no BIK implications as per their original signed mortgage agreement at the end of their 2-year fixed period"*, in the staff intranet notice dated **09 October 2008** did not apply to the Complainant's mortgage loan account.

The Provider submits that it was at all times open to the Complainant between **December 2006** and **10 October 2008** to approach the Provider with a request to move his mortgage loan account to a tracker interest rate. It does not appear to me from the evidence that the Complainant contacted the Provider in this regard until **9 November 2017** when he emailed the Provider as follows:

*"Can you let me know if my mortgage accounts above are included in the additional numbers announced today for compensation.*

*If not, can you recheck my paperwork because I remember receiving a letter from the bank about the tracker rate but cannot remember the contents."*

The Complainant has submitted that the Provider's mortgage staff informed other Provider staff *"in the days running up to and including the 10/10/08, in writing and verbally that they would roll to a tracker on the same day the tracker was supposed to be withdrawn. This provided other staff members (who didn't have direct engagement with [Provider] mortgage staff in this period) comfort that there was no need to break out of the 2 year fixed product as staff members speak to each other."* He has further stated that *"numerous staff called [Provider] mortgage staff in early Oct 08"*.

The Complainant, in his post Preliminary Decision submission dated **22 October 2021**, submits that I note in my Preliminary Decision dated **05 October 2021** that he *"did not object"* or make a complaint to the Provider when the fixed interest rate period expired in **2009**. The Complainant further submits that he *"did make a complaint to the provider in writing in 2011, and questioned why [he] was not moving to a tracker rate but this was rejected by [the Provider]."*



It should be noted that I did not state that the Complainant “*did not object*” or did not complain that his mortgage loan account did not roll onto a tracker interest rate in **2009** in my Preliminary Decision but rather, I noted the Complainant did not make any enquiries with the Provider as to what rate would apply upon the expiry of the initial fixed interest rate period in **2009** on foot of reading the staff intranet notice in **2008**, as outlined below. I note that the Complainant wrote a letter of complaint to the Provider on **4 November 2011** expressing his dissatisfaction that the interest rate on his mortgage loan account “*did not roll onto a tracker mortgage*” in **2009**.

However, it was also open to the Complainant himself to make enquiries with the Provider in relation to the interest rate that would be applicable to his mortgage loan account on the expiry of the fixed interest rate period when he read the staff intranet notice in **2008**.

However, it does not appear from the evidence that he did so. It is important for the Complainant to understand that while other staff members of the Provider may well have had communications with the Provider by email or telephone at that time in relation to their own entitlement to a tracker interest rate, any communications between the Provider and other staff customers of the Provider at that time, are not relevant to, and have no bearing on the Complainant’s entitlement to a tracker interest rate on his mortgage loan account.

For the avoidance of doubt the evidence shows that the Complainant’s mortgage loan account was never on a tracker rate of interest. The evidence shows that the choice to take out the mortgage loan on the terms and conditions offered by the Provider was a choice that was freely made by the Complainant.

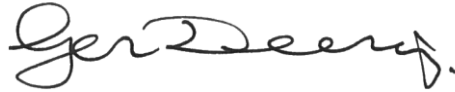
For the reasons outlined in this Decision, I do not uphold this complaint.

### **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**

6 December 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.