



<b><u>Decision Ref:</u></b>	2021-0544
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Tracker Mortgage
<b><u>Conduct(s) complained of:</u></b>	Failure to offer a tracker rate throughout the life of the mortgage
<b><u>Outcome:</u></b>	Rejected

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

This complaint relates to two mortgage loan accounts held by the Complainants with the Provider. Both mortgage loans are secured on the Complainants' private dwelling house.

The **Mortgage Loan Offer** in respect of mortgage loan account ending **8458** was signed and accepted by the Complainants on **26 September 2002**. The loan amount was €145,360.00 repayable over a term of 25 years on a fixed interest rate of 3.65% for the first 12 months, with a variable interest rate to apply thereafter.

The **Mortgage Loan Offer** in respect of mortgage loan account ending **3052** was signed and accepted by the Complainants on **3 August 2004**. The loan amount was €30,000.00 repayable over a term of 15 years on a fixed interest rate of 2.75% for the first 12 months, with a variable interest rate to apply thereafter.

**The Complainants' Case**

The Complainants outline that they obtained a mortgage loan account ending **8458** with the Provider on a fixed interest rate in **September 2002**. The Complainants submit that the first Complainant was made a permanent employee of the Provider in **March 2004**. The

Complainants detail that they signed a document moving their mortgage loan to a tracker interest rate which had small print that was not properly explained to them.

The Complainants note that a second mortgage loan account ending **3052** was drawn down in **2004**.

On **16 December 2005**, the Complainants submit that they received a letter from the Provider offering a staff tracker interest rate. The Complainants outline that they completed a **Mortgage Form of Authorisation (MFA)**, selecting a tracker interest rate.

In **May 2016**, the Complainants submit that they learned that their mortgage loan accounts were put on a variable interest rate between **2006** and **2008**. The Complainants state that they were transferred to a variable interest rate without their knowledge and were never given the option to choose from the alternative interest rates that were available from the Provider in **2006**. The Complainants contend that there were no terms and conditions stating that a *"tracker could go to a variable w/o consent"*. The Complainants outline that the Provider's branch admitted that there was no correspondence informing them of this. The Complainants contend that they do not believe it is ethical from a personal or business point of view to transfer a customer to the highest rate of interest without informing them. The Complainants refer to point 3 of the **MFA** in this regard.

The Complainants outline that the second Complainant was made redundant in **2009** and was forced to emigrate to obtain work. The Complainants submit they had to enter a 6-month moratorium on their mortgage to avoid getting a poor credit rating or possibly losing their home.

The Complainants assert that the Provider should furnish proof that it wrote to them in **April 2006** and that they did not reply. The Complainants submit that a *"hopper letter"* is not evidence that a MFA was issued. The Complainants submit that this letter did not exist until this office became involved in the investigation of this complaint in **2018**. The Complainants submit that the Provider continually quotes a line from a **MFA** that issued in **2004** but talk about lack of policies and *"have drawn this out over a three-and-a-half-year period"*.

The Complainants submit that they were not offered a tracker interest rate and refer to the telephone recording of a staff member in **November 2016**. The Complainants outline that they were *"in shock"* when they listened to the telephone recording and *"to hear a staff member confirm back in 2016 that indeed [the Complainants'] mortgage was*

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*transferred to the highest variable rate without [their] knowledge or consent shook [the Complainants] to the core”.*

The Complainants state that they had to put all their expectations and future plans on hold for many years.

The Complainants are seeking the following:

- (a) Their mortgage loan account is reverted to a tracker rate of interest; and
- (b) Compensation and redress for the overpaid interest amount since **2006** when the Complainants were switched from the tracker interest rate to a variable rate.

### **The Provider’s Case**

#### **Mortgage Account ending 8458**

The Provider outlines that that Complainants signed and accepted a **Mortgage Loan Offer** in relation to mortgage loan account ending **8458** on **26 September 2002** for an amount of €145,360.00 for a term of 25 years on a fixed interest rate of 3.89% for 12 months, and thereafter moving to a variable interest rate. The Provider submits that the Mortgage Loan Offer does not contain a provision in respect of a tracker interest rate. The Provider refers to **General Condition 7(b)** which outlines what rate would apply at the end of any fixed interest rate period. The Provider also refers to **General Condition 6(a)** which deals with variable interest rates.

The Provider submits that the Complainants signed and accepted a **Form of Authorisation** on **13 October 2003** accepting a further fixed interest rate of 3.65% for a period of 12 months.

The Provider outlines that at the end of the fixed interest rate period, the Complainants signed a **MFA** on **14 October 2004** to move to a staff tracker rate of interest. The Provider states that the staff tracker rate was made available to the Complainants as the first Complainant was employed as a permanent member of staff at the time. The Provider refers to the “*Acknowledgement and Agreement*” section of the MFA in this regard. The Provider submits that it was clear to the Complainants that the **General Conditions** contained in the Mortgage Loan Offer signed on **26 September 2002** remained in force and refers in particular to **General Condition 6** and **General Condition 7**.

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The Provider submits that it does not hold any record of interactions with the Complainants in **2004** and **2005** other than receipt of the MFA signed on **14 October 2004**.

The Provider submits that the first Complainant left her employment with the Provider in **February 2006**. The Provider submits that it wrote to the Complainants on **11 April 2006** offering a range of non-staff interest rate options to include a tracker interest rate of ECB +1.25%. The Provider refers to a screenshot of its "*Mortgage Desktop System*" which it submits is evidence of the letter that issued on **11 April 2006**, otherwise referred to as a "*Hopper Letter*".

The Provider submits that the Complainants did not return the MFA and the mortgage loan account moved to a standard variable rate on **29 May 2006** in line with the terms and conditions of the MFA signed on **14 October 2004**. The Provider submits that it cannot implement a change to the interest rate on a mortgage loan account without the express authorisation and agreement from a customer. The Provider states the Complainants lost their contractual entitlement to avail of the staff tracker rate of interest when the first Complainant ceased her employment with the Provider in **February 2006**.

The Provider contends that the telephone call recording between two of its staff members in **November 2016**, to which the Complainants refer to in their submissions, does not amount to does not reflect a true representation of the terms and conditions of the mortgage loan agreement.

### **Mortgage Account ending 3052**

The Provider outlines that the Complainants signed and accepted a **Mortgage Loan Offer** in relation to mortgage loan account ending **3052** on **3 August 2004** for an amount of €30,000.00 for a term of 15 years on a fixed interest rate of 2.75% for 12 months, and thereafter moving to a variable interest rate. The Provider submits that the Mortgage Loan Offer did not contain a provision for a tracker interest rate.

The Provider submits that it issued a "*Staff Tracker Notice*" to the Complainants on **16 December 2005** offering a tracker rate of interest. The Provider states that the Complainants did not accept the offer of a staff tracker interest rate of ECB + 0.85%. The Provider outlines that the interest rate that applied to mortgage loan account ending **3052** was not linked with the first Complainant's employment with the Provider, therefore when her employment ceased, there was no requirement for the Provider to issue a rate options letter to the Complainants.

The Provider submits that it does not have any record of interactions between the Complainants and the Provider seeking to convert mortgage loan account ending **3052** to a staff tracker interest rate or any other rate in **2004** and **2005**.

The Provider submits that it did not have any specific policy in place in respect of a staff tracker interest rate offering to existing staff customers between **2004** and **2005**. The Provider states that it was open to the Complainants to request to move their mortgage loan account to a tracker interest rate between **2004/2005** and **late 2008**.

The Provider submits that a variable rate of interest remained on the account until the mortgage was redeemed in full on **19 February 2019**.

### **The Complaint for Adjudication**

The conduct complained of is that the Provider incorrectly switched the Complainants' mortgage loan accounts ending **3052** and **8458** from a staff tracker interest rate to a standard variable rate in **2005** and **2006** without informing them or presenting them with any alternative interest rate options.

### **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 **11 October 2021** outlining my preliminary determination in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

Following the issue of my Preliminary Decision, the Complainants made a further submission by way of email to this office dated **28 October 2021**, a copy of which was transmitted to the Provider for its consideration. The Provider has not made any further submission.

Following the consideration of the Complainants' additional submission and all of the submissions and evidence furnished by both parties to this office, I set out below my final determination.

Before dealing with the substance of this complaint, I note that the Complainants state in their submissions that the Provider *"never complied or responded to [our] request for full disclosure under Section 3 of the Data Protection Act"*.

The Complainants were informed of the parameters of the investigation of their complaint, by email from this Office dated **10 October 2019** which outlined as follows:

*"With respect to any issue you may have which relates to an alleged breach of data protection legislation, please be advised that the office of the Data Protection Commissioner is the more appropriate body to raise such concerns with.*

Therefore, any alleged breach of data protection legislation, does not form part of this investigation and decision for the reasons set out above.

In order to determine this complaint, it is necessary to review and set out the relevant provisions of the Complainants' mortgage loan documentation in relation both accounts. It is also necessary to consider the details of certain interactions between the Complainants and the Provider in **2005** and **2006**.

I will now consider each mortgage loan account in turn below.

#### **Mortgage loan account ending 8458**

The Provider issued a **Mortgage Loan Offer Letter** dated **20 September 2002** to the Complainants.

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

“1.	<i>Amount of Credit Advanced:</i>		€145,360
2.	<i>Period of Agreement:</i>		25 Years
3.	<i>Number of Repayment Instalments</i>	<i>Instalment Type</i>	<i>4.Amount of each Instalment</i>
	12	Fixed at 3.890%	€757.46
	288	Variable at 4.740%	€824.03”

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

“11.	<i>Type of Loan:</i>	<i>Repayment</i>
12.	<i>Interest Rate:</i>	<i>3.890% Fixed”</i>

At the bottom of **Part 4 - Special Conditions** it states 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.”*

**Part 5 - General Conditions** details as follows:

**“6. Variable Interest Rates**

- (a) *Subject to clause 6(c), at all times when a variable interest rate applies to the Loan the interest rate chargeable will vary at the Lender’s discretion upwards or downwards. If at any time a variable rate of interest applies, repayments in excess of those agreed may be made at any time during the term of the Loan without penalty.*
  
- (b) *The Lender shall give notice to the Borrower of any variation of the interest rate applicable to the Loan, either by notice in writing served on the Borrower in accordance with clause 1(c) above, or by advertisement published in at least one national daily newspaper. Such notice or advertisement shall state the varied interest rate and the date from which the varied interest rate will be charged.*

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- (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 increase, subject to these Conditions, be fixed from the date of draw down for the fixed period stated in this Offer Letter. **The fixed rate of interest set out in this Offer Letter is the fixed rate which would apply were the Loan drawn down today. There is no guarantee that the fixed rate so stated will be available when the Loan is in fact drawn down. The actual fixed rate that shall apply shall be the Lender's fixed rate available for the fixed period selected by the Borrower at the date of draw down.***
- (b) *The Lender shall have sole discretion to provide any further or subsequent fixed rate period. If the Lender does not provide such a further or subsequent fixed rate period or if the Lender offers the Borrower a choice of interest rate at the end of any fixed rate period and the Borrower fails to exercise that choice, then in either case the interest rate applicable to the Loan will be a variable interest rate....."*

The Complainants signed the **Borrower's Acceptance and Consents** section of the **Mortgage Loan Offer Letter** on **26 September 2002** on the following terms:

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

The screenshot from the Provider's internal letter history system shows that a **Product Review Notice** issued on **15 September 2003**. The Complainants signed a **Form of Authorisation** on **13 October 2003** which detailed as follows:

*"Re: ACCOUNT NO: [ending 8458] Repayment HomeLoan*

*...*

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*I accept your offer dated 15/09/2003 and apply for the interest rate indicated below for my Homeloan. I understand this rate will apply to my Homeloan from the expiry of my current fixed rate.*

*Homeloan Variable Rate 3.600%*

*20 Year Fixed Rate (New/Exist) 7.250%*

✓ *1 Year Fixed Rate (Existing) 3.650%*

*2 Year Fixed Rate Existing 4.050%*

*3 Year Fixed Rate 4.240%*

*5 Year Fixed Rate 4.750%*

*10 Year Fixed Rate 5.500%*

*I agree to the following terms:*

- 1. The interest rate I have chosen on this form will apply to my Homeloan from the expiry of my current fixed rate.*
- 2. ....These terms replace any similar terms in my Homeloan Letter of Offer*
- 3. I confirm that my Homeloan Letter of Offer as amended by this Authorisation remains in force."*

In circumstances where the Complainants selected a 1-year fixed interest rate period, a further fixed interest rate was applied to the Complainants' mortgage loan account. The screenshot from the Provider's internal letter history system shows that a Product Rollover Letter issued to the Complainants on **14 October 2003**.

The Complainants signed a **Staff Application for Change to Tracker Mortgage Form of Authorisation** on **14 October 2004** which details as follows:

*"The interest rate shall be no more than 1.10% above the prevailing European Central Bank Main Refinancing Operations Minimum Rate ("Repo rate") for the term of the Loan.*

**APPLICATION FOR CHANGE OF INTEREST RATE:**

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***I/We wish to apply for the tracker mortgage variable interest rate as detailed above for my/our mortgage loan (the "Loan").***

*Please select when you wish to change your interest rate:*

- I/We wish to change to the rate selected above immediately\*.
- I/We wish to change to the rate selected above at the expiry of my/our current fixed rate period (if applicable)
- We wish to switch from the staff preferential interest rate to the tracker mortgage variable interest rate for my/our mortgage loan (the "Loan"). Please see conditions overleaf.

The **Acknowledgement and Agreement** section of this application form details as follows:

*"I acknowledge that following the acceptance by [the Provider] 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, and I accept the said conditions and agree to be bound by them.*

*I acknowledge and agree that:-*

*...*

- 2. In the event of the Borrower (or both Borrowers where both are members of the permanent staff of the [Provider]) ceasing to be employed by the [Provider] the interest rate applicable to the Loan shall immediately revert to the prevailing Homeloan Variable Rate or such other rate which [the Provider] may, at its absolute discretion, offer to the Borrower.***
- 3. In converting the Loan to a Tracker Mortgage Loan, I agree that the interest rate applicable to the Loan is a variable interest rate and may vary upwards or downwards. The interest rate shall be no more than the percentage stated on page 1 above the prevailing European Central Bank Main Refinancing Operations Minimum Bid Rate ("Repo rate") for the term of the Loan. Variation in interest rate shall be implemented by [Provider] not later than close of business on the 5<sup>th</sup> working day following a change in the Repo rate by the European Central Bank. Notification shall be given to the Borrower of any variation in interest rate either by notice in writing served on the Borrower, or first named borrower where there is more than one borrower, or by advertisement published in at least one national daily newspaper. In the event that, or at any time, the Repo rate is certified by [Provider] to be unavailable for***

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*any reason the interest rate applicable to the Loan shall be the prevailing Home Loan Variable Rate.*

**4. Save as set out in this Form of Authorisation all the terms and conditions applicable to the Loan remain unchanged.”**

A tracker interest rate of ECB +1.10% was subsequently applied to the Complainants' mortgage loan account.

It is clear to me that the **Mortgage Loan Offer Letter** dated **20 September 2002**, which was signed and accepted by the Complainants on **26 September 2002**, provided for a fixed interest rate of 3.89% for 12 months after which a variable interest rate would apply. The Mortgage Loan Offer Letter did not contain any contractual entitlement to a tracker interest rate on the expiry of the fixed interest rate period or at any other time during the term of the loan.

Prior to the expiry of the initial fixed interest rate period, the Complainants signed and accepted a **Form of Authorisation** on **13 October 2003** wherein they opted for a further 1-year fixed interest rate period at 3.65%. The **Form of Authorisation** specifically provided that the **Mortgage Loan Offer Letter**, as amended by the **Form of Authorisation**, would remain in force.

The first Complainant became a permanent employee with the Provider in **2004** and was offered a staff tracker interest rate. I do not believe there is any dispute between the parties in that regard. The Complainants accepted the staff tracker interest rate by signing the **Staff Application for Change to Tracker Mortgage Form of Authorisation** on **14 October 2004**.

The Complainants appear to submit that the “*small print*” in this staff application form was not properly explained to them. It is clear to me that the **Acknowledgement and Agreement** section of this staff application outlined that if the first Complainant ceases employment with the Provider, the interest rate applicable to the loan will switch to the Provider's variable interest rate or any such rate that the Provider may decide to offer the Complainants.

I accept that the terms and conditions of the **Mortgage Loan Offer Letter** dated **20 September 2002** remained in effect and in particular **General Condition 6** which relates to variable interest rates and **General Condition 7** which relates to fixed interest rates. If the Complainants were not satisfied with and/or did not understand the terms of the **Staff Application for Change to Tracker Mortgage Form of Authorisation**, the Complainants

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were free to seek independent advice or indeed choose to not accept the offer and accordingly not sign the document in question.

However, the Complainants acknowledged that they agreed with the terms of the applicability of the tracker interest rate by signing the **Acknowledgement and Agreement** section of the **Staff Application for Change to Tracker Mortgage Form of Authorisation** on **14 October 2004**.

The first Complainant ceased her employment with the Provider in **spring 2006**.

The Complainants, in their post Preliminary Decision submission dated **27 October 2021**, submit that the **Staff Application for Change to Tracker Mortgage Form of Authorisation** from **2004** provides that *"notification shall be given to the borrower of any variation in interest rate by notice in writing served on by the Borrower, or first named borrower where there is more than one borrower, or by an advertisement in the newspaper"*. I am satisfied that the provision referred to in the **Mortgage Form Authorisation** relates to a requirement to notify the Complainants of a change in the tracker mortgage interest rate specifically. Therefore, whenever a change occurred in the ECB main refinancing rate, the Provider was required to notify the Complainants of any such change as it affected the overall tracker interest rate applicable to their mortgage loan.

The screenshot from the Provider's internal letter history system shows that a **Rate Change Document** issued to the Complainants on **05 December 2005** and **08 March 2006**. I note from the mortgage loan account statement submitted in evidence that the interest rate on mortgage loan account ending **8458** changed to 3.35% on **05 December 2005** and to 3.6% on **08 March 2006**. The ECB main refinancing rate changed to 2.25% in **December 2005** and to 2.50% in **March 2006** therefore the tracker interest rate applicable to the Complainants' mortgage loan account changed to 3.35% on **05 December 2005** and to 3.6% on **08 March 2006**. I am satisfied that the Complainants were correctly notified of these changes in line with the terms of their mortgage loan agreement.

The Provider issued a letter dated **11 April 2006** to the Complainants which detailed as follows:

*"Dear [Complainants]*

*Further to your request to change your current mortgage product, I am very pleased to offer you the following range of attractive options:-*

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<b>Description</b>	<b>Rate</b>	<b>Projected Repayment</b>
<i>Homeloan Variable Rate</i>	<i>3.990%</i>	<i>€763.13</i>
<i>Tracker Variable ECB + 1.25%</i>	<i>3.750%</i>	<i>€746.35</i>
<i>1 Year Fixed</i>	<i>3.990%</i>	<i>€763.13</i>
<i>2 Year Fixed</i>	<i>4.210%</i>	<i>€778.69</i>
<i>3 Year Fixed Rate</i>	<i>4.250%</i>	<i>€781.54</i>
<i>4 Year Fixed Rate</i>	<i>4.350%</i>	<i>€788.68</i>
<i>5 Year Fixed Rate</i>	<i>4.450%</i>	<i>€795.86</i>

*To avail of your selected option, please tick the relevant rate on the enclosed Mortgage Form of Authorisation. Please sign and date this form and return it to us at [address] before 25/04/2006. Unfortunately, we cannot hold the above choice of rates open after this date.*

***If you would like to discuss the above option(s) further, please do not hesitate to contact me or any member of my branch team. I would be more than happy to discuss this with you.***

*If I do not hear from you by 25/04/2006 your current mortgage product and rate will continue to apply in accordance with your loan until we receive further instructions from you....”*

It appears to me that the letter dated **11 April 2006** was issued on foot of a request made by the Complainants as opposed to a letter that issued automatically from the Provider. However, I have not been provided with any details of any such request made by the Complainants and the Provider submits that it does not hold any record of the request from the Complainants at this time. The Complainants, in their post Preliminary Decision submission dated **27 October 2021**, submit that they “*did not make a request to the Provider in 2006 regarding our mortgage*”. Upon consideration of the evidentiary documentation in relation to this complaint, it appears that the Provider issued the letter dated **11 April 2006** to the Complainants on foot of the first Complainant having ceased her employment with the Provider in **February 2006**. By consequence of the first Complainant no longer being an employee of the Provider, the Complainants were no longer able to avail of the staff tracker interest rate of ECB +1.10%. As a result, the

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Provider had to notify the Complainants of the alternative interest rate options available to them.

In circumstances where the first Complainant was no longer employed by the Provider, the Complainants were entitled to the Provider's variable interest rate or any such rate that the Provider may decide to offer the Complainants in line with the **Staff Application for Change to Tracker Mortgage Form of Authorisation** which was accepted and signed by the Complainants on **14 October 2004**. I note that the letter dated **11 April 2006** set out the Provider's home loan variable rate at the time which was 3.99% and a number of alternative interest rates on offer by the Provider to include a tracker interest rate option of ECB + 1.25% and a number of fixed interest rate options.

The Complainants maintain that they did not receive the letter dated **11 April 2006**, which the Provider has submitted in evidence. The Provider has provided a "Mortgage Desktop" screenshot in evidence which shows that a "Hopper Letter" issued on **11 April 2006** which the Provider explains was the letter that I have detailed above. The Complainants, in their post Preliminary Decision submission dated **27 October 2021**, submit that "*a screenshot is not evidence, anything can be typed into a screenshot*". While I note the Complainants' submission in this regard, I am satisfied that the screenshot furnished in evidence by the Provider provides an accurate account of the letter history on its internal system. Moreover, the Provider has retained a copy of the letter that issued on **11 April 2006** as part of its records in respect of the Complainants' mortgage loan account. I also note that the letter was addressed to the Complainants at the mortgaged property which is the same correspondence address that was used in all of the communications between the Provider and the Complainants.

I am satisfied that in circumstances where the Complainants did not respond to the letter dated **11 April 2006** and in the absence of an alternative rate selection by the Complainants, the interest rate on mortgage loan account ending **8458** switched to a standard variable rate of 3.990% on **29 May 2006**, as shown in the mortgage account statements furnished in evidence by the Provider. I am also satisfied that this switch to a standard variable interest rate was in line with terms of the **Staff Application for Change to Tracker Mortgage Form of Authorisation**, accepted and signed by the Complainants on **14 October 2004**.

The Complainants refer to a recording of a telephone call that took place between two staff members of the Provider on **2 November 2016**. The Complainants appear to submit that one staff member confirmed that their mortgage loan account had been "*transferred to the highest variable rate without [their] knowledge or consent*". A recording of this

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telephone call has been supplied in evidence. Having considered the contents of this recording, I do not consider the Complainants' submission to be a true reflection of the dialogue that took place between the two staff members of the Provider.

I note that a staff member from the Provider's branch contacted her colleague on foot of a query from the Complainants in respect of their mortgage loan account. The staff branch member commented that it appeared that the Complainants had been "taken off" a staff tracker rate at some stage and were switched to a variable interest rate but were never offered an "ordinary tracker". The other staff member commented that a number of former staff mortgage loan accounts were moved from a tracker rate of interest to a variable rate and were not offered a tracker rate. This staff member recommended that the staff member of the Provider's branch to furnish the contact details of the Provider's tracker investigation team to the Complainants in order to launch an investigation to see if the Complainants should have been offered a tracker rate.

The Complainants, in their post Preliminary Decision submission dated **27 October 2021**, submit that *"it is clearly said that we weren't offered the tracker rate. But both your office and the provider say that we were on 11<sup>th</sup> April 2006, this is where the dispute lies". We were not written to 11<sup>th</sup> April 2006 and offered new rates.*" For the avoidance of doubt, I do not consider the discussion that took place between two staff members of the Provider on **2 November 2016** can be taken as confirmation that a tracker interest rate. The documentary evidence submitted to my office during the investigation of this complaint proves to the contrary.

It appears to me that the terms of the **Staff Application for Change to Tracker Mortgage Form of Authorisation** signed by the Complainants on **14 October 2004** are sufficiently clear and unambiguous as to what would transpire if the first Complainant ceased employment with the Provider. Consequently, I accept that the Complainants were on notice that the interest rate on their mortgage account would convert to the Provider's standard variable rate on foot of cessation of the first Complainant's employment with the Provider in **2006**. The Provider, of its own commercial discretion at the time, offered the Complainants the option to switch to a non-staff tracker interest rate of ECB + 1.25% or a 1-year, 2-year, 3-year, 4-year or 5-year fixed interest rate. The Provider was under no obligation to offer the Complainants another tracker interest rate or indeed a fixed rate as the terms of the **2004** staff application form were clear that that the mortgage loan account would switch to a variable rate of interest if the employment relationship ended. I am therefore of the view that the Provider acted in accordance terms of the mortgage loan documentation.

**Mortgage loan account ending 3052**

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The Provider issued a **Mortgage Loan Offer Letter** dated **20 July 2004** to the Complainants.

**Part 1 - The Statutory Loan Details** of the **Mortgage Loan Offer Letter** dated **20 July 2004** details as follows:

“1.	<i>Amount of Credit Advanced:</i>		€30,000
2.	<i>Period of Agreement:</i>		15 Years
3.	<i>Number of Repayment Instalments</i>	<i>Instalment Type</i>	4. Amount of each Instalment
	12	Fixed at 2.750%	€203.50
	168	Variable at 3.600%	€215.01
...”			

**Part 2 – The Additional Loan Details** of the **Mortgage Loan Offer Letter** outlined as follows:

“11.	<i>Type of Loan:</i>	Repayment
12.	<i>Interest Rate:</i>	2.750% Fixed”

At the bottom of **Part 4 - Special Conditions** it states 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.”***

**Part 5 - General Conditions**, detail as follows:

**“ 6. Variable Interest Rates**

- (a) *Subject to clause 6(c), at all times when a variable interest rate applies to the Loan the interest rate chargeable will vary at the Lender’s discretion upwards or downwards.*

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*If at any time a variable rate of interest applies, repayments in excess of those agreed may be made at any time during the term of the Loan without penalty.*

- (b) The Lender shall give notice to the Borrower of any variation of the interest rate applicable to the Loan, either by notice in writing served on the Borrower in accordance with clause 1(c) above, or by advertisement published in at least one national daily newspaper. Such notice or advertisement shall state the varied interest rate and the date from which the varied interest rate will be charged.*
- (c) Notwithstanding anything else provided in this Offer Letter, the varied applicable interest rate shall never, in any circumstances, be less than 0.1% over one month's money at the Euro Inter Bank Offered Rate (EURIBOR).*

#### **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 increase, subject to these Conditions, be fixed from the date of draw down for the fixed period stated in this Offer Letter. The fixed rate of interest set out in this Offer Letter is the fixed rate which would apply were the Loan drawn down today. There is no guarantee that the fixed rate so stated will be available when the Loan is in fact drawn down. The actual fixed rate that shall apply shall be the Lender's fixed rate available for the fixed period selected by the Borrower at the date of draw down.*

- (b) The Lender shall have sole discretion to provide any further or subsequent fixed rate period. If the Lender does not provide such a further or subsequent fixed rate period or if the Lender offers the Borrower a choice of interest rate at the end of any fixed rate period and the Borrower fails to exercise that choice, then in either case the interest rate applicable to the Loan will be a variable interest rate.*

*...."*

The Complainants signed the **Borrower's Acceptance and Consents** of the **Mortgage Loan Offer Letter** on **3 August 2004** on the following terms:

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*"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".*

The Complainants' mortgage loan account drew down on a fixed interest rate.

The screenshot from the Provider's internal letter history system shows that a Product Review Notice issued on **26 July 2005** and a Product Rollover Letter issued to the Complainants on **25 August 2005**. I note that the interest rate on the Complainants' mortgage loan account switched to a variable rate of interest in line with the terms of the mortgage loan agreement.

The screenshot from the Provider's internal letter history system shows that a Staff Tracker Notice issued on **16 December 2005**.

The Provider wrote to the Complainants on **16 December 2005** outlining as follows:

*"Dear [Complainants]*

*Further to the recent communication on [redacted], [the Provider] is delighted to offer you the new Staff Tracker rate of ECB Repo Rate +.85%. Currently the ECB Repo Rate is 2.25%. This makes the staff tracker rate available to you at 3.10%:-*

<b>Description</b>	<b>Rate</b>	<b>Projected Repayment</b>
<i>Staff Tracker ECB Repo + 0.85%</i>	<i>3.100%</i>	<i>€208.66</i>

*To avail of this option, please tick the rate on the enclose Mortgage Form of Authorisation. All of the account holders must sign and date this form and the form should then be returned to us at [address]*

*If you do not return the Mortgage Form of Authorisation to us, your current rate will continue to apply.*

*..."*

The Complainants appear to suggest in their submission that they signed the Mortgage Form of Authorisation enclosed with the above letter however the Provider has no record of having received a Mortgage Form of Authorisation from the Complainants in or around **December 2005** therefore the Complainants' mortgage loan account remained on a variable interest rate.

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The evidence shows that the **Mortgage Loan Offer Letter** dated **20 July 2004** which was signed and accepted by the Complainants on **3 August 2004**, envisaged a fixed interest rate of 2.75% for a period of 12 months thereafter moving to a variable interest rate. It is clear that the loan offer did not contain any contractual entitlement to a tracker interest rate on the expiry of the fixed term period or at any other time during the lifetime of the loan.

It is clear that the Provider wrote to the Complainants on **16 December 2005** offering a staff tracker interest rate option. The Complainants maintain that they ticked the Mortgage Form of Authorisation enclosed with the letter selecting a tracker interest rate, however there is no evidence to support their contention that the form was signed and returned to the Provider. In circumstances where the offer of a staff tracker interest rate was not accepted by the Complainants, a variable interest rate applied to mortgage loan account ending **3052**.

I am of the view that there was no contractual obligation on the Provider to offer the Complainants a tracker interest rate in **2005**, however the Provider decided to do so in line with its own policy on staff interest rate loans at that time. It was open to the Complainants to approach the Provider to discuss interest rates however they do not appear to have done so during the lifetime of the loan.

I note that a variable interest rate applied to the account until it was redeemed on **10 February 2019**.

Having considered the mortgage loan documentation in relation to both mortgage loan accounts, I am satisfied that the terms and conditions were sufficiently clear and transparent and that there was no contractual or other entitlement to a tracker interest rate available to the Complainants. I am of the view the Provider did not fail to inform or notify the Complainants that the nature of the interest rate applicable to both mortgage loan accounts would switch to a variable rate of interest or that both mortgage loan accounts would revert to the Provider's standard variable rate in **2005** and **2006** respectively. The Complainants maintain that they were never provided with rate options however it is clear that they were provided with options by the Provider in respect of both accounts in **2005** and **2006**. In light of the documentary evidence before me, I cannot accept the Complainants' submission that the interest rates on their mortgage loan accounts were changed without their knowledge and consent. The decision as to which rate was to be applied to each account rests with the Complainants and despite being

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afforded the option of applying a staff tracker interest rate to mortgage loan account ending **3052** in **December 2005** and a non-staff tracker interest rate to mortgage loan account ending **8458** in **April 2006**, the Complainants chose not to avail of a tracker rate on either occasion.

It was a matter for the Complainants to decide what interest rate best suited them in light of their circumstances. The Complainants were free to explore different interest rate options with the Provider, to include tracker interest rates (up until they were withdrawn by the Provider in **late 2008**), however I have not been provided with any evidence that they contacted the Provider to discuss rate options.

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**

20 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,

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**(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.**

