



<u>Decision Ref:</u>	2021-0485
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Tracker Mortgage
<u>Conduct(s) complained of:</u>	Failure to offer a tracker rate at point of sale 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 two mortgage loan accounts ending **7486** and **7473** held by the Complainants with the Provider as follows:

- **Mortgage sub-account ending 7486**

The loan amount for mortgage loan account ending **7486** is €117,000.00 and the term of the loan is 30 years. The particulars of the Mortgage Loan Offer provided for a fixed rate of interest at 5.69% for a period of 24 months. The Complainants drew down this mortgage loan in **May 2001**.

- **Mortgage sub-account ending 7473**

The loan amount for mortgage loan account ending **7473** was €20,000.00 and the term of the loan was 20 years. The particulars of the Mortgage Loan Offer provided for a standard variable rate of 3.28%. The Complainants drew down this mortgage loan in **August 2006**.

Both mortgage loan accounts were secured on the Complainants' private dwelling house.

The Complainants' Case

The Complainants submit that the Provider failed to disclose the various financial options available to them from **2003** to **2012**, particularly tracker rates of interest.

The Complainants submit that their children have been adversely affected due to *“financial constraints imposed on us by the non-offer of the Tracker Mortgage between 2003 and 2012.”*

- **Mortgage sub-account ending 7486**

The Complainants submit that they drew down mortgage loan account ending **7486** on a fixed interest rate with the Provider in **2001**. The Complainants outline that they did not request a tracker interest rate at inception as tracker interest rates were not available at the time.

The Complainants detail that on expiry of the fixed interest rate period in **May 2003**, they selected a further 2-year fixed interest rate period to apply until **May 2005**, followed by another 2-year fixed interest rate period until **May 2007**. In **May 2007**, the Complainants state that they selected a further fixed rate period for 5 years until **May 2012**.

The Complainants state that they accept that the Provider did not offer tracker interest rates in **2003**. The Complainants state that tracker interest rates were available in **2005** and **2007** however they were not offered the option then. The Complainants maintain that they would have accepted a tracker rate of interest if one had been offered to them in **2005**.

The Complainants submit that they were not offered a tracker rate in **2007**, when the fixed rate period expired. The Complainants further outline that a tracker interest rate option was never included in any correspondence from the Provider. The Complainants contend that they did not receive a letter which outlined an option to discuss variable tracker rate options with the Provider.

The Complainants disagree with the Provider's submission that *“[t]here was no reference to a tracker interest rate in either the Letter of Authority/Acknowledgement forms and such a reference would have been necessary for a tracker interest rate to apply”*. The Complainants assert that they could not make an informed decision as the Provider never gave them any information regarding tracker rates.

The Complainants outline that the Provider wrote to them prior to the end of the fixed interest rate period in **2012** outlining all the options available to them. The Complainants submit that this was the first time that they had any understanding or knowledge of their eligibility to avail of a tracker rate of interest.

- **Mortgage sub-account ending 7473**

The Complainants outline that they applied for a top-up mortgage loan account ending **7473** in **August 2006**.

The Complainants submit that they never received a letter in **2007** that outlined that they were eligible for a tracker rate. The Complainants submit there was a lack of transparency on the part of the Provider as at no stage prior to **2012** were they offered a tracker rate of interest.

The Complainants dispute the Provider's conclusion that their loan accounts were not negatively impacted and maintain that they were subject to higher interest rates than necessary from **2005** to **2012**, placing them under "*unnecessary financial burden*".

The Complainants reject the Provider's position that it acted in a transparent manner and maintain that had they been made aware of the tracker interest rates available from **2005** to **2012**, they would have made a more informed decision.

The Complainants are seeking the following:

- a) to be reimbursed for the interest that they overpaid on mortgage loan account ending **7486** from **May 2003** until **May 2012**, and
- b) to be reimbursed for the interest that they overpaid on mortgage loan account ending **7473** from **August 2006** until **June 2012**.

The Provider's Case

The Provider outlines that tracker interest rate products were available between **early 2004** and **late 2008**.

- **Mortgage sub-account ending 7486**

The Provider outlines that the Complainants applied for the mortgage loan account ending **7486** through a third-party broker and therefore cannot comment on that agreement.

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The Provider maintains that they were the provider of the product and it was prohibited from contacting the Complainants directly until such time as the mortgage loan was drawn down.

The Provider submits that it issued a **Letter of Loan Offer** dated **18 April 2001** to the Complainants. The Provider states that the **Letter of Loan Offer** *“did not contain any reference to a tracker rate or specific condition that a tracker rate interest would be made available... when the fixed interest rate ended or at any other future date.”* The Provider refers to **Condition 10** of the **Letter of Loan Offer** in that regard.

The Provider explains that the variable rate referred to in **Condition 10** is the Provider’s standard variable rate which can be increased or decreased by the Provider. The Provider further details that by comparison a tracker rate *“will rise and fall in line with movements in ECB base rate”*. The Provider asserts that the default position following the expiry of the fixed term period was the Provider’s standard variable rate and there was no entitlement to a default tracker interest rate.

The Provider submits that it wrote to the Complainants on **8 May 2003** to confirm the scheduled expiry of the fixed term period and to confirm that they had the option to either a variable interest rate or further fixed interest rate. The Provider outlines that the Complainants selected another fixed interest rate at 3.89% for a period of 2 years. The Provider maintains that tracker interest rates were not available at the end of the expired fixed rate period in **2003**.

The Provider submits that it wrote to the Complainants on **9 May 2005** to confirm the scheduled expiry of the fixed term period and to confirm that they had the option to choose a variable interest rate or a further fixed interest rate. The Provider states that the Complainants selected a 2-year fixed interest rate of 3.89%.

The Provider outlines that it wrote to the Complainants in **May 2007** to confirm the scheduled expiry of the fixed term period and to confirm that they had the option to choose a variable interest rate or a further fixed interest rate and that the Complainants also had to option to discuss tracker variable rate options with the Provider. The Provider states that the Complainants chose to move their mortgage to a fixed interest rate of 4.94% for a period of 5 years. The Provider submits that in **2003, 2005** and **2007**, the Complainants completed and signed **Letter of Authority/Acknowledgement** forms which contained all the relevant information including what would transpire at the end of the fixed interest rate periods.

The Provider details that the ECB base rate in **May 2007** was 3.75% and gradually increasing since **December 2005**.

The Provider submits that on **17 April 2012**, prior to the expiry of the fixed interest rate period, it wrote to the Complainants outlining the fixed and variable interest rate options and that in absence of an alternative interest rate being selected, the interest rate would default to the tracker interest rate default option of ECB + 1.15%. The Provider submits that the Complainants did not select an alternative interest rate and the default tracker interest rate applied.

- **Mortgage sub-account ending 7473**

In relation to mortgage loan account ending **7473**, the Provider states that this account related to a top-up mortgage loan. The Provider outlines that it received the Complainants' application via a third-party in **2006** and did not provide any advice or recommendation regarding mortgage products to the Complainants. The Provider outlines that the practice at the time was that there was a range of interest rate options that were available to consumers however subject to credit criteria, eligibility and terms and conditions. The Provider submits that the Complainants applied for a loan in the amount of €20,000 over a term of 20 years on a variable interest rate of 4.28%.

The Provider submits that the Complainants did not request a tracker interest rate in respect of the top-up loan and refer to the signed **Top-Up Mortgage Application** form in this regard. The Provider submits that it is unable to locate a copy of the **Letter of Loan Offer** in respect of mortgage loan account ending **7473**.

The Provider details that the Complainants drew down the top-up mortgage loan in **August 2006** on the Provider's standard variable rate. The Provider submits that the Complainants requested information in relation to fixed interest rate options in **May 2007**. The Provider details that it sent correspondence dated **23 May 2007** to the Complainants providing fixed interest rate options and it also offered to discuss tracker variable rate options. The Provider states the Complainants selected a fixed interest rate at 4.94% for a period of 5 years.

The Provider submits that it wrote to the Complainants on **14 May 2012** prior to the expiry of the fixed rate period, outlining the fixed and variable interest rate options available and that in absence of an alternative interest rate being selected, the rate would default to the tracker interest rate default option of ECB + 1.15%. The Provider submits that the Complainants did not select an alternative interest rate and the default rate applied.

The Provider acknowledges that the tracker interest rate was not in accordance with the loan documentation or **Letter of Acknowledgement/Authority** form from **2007**, however maintains that as the interest rate was of benefit to the Complainants and no objection was raised, the interest rate is not in dispute.

The Provider maintains that the *“mortgage documentation ...was clear and unambiguous throughout [the] mortgage journey”* and that *“staff are not authorised to provide advice to customers as to what interest rate to select. The decision as to what interest rate to select rests solely with the customer based on what suits their individual circumstances”*.

The Complaint for Adjudication

The complaint being considered for this adjudication is that the Provider failed to offer the Complainants a tracker interest rate on mortgage loan sub-account ending **7486** from **2003** to **2012** and on mortgage loan sub-account ending **7473** from **2006** to **2012**.

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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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 this complaint, it is necessary to set out the provisions of the Complainants' mortgage loan documentation in respect of both mortgage loan accounts and also detail certain interactions between the Complainants and the Provider in the period between **2003** and **2012**.

I will consider each mortgage loan account separately below.

Mortgage sub-account ending 7486

The **Loan Offer Letter** dated **18 April 2001** in respect of mortgage loan account number ending **7486** details as follows:

<i>Loan Type:</i>	<i>ANNUITY</i>
<i>Loan Amount</i>	<i>£117,000.00</i>
<i>Interest Rate:</i>	<i>5.69%</i>
<i>Interest Type</i>	<i>FIXED FOR 24 MONTHS</i>
<i>Term</i>	<i>30 YRS"</i>

The **Loan Offer Letter** also stipulates the following:

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

Condition 4 of the **Specific Loan Offer Conditions** of the **Loan Offer Letter** details as follows:

"The rate of interest applicable to this loan will be fixed for the fixed rate term specified in the loan offer letter".

General Condition 10(b) of the **Loan Offer**- General Conditions details as follows:

"In the case of a fixed rate loan the following conditions will apply:-

- (i) The rate of interest applicable to this loan will be fixed at the rate and for the period specified in the loan offer.*
- (ii) The applicant(s) on the expiry of the fixed term, may, by prior notice in writing to the Company, opt to choose a further fixed rate of interest for a certain period if such an option is made available by the Company.*

Where such an option is not available or, if available, the applicant(s) fail to exercise the option, the interest rate applicable will be the rate of interest which may be increased or reduced by the Company from time to time and at any time (the variable interest rate), and in this respect the decision of the Company will be final and conclusively binding on the applicant(s)...."

The **Loan Acceptance** of the **Loan Offer Letter** was signed by the Complainants on **03 May 2001** on the following terms:

- (a) "I/We acknowledge receipt of the General & Specific Conditions attached to the Loan Offer. I/We have had the Loan Offer, Terms and Conditions explained to us by our Solicitor and I/We fully understand them. I/We hereby accept the Loan Offer on the terms and conditions specified. We undertake to complete the Mortgage Deed as soon as possible."*

The evidence is that the Complainants signed and accepted the Letter of Offer which confirms that the terms and conditions had been explained to them by their solicitor and they fully understand them.

It is clear to me that the **Loan Offer Letter** dated **18 April 2001** envisaged that a fixed interest rate of 5.69% would apply to mortgage loan account ending **7486** for a period of 24 months with a further fixed rate period to apply thereafter and if the option of a fixed interest rate was not available, a variable interest rate would apply. The nature of the variable rate was one that could be increased or reduced by the Provider from time to time as opposed to a tracker rate of interest that fluctuates in line with the ECB rate. In fact, I note that there is no reference whatsoever to a tracker rate of interest in the **Loan Offer Letter** dated **18 April 2001**, the terms of which were accepted by the Complainants. Moreover, I note that tracker interest rate products were not available from the Provider in **2001** when the Complainants applied for a mortgage loan as such products only became available from the Provider in **2004**.

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I acknowledge that the Complainants accept that a tracker interest rate option was not available in 2001 when they applied for mortgage loan account ending **7486**.

The Provider wrote to the Complainants on **8 May 2003**, prior to the expiry of the fixed interest rate period, outlining the fixed rate and variable rate options available as follows:

“On the 18th May 2003, the current fixed rate of 5.69% on your mortgage will expire and you may choose to transfer your mortgage to either a variable rate or new fixed rate term. The choice is yours.

The fixed rate options available at present are as follows:

<i>Rate Options</i>	<i>Rate %</i>
<i>1 year fixed</i>	<i>N/A</i>
<i>✓2 year fixed</i>	<i>3.89</i>
<i>3 year fixed</i>	<i>4.24</i>
<i>4 year fixed</i>	<i>N/A</i>
<i>5 year fixed</i>	<i>4.79</i>
<i>10 year fixed</i>	<i>N/A</i>

....

If you decide that a fixed rate option is best for you, simply complete the enclosed Letter of Authority and return it to us. We will then transfer your existing Mortgage to the option chosen...

If you choose the variable rate option you do not need to contact us as your loan will automatically revert to a variable rate. The current variable rate is 3.99%....”

The Provider has not furnished a copy of the Letter of Authority signed by the Complainants which is disappointing however it has provided a copy of the letter to the Complainants dated **20 May 2003** which details that the Complainants chose to accept a **fixed interest rate of 3.89% for a period of 2 years**.

The Complainants appear to accept that a fixed interest rate applied for 24 months and that there was no contractual entitlement to a tracker rate in **2003**, upon expiry of the initial fixed interest rate period, as the Provider did not offer tracker interest rate products in **2003**.

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The Provider wrote to the Complainants on **9 May 2005**, prior to the expiry of the further fixed interest rate period, outlining the interest rate options available as follows:

“On the 19th May 2005, the current fixed rate of 3.89% on your mortgage will expire and you may choose at that time to transfer your mortgage to either a variable rate or new fixed rate term. The choice is yours.

The fixed rate options available at present are as follows:

<i>Rate Options</i>	<i>Rate %</i>
<i>1 year fixed</i>	<i>N/A</i>
<i>2 year fixed</i>	<i>3.89</i>
<i>3 year fixed</i>	<i>4.19</i>
<i>4 year fixed</i>	<i>N/A</i>
<i>5 year fixed</i>	<i>5.04</i>
<i>10 year fixed</i>	<i>5.49</i>

....

If you decide that a fixed rate option is best for you, simply complete the enclosed Letter of Authority and return it to us. We will then transfer your existing Mortgage to the option chosen...

If you choose the variable rate option you do not need to contact us as your loan will automatically revert to a variable rate. The current variable rate is 3.53%....

The current variable rate may be increased or reduced by [Provider] from time to time, subject to prior notice being given, in the event of any change in the rate...”

The Provider’s letter dated **9 May 2005** clearly outlined a range of fixed rate options available to the Complainants and outlined that a variable rate of interest would automatically apply if the Complainants did not select a fixed interest rate. The interest rate options outlined in the letter dated **9 May 2005** are in line with **General Condition 10** of the **Loan Offer Letter** dated **18 April 2001**.

The Provider has not furnished a copy of the Letter of Authority signed by the Complainants which is disappointing however it has provided a copy of the letter sent to the Complainants dated **23 May 2005**, confirming their choice to accept a fixed interest rate of 3.89% for a period of 2 years.

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The Provider has not provided a copy of the letter that issued to the Complainants in **2007**, prior to the expiry of the fixed interest rate period, however it has provided a copy of a “generic letter” that issued to customers in **May 2007** who were on a fixed interest rate. The letter outlined 1-year, 2-year, 3-year, 4-year, 5-year and 10-year fixed interest rates.

The letter also detailed as follows:

“If you decide that a fixed rate option is best for you, simply complete the enclosed Letter of Authority and return it to us. We will then transfer your existing Mortgage to the option chosen. Should you have any specific queries in relation to refixing your mortgage, or the availability of tracker variable rate options, please contact us at [contact number].”

If you choose a variable rate option you do not need to contact us as your loan will automatically revert to a variable rate. The current variable rate is 5.40%....

The current variable rate may be increased or reduced by [Provider] from time to time, subject to prior notice being given, in the event of any change in the rate...”

The Complainants completed and signed a **Letter of Authority/Acknowledgement** on **22 May 2007** wherein they chose to apply a 5-year fixed rate of 4.94% to their mortgage loan account. The **Letter of Authority/Acknowledgement** also stipulated as follows:

*“TRANSFER FROM FIXED RATE TO VARIABLE RATE AT THE END OF FIXED NOTICE
On the expiry of the fixed term I/we may, by prior notice in writing to the Company, opt to choose a further fixed rate of interest for a certain period, if such an option is made available by the Company. Where such an option is not available or I/We fail to exercise the option if available, the ‘interest’ rate applicable will be a rate of interest which may be increased or reduced by the Company from time to time and at any time in line with market interest rates (the variable rate).”*

The Complainants appear to submit that they were never made aware of the availability of a tracker interest rate option in **2007** however I note that the letter that purportedly issued to the Complainants in **May 2007** invited the Complainants to discuss tracker interest rate options with the Provider. That said, the Provider was under no obligation, contractual or otherwise, to offer the Complainants a tracker interest rate in 2007. The Provider, in line with the terms of the **Loan Offer Letter** dated **18 April 2001**, offered further fixed interest rate options and a variable rate option to the Complainants. It is clear to me that the Complainants selected to apply a 5-year fixed interest rate to their mortgage loan account in **May 2007**.

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The Provider wrote to the Complainants by letter dated **17 April 2012**, prior to the expiry of the 5-year fixed interest rate period, which states as follows:

*“The fixed rate period of your mortgage is coming to an end on **26/05/2012***

...Any borrowings you have on this fixed rate will automatically roll to the Standard Tracker Rate Default Option ECB + 1.15% (APR 2.2%). Your monthly repayment on this rate is included in the table overleaf.

Alternatively you might choose a new variable or fixed rate”

In the absence of a selection by the Complainants, the interest rate defaulted to a tracker interest rate of ECB + 1.15%. I note that mortgage loan account ending **7486** remains on a tracker rate of interest and there is no dispute between the parties in that regard.

Mortgage sub-account ending 7473

I note that the Provider states that despite extensive searches of its electronic and manual records, the Provider has not been able to locate a copy of the mortgage loan offer letter that issued to the Complainants in **2006** in respect of the account ending **7473**, which is most disappointing. Nonetheless, it does not appear to be disputed between the parties that the Complainants signed and accepted a mortgage loan offer for top-up mortgage loan account ending **7473**. The Provider states that it is satisfied that the details of the loan offer are in line with the application form which has been furnished in evidence.

The **Top-Up Application Form** signed by the Complainants on **08 August 2006** shows that the Complainants sought to apply for a mortgage loan in the sum of €20,000 repayable over a term of 24 years on a standard variable rate of 4.28%. The Provider confirms that loan terms are as follows:

<i>“Amount</i>	<i>€20,000</i>
<i>Term</i>	<i>20 years</i>
<i>Rate</i>	<i>Standard Variable Rate 4.28%”</i>

I note the term of the loan was 20 years as opposed to 24 years as per the loan application, however I do not believe that is in dispute between the parties. The mortgage loan account statements submitted in evidence show that mortgage loan account ending **7473** was drawn down on **22 August 2006** on a standard variable rate.

It is important for the Complainants to be aware that although tracker interest rates were on offer generally by the Provider as part of its suite of products when the Complainants applied for a top-up mortgage loan in **August 2006**, there was no obligation on the Provider to provide the Complainants with information on the tracker interest rate offering at that time. The Provider explains that *“no advice or recommendation regarding suitability of products was provided to the customers by the [Provider]”* in that regard.

I note that the Complainants made enquiries with the Provider about the availability of fixed interest rate options in **2007**. The Provider has furnished in evidence a copy of a letter dated **23 May 2007** that issued to the Complainants outlining the fixed rate options available at that time. The letter dated **23 May 2007** details as follows:

“Further to your recent request please find below repayment quotes for our available fixed rates:

Rate Options	Rate% ...	Total Repayment per month
2 Year Fixed	4.98% ...	€119.09
3 Year Fixed	5.09% ...	€120.34
5 Year Fixed	4.94% ...	€118.64

...

If you decide that a fixed rate option is best for you, simply complete the enclosed Letter of Authority and return it to us within seven days. We will then transfer your existing Mortgage to the option chosen. Should you have any specific queries in relation to re-fixing your mortgage, or the availability of tracker variable rate options, please contact us at [contact number]”.

The Provider referred to the availability of tracker variable rate options in the letter dated **23 May 2007** however there was no contractual or other obligation on the Provider to do so. If the Complainants wished to pursue the potential option of applying a tracker interest rate on their mortgage loan in **May 2007**, the Complainants could have contacted the Provider at that time.

The Complainants completed and signed a **Letter of Authority/Acknowledgement** on **25 May 2007** wherein they chose to apply a 5-year fixed rate of 4.94% to their mortgage loan account. The **Letter of Authority/Acknowledgement** also stipulated as follows:

“I/We acknowledge the following Fixed Rate Mortgage conditions:

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1. FIXED TERM DETAILS

The rate of interest applicable to this loan will be fixed for the period specified.

2. TRANSFER FROM FIXED RATE TO VARIABLE RATE AT THE END OF FIXED NOTICE

On the expiry of the fixed term I/We may, by prior notice in writing to the Company, opt to choose a further fixed rate of interest for a certain period, if such an option is made available by the Company.

Where such an option is not available or I/We fail to exercise the option if available, the 'interest' rate applicable will be a rate of interest which may be increased or reduced by the Company from time to time and at any time in line with market interest rates (the variable rate)."

The Complainants, in their submissions, maintain that they were never made aware of the availability of a tracker interest rate option in **2007** however it is clear to me that the letter dated **23 May 2007** invited the Complainants to make enquiries with the Provider at the time in relation to potential tracker interest rate options.

The Provider wrote to the Complainants on **09 June 2007** confirming their selection to apply a 5-year fixed rate of 4.94% to the mortgage loan account ending **7473**.

The Provider wrote to the Complainants on **14 May 2012**, prior to the expiry of the fixed interest rate period as follows:

*"The fixed rate period of your mortgage is coming to an end on **03/06/2012**
...Any borrowings you have on this fixed rate will automatically roll to the Standard Tracker Rate Default Option ECB + 1.15% (APR 2.2%). Your monthly repayment on this rate is included in the table overleaf.*

Alternatively you might choose a new variable or fixed rate. To help you make an informed decision the table below outlines the advantages and disadvantages of the default tracker mortgage option compared to other variable and fixed rate mortgages."

In the absence of a selection by the Complainants, the interest rate defaulted to a tracker interest rate of ECB + 1.15%. I note that mortgage loan account ending **7473** remains on a tracker rate of interest and there is no dispute between the parties in that regard.

The Complainants are of the view that the Provider failed to offer them a tracker interest rate on mortgage loan sub-account ending **7486** from **2003** to **2012** and on mortgage loan sub-account ending **7473** from **2006** to **2012**.

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In relation to mortgage loan account ending **7486**, the evidence shows that tracker interest rates were first introduced by the Provider in **early 2004**, therefore a tracker interest rate option was not available to the Complainants when their first fixed interest rate period expired in **May 2003**. At the time, the Complainants elected to avail of a further 2-year fixed interest rate period.

In **May 2005**, the Complainants were offered further fixed interest rate options and a standard variable interest rate, in accordance with the terms of the **Letter of Loan Offer** dated **18 April 2001**. The Complainants chose to apply a further 2-year fixed interest rate. Despite tracker interest rates being available as part of the Provider's mortgage product offering, the Provider was under no obligation, contractual or otherwise, to offer the Complainants a tracker interest rate at that time. In **May 2007**, the Complainants were offered further fixed interest rate options and a standard variable interest rate, in accordance with the terms of the **Letter of Loan Offer** dated **18 April 2001**. The Complainants were also informed by the Provider of the availability of tracker rate options. However, the Complainants decided not to explore the tracker interest rate options and instead chose to apply a 5-year fixed interest rate to their mortgage loan account until **2012**, at which point the mortgage loan account defaulted to a tracker rate of interest.

In relation to mortgage loan account ending **7473**, the evidence shows that the Complainants drew down their top-up mortgage loan on a standard variable rate. If the Complainants were not satisfied with the applicable interest rate, the Complainants could have decided to not draw down the loan and explore alternative interest rate options with the Provider. However, the evidence shows that the Complainants applied for a standard variable interest rate mortgage loan and that is what they were offered. In **May 2007**, the Complainants, of their own choosing, sought to apply a 5-year fixed interest rate to their mortgage loan. Despite tracker interest rates being available as part of the Provider's mortgage product offering at that time, the Complainants chose to apply a 5-year fixed interest rate until **2012**, at which point the mortgage loan account defaulted to a tracker rate of interest. It was a matter for the Complainants to decide what mortgage interest rate product best suited their needs during the term of their mortgage loans.

While I acknowledge that the Letter of Authority/Acknowledgement form completed by the Complainants in **2007** in respect of both mortgage loan accounts state that either a fixed interest rate option or a variable rate option would apply (if a fixed rate was not available) on the expiry of the 5-year fixed interest period, I accept that the Provider of its own commercial discretion decided to offer the Complainants a tracker interest rate as the default interest rate in **2012**.

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The Complainants were also given the option of applying a further fixed interest rate or a discounted variable rate, in line with the terms of their loan agreement, however the default tracker rate of ECB +1.50% was more advantageous at the time. It is important to highlight that the Complainants were not contractually entitled to a tracker interest rate at any time throughout the term of both their mortgage loans. The Provider decided to offer the Complainants a tracker interest rate in **2012** as the default option on the expiry of the fixed interest rate period. This was to the benefit of the Complainants at the time, however there was no obligation on the Provider to so.

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

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and

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

