



<b><u>Decision Ref:</u></b>	2021-0558
<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 one of two mortgage loan accounts held by the Complainant with the Provider. Mortgage loan account ending **0404**, the subject of this complaint, was secured on the Complainant's then private dwelling house. The Complainant subsequently purchased a new property in **2007** and retained the property which is the subject of mortgage loan account **0404** as a residential investment property.

The loan amount was €20,000 and the term of the loan was 15 years. The particulars of the mortgage loan offer accepted by the Complainant on **08 September 2004** detailed that the interest rate type was "*3.100% Variable*".

**The Complainant's Case**

The Complainant submits that she drew down her first mortgage loan account ending **8218** with the Provider on a 1-year fixed interest rate in **July 2003** after which a tracker interest rate was applied. The Complainant states that she subsequently drew down a second mortgage loan account ending **0404**, the subject of this complaint, in **September 2004** on a tracker interest rate. The Complainant details that both mortgage loan accounts were secured against the Complainant's private dwelling house.

The Complainant explains that she and her husband decided to trade up and purchase a new private dwelling house in **2007**, however they wished to retain the mortgaged property the subject of mortgage loan accounts **8218** and **0404** as an investment property.

The Complainant outlines that *“at the time the bank advised that I could no longer continue to avail of the Tracker rate on this Mortgage as it was now converting to an investment property”*. The Complainant submits that she was only offered standard investment interest rates when the mortgaged property the subject of mortgage loan accounts **8218** and **0404**, converted to an investment property. She asserts that she was *“not given the option of a tracker investment rate even though same were available and being offered to other Customers”* at this time. The Complainant submits that both mortgage loan accounts were moved from a tracker interest rate in **October 2006**.

The Complainant does not accept the Provider’s submission that she voluntarily opted for a staff non-standard variable interest rate to apply to mortgage loan account ending **0404**. She states that *“the only reason I did this was because I was told I was not allowed to retain the Tracker and had to go on to a Non- St[andar]d Variable rate”*. The Complainant further submits that she was about to draw down a new mortgage loan with her husband in **January 2007** in relation to a new private dwelling house and was *“fearful the Bank would not allow us to have a Tracker on the new Mortgage so we panicked and believed what they told us”*. She details that given the new mortgage loan was for a substantial sum, she needed to ensure that a tracker interest rate applied to that mortgage loan account.

With respect to the content of an internal memorandum issued to staff by the Provider on **22 December 2006**, the Complainant does not accept the Provider’s submission that she read the internal memorandum. The Complainant submits that the timing of this memorandum was just prior to the Christmas break and she was *“just about to draw down a substantial mortgage (592k)”* which left her *“in a vulnerable position whereby I could not afford to take the risk”* that the tracker rate on the new mortgage loan account would be removed. The Complainant details that she *“should have been contacted directly and offered”* the option of a tracker interest rate on the residential investment property loan. The Complainant states that she does *“not believe that it was publically made available to me that Residential properties could avail of [the] Tracker rate and I do not believe I was given adequate time and notice to be made aware of this.”*

The Complainant details that the Provider deemed her first mortgage loan account ending **8218** as impacted under the Central Bank directed Tracker Mortgage Examination in **December 2017**.

She submits that the redress letter received from the Provider stated that the error occurred when the Complainant moved from a tracker interest rate to a staff non-standard variable rate.

She contends that *“the exact same thing happened with [mortgage loan account ending 0404]”*. The Complainant outlines that she *“was incorrectly taken off Tracker on both these mortgages”*. The Complainant details that *“however it was felt that this was not an error”* in respect of mortgage loan account ending **0404**, the subject of this complaint.

The Complainant submits that *“the financial stress that myself and my family have gone through during this time has been significant.”*

The Complainant is seeking the following;

- a) Financial refund to reflect the incorrect interest rate; and
- b) A tracker rate to be applied to mortgage loan account ending **0404**.

### **The Provider’s Case**

The Provider details that the Complainant drew down mortgage loan account ending **8218** on **02 July 2003** for the amount of €142,000 subject to a 1-year fixed interest rate of 2.990%. It outlines that on the expiry of the fixed interest rate, a staff tracker rate of ECB + 1.1% applied to the mortgage loan account.

The Provider details that the Complainant drew down a second mortgage loan account ending **0404** on **23 September 2004** for the amount of €20,000 subject to a tracker interest rate of 3.1%.

The Provider outlines that the mortgage loan account ending **0404** remained on a tracker interest rate until **October 2006** when the Complainant applied for a staff non-standard variable rate to apply to both mortgage loan accounts ending **0404** and **8218**. It outlines that mortgage loan accounts ending **0404** and **8218** were not issued **Product Review Notices** in **October 2006** as neither of those mortgage loan accounts were on fixed interest rates that were due to expire. It outlines that the Complainant applied for a staff non-standard variable rate of interest *“in response to the Provider’s [internal] Notice dated 18 August 2006 to staff describing the Staff Non-Standard Variable Rate”* by completing **Mortgage Forms of Authorisation** in relation to both mortgage loan accounts.

The Provider states that the Complainant accessed and downloaded the **Mortgage Forms of Authorisation** through the Provider's intranet and returned them to the Provider on completion. It details that the Complainant *"as an employee of the Provider, had access to the Provider's intranet known as [redacted] where a range of "staff interest rates" were offered to all staff members."* It relies on the Provider's internal notice which clearly states that *"the Staff Non-Standard Variable Rate is not a tracker rate"*.

The Provider details that the Complainant signed and accepted the **Mortgage Form of Authorisation** to apply a staff non-standard variable rate to mortgage loan account ending **0404** on **12 October 2006**. It states that by signing this **Mortgage Form of Authorisation** she *"relinquished her entitlement to the tracker rate of interest set out in the Offer Letter"*. The Provider details *"that is because the new rate chosen was a different, non-tracker variable rate without temporal limit."* It details that this also occurred in relation to mortgage loan account ending **8218**.

The Provider submits that the Complainant signed and accepted the terms of the **Mortgage Form of Authorisation** which *"altered the underlying terms and conditions of her original agreements and completely superseded and revoked the tracker rate."* The Provider details that *"the original mortgage terms continued to apply subject to any amendments which stem from the October 2006 MFAs"*. It details that the staff variable interest rate was linked to the Revenue Commissioners Benefit-in-Kind rate or the EURIBOR, whichever was higher, and not the ECB rate.

The Provider submits that the Complainant's voluntary decision to move from the tracker rate *"is readily explained by the factual background concerning interest rates"*. It outlines that, at the time, the staff non-standard variable interest rate of 3.5% was lower than the tracker interest rate of 4.35%. The Provider submits that the Complainant *"made her own decision to convert her loans to a more favourable rate using the October 2006 MFAs"*.

The Provider does not accept the Complainant's submission that it *"would not allow her to retain the tracker interest rate on her mortgage loan accounts"*. It submits that *"no evidence to this effect"* has been furnished to support this. Rather, the Provider states that it gave the Complainant the option to move both her mortgage loan accounts to a tracker rate of interest in **December 2006** however the Complainant chose not to avail of this option. The Provider details that it published an internal staff notice on **22 December 2006**, which offered the Complainant the option to either remain on the non-standard variable rate of 4.5%, apply a 2-year fixed interest rate of 3.95% or apply a tracker interest rate of ECB + 0.75% (4.25%) to both mortgage loan accounts ending **0404** and **8218**.

It outlines that *“the options were clearly advertised on the [redacted] memo, which was available to all members of staff”* and submits that *“the Complainant did have sight of this memo, and acted accordingly”*.

The Provider explains that this *“communication makes no promise of a return to a Tracker rate at any point”*. It submits that the Complainant did not opt for the tracker rate option and *“specifically sought to fix the rate”* on her mortgage loan account ending **8218** and chose to *“remain on the Staff Non Standard Variable Rate”* in respect of mortgage loan account ending **0404** in **January 2007**.

The Provider outlines that it offered the Complainant redress and compensation in respect of mortgage loan account ending **8218** as the Provider’s internal notice was unclear as to what interest rate would apply on the expiry of the fixed interest rate period.

The Provider submits that the staff tracker interest rate of ECB + 0.75% *“was readily available for the Complainant to accept, and by her own choice, she rejected the Provider’s offer”*. The Provider submits that *“there was no onus on the Provider to offer the Complainant a tracker rate option 0.75% again”* and there was *“no contractual obligation”* compelling the Provider to offer such a rate.

The Provider does not accept the Complainant’s submission that she should have been contacted directly in respect of the interest rate options offered in the Provider’s internal notice in **December 2006**. It contends that this *“would be an unreasonable burden to expect of the Provider, especially in light of the [redacted] notice having been posted.”*

The Provider further submits that it refutes the Complainant’s submission that she was advised that a tracker interest rate could not be applied to her mortgage loan accounts and states that *“the Complainant never contacted the Provider seeking advice in October 2006 regarding tracker mortgages”*.

The Provider submits that during this period, the Complainant together with a third party applied for two new mortgage loans with the Provider for the total amount of €592,000 for the purposes of purchasing a new private dwelling house while still retaining the mortgaged property the subject of mortgage loan accounts ending **0404** and **8218**. The Provider states that the Complainant and the third party *“expressly requested the Staff Non-Standard Variable Rate of 3.5%”* as evidenced in the two Mortgage Loan Offer Letters which issued on **6 and 14 November 2006**. The Provider notes that the Complainant and the third party subsequently requested a staff 2-year fixed interest rate on both of these mortgage loan accounts in **January 2007** and amended Mortgage Loan Offer Letters issued to that effect.

The Provider outlines that the Complainant contacted the Provider on **28 January 2009** requesting a staff interest rate sheet which was duly sent to her. It relies on its telephone logs to support this. The Provider submits that the Complainant signed and accepted a **Mortgage Form of Authorisation** to convert her mortgage loan account ending **0404** to a staff LTV variable rate on **28 January 2009**. It relies on **clause 2** and **clause 4** of the **Mortgage Form of Authorisation** which detail that the *“original mortgage terms continued to apply subject to any amendments which stem from the [full account number] October 2006 MFA and the 2009 MFA”*.

The Provider states that it is satisfied that *“it was sufficiently clear and transparent to the Complainant that the terms and conditions with respect to interest rate options were different for account ending in 8218 and 0404”*.

### **The Complaint for Adjudication**

The complaint for adjudication is that the Provider refused to allow the Complainant to retain a tracker interest rate on mortgage loan account ending **0404** in **October 2006**.

### **Decision**

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

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

Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished 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 29 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.

In the absence of additional submissions from the parties, within the period permitted, the final determination of this office is set out below.

The Provider issued a **Mortgage Loan Offer Letter** dated **26 August 2004** to the Complainant in respect of mortgage loan account ending **0404** which provided for a loan in the amount of €20,000 over a term of 15 years.

**Part 1 – The Statutory Loan Details** of the **Mortgage Loan Offer Letter** dated **26 August 2004**, details as follows;

<i>3. Number of Repayment Instalments</i>	<i>Instalment Type</i>	<i>4. Amount of each Instalment</i>
<i>180</i>	<i>Variable at 3.100%</i>	<i>€139.00</i>

The **Mortgage Loan Offer Letter** outlines that the loan type is *“Repayment”* and the interest rate is *“3.100% Variable”*.

**Part 4 – The Special Conditions** of the **Mortgage Loan Offer Letter** detail as follows;

- “(i) This advance is issued in addition to your existing homeloan reference [mortgage loan account ending 8218]*
- (ii) The purpose of the loan is to restructure debts*
- ...*
- (v) 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 1.10% above the European Central Bank Main Refinancing Operations Minimum Bid Rate (“Repo Rate”) for the term of the Loan. Variation in interest rates shall be implemented by the lender 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 in accordance with General Condition 6(b) of this Offer letter.*

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*In the event that, or at any time, the Repo rate is certified by the Lender to be unavailable for any reason the interest rate applicable to the Loan shall be the prevailing Home Loan Variable Rate.”*

**Part 5 – The General Conditions of the Mortgage Loan Offer Letter detail as follows;**

**“5. General Interest Rate Provisions**

- (a) *Interest at the fixed or variable interest rate prevailing from time to time during the Loan, shall be calculated on the daily balance outstanding and shall be compoundable at such monthly, quarterly or other periodic rests as the Lender shall, from time to time and at any time, at its absolute discretion, determine.*
- (b) *Any variation in the interest rate (whether an adjustment of interest rate as between one fixed rate period and another fixed rate period or any variation of 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 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)”*

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I note that the Complainant signed an **Acceptance of the Loan Offer** on **08 September 2004** 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 Complainant accepted the **Mortgage Loan Offer Letter** dated **26 August 2004**, having confirmed that she had read and fully understood the terms and conditions set out in the loan offer. The **Mortgage Loan Offer Letter** dated **26 August 2004** envisaged that a tracker interest rate varying in accordance with the ECB refinancing rate would be applied to the mortgage loan account. It appears from the mortgage account statements submitted in evidence that the Mortgage loan account ending **0404** was subsequently drawn down on **24 September 2004**.

The Provider issued an internal notice to employees on the staff intranet on **18 August 2006** which offered its employees the *"New Staff Non Standard Variable Rate"*. The internal publication stated as follows;

***"New Staff Non- Standard Variable Rate Mortgage – rate 3.50%***

...

*This mortgage rate is available for all new and existing mortgage business and includes both PDH (Private Dwelling House) and RIL (Residential Investment Lending).*

*As you will be aware, we currently offer staff a choice of two preferential mortgage rates +3.00% or 4.00% (note the 3% preferential rate currently attracts benefit in kind) and a PDH tracker mortgage at ECB +0.85% currently 3.85%.*

*[Provider] are delighted to offer you our new staff non-standard variable rate mortgage at just 3.50% currently.*

***Key benefits for our staff:***

- *Market Lending rate*
- *No Benefit in Kind*
- *Not directly linked to ECB interest rate movements (see below) – important given predicted interest rate increases over coming 6 months.*
- *Simple and easy to avail of.*

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...

**What is a Non-Standard Variable Rate Mortgage?**

*The non-standard variable rate mortgage tracks two key indicators, the Revenue Commissioners BIK (Benefit-in-Kind) Reference Rate and the One-Month COF (Cost of Funds).*

...

***The non-standard variable mortgage does not track ordinary ECB interest rate movements, which impact on our standard variable tracker rate products.***

***How do I get this new staff non-standard variable rate mortgage?***

***1. Existing Staff Mortgage Accounts***

- *For your PDH or RIL mortgage account you will need to complete a 'Mortgage Form of Authorisation' (MFA) to avail of the new staff non-standard variable rate mortgage. The mortgage form of authorisation will need to be completed and signed by all parties on the mortgage account and returned to [the Provider]. Please print off and complete the form attaching to this notice.*
- *If you are currently on a fixed rate and would like to break out of that fixed rate to avail of the new staff non-standard variable rate mortgage then a funding fee may be applicable.*

....

**Terms & Conditions**

- *This product is available on both PDH and RIL mortgages/properties in the Republic of Ireland."*

There is some dispute between the parties as to whether the Complainant applied for the new staff non-standard variable rate to be applied to her mortgage loan accounts ending **0404** and **8218** in **October 2006** on foot of the notice of **18 August 2006**, or whether it was because the Complainant was specifically advised that she could not retain the tracker interest rates on mortgage accounts ending **0404** and **8218** in light of the new mortgage application she had made at the time.

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In any event, the Complainant signed and accepted the “Application to change to staff non-standard variable rate mortgage” **Mortgage Form of Authorisation** on **12 October 2006** in relation to mortgage loan account ending **0404**, which details as follows;

“...

*The Staff Mortgage Rate is a variable interest rate and shall be the higher of the following two key indications: (1) The prevailing Revenue Commissioners BIK (Benefit in kind) reference rate; (2) The prevailing one month Cost of Funds reference rate (which is equivalent to the one month EURIBOR rate issued by [the Provider] on a daily basis.*

**APPLICATION FOR CHANGE OF INTEREST RATE:**

*I/We wish to apply for the Staff Mortgage 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*

...

**ACKNOWLEDGEMENT AND AGREEMENT**

...

*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, and I accept the said conditions and agree to be bound by them.*

*I acknowledge and agree that:-*

...

- 3. In converting the Loan to a Staff Mortgage Loan, I agree that the interest rate applicable to the Loan is a variable interest rate and may vary upwards or downwards. The rate shall be the higher of the following two key indicators: (1) the prevailing Revenue Commissioners BIK (Benefit in Kind) reference rate; (2) the one month Cost of Funds reference rate (which is equivalent to the one month EURIBOR rate issued by [the Provider] Global markets on a daily basis). In the event that the Staff Mortgage Rate is certified by the Bank to be unavailable for any reason the interest rate applicable to the Loan shall be the prevailing Home Loan Variable Rate.*

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*Notification of any change in the interest rate shall be the prevailing Home Loan Variable Rate. Notification of any change in the interest rate shall be the prevailing Home Loan Variable Rate. Notification of any change in the interest rate shall be given in accordance with Condition 6(b) of the General Conditions of my original Offer Letter.*

4. *Condition 6 (c) of the General Conditions of my original Offer Letter is not applicable for the duration of the Loan when the interest rate is the Staff Mortgage Rate.*
5. *Save as set out in this Form of Authorisation all the terms and conditions applicable to the Loan remain unchanged.”*

The **Mortgage Form of Authorisation** clearly sets out that the non-standard variable mortgage does not vary in accordance with the ECB rate but rather is one that tracks the Revenue Commissioners BIK reference rate and the One-Month Cost of Funds, and the rate that will apply is the higher of the two indicators at any given time. By signing the **Mortgage Form of Authorisation**, the Complainant agreed to convert mortgage loan account ending **0404** to a staff mortgage loan with a variable interest rate. It is clear that the **Mortgage Form of Authorisation** envisaged that a staff non-standard variable rate would apply to the mortgage loan account and that the terms of the original **Mortgage Loan Offer Letter** dated **26 August 2004** would be amended accordingly.

While I note that the **Mortgage Form of Authorisation** outlined that it had the effect of amending/varying the terms and conditions applicable to the loan and that save as set out in the **Mortgage Form of Authorisation** “*all the terms and conditions applicable to the Loan remain unchanged*”, however it did not set out precisely what terms of the original **Mortgage Loan Offer Letter** dated **26 August 2004** were amended. I am of the view that there is some ambiguity in this respect.

Nonetheless, I have not been provided with any evidence to support the Complainant’s assertion that the Provider refused to allow her to retain a tracker interest rate on her mortgage loan account ending **0404** in **October 2006**. The Complainant could have remained on a tracker interest rate by taking no action. However, she elected to apply the new staff non-standard variable rate to mortgage loan account ending **0404** which appears to have been the more attractive interest rate offering at the time.

The Provider issued an internal notice on its employee intranet on **22 December 2006**, detailing as follows;

*“An update on the Staff Non- Standard Variable Rate Mortgage currently at 3.5%*

*...*

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*In the budget on 6 December 2006, the Revenue Commissioners Benefit-in-kind (BIK) Reference Rate was changed from 3.5% to 4.5% with effect from 1 January 2007 in Ireland.*

*As a result the rate on the staff non-standard variable rate mortgage will have to increase to 4.5% with effect from 1 January 2007 to avoid staff having to pay BIK.*

*A notice to this effect will issue to all staff on this product in due course in line with the terms and conditions but staff should note that the new repayment amount will be effective from 1 January 2007.*

### **Staff Mortgage Options**

*In the light of these changes we are delighted to be able to announce a new range of staff options, which we have put together for you, our customers. These have resulted from negotiations to secure the best possible product options for staff. As a result of these changes, staff can now avail of the following options:*

<i>Option</i>	<i>Rate</i>	<i>Note</i>
<i>Remain on Staff Non-Standard Variable Rate</i>	<i>4.5%</i>	<i>No BIK applicable</i>
<i>New Special Staff 2 Year Fixed Rate</i>	<i>3.95%</i>	<i>Subject to BIK</i>
<i>Staff Tracker Mortgage</i>	<i>ECB + 0.75% (4.25%)</i>	<i>No BIK applicable</i>

- a) Remain on the staff non-standard variable rate mortgage** for all your PDH (Private Dwelling House) and RIL (Residential Investment Lending) mortgage business. The rate will increase to 4.5% with effect from 1 January and you will receive written notification in due course about your new repayment amount. No further action is required.
- b) You can avail of our new special staff 2 Year Fixed Rate** which will be priced at 3.95%. This special fixed rate is available for all new and existing mortgage business and includes both PDH (Private Dwelling House) and RIL (Residential Investment Lending)

*Staff will be advised of their rollover options a number of weeks prior to the expiry of the fixed rate term.*

*The staff 2 year fixed rate represents excellent value for both RIL's and PDH loans in a volatile interest rate environment. All the latest indications are that the ECB rate will increase a number of times throughout 2007.*

*This product and rate is subject to BIK at the appropriate rates i.e. difference between the rate, 3.95% and the Revenue Commissioners Reference Rate (4.5% with effect from 1 January 2007) at your marginal tax rate.*

*Please note that this product option is only available for a limited period of time i.e. until 19 January 2007. All application, MFA's (Mortgage Form of Authorisation) must have been received by this date to qualify for this fixed rate.*

.....

- c) ***You will also have the option to convert to the staff tracker mortgage. This was priced at ECB + 0.85%, currently 4.35% and was only available for PDH mortgages. We are now delighted to be able to tell you that we have secure agreement to offer this tracker product to staff at ECB + 0.75%, i.e. currently 4.25%. **This mortgage rate is available for all new and existing mortgage business and includes both PDH (Private Dwelling House) and RIL (Residential Investment Lending).*****" (my emphasis).

*For details on how to switch into this product option and terms & conditions, please see [Staff Tracker Mortgage](#)."*

The Provider has also submitted a copy of the Staff Tracker Mortgage notice dated **22 December 2006** in evidence which details as follows;

".....

## **2. Existing Staff Mortgage Accounts**

*For your PDH or RIL mortgage account you will need to complete a 'Mortgage Form of Authorisation' (MFA) to avail of the staff tracker mortgage. The mortgage form of authorisation will need to be completed and signed by all parties on the mortgage account and returned to [Provider]. Please print off and complete the form attaching to this article.*

### **Terms & Conditions**

- *This staff tracker rate product is available on both PDH and RIL mortgages/properties in the Republic of Ireland."*

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The Complainant subsequently signed a further **Mortgage Form of Authorisation** on **19 January 2007**, applying a 2-year fixed interest rate of 3.95% to mortgage loan account ending **8218**. However, in relation to mortgage loan account ending **0404**, the Complainant decided to remain on the staff non-standard variable rate mortgage by taking no further action on that particular mortgage loan account.

The Provider's internal notice of **22 December 2006** clearly details that a tracker interest rate option of ECB + 0.75% was available to all existing staff customers as part of the staff mortgage options on offer by the Provider and included both private dwelling house and residential investment lending properties.

Therefore, the evidence does not support the Complainant's assertion that she could not retain a tracker rate mortgage because the mortgaged property subject to mortgage loan account ending **0404** was converting to a residential investment property after she decided to trade up to a new private dwelling house and retain that property. The Complainant could have chosen to request to apply a tracker interest rate of ECB + 0.75% on all mortgage loan accounts with respect to her private dwelling house and residential investment lending however, she did not do so. The Complainant, of her own volition, decided to leave mortgage loan account ending **0404** on the staff non-standard variable interest rate and apply a 2-year fixed interest rate of 3.95% to mortgage loan account ending **8218** at that time.

In this regard, I note that the Complainant submits that *"I appreciate that the Bank did give me the opportunity to move both Mortgages [(ending 0404 & ending 8218)] to tracker as per the Internal Memo of Friday 22nd Dec 2006 but I believe the timing of the memo and the fact that I was just about to draw down a substantial Mortgage (592k) left me in a vulnerable position whereby I could not afford to take the risk that the Bank would remove me from Tracker on [account ending 5498 & account ending 5527] if I retained it on [account ending 0404 & account ending 8218] given my earlier conversation in October 2006."*

The Complainant appears to be of the view that both mortgage loan accounts ending **8218** and **0404** were subject to the same error but only mortgage loan account ending **8218** was deemed to be impacted under the Central Bank directed Tracker Mortgage Examination. The Provider has supplied this office with the mortgage loan documentation in relation to mortgage loan ending **8218** and I have had the benefit of reviewing and considering this loan documentation. I note that there are differences between the terms and conditions attaching to each mortgage loan.

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It is clear to me that both mortgage loan accounts, despite being secured on the same mortgage property, took different mortgage journeys. Mortgage loan account ending **8218** was drawn down on **2 July 2003** on a 1- year fixed rate at 2.990% and thereafter moved to a staff tracker interest rate of ECB +1.1%. This mortgage loan account remained on a tracker rate of interest until **October 2006** when the Complainant completed a **Mortgage Form of Authorisation** to switch the mortgage loan account to a staff non-standard variable rate of 3.50%. On **19 January 2007**, the Complainant signed a further Mortgage Form of Authorisation and chose to apply a 2-year staff fixed interest rate of 3.95%.

Mortgage loan account ending **8218** was considered by the Provider as part of the Central Bank directed Tracker Mortgage Examination because the Provider identified that an error had occurred on the mortgage loan account. The Provider contacted the Complainant on **12 December 2017** advising her of the error that had occurred on mortgage loan account ending **8218**. The Provider detailed how it “*got things wrong*” as follows;

*“In our review, we found that when you moved from a tracker rate to the staff non-standard variable rate and then a fixed rate, we failed to provide you with sufficient clarity as to what would happen at the end of that fixed rate and the language used by us in communications to you may have been confusing and/or misleading.”*

In circumstances where the Complainant did not apply the same fixed interest rate to mortgage loan account ending **0404** in **January 2007**, but rather chose to remain on a staff non-standard variable rate, I accept that the same error outlined above did not occur on mortgage loan account ending **0404**.

Having considered the circumstances of this complaint, on the basis of the evidence and submissions it appears that the Complainant was aware when she moved from the tracker interest rate to the staff variable rate on mortgage loan account ending **0404** that she was giving up the entitlement of a tracker interest rate at that time

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**

21 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.