



<u>Decision Ref:</u>	2021-0489
<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 Complainants with the Provider. The mortgage loan that is the subject of this complaint is secured on the Complainants' investment property.

The loan amount was for €255,000 and the term of the loan was 15 years. The **Loan Offer Letter** which was signed on **12 January 2004** outlined that the interest rate applicable to the loan was "Fixed at 2.990%" for the first 12 months of the loan, with the Provider's variable interest rate to apply thereafter.

The Complainants' Case

The Complainants outline that they took out a mortgage in the sum of €255,000 in **2004**. The Complainants submit that in **February 2006** they were approved for a tracker interest rate of ECB base rate + 1.35%. They submit that in **June 2006**, they completed a Mortgage Form of Authorisation and sent it to the Provider.

The Complainants assert that they received confirmation from the Provider, in a letter dated **06 October 2006** "*clearly indicating that [the first Complainant] had sent an Acceptance (which [the first Complainant] was satisfied was an acceptance of a tracker rate)*".

In relation to the Provider's submission that it sent a reminder regarding the form on **16 October 2006**, the Complainants assert that the Provider *"did nothing to follow up despite repeated personal contact between [themselves] and the bank"*.

The Complainants detail that they *"understood this was implemented ever since"* but they only realised the rate had not been implemented in **November 2012**. The Complainants outline that they contacted the Provider and asked for this rate to be implemented and for any overpayments in interest to be refunded. The Complainants contend that the Provider *"flat refused"* this request and that *"[t]he [Provider] seems unaware of the 2006 correspondence"*.

The Complainants assert that the Provider has *"completely overlooked the correspondence of 2006 in which they agreed to alter our terms and acknowledged same but never implemented them"*.

The Complainants maintain that the Provider has *"consistently behaved appalling since December 2012"*. The Complainants submit that in **December 2012** and **January 2013** they *"repeatedly informed the [Provider] that [they were] stopping the standing order or direct debit for the excessive charge being levied"*. The Complainants submit that as soon as they identified the *"overcharging"* by the Provider, they calculated how much they *"should be paying per month on the tracker rate and altered [their] payments to that rate"* and kept their repayments at that reduced rate *"to indicate that [they] were prepared to pay"* the tracker rate of interest but not at the Provider's rate. The Complainants deny that *"the mortgage has fallen into arrears in the conventional sense"*.

The Complainants submit that, due to reducing their monthly payments with the Provider, they *"have been harassed on a monthly basis"* by the Provider's mortgage arrears department. The Complainants maintain that they were contacted on numerous occasions by numerous employees of the Provider and *"[n]one of the people calling from the [Provider] gave the impression that they liaised with any other people calling on behalf of the [Provider] and never hinted at accepting any fault on the part of the [Provider]"*. The Complainants detail that they contacted the Provider requesting a calculation of the *"difference in the figures between what [they] would have paid on tracker rate as opposed to what [they] paid on the rates applied by the [Provider]"* but the Provider has refused to give them the information.

The Complainants detail that the Provider did in fact approve a tracker interest rate in relation to mortgage loan account ending **4206**, which is not subject of this complaint and “*accept that*” that account was placed on a tracker.

The Complainants assert that the Provider accepts that it “*sanctioned a tracker and an alteration in the repayment to interest only*” for the Complainants’ mortgage loan account ending **3678**, which is the subject of this complaint. The Complainants contend that the Provider also accepts that it issued a letter to the Complainants on **06 October 2006** in relation to mortgage loan account ending **3678**, which stated that amendments had been made to their mortgage loan account. The Complainants contend that this letter indicated that their mortgage loan account had been amended to a tracker rate of interest.

The Complainants further submit that the Provider claims that this letter “*confirmed the new repayment amount as well as confirming that the “Mortgage Product Type” was “investment variable and not a tracker rate”*”. The Complainants suggest that the Provider “*deliberately misquote[s] their own letter*” as the Provider’s letter in question does not state that the mortgage product type was “*investment variable and not a tracker*”. The Complainants assert that if the Provider’s letter had stated this, this issue would not have arisen.

The Complainants assert that **General Condition 6** of the loan offer is “*entirely deficient and contrary to law and in particular contrary to the Unfair Terms in Consumer Contract Regulations 1995*” and that the Provider has not changed the clause.

The Complainants are seeking the following:

- (a) A tracker interest rate to be applied to their mortgage loan account; and
- (b) A refund of all overpaid interest on the mortgage loan account, backdating to **February 2006**.

The Provider’s Case

The Provider outlines that the Complainants drew down mortgage loan account ending **3678** on **08 March 2004**. The Provider details that the loan amount was €255,000, which was repayable over a term of 15 years. The Provider submits that the **Loan Offer Letter**, which was signed by the Complainants on **12 January 2004**, provided that a fixed interest rate of 2.99% for the first 12 months of the loan, with a standard variable rate to apply thereafter.

The Provider outlines that the mortgage loan account moved from the fixed rate to the investment standard variable rate on **08 March 2005** and the account matured on **01 April 2019**.

The Provider submits that interactions and communications in relation to another mortgage loan account held by the Complainants with the Provider, which is not subject of this complaint, are linked to the mortgage loan account subject of this complaint. The Provider acknowledges that *"from a review of its Letter history on account [ending 3678] that an MFA was issued to the Complainants"* to move this loan account to *"interest only repayments for a period of 10 years on 27 February 2006"*.

The Provider submits that it does not have a record of issuing a **Mortgage Form of Authorisation** at this time in respect of moving the mortgage loan account to a tracker interest rate. The Provider outlines that it *"cannot confirm that the required MFA issued to the Complainants in February 2006 at the time of the Complainants' request to move to a tracker rate of interest"*, however it is satisfied that it did issue the required MFA in **October 2006**.

The Provider outlines that the Complainants signed and accepted an incomplete version of the **Mortgage Form of Authorisation** dated **27 February 2006**. The Provider explains that the **Mortgage Form of Authorisation** was reissued to the Complainants and was signed and accepted by the Complainants on **23 June 2006**. The Provider notes that this **Mortgage Form of Authorisation** was *"delivered under cover of the Complainants' Representative on the same day"*.

The Provider submits that the **Mortgage Form of Authorisation** was titled *"Application for Change to Interest Only Loan"* and did not purport to move the Complainants mortgage loan account to a tracker interest rate. The Provider contends that the **Mortgage Form of Authorisation** *"was solely concerned with the change to interest only payments"*. The Provider asserts that it is satisfied that there *"could be no misinterpretation of the MFA so as to lead to a belief that this MFA would move the mortgage loan account to a tracker rate of interest"*.

The Provider submits that it issued a letter to the Complainants dated **06 October 2006**, which confirmed that the *"the terms of the mortgage loan account had changed only in respect of interest only payments"*. The Provider submits that this letter confirmed that the mortgage was a *"interest variable"* mortgage, and not a tracker mortgage. The Provider asserts that this request was in relation to mortgage loan account ending **3678**, the subject of this complaint.

The Provider submits that it issued a further letter to the Complainants dated **16 October 2006**, which confirmed that the Complainants' mortgage loan had been amended to interest only.

The Provider notes that this letter also noted that the Provider was "*unable to apply the special tracker rate (ECB +1.35%) approved February 2006*" as the required MFA was still outstanding. The Provider details that a copy of the required MFA was enclosed in this letter.

The Provider submits that the Complainants never completed and returned the **Mortgage Form of Authorisation** and therefore, the Complainants mortgage loan account never converted to the tracker interest rate.

The Provider notes that any amendment to a mortgage loan account requires written consent from customers to implement any change and the Provider suggests that it "*is not in a position to unilaterally amend the rate of interest without a customers express written instruction to do so*". Further, the Provider notes that the Complainants could have made a similar request for a tracker interest rate at any time, up until the Provider's removal of tracker interest rates from its product suite in late **2008**, however, the Complainants did not do so.

The Provider contends that the "*Complainants were incorrectly of the belief that the letter of 6 October 2006 confirmed a move of the mortgage loan account to a tracker rate of interest*".

The Provider outlines that the loan account fell into arrears on **01 February 2013, 03 November 2014, 02 January 2015** and **01 December 2015**. The Provider maintains that the arrears accrued on the account were not caused by financial difficulty, "*but rather the wilful decision by the Complainants to set up a standing order payment to the mortgage loan account that was equivalent to what the Complainants believed would be the payments if the mortgage loan account had been on a tracker rate*". The Provider asserts that it engaged extensively with the Complainants through telephone calls and correspondence with a view to resolving the arrears on the account.

The Complaint for Adjudication

The complaint for adjudication is that the Provider failed to apply a tracker interest rate to the Complainants' mortgage loan account as per their instructions in **February 2006**.

2.	<i>Period of Agreement</i>		25 years
3.	<i>Number of Repayment Instalments</i>	<i>Instalment Type</i>	4. <i>Amount of each Instalment</i>
	12	Fixed at 2.990%	€1,758.84
	168	Variable at 4.100%	€1,888.55”

Part 2 –The Additional Details of the Mortgage Loan Offer Letter describes the loan type as “*Repayment*” and outlines that the interest rate is “*2.990% Fixed*”.

The notice at the end of the page containing **Part 4 –The Special Conditions** details as follows:

“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.”

The relevant provisions of **Part 5 – The General Conditions** of the **Mortgage Loan Offer Letter**, provide as follows:

“4. Repayment

(a) Unless otherwise stated herein or agreed by the Lender in writing, the repayment of the Loan shall be by monthly instalments in arrears by direct debit and the Borrower must effect and maintain a suitable direct debit mandate with the Borrower’s bank or other financial institution. For an annuity, or other repayment loan, repayments shall be comprised of principal and interest and any other amounts payable and for an endowment loan shall comprise of interest and such other amounts only. The due dates for repayment of the Loan are those dates that are from time to time set by the Lender. The amounts of such repayments and the due dates for payment thereof shall be determined by the Lender at its absolute discretion.

...

5. General Interest Rate Provisions

...

(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.

...

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), 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)

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 that 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."

The **Consumer Credit Act Notices** provide as follows:

*"If your mortgage loan is at any time at a variable rate, please note:
THE PAYMENT RATES ON THIS HOUSING LOAN MAY BE ADJUSTED BY THE LENDER FROM TIME TO TIME."*

The **Borrower's Acceptance and Consents** section of the **Loan Offer Letter** which was signed by the Complainants on **12 January 2004** states as follows:

"...To signify your Acceptance of these terms and conditions, you must complete this Acceptance and Consents and return one part of the Offer Letter, duly completed, to the Lender. Where there is more than one borrower, references to "I" or "my" are to be construed as references to "we" or "our" respectively.

1. *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 that the foregoing **Mortgage Loan Offer Letter** envisaged that a fixed interest rate of 2.990% would apply for the first 12 months of the mortgage loan and, on the expiry of this 12-month period, the Provider's standard variable rate would apply. The Provider's variable interest rate is detailed as a rate which will *"vary at the lender's discretion upwards or downwards"*. The Complainants signed the **Acceptance and Consents** on **12 January 2004** confirming that they had read and understood the terms and conditions of the loan offer. I note from the **mortgage loan account statements** furnished in evidence that the mortgage loan was drawn down in full on **08 March 2004** on a rate of 2.790%.

The **internal mortgage desktop notes** furnished in evidence by the Provider show that the Complainants applied for another mortgage loan with the Provider in **2006** however that mortgage loan account is not subject of this complaint. It appears that a tracker interest rate of ECB + 1.35% applied to that mortgage loan account, which was signed and accepted by the Complainants on **09 May 2006** and the loan was drawn down on **22 August 2006**. For the avoidance of doubt, each mortgage loan is governed by the terms and conditions applicable to that particular mortgage loan.

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The fact that a tracker interest rate applied to a separate mortgage loan account held by the Complainants has no bearing whatever on the Complainants' interest rate entitlements in respect of mortgage loan account ending **3678** nor does it impact on the determination of this complaint.

The Provider has furnished an internal note in relation to the additional mortgage loan account ending **4206** held by the Complainants which is not subject of the complaint, however, it details as follows in relation to mortgage loan account ending **3678**:

"[the first Complainant] requests conversion of existing RIL [account ending 3678] to interest only and reduction in rate ...recommend 3.85% (tracker rate ECB + 1.6%)"

I have also been provided with a screenshot of the Providers' internal system in relation to mortgage loan account ending **3678** which details as follows:

"Date Sent: 27/02/2006

....

TREASURY HAVE APPROVED ECB PLUS 1.35% FOR TERM"

The Provider issued a letter to the Complainants on **27 February 2006** which detailed as follows:

"Dear [the Complainants]

We refer to your recent request to convert your mortgage account, as above, to an interest only loan for a period of 10 years. We confirm that the conversion to interest only has been approved subject to the receipt of the following documents as outlined below:

Signed Mortgage Form of Authorisation (enclosed)

To enable us to amend the account to interest only please return the requested documentation...."

I note that the Complainants' representative wrote to the Provider by way of letter dated **23 June 2006** as follows:

"Dear Sir we refer to your letter of 27th of February in the above matter and now enclose the Mortgage Form of Authorisation duly signed by our client"

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I have been provided with a copy of the signed **Mortgage Form of Authorisation Application for Change to Interest Only Loan** which is accepted and signed by the First Complainant on **23 June 2006** and the Second Complainant on **22 June 2006**.

The Complainants signed the **Mortgage Form of Authorisation Application for Change to Interest Only Loan** on the following terms:

I/We wish to apply to change my/our Mortgage Loan (the "Loan") from an Annuity Loan to an INTEREST ONLY Loan for a period of 10 years (Agreed Period).

ACKNOWLEDGEMENT AND AGREEMENT

Please read carefully before signing this form. Where there is more than one borrower, any references to "I" or "my" are to be construed as references to "we" or "our" respectively.

I acknowledge that following the acceptance by the Bank of this Application the terms and conditions applicable to the Loan shall be amended/varied by the terms and conditions set out in this Form of Authorisation.

I acknowledge and accept the following conditions and agree to be bound by them:

1. I/we must continue to make such revised repayment instalments comprising of interest only and any other moneys payable as the Bank shall advise me in writing.
2. In converting the Loan from repayment to INTEREST ONLY for the period set out below I/we will be bound by the additional conditions set out overleaf.
3. Save as set out in this Form of Authorisation all the terms and conditions applicable to the Loan remain unchanged.
4. I/we acknowledge that we have been advised to obtain independent legal/financial advice with regard to this amendment to the mortgage.

CONDITIONS: CONVERSION TO INTEREST ONLY LOAN

For a period of 10 years only

For the next Agreed period of the term of the Loan, repayment of this Loan shall be comprised of interest and any other amounts payable only and General Condition 4(a) is hereby varied. At the end of the Agreed period, repayment shall comprise of principal and interest and any other amounts payable fully in accordance with General Condition 4(a). The amount of such revised repayment instalments shall be as advised to the Borrower by the Bank in writing. The Bank may at any time during this Agreed period and at its absolute discretion (or at the request of the Borrower), convert the Loan to an annuity or repayment loan whereupon the Borrower shall be obliged to make such revised repayment instalments comprising both principal and interest and any other moneys payable as the Bank shall advise the Borrower in writing."

It is clear to me that the Complainants chose to apply to change their mortgage loan to an interest only loan for a period of 10 years. By doing so, the Complainants agreed to make revised monthly repayment instalments as advised by the Provider in writing. Despite the application for interest only repayments having been accepted in **June 2006**, this change was not implemented by the Provider until **October 2006**.

A screenshot from the Provider's internal system details as follows:

"Date Sent: 4/10/2006

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...

MFA has been returned to you. Repayments have not been reduced [sic] to interest only. Please reduce with immediate effect and refund account back to June”.

The Provider’s internal note dated **06 October 2006** states as follows:

“mortgage type changed to interest only and backdated to payment on 01/06/06. A rate was approved by treasury and we have never received a Tracker MFA so that we can set up the rate. Please forward signed [sic] MFA in order to allow us to amend the rate.”

I note the Provider wrote a letter to the Complainants’ representative on **27 May 2014** over the course of dealing with this complaint, which detailed as follows:

“[The Provider] issued the Mortgage Form of Authorisation – Application for Change to Interest Only Loan (Interest Only MFA) to your clients on 27th February 2006, copy enclosed.....The Branch at [address redacted] provided your clients with the “Application for Change to Tracker Mortgage – Mortgage Form of Authorisation” (Tracker Rate MFA). The Bank did not receive a signed Tracker Rate MFA from your clients in order to apply this rate to your clients’ mortgage account”.

It therefore appears to me that the Provider approved a tracker interest rate of ECB +1.35% to apply to the Complainants’ mortgage loan account in **February 2006** and a **Mortgage Form of Authorisation** issued to the Complainants for completion in order for the Provider to be able to amend the applicable interest rate. It appears however that the signed **Mortgage Form of Authorisation** was never received by the Provider.

The Provider issued a **Product Switch Letter** to the Complainants dated **06 October 2006**, which states as follows:

“With reference to your recent request, I confirm that the amendments to the above account have been processed and the revised details relating to your account are outlined below:

<i>Mortgage Product Type:</i>	<i>Investment Variable</i>
<i>Mortgage Type:</i>	<i>Interest Combo</i>
<i>Interest Rate:</i>	<i>4.940%</i>

...

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The payment rates on this HomeLoan may be adjusted by the Lender from time to time."

The Provider issued a letter to the Complainants on **16 October 2006**, which provides as follows:

"I wish to confirm that the above mortgage has been amended to interest only and repayments have been backdated to 01/06/2006. A refund of €5,297.41 has been credited to your account. Future monthly repayments of €911.15 will apply.

Also, we have been unable to apply the special tracker rate (ECB + 1.35%) approved February 2006, as your authority form appears to be outstanding. I enclose copy form and would greatly appreciate if both of you could sign and return to me directly."

The evidence shows that the Complainants completed a **Mortgage Form of Authorisation Application For Change to Interest Only** in **June 2006** which provided for the conversion of mortgage loan account ending **3678** to an interest only loan for a period of 10 years however this change was not implemented until **October 2006**. The Provider however backdated the interest only repayments to **01 June 2006** and refunded the overcharged interest to the Complainants' mortgage loan account on **06 October 2006**. The letter dated **06 October 2006** issued to the Complainants to notify them that the change had been implemented. Further, this letter states that the nature of the mortgage loan was an investment variable loan, and the payment rates could be adjusted by the Provider. There is no reference to the payment rates varying in accordance with the ECB refinancing rate. This suggests that the Complainants' loan account remained on a variable rate of interest.

It is clear from the letter dated **16 October 2006** that the Complainants were notified that their mortgage loan account had not been converted to a tracker interest rate, as the requisite **Mortgage Form of Authorisation** remained outstanding. The Provider enclosed a further copy of the **Application for Change to Tracker Mortgage Form of Authorisation** in its letter to the Complainants dated **16 October 2006**. This form was required to be completed by the Complainants if they wished to apply for a tracker mortgage variable interest rate. It appears that a similar form was issued to the Complainants in **February 2006** but was never completed and returned to the Provider. It would appear to me that the Provider did not specify a date by which the Complainants had to complete and return the requisite form. The Complainants maintain that they do not recall receiving the letter dated **16 October 2006**, however there is no evidence to support this.

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The Provider asserts that the Complainants never completed the **Application for Change to Tracker Mortgage Form of Authorisation** to change the interest rate on their mortgage loan account to a tracker interest rate in **February 2006** or **October 2006**.

There is no evidence to show that the Complainants signed or accepted this form in order to apply a tracker interest rate of ECB +1.35% to their mortgage loan account therefore the mortgage loan account remained on a variable interest rate.

I note that the Complainants subsequently cancelled the direct debit mandate in respect of mortgage loan account ending **3678** and reduced their monthly payments in **February 2013** to an amount of €397.49 per month. This appears to be the amount that the Complainants estimated that they would be repaying if a tracker rate of interest applied to their mortgage loan account. From **January 2012** to **October 2012**, the Complainants were making monthly repayments of €1,032.82 at a variable rate of 5.465% and from **November 2012** to **January 2013**, monthly repayments of €1,128.90 at a variable rate of 5.965%. These repayments were in line with the terms of the **Mortgage Form of Authorisation Application for Change to Interest Only Loan** which the Complainants agreed to in **June 2006**. The Complainants appear to have made the decision to reduce their monthly repayments of their own accord despite the Provider having notified the Complainants that any shortfall in monthly repayments would result in the mortgage loan account falling into arrears. In circumstances where the Complainants did not make the correct monthly repayments applicable to their mortgage loan account, the mortgage loan account ending **3678** fell into arrears on **01 February 2013**. It does not appear from the evidence before me that the Complainants could not afford to service the interest only repayments but rather chose not to make the required monthly repayments at the appropriate amount because they decided themselves that they should be paying a monthly repayment on a tracker rate of interest as opposed to the investment variable rate. The Complainants made this decision despite having received confirmation from the Provider some 5 years previous that their mortgage loan account had not converted to a tracker interest rate of ECB +1.35%.

I have been provided with five telephone call recordings in evidence from the Provider, which I have considered. The telephone calls, which I do not consider have any bearing on this complaint, relate primarily to calls made by the mortgage arrears department of the Provider to the First Complainant. I note that on **21 August 2014**, during a telephone call, the First Complainant maintains that the Provider offered the Complainants a tracker rate and this was applied to the mortgage loan account. During a telephone call on **26 June 2017**, the First Complainant queried with the Provider's representative as to who decides what rate would apply after a fixed interest rate period. During the call, the representative informed the First Complainant that independent legal advice should be sought in that regard.

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The Complainants describe the Provider's behaviour during the telephone calls as "*bullying and oppressive and extremely sloppy*". Having considered the telephone calls between the parties, I am of the view that the Provider's dealings with the Complainants cannot reasonably be characterised as "*bullying*" or "*oppressive*" in nature.

Having considered the evidence in its entirety, it is clear that the Complainants initially drew down their mortgage loan account on a fixed interest rate of 2.79% for a period of 12 months, which would thereafter convert to the Provider's variable rate. The evidence shows that the Provider issued two **Mortgage Forms of Authorisation** to the Complainants, one to convert their mortgage loan account to interest only in **February 2006** and the other to convert their loan account to a tracker rate of interest in **February 2006** and again in **October 2006**. I note that this office has not received any documentation from either party, wherein the Provider notifies the Complainants that their mortgage loan account had been converted to a tracker rate of interest. I accept that the Provider cannot make amendments to a customer's account without their consent and in order for a tracker interest to apply to the mortgage loan account ending **3678**, the Complainants would have been required to complete the appropriate **Mortgage Form of Authorisation**, however they do not appear to have done so. Given the nature of a mortgage loan contract between a financial services provider and a customer, it is only necessary that the written authorisation of a customer is required to alter the terms of a customer's mortgage loan.

In addition, the Provider notified the Complainants by letter dated **16 October 2006**, that it had been unable to apply the tracker rate to the Complainants' mortgage loan account as the **Mortgage Form of Authorisation** had not been completed. The evidence shows that the Provider enclosed a further **Mortgage Form of Authorisation** and requested that the Complainants complete and return the form. Based on the evidence submitted to this office, it appears to me that the Complainants never completed and returned the enclosed **Mortgage Form of Authorisation** and accordingly, their mortgage loan account was never converted to a tracker rate of interest.

In light of the foregoing, it is evident that the Complainants did not, at any time, have an entitlement, contractual or otherwise, to a tracker rate of interest. It appears to me that the Provider, in line with its own commercial discretion at the time, offered the Complainants a special tracker interest rate in **February 2006** and, based on the evidence before me, it appears that the Complainants did not complete the documentation required to apply that tracker interest rate. I would not expect the Provider's offer of a special tracker interest rate to remain valid indefinitely.

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Nevertheless, the Provider afforded the Complainants another opportunity to apply a tracker interest rate in **October 2006**, however they did not do so. It remained open to the Complainants to seek a tracker interest rate at any time up until the Provider withdrew such rates from its product offering in **late 2008**, however the Complainants did not do so and therefore the mortgage loan account remained on a variable interest rate.

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**

8 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.