



<u>Decision Ref:</u>	2022-0029
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Tracker Mortgage
<u>Conduct(s) complained of:</u>	Refusal to move existing tracker to a new mortgage product
<u>Outcome:</u>	Rejected

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

This complaint relates to the following two mortgage loan accounts held by the Complainants with the Provider:

1. Mortgage loan account ending 7404

The loan amount was €211,000 and the term of the loan was 25 years. The particulars of the **Mortgage Loan Offer** accepted by the Complainants on **18 May 2005** detailed that the loan type was “*Repayment*” and that a Discounted Variable rate at 2.750% applied for a period of 24 months which would convert to a Standard Variable rate thereafter. The mortgage was redeemed on **25 January 2010**. This mortgage loan was secured on the Complainants’ former principal private residence.

2. Mortgage loan account ending 4494

The loan amount was €340,000 and the term of the loan was 27 years. The particulars of the **Mortgage Loan Offer** accepted by the Complainants on **7 May 2010** detailed that the loan type was “*Repayment*” and the interest rate was fixed at 3.250% for a period of 52 months, with a standard variable interest rate to apply thereafter. This mortgage loan is secured on the Complainants’ current principal private residence.

The Complainants' Case

The Complainants detail that on **14 June 2005** they took out a mortgage with the Provider concerning mortgage loan account ending **7404**. The Complainants submit that on **11 February 2008** they "*signed up for the tracker mortgage rate*".

The Complainants outline that in **2010**, they decided to move home "*and asked on several occasions, over the phone whether [they] could keep our tracker OR whether we could split our mortgage*" which would involve keeping the tracker rate on the amount still owed and "*getting a new mortgage on a variable rate for the difference between what [they] owed and what [they] were borrowing for the new house.*" The Complainants submit that they also suggested that their original mortgage remain on the tracker and then obtain a top up mortgage loan on a variable rate however it was not granted.

The Complainants contend that they spoke to several different managers employed by the Provider to make this request but have no records of these discussions. The Complainants state that as far as they remember, all communications with the Provider were over the phone and "*possibly in person*". The Complainants state that after several requests to retain the tracker interest rate, the Provider informed the Complainants that their only option, if they wanted to buy a new house, "*was to get a completely new mortgage.*" The Complainants assert that they felt that they were "*forced to quit*" the tracker rate and take out "*a completely new mortgage*". The Complainants maintain that they were "*unwillingly forced off*" their tracker mortgage when they moved house. The Complainants submit that they subsequently drew down a new mortgage loan account ending **4494** for the loan amount of €340,000, in **May 2010**.

The first Complainant submits that, as she is a former staff member of the Provider, she spoke to a colleague who confirmed to her that a "*number of staff*" got their tracker mortgages back and will be refunded and compensated.

The Complainants state that they were not satisfied with the **Final Response Letter** issued by the Provider on **30 April 2018** and note that the letter "*does not address the fact that we [...] ALREADY WERE ON A TRACKER and were NOT looking for a new one but to keep our current tracker.*"

The Complainants want to be "*compensated for the higher rate of mortgage we have paid since 2010*".

The Provider's Case

The Provider outlines that the Complainants drew down mortgage loan account ending **7404** on **15 June 2005** for a term of 25 years. The Provider details that a discounted variable rate of interest was applied for a period of 24 months, after which the interest rate moved to the standard variable interest rate. The Provider asserts that there *"is no tracker entitlement contained in the 2005 Offer Letter."*

The Provider outlines that the Complainants signed and accepted a **Mortgage Form of Authorisation** on **4 December 2006** to convert the mortgage loan account to a staff non-standard variable interest rate.

The Provider details that on **11 February 2008**, a further **Mortgage Form of Authorisation** was signed and accepted by the Complainants *"to convert the mortgage loan account to a staff tracker rate of ECB + 0.75% at 4.750%."*

The Provider submits that the mortgage loan account ending **7404** was redeemed on **25 January 2010** as the Complainants *"sold the security property."* The Provider relies on *"contemporaneous records"* in relation to the redemption of the mortgage loan account in this regard.

The Provider asserts that they have *"no evidence"* that the Complainants requested, applied for, or were refused a top up loan for mortgage loan account ending **7404** nor have they evidence that the Complainants requested, applied for, or were refused the opportunity to split their mortgage loan account.

The Provider outlines that the Complainants were selling the property secured on mortgage loan account ending **7404** and purchasing a new property therefore the Complainants had to redeem mortgage loan account ending **7404** in full. It relies on the special conditions in the Mortgage Loan Offer letter in this regard.

The Provider maintains that it does *"not hold notes of the conversations between the Complainants and the Provider"* in relation to the Complainants' application for their new mortgage loan account ending **4494**. The Provider relies on *"contemporaneous notes"* and states that they are *"satisfied"* that the documents exhibited in evidence *"provide clarity on the interactions between the Complainants and the Provider."*

The Provider asserts that it offers customers *"a range of available and applicable rates at the application stage of the mortgage loan"* and that *"it is for the Customer to choose the rate that best suits their needs at that point in time"*.

The Provider submits that its internal notes detail that the Complainants *“specifically sought a 2 year fixed rate of interest”* in respect of the new mortgage loan.

The Provider outlines that it issued numerous **Mortgage Loan Offer** letters to the Complainants in relation to the new mortgage loan. The Provider submits that a **Mortgage Loan Offer** dated **6 May 2010** was ultimately signed and accepted by the Complainants on **7 May 2010** and mortgage loan account ending **4494** was drawn down on **13 May 2010**.

The Provider submits that the **Mortgage Loan Offer** dated **6 May 2010** provided for a 2-year fixed interest rate of 3.250% which would convert to a variable staff preferential interest rate thereafter. It relies on **General Condition 7(b)** which details what would occur at the end of the fixed interest rate period. The Provider is of the view that **General Conditions 6(a)** and **7(b)** *“clearly and unequivocally state that the Provider has the sole discretion upon expiry of the fixed rate period, to provide a further fixed rate period, a choice of rates and if either of these are not selected, then the mortgage will revert to a variable rate.”* The Provider states that **General Conditions 6(a)** and **7(b)** are *“clear, concise and comprehensible”*. The Provider maintains that the Complainants *“were on notice of the fact that a variable interest rate, which may be amended at the Provider’s discretion rather than a tracker interest rate, would apply to the mortgage loan account”*.

The Provider maintains that the tracker mortgage product was withdrawn from the market at the **end of 2008**. The Provider submits that a press release was issued at the **end of 2008** which informed the public of the removal of the tracker rate from the market and states that they had *“no obligation to advise customers who had no tracker entitlement that such a product was no longer on offer.”*

The Provider details that *“the ‘tracker for movers’ product, which would move an existing tracker rate of interest from one mortgage loan account to another in the event of a customer moving house, was not introduced until April 2014.”* The Provider submits that, as such, there was no option *“to move”* the tracker rate from the Complainants’ previous mortgage loan account to the new mortgage loan account in **May 2010**. The Provider explains that the Complainants’ mortgage loan application in **May 2010** *“was a new lending application which contained different terms and conditions to the Complainants’ previous mortgage loan account.”* The Provider submits that the application *“required a new charge being placed over the new security property”*.

The Provider refutes the Complainants’ assertion that they were unwillingly forced off the tracker rate and submits that *“the Complainants have failed to support their accusation with any evidence.”* The Provider is of the view that the *“2010 Offer Letter forms the contractual basis between the Complainants and the Provider”*.

The Provider details that on **13 May 2012**, the Complainants signed and accepted a **Mortgage Form of Authorisation** and selected a staff variable interest rate of 3.40%.

The Complaint for Adjudication

The complaint for adjudication is that Complainants had to draw down a new mortgage (mortgage loan account ending **4494**) when they sought an additional loan in **2010**, which resulted in the loss of their tracker interest rate.

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 **26 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.

Following the issue of my Preliminary Decision, the Complainant made a further submission under cover of e-mail to this Office dated **03 December 2021**, a copy of which was transmitted to the Provider for its consideration.

The Provider has not made any further submission.

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Having considered the Complainant's additional submission and all submissions and evidence furnished by both parties to this office, I set out below my final determination.

In order to determine the complaint, it is necessary to review and set out the relevant provisions of the Complainants' mortgage loan documentation and consider certain interactions between the Complainants and the Provider in and around **2010** when the Complainants redeemed mortgage loan account ending **7404** and applied for mortgage loan account ending **4494**.

I will now consider both mortgage loan accounts in turn below.

Mortgage Loan Account ending 7404

The Provider issued a **Mortgage Loan Offer** dated **17 May 2005** to the Complainants which details as follows:

***"PART 1 – THE STATUTORY LOAN DETAILS
IMPORTANT INFORMATION AS AT 17 MAY 2005***

1. <i>Amount of Credit Advanced</i>		€211,000
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>
24	Variable at 2.750%	€972.68
246	Variable at 3.600%	€1,059.69
.....		

PART 2- THE ADDITIONAL LOAN DETAILS

- 11. *Type of Loan:* *Repayment*
- 12. *Interest Rate:* *2.750% Variable*
- 13. *Property to be Mortgaged (the "Property"):*
 [property address]
- 14. *Purchase Price (or value) of Property: €465,000"*

The particulars of **Mortgage Loan Offer** dated **17 May 2005** outline the address of the secured property under "*Property to be Mortgaged*".

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I note that the note on **page 2** of the **Mortgage Loan Offer** dated **17 May 2005** 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.”

Special Condition (a) (iii) of the **Mortgage Loan Offer** details as follows:

*“ ...
The interest rate applicable to the loan has been discounted by 0.85% per annum on the amount of the loan for a period of 24 months from the date of the drawdown of the loan. At the end of the said discounted period the reduction shall cease and the interest rate applicable to the loan shall revert to the then prevailing Home Loan variable rate.
...”*

The relevant sections of the **General Conditions** to the **Mortgage Loan Offer** detail as follows:

“2. Security and Valuation

(a) The “Lender’s Security” is: (i) a first legal mortgage or charge over the Property described in Part 2...

...

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)"

The **Acceptance and Consents** section of the **Mortgage Loan Offer** was signed by the Complainants on **18 May 2005**, which states as follows:

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

It is clear to me that the **Mortgage Loan Offer** dated **17 May 2005** provided for a discounted variable interest rate of 2.750% for a period of 24 months, with a standard variable interest rate of 3.600% to apply for the remainder of the loan. The variable rate in this case made no reference to varying in accordance with variations in the European Central Bank main refinancing rate, but rather it was a variable rate which could be adjusted at the discretion of the Provider.

I note from the **mortgage account statements** submitted in evidence that mortgage loan account ending **7404** was drawn down on **15 June 2005**.

The Complainants subsequently signed a **Mortgage Form of Authorisation** on **4 December 2006** agreeing to convert their loan to a staff mortgage loan.

Thereafter, the Complainants signed a **Staff Application Change to Tracker Mortgage - Mortgage Form of Authorisation** on **11 February 2008** which details as follows:

"...

The interest rate shall be no more than 0.75% above the prevailing European Central Bank Main Refinancing Operations Minimum Bid Rate ("Repo rate") for the term of the Loan.

APPLICATION FOR CHANGE OF INTEREST RATE:

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:

/Cont'd...

- 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 (only applicable if your fixed rate is due to expire within 30 days from the date of this Application)
- 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.

**Note: If you change from a fixed rate during the fixed rate period, you may be liable to pay a funding sum to [the Provider]. See conditions overleaf.*

..."

I note that the Complainants signed the **Acknowledgement and Agreement** on **11 February 2008** on the following terms:

"...

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 [the Provider] not later than close of business on the 5th 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 [Redacted] to be unavailable for 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.

..."

The evidence shows that the Complainants signed and accepted the **Mortgage Form of Authorisation** selecting to apply a tracker interest rate for the term of the loan. An interest rate of 4.75% was applied to the mortgage loan account on **28 February 2008**.

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The Complainants' solicitor sent a letter dated **2 December 2009** to the Provider to request *"to receive as a matter of urgency the title documents"* for the mortgaged property the subject of mortgage loan account ending **7404** as they were instructed to issue contracts for sale. The Provider's internal notes indicate that the title deeds were sent on or around **18 December 2009**.

From a review of the **mortgage account statements**, I note that mortgage loan account ending **7404** was fully redeemed on **25 January 2010** and the mortgage loan account was closed.

Mortgage Loan Account ending 4494

Prior to redeeming mortgage loan account ending **7404**, the Complainants submit that they approached the Provider in **2009/2010** to look for a top-up loan or a split mortgage as they required additional borrowings on foot of deciding to move house. The Complainants appear to submit that they wished to retain that tracker interest rate in respect of the new property that they intended to purchase.

I have not been provided with any evidence of any communications of this nature between the parties. However, the Provider was submitted documentation in relation to the Complainants' application for additional borrowings.

The Provider issued a **Mortgage Loan Offer** dated **13 October 2009** which provided for a loan in the amount of €250,000 for a period of 20 years on a fixed interest rate of 2.99% for the first 24 months of the term of loan with a standard variable interest rate to apply thereafter. The **Mortgage Loan Offer** dated **13 October 2009** was not signed and accepted by the Complainants.

The Provider issued a revised **Mortgage Loan Offer** dated **25 November 2009** which provided for a loan in the amount of €320,000 for a period of 27 years on a fixed interest rate of 2.99% for first 24 months of the term of loan with a standard variable interest rate to apply thereafter. The **Mortgage Loan Offer** dated **25 November 2009** was not signed or accepted by the Complainants.

The Provider's internal note dated **9 February 2010** details as follows:

"Customer has gone sale agreed on [redacted]

...

Mortgage 300,000 Rate 2.25% Variable (Staff) and payments to come out fortnightly"

/Cont'd...

I note that that Provider subsequently issued a further **Mortgage Loan Offer** dated **11 February 2010** which provided for a loan in the amount of €300,000 repayable over a term of 27 years on a variable interest rate of 2.250%. The **Mortgage Loan Offer** dated **11 February 2010** was not signed or accepted by the Complainants.

The Provider issued a revised **Mortgage Loan Offer** dated **17 February 2010** on the same terms as the offer letter dated **11 February 2010** however the loan amount was for €340,000. The **Mortgage Loan Offer** dated **17 February 2010** was not signed or accepted by the Complainants.

The Provider's internal note dated **5 May 2010** details as follows:

"...

Hi

*Cust would like to apply a 2 year fixed rate of 3.25%.
Please reissue letter of offer urgently*

Regards,

XXXXXXXXX

Mortgage Adviser"

The Provider subsequently issued a cover letter dated **6 May 2010** enclosing a **Mortgage Loan Offer** dated **6 May 2010** to the Complainants. The cover letter details as follows:

"...

I am delighted to let you know that [the Provider] has approved your mortgage application. This approval is subject to the revised terms and conditions contained in the enclosed Mortgage Loan Offer ("Offer Letter").

Based on the information you provided to us, we believe that the enclosed loan offer will meet your requirements and is suited to your needs as a customer who is moving house.

While details of fixed and variable rate options were discussed with you, we note that you have chosen the 2 year fixed rate option as you wanted your repayments to remain the same over this period.

/Cont'd...

....

This Offer Letter supersedes and replaces all previous versions of this Offer Letter issued to you in respect of this loan.”

Mortgage Loan Offer dated 6 May 2010 details as follows:

“ ...

**PART 1 – THE STATUTORY LOAN DETAILS
IMPORTANT INFORMATION AS AT 06 May 2010**

1. Amount of Credit Advanced		€340,000
2. Period of Agreement		27 Years
3. Number of Repayment Instalments	Instalment Type	4. Amount of each Instalment
52	Fixed at 3.250%	€725.02
651	Variable at 3.100%	€713.36”

PART 2- THE ADDITIONAL LOAN DETAILS

11. Type of Loan: Repayment
12. Interest Rate: 3.250% Fixed
13. Property to be Mortgaged (the “Property”):
[property address of new principal private residence]
14. Purchase Price (or value) of Property:” €485,000
...”

I note that the note on **page 2** of the **Mortgage Loan Offer dated 6 May 2010** 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 particulars of **Mortgage Loan Offer dated 6 May 2010** detail the address of the Complainants’ new principal private residence under “*Property to be Mortgaged*”.

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Part 4 – The Special Conditions attached to the **Mortgage Loan Offer** details as follows:

“The Loan is subject to the following special conditions (the “Special Conditions”) which, unless stated to the contrary, must be complied with in full to the Lender's satisfaction before the Loan, or any part of it, can be drawn down:

(a) The following Special Conditions apply to the Loan:

...

(ii) Borrower's solicitor to provide written confirmation that the Borrower's mortgage on the property at [address of the mortgaged property the subject of mortgage loan account ending 7404] has been redeemed from the proceeds of the sale of that property.

...

(v) This offer replaces our offer of 17/02/2010.

(vi) The interest rate applied to the Loan is a staff preferential rate. In the event of the Borrower (or both Borrowers where both are members of the permanent staff of the Lender) ceasing to be employed by the Lender for any reason, the interest rate applicable to the Loan shall immediately revert to the prevailing Homeloan Variable Rate or such other rate which the Lender may at its absolute discretion, offer to the Borrower.

...”

Part 5 – The General Conditions Mortgage Loan Offer attached to the **Mortgage Loan Offer** details as follows:

“1. Interpretation and General

...

(d) This Offer Letter replaces and supersedes all earlier versions of this Offer Letter.

2. Security and Valuation

(a) The “Lender's Security” is: (i) a first legal mortgage or charge over the Property described in Part 2...

...

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, 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 **Acceptance and Consents** section of the **Mortgage Loan Offer** was signed by the Complainants on **7 May 2010**, which states as follows:

"Acceptance of this Offer Letter must reach the Lender within 30 days of the date of this Offer Letter or the offer will lapse. (The Lender may, at its absolute discretion, extend this period). 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.

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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 term and conditions contained in this Offer Letter and I confirm that I accept this Offer Letter on such terms and conditions...."

It is clear to me that the **Mortgage Loan Offer** dated **6 May 2010** provided for a fixed interest rate of 3.250% for a period of 52 months with a standard variable interest rate of 3.100% to apply thereafter. The variable rate in this case made no reference to varying in accordance with variations in the European Central Bank main refinancing rate, rather it was a variable rate which could be adjusted at the discretion of the Provider.

The **mortgage account statements** show that mortgage loan account ending **4494** was drawn down on **13 May 2010**.

The Complainants subsequently signed a **Mortgage Form of Authorisation** dated **4 May 2012** which details as follows:

" ...

SWITCHES TO STANDARD VARIABLE RATES OR OTHER RATES

If you avail of a Standard Variable Rate or Other Rate, our tracker rate commitment to you is deemed to be at an end. For the avoidance of doubt, we wish to advise you that if you avail of a Standard Variable Rate or Other Rate, you will lose the ability to avail of a Tracker Rate Mortgage in the future.

...

Selected Rate

Description

Rate



STAFF VARIABLE RATE PDH

3.400%

..."

/Cont'd...

The Complainants signed the **Acknowledgement and Agreement** on the **13 May 2012** on the following terms:

“...

5. *If the selected rate is a variable rate:-*
 - 5.1 *the interest rate will vary at our discretion upwards or downwards;*
 - 5.2 *the General Conditions in the Mortgage Loan Offer Letter concerning variable rates of interest will continue to operate.*

...

7. *Any commitment or obligation by us, in your Mortgage Loan Offer Letter or otherwise, to provide you with a tracker variable rate (as described at clause 6.1 above) for the Loan, now or in the future, will end if you select a fixed rate of interest or a non-tracker variable rate of interest by way of this Mortgage Form of Authorisation. This paragraph takes precedence over any condition of your Mortgage Loan Offer Letter concerning tracker variable rates including any Special Condition.*

...”

The **mortgage account statements** show that an interest rate of 3.4% was applied to the Complainants' mortgage loan account on **16 May 2012**.

Mortgage loan account ending **4494** appears to have switched from a staff variable rate of 3.9% to a discounted variable rate of 3.30% on **12 November 2018**, at the request of the Complainants.

The Complainants appear to take issue with the fact that the Provider required them to take out a new mortgage loan when they decided to sell the mortgaged property the subject of mortgage loan account ending **7404** and purchase a new principal private residence.

Having considered the documentation provided in evidence, it is clear to me that the **Mortgage Loan Offer** dated **17 May 2005** together with the terms and conditions provided for a first legal charge or mortgage over the specific property named in the **Mortgage Loan Offer**. There was no provision under the terms of the mortgage loan which entitled the Complainants or the Provider to substitute this property or amend the details of the property which secured the mortgage facility.

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In this regard, I would highlight that it is usual banking practice, where a person seeks to sell a property, which is security for a mortgage loan, that that mortgage loan is redeemed, and the proceeds are used to discharge that mortgage loan. It is then at the discretion of the parties whether to seek to enter into a new mortgage loan agreement with respect to the purchase of any subsequent property.

It appears to me that the Complainants voluntarily chose to redeem mortgage loan account **7404** which was on a tracker rate in order to sell the property that was held as security for that mortgage loan.

The Complainants, in their post Preliminary Decision submission dated **03 December 2021**, state that this reference to “voluntarily” redeeming the mortgage “seems to ignore the evidence I provided with regard to my conversations with the bank and our repeated requests to retain our tracker mortgage. We had to move and the bank left us with no other choice”.

However, it is clear from the evidence before me that if the Complainants had decided not to sell the mortgaged property the subject of mortgage loan account **7404** and redeem mortgage loan account **7404** early, they would have been entitled to avail of the tracker interest rate until the term of the mortgage ended.

The Complainants however applied for a new mortgage in **2009** to facilitate the purchase of the new property and signed and accepted **Mortgage Loan Offer** dated **6 May 2010**, which provided for a fixed interest rate for 24 months.

By doing so, the Complainants opted to terminate the mortgage contract in respect of mortgage loan account **7404**, which was on a tracker rate, with the Provider.

At the time of the new mortgage loan application, the Provider was no longer offering tracker rates for new mortgage lending. Furthermore, the Provider’s tracker portability product did not become available as part of the Provider’s product offering until some four years later in **April 2014**.

The Complainants ultimately chose to redeem their tracker mortgage loan and were offered a new mortgage in respect of the new property that they purchased by way of **Mortgage Loan Offer** dated **6 May 2010** which provided for a fixed interest rate of 3.250% for a period of 52 months with a standard variable interest rate of 3.100% to apply thereafter. The Provider was under no obligation to offer the Complainants’ a tracker interest rate on their new mortgage loan. In any event, tracker interest rates were no longer an option available on new mortgages from the Provider when the Complainants applied for the new mortgage loan.

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If the Complainants were not satisfied with the interest rate applicable to the mortgage loan, they could have decided not to accept the Provider's offer. Instead, the Complainants accepted the Provider's offer by signing the **Acceptance and Consents** section of the **Mortgage Loan Offer on 7 May 2010**, having confirmed that they fully understood the terms and conditions set out in the Offer Letter.

In light of all the foregoing, I accept that the Provider acted correctly in its dealings with the Complainants and there was no obligation on the Provider to allow the Complainants retain a tracker interest rate on their new mortgage loan under mortgage loan account ending **4494**.

For the reasons set out in this Decision, I do not uphold the complaint.

Conclusion

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is rejected.

The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.



**GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

24 January 2022

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,

/Cont'd...

**(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.

