



<u>Decision Ref:</u>	2021-0484
<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 mortgage loan account held by the Complainants with the Provider. The mortgage loan is secured on a rental investment property that is now held in the sole name of the first Complainant.

The Complainants signed and accepted a **Revised Offer of Advance** on **31 October 2006** for a mortgage loan in the sum of €145,000.00. The particulars of the loan outline that a fixed interest rate of 4.49% applied until **31 July 2008**, with the Provider's variable home loan rate to apply thereafter.

The Complainants' Case

The Complainants submit that they took out a joint mortgage with the Provider in **2006** on their residential investment property. The Complainants contend that they agreed to a fixed interest rate which would convert to a tracker interest rate on expiry.

The Complainants submit they were initially offered a tracker interest rate and then offered a discounted fixed interest rate. The Complainants state that when they received the second offer which provided for a discounted fixed interest rate, *"it didn't revert back to the tracker once the term was finished"*.

The Complainants submit that they queried the rate at the time with the Provider and were informed that on expiry of the fixed interest rate period, they would be offered a tracker interest rate or to continue with a fixed interest rate.

The Complainants assert that they were not offered a tracker interest rate on expiry of the further fixed interest rate in **2008**, which had been originally agreed.

The Complainants contend that they never received the original **Product Expiry Letter** in **2008** as it was sent to the rental property address. The Complainants submit that they contacted the Provider when they noticed a difference in the cost of mortgage repayments. The Complainants outline that they were informed by the Provider that the original Product Expiry Letter was sent to the rental investment property address. The Complainants state that they informed the Provider that they did not live at that address and all previous letters were sent to their private dwelling house and they questioned why that letter was sent to their residential investment property.

The Complainants submit that the Provider issued a new letter to their private dwelling house which they signed and returned to the Provider by facsimile. The Complainants outline that the Provider said it never received the facsimile and *“it was after that when [the Complainants] started the complaint process”*.

The Complainants submit that the Provider did change the interest rate to a tracker interest rate in **2010**. The Complainants contend that they should not have been put through years of stress to resolve this issue. The Complainants outline that it has caused a huge amount of stress and pressure on their finances.

The Complainants submit that details of the revised loan offer should never have been changed, with the exception of the fixed rate offer. The Complainants state that the Provider advised at the time that it was a great offer and *“worth changing”*. The Complainants assert that they took this information as correct and that the second loan offer was *“not such a big deal and to run with it and once the term is over just revert back to the tracker as this will have to be offered”*. The Complainants state they are *“100% sure”* that they spoke with their solicitor at the time and their solicitor advised that the tracker rate will be offered as it was the rule. The Complainants outline that they cannot provide any details of these discussions.

The Complainants are seeking compensation *“for the stress caused”*.

The Provider's Case

The Provider outlines that in **2006** the Complainants signed a **General Mortgage Loan Application Form** on **7 April 2006** seeking an investment mortgage loan in sum of €145,000 for a term of 25 years. The Provider submits that it issued an **Offer of Advance** dated **20 June 2006** for a mortgage loan in the amount of €145,000 over a term of 25 years. The Provider notes that this Offer of Advance provider for a tracker interest rate of ECB base rate + 1.35% however the loan offer was not signed and accepted by the Complainants.

The Provider submits that prior to drawing down a mortgage loan, the Complainants chose to avail of a fixed interest rate instead of a tracker interest rate. The Provider submits that it wrote to the Complainants on **27 June 2006** to confirm the change in the rate. The Provider submits that it issued a **Revised Offer of Advance** on **29 June 2006** offering a fixed interest rate of 4.49% until **31 July 2008**. The Provider submits that the **Revised Offer of Advance** was signed and accepted by the Complainants on **31 October 2006**.

The Provider outlines that there is no reference to a tracker interest rate in the **Revised Offer of Advance** dated **29 June 2006**. The Provider submits that the **Special Conditions** clearly outlined what would transpire at the end of the initial fixed interest rate period. The Provider submits that at the end of the fixed interest rate period, the mortgage would *"automatically revert to the [Provider's] Variable Home Loan Rate"*.

The Provider outlines that tracker interest rates were on offer from the end of **2001** up until then end of **2008**. The Provider submits that tracker interest rates were available in **2006** when the Complainants drew down their mortgage, but all interest rate products are subject to change and can be withdrawn by the Provider. The Provider outlines that the terms and conditions applicable to mortgage loan account ending **1952** are as outlined in the **Revised Offer of Advance** dated **29 June 2006**. The Provider states that the **Revised Offer of Advance** did not contain any contractual entitlement or guarantee that the mortgage would drawdown on a tracker interest rate or that a tracker interest rate would be made available to the Complainants when the initial fixed rate period ended.

The Provider submits that it cannot locate any evidence or information relating to Complainants' assertion that they made a query in relation to the applicable interest rate at the time of drawdown in **2006**. Further, the Provider states that it has no record of any other interaction until the end of the fixed interest rate period in **July 2008**. The Provider submits that it cannot find any evidence to support the Complainants' contention that they were informed that they would be offered a tracker interest rate at the end of the fixed rate period or that they could continue with a fixed interest rate.

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The Provider outlines that it sent a **Product Expiry Letter** to the Complainants in **July 2008**, prior to the expiry of the fixed interest rate period which outlined the interest rate products available. The Provider submits that the letter referred to a "*Standard Variable Rate*" and not the "[*Provider's*] *Variable Home Loan Rate*" as referred to in the **Offer of Advance** but confirms that they are one in the same.

The Provider submits that it did not receive a response from the Complainants prior to the expiry of the fixed interest rate period and therefore the Provider's standard variable rate was applied to the mortgage loan account on **1 August 2008**. The Provider states that it wrote to the Complainants on **22 August 2008** confirming that the fixed interest rate had expired and that the Provider's standard variable rate of 6.10% had been applied to the mortgage loan account.

The Provider states that the Complainants raised a complaint in **2009** in relation to what had transpired in **July 2008**. The Provider outlines that there was some confusion in relation to the **Product Expiry Letter** and the Complainants initially indicated that on receipt of the letter, they sent a facsimile to the Provider confirming their preferred rate option, however, the Complainants subsequently advised the Provider in **January 2010** that they never received the letter. The Provider submits that the **Product Expiry Letter** was sent to the mortgaged property address as opposed to the Complainants' correspondence address, being their private dwelling house. The Provider outlines that this letter was not retained as it was issued as part of a "*mail merge*" however a generic copy was retained. The Provider states that as the "*mail merge*" contains private and confidential information relating to all customers, it cannot provide a full copy of the "*mail merge*" database list however has provided an extract of the database which confirms that the Complainants' names were included.

The Provider states that having considered all the facts and with a view to resolving matters amicably, it agreed to allow the Complainants the option to avail of the interest rates that had been outlined in the **Product Expiry Letter** dated **July 2008** on a goodwill basis. The Provider submits that it wrote to the Complainants on **28 January 2010** outlining the rates on offer. The Provider outlines that the Complainants chose a tracker interest rate of ECB base rate + 2.25%. The Provider submits that it wrote to the Complainants on **2 February 2010** to confirm that it would backdate the tracker interest rate to **1 August 2008**.

The Provider submits that the Complainants signed a **Letter of Authority** to place the mortgage on a tracker interest rate on **9 February 2010**. The Provider outlines that it wrote to the Complainant on **18 February 2010** to confirm the "*mortgage has been transferred to a rate of 2.25% above the European Central Bank (ECB) base rate*".

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The Provider contends that the decision to allow the Complainants to select an interest rate option in **January 2010** was not in any way related to the initial tracker interest rate outlined in the **Offer of Advance** dated **20 June 2006**, which was never accepted by the Complainants and does not form their loan agreement with the Provider.

The Complaint for Adjudication

The complaint for adjudication is that the Provider failed to offer the Complainants the option to convert their mortgage loan account to a tracker interest rate upon expiry of the fixed rate period in or around **August 2008**.

Decision

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

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

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

A Preliminary Decision was issued to the parties on 15 November 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.

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Following the issue of my Preliminary Decision, the Provider made an observation under cover of e-mail to this office dated **18 November 2021** in relation to a typographical error on page 9 of my Preliminary Decision wherein I stated that:

*"It is clear that the Revised Offer of Advance dated 29 June 2006 envisaged a fixed Interest rate of 4.49% to apply to the Complainants' mortgage loan account until 31 July **2018**". [my emphasis]*

I note that the reference to "2018" was in fact a typographical error and should have read **2008**. This typographical error was subsequently brought to the attention of the Complainants by way of e-mail dated 18 November 2021.

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

Before dealing with the substance of the complaint, I note the application for the mortgage loan was submitted by the Complainants to the Provider through a third-party broker. As this complaint is made against the respondent Provider only, it is the conduct of this Provider and not the broker which will be investigated and dealt with in this Decision.

In order to determine the complaint, it is necessary to set out the mortgage loan documentation and also consider certain interactions between the Complainants and the Provider between **2006** and **2010**.

On foot of receipt of the Complainants' mortgage loan application dated **7 April 2006**, the Provider issued an **Offer of Advance** dated **20 June 2006** which detailed as follows:

" **IMPORTANT INFORMATION**

- | | |
|---|-------------------|
| 1. Amount of Credit Advance: | €145,000.00 Eur |
| 2. Period of agreement: | 25 years 0 months |
| 3. Number of repayment instalments: | 300 |
| 4. Amount of each instalment per month: | 773.39 |

....

Interest Rate: 4.1000%"

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The **Special Conditions relating to Loan** detail as follows:

“The rate of the [Provider’s] Flexible Mortgage tracks ECB rate with a margin which is fixed for the life of the Home Loan term. The margin for this Home Loan is ECB rate plus 1.35%. This margin is dependent on the amount borrowed and the value of the property to be mortgaged.”

The evidence is that the Complainants did not accept the **Offer of Advance** dated **20 June 2006** which provided for a tracker interest rate of ECB + 1.35% for the term of the mortgage loan.

An **Internal Memorandum** dated **27 June 2006** which has been furnished in evidence by the Provider details as follows:

“Dear Sir

I refer to telephone conversation today with [name] and write to confirm that the [Complainants] now wish to avail of RIP Fixed Rate 4.49% to 31.07.2008. I should be grateful for issue or revised offer in this regard”

On foot of the above request, the Provider issued a **Revised Offer of Advance** dated **29 June 2006** which detailed as follows:

1. *Amount of Credit Advance:* €145,000.00 Eur
2. *Period of agreement:* 25 years 0 months
3. *Number of repayment instalments:* 300
4. *Amount of each instalment per month:* 805.13 Eur

....

Interest Rate: 4.4900%

....

WARNING

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

This offer supersedes the offer on the 20 June 2006.”

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The **Special Conditions relating to Loan** appended to the **Revised Offer of Advance** dated **29 June 2006** detail as follows:

“The [Provider] Home Loan fixed rate of interest applicable at the date of this letter is 4.4900% per annum and this rate will apply until 31 July 2008. At the end of the fixed rate period the loan will automatically revert to the [Provider’s] Variable Home Loan Rate and [Provider] may offer to continue the Advance at a Fixed Rate of Interest for such a period and at such a rate as it may decide.”

In the event of the Applicant electing to accept such an offer (if any), he/she must do so in writing, and the agreement must be signed by all parties to the mortgage advance. If no such offer is made by the [Provider] or if an offer is made by the [Provider] and not accepted by the Applicant(s) the [Provider] Variable Home Loan Rate shall apply from 1 August 2008 and thereafter but otherwise in accordance with General Condition 2 of the Bank’s General Conditions Relating to Advances by [the Provider] House Mortgages Section enclosed herewith, which varies the Interest Rate, and the mortgage conditions incorporated in the mortgage, and the said General Conditions relating to the Advances shall be construed accordingly.”

Condition 2 of the **General Conditions** attached to the **Revised Offer of Advance** details as follows:

“Interest is calculated on the balance outstanding on the home loan at the close of business each day from the date of release of the advance monies until the home loan is repaid. Interest so calculated is charged on the last day of the calendar month in which release of funds takes place and on the last day of each calendar month thereafter until the home loan is repaid. Interest charged to the home loan is included in the outstanding balance on which interest is calculated.”

*The outstanding balance on which interest is calculated will include any overdue repayments and other sums outstanding. Overdue repayments and other sums outstanding will be included in the outstanding balance from the date on which they are debited to the home loan account until the date on which they are discharged. If redemption of the home loan takes place mid month the amount required to redeem the loan will include interest from the first day of the month in which redemption takes place to the date of redemption. **The monthly repayments will vary if changes in the Home Loan Interest Rate occur. Variations in [Provider] Home Loan Rate may occur at any time and notice of each variation will be published at least once in a national daily newspaper.** Interest is calculated on a compound basis. [My emphasis]*

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Drawdown date of your mortgage will be the date on which your mortgage cheque is negotiated. If drawdown date is before the date on which direct debits are raised in any given month the first repayment will be on the 1st of the month following the month in which drawdown takes place and will be interest only on the amount drawdown from the date of drawdown until month end. This repayment will be in addition to the number of repayment instalments shown on the schedule of important information.

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

APR calculations assumes that drawdown of the loan will take place on the 15th of the month following the month in which the Offer of Advance issues.”

The **Acceptance and Authority** was signed by the Complainants on **31 October 2006** as follows:

1. *I/We the undersigned accept within the Offer of Advance on the terms and conditions set out above and overleaf and in the Bank's standard form of Mortgage....*

Witnessed by me a Solicitor having explained the nature and content hereof to the Applicant(s)”

I note that the mortgage loan was drawn down on **15 February 2007**.

It is clear that the **Revised Offer of Advance** dated **29 June 2006** envisaged a fixed interest rate of 4.49% to apply to the Complainants' mortgage loan account until **31 July 2008**. Thereafter, the **Revised Offer of Advance** stipulated that the interest rate would automatically switch to the Provider's variable home loan rate or the Provider "may" offer a further fixed interest rate. This was set out in the **Special Conditions** to the mortgage loan and also **General Condition 2** of the **General Conditions relating to Home Loan Advances**. The variable home loan rate made no reference to the rate being connected to the ECB base rate, rather it was a variable rate that could be adjusted by the Provider.

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The Complainants signed and accepted the **Revised Offer of Advance** on **31 October 2006**, having accepted the terms and conditions and their solicitor having explained the nature and contents to them.

Prior to the expiry of the fixed interest rate in **July 2008**, the Provider wrote to the Complainants. The Provider submits that it does not have a copy of that letter. It is disappointing that the Provider has not been able to furnish same.

Provision 49 of the Consumer Protection Code 2006 ("CPC 2006") (which was fully effective from **01 July 2007**) outlines as follows:

"A regulated entity must maintain up-to-date consumer records containing at least the following:

- a) a copy of all documents required for consumer identification and profile;*
- b) the consumer's contact details;*
- c) all information and documents prepared in compliance with this Code;*
- d) details of products and services provided to the consumer;*
- e) all correspondence with the consumer and details of any other information provided to the consumer in relation to the product or service;*
- f) all documents or applications completed or signed by the consumer;*
- g) copies of all original documents submitted by the consumer in support of an application for the provision of a service or product; and*
- h) all other relevant information [and documentation] concerning the consumer.*

Details of individual transactions must be retained for 6 years after the date of the transaction. All other records required under a) to h), above, must be retained for 6 years from the date the relationship ends. Consumer records are not required to be kept in a single location but must be complete and readily accessible."

The Provider is obliged to retain all documentation relating to the mortgage loan account for a period of six years from the date the relationship with the mortgage holder ends which includes all correspondence with the consumer. The Provider explains that the letter that issued to the Complainants was part of a mail merge. The Provider has supplied an extract from its mail merge database in evidence which I note indicates that the Complainants' names were included.

The Provider has also furnished in evidence a generic copy of the **Product Expiry letter** which issued to customers, including the Complainants, in **July 2008** which details as follows:

“Dear [Letter Salutation]

The [Product Type] Rate on your mortgage is due to expire on 31 July 2008. Any borrowings you have on this Fixed Rate will change to our Standard Variable Rate from 01 August 2008. This a great opportunity to look at your options as your decision now could save you money.

Option 1: Flexible Mortgage – *this is one of our most popular mortgages. The flexible mortgage tracks the European Central Bank base rate and although the base rate may change, the margin you pay is fixed for the life of the loan.*

- *You can make overpayments/lumps to reduce the interest you pay and/or you term.*
- *You can apply for a six month payment break*
- *No redemption charge for paying off your mortgage early*

Option 2: Fixed Rate mortgage – *If you’d like the peace of mind knowing your interest rate will stay the same for the fixed length of time. Simply choose the fixed term that suits you know. And remember, at the end of your fixed rate period you will have the flexibility to explore your options again.*

Just call our dedicated team on [phone number]. We are here to make the process of choosing your new mortgage rate simple and hassle-free. If we don’t hear from you before the end of July 2008 your current rate will automatically revert to the standard variable rate. This could mean an increase in your monthly repayments so now is the time to act.

We would [like] to take this opportunity to thank you for your continued business and we look forward to offering you another great deal on your mortgage!”

The Complainants maintain that they did not receive the letter when it was originally sent in **2008** and therefore did not respond to the Provider.

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The Provider issued a letter dated **22 August 2008** to the Complainants as follows:

“Dear [Complainant]

We wrote to you recently to advise that the product on one of your mortgage accounts was expiring. As we have not received any response from you, any accounts on any expiring product have been transferred to our Standard Variable Rate, currently 6.10%.

The revised gross monthly repayment to your mortgage is 936.94 Euro. If applicable, this figure will be reduced by any tax relief at source (TRS) applied to your account....”

I note that the Provider’s standard variable interest rate of 6.10% applied to the mortgage loan account on the expiry of the fixed interest rate period, which is in line with the **Special Conditions relating to Loan.**

The Complainants submit that the letters in **July 2008** and **August 2008** were sent to the rental investment property address of the Complainants as opposed to their private dwelling house address. The Complainants maintain that all previous correspondence had been sent to the address of their private dwelling house. The Provider has provided no explanation as to why the letters issued to the rental investment property address on this occasion.

It appears from the Provider’s submissions that the Complainants initially told the Provider that they had completed a change agreement form and sent it by facsimile to the Provider but subsequently informed the Provider that they never received the letter in **July 2008**. There is no evidence to support the Complainants’ submission that they completed a change agreement form and submitted it to the Provider in **July 2008** nor is there evidence to demonstrate the interest rate selected by the Complainants on that occasion.

The Complainants submit that they made a complaint to the Provider in **2009** querying the rate to be applied to the mortgage loan account. I have not been provided with the particulars of the complaint however I understand that there is no dispute between the parties that a complaint was raised.

The Complainants sent a duplicate letter to the Provider on **9 July 2009** and **15 July 2009** which details as follows:

“Mortgage Number [ending 9404]

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Please find attached Mortgage details relating to a mortgage I have with [the Provider]. My understanding was I had a rate that tracks above the ECB of 1.35%

Can you please provide signed details to state otherwise?"

The letter dated **9 July 2009** contains a handwritten note which states "Fax" and a number. The Complainants letter from **9 July 2009** and **15 July 2009** suggest that they were of the view that they were entitled to a tracker interest rate of ECB + 1.35%. I note that the **Offer of Advance** dated **20 June 2006** appears to have been sent by the Complainants by way of facsimile to the Provider's finance department on **15 September 2009**. It is important to remind the Complainants that the **Offer of Advance** dated **20 June 2006** was not signed and accepted by them therefore a tracker interest rate was never applied to their mortgage loan account. It is important to highlight that the **Revised Offer of Advance** dated **29 June 2006** stipulates that the interest rate to be applied at the end of the fixed interest rate period was the Provider's variable home loan rate.

This variable interest rate was not in any way linked to the ECB base rate. I am satisfied that the terms and conditions of the **Revised Offer of Advance** are clear and transparent in that regard.

The Provider wrote to the Complainants on **26 August 2009** as follows:

"....

As discussed, your mortgage drew down on the 14 February 2007 on our 4.49% fixed product rate, which had an expiry of the 31 July 2008. On expiry of this rate your mortgage account rolled off onto our standard variable rate (SVR) on the 22nd August 2008 and was backdated to the 1st of August to reflect the expiry date of your fixed rate product.

....

I can confirm this rate is currently 3.85%"

I am not in receipt of any further correspondence between the Complainants and the Provider, until the Provider wrote to the Complainants on **28 January 2010** as follows:

"My investigations have shown that there appears to be some confusion surrounding the correspondence issued to you in July 2008. Our records all show that the letter was sent to you at the address provided by you.

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However, in an effort to resolve the issue to the satisfaction of all parties, we would be happy to offer you the interest rates that you would have had a choice to roll onto (applicable to investment properties, given that this is a buy to let property)."

The interest rates attached to the letter dated **28 January 2010** detail as follows:

"Fixed Until 31/07/10 6.30%

Fixed Until 31/08/11 6.40%

Fixed Until 31/08/13 6.52%

The Provider subsequently sent a further letter to the Complainants dated **02 February 2010** which details as follows:

"Dear [Complainants]

Further to our discussions today, I am pleased to advise that the tracker rate of 2.25% above the European Central Bank (ECB) rate will be applied to your mortgage account upon the attached request signed by both parties to the mortgage returned to me. I have attached a pre-paid envelope for your convenience.

The tracker rate will be backdated to 01 August 2008, the date of the application of the Standard Variable Rate to your mortgage account following roll off of the previous fixed rate of 4.49% on 31 July 2008. This backdate will result in an interest adjustment to your mortgage account, which will reduce the balance outstanding.

As discussed, the amount of this adjustment will post to your account on the last date of the month in which the rate is applied, so if the authorisation is received before the last week in February, the interest adjustment will post to your account on 28 February 2020. I will write in confirmation of this account once posted and you have the option of leaving this amount in permanent reduction of your balance, or I can refund this amount to you, which will result in your balance increasing by this amount.

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The rate now applicable to your account is the standard variable rate of 3.85%, the rate which will apply upon signed authorisation is the tracker 2.25% margin +1% ECB rate. Your repayments will be €716.00 and will vary in line with any changes to the ECB rate. You will receive notification of any changes to your repayments from [The Provider].

I can be contacted on [phone numbers] if you have any queries, I'll be delighted to help".

The evidence shows that the Provider wrote to the Complainants on **28 January 2010** to offer fixed interest rates as at the **July 2008** rates and sent a further letter on **2 February 2010** offering a tracker interest rate of ECB + 2.25% which would be backdated to **01 August 2008**, which marked the end of the fixed interest rate period. The Complainants signed a **Letter of Authority** on **9 February 2010** accepting the tracker interest rate of 3.25%. I note the Provider wrote to the Complainants on **18 February 2010** to confirm that a rate of 3.25% (ECB + 2.25%) had been applied to the mortgage account and backdated to **01 August 2008**.

It is clear to me that the **Revised Offer of Advance** dated **29 June 2006** that was signed and accepted by the Complainants superseded the previous initial **Offer of Advance** dated **20 June 2006**. The **Revised Offer of Advance** dated **29 June 2006** did not confer any contractual right to a tracker interest rate at the expiry of the fixed interest rate period in **July 2008**. Rather, the **Revised Offer of Advance** provided that the Complainants' mortgage loan account would convert to the Provider's variable home loan rate. I do not consider there to be any real basis for the Complainants to reasonably expect that the term "*Variable Home Loan Rate*" equated to tracker interest rate, given that there is no reference to a tracker or the ECB rate in the **Revised Offer of Advance**.

In order for the Complainants to have a contractual right to a tracker interest rate on mortgage loan account ending **1952** at the end of the fixed interest rate period, that right would need to have been specifically outlined in the **Revised Offer of Advance**. However, no such right was set out in writing in the **Revised Offer of Advance** dated **29 June 2006**, which was signed by the Complainants on **31 October 2006**. It is important for the Complainants to understand that the terms of a mortgage loan are governed by the terms contained in the **Revised Offer of Advance** which is signed by the parties and not that **Offer of Advance** dated **20 June 2006**. I am satisfied that the terms of the **Revised Offer of Advance** were sufficiently clear in relation to what would occur at the end of the fixed interest rate period in **2008**.

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In light of all the foregoing, I am of the view that there was no obligation on the Provider to apply a tracker interest rate to the Complainants' mortgage loan account from **01 August 2008**. It appears that the Provider, with a view to resolving the complaint received from the Complainants, decided to apply a tracker interest rate of 3.25% (ECB + 2.25%) and backdated it to **01 August 2008** as a gesture of goodwill. Given the circumstances of this complaint, I consider this to be a more than fair and reasonable attempt by the Provider to resolve this complaint.

For the reasons set out 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

7 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.

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