



<u>Decision Ref:</u>	2022-0105
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Tracker Mortgage
<u>Conduct(s) complained of:</u>	Failure to offer a tracker rate throughout the life of the mortgage
<u>Outcome:</u>	Rejected

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

This complaint relates to a mortgage loan account held by the Complainants with the Provider. The mortgage loan that is the subject of this complaint is secured on the Complainants' principal private residence.

The loan amount is €70,000 and the term of the loan is 25 years. The **Letter of Offer** which is dated **19 July 2004** outlined that the interest rate applicable to the loan was a fixed interest rate of 2.75% for the first 12 months of the loan.

The Complainants' Case

The Complainants submit that they hold four mortgage loan accounts with the Provider. Mortgage loan account ending **0/002** is the subject of this complaint. The Complainants also hold mortgage loan accounts ending **0/001**, **0/003** and **0/004** with the Provider.

The Complainants submit that they drew down their mortgage loan account ending **0/002** in **July 2004** on a 1-year fixed interest rate of 2.75%. The Complainants outline that on the expiry of the fixed rate period in or around **July 2005**, mortgage loan account ending **0/002** rolled on to the Provider's standard variable interest rate. The Complainants contend that the Provider did not offer them a tracker interest rate on the expiry of the fixed interest rate period for mortgage loan account ending **0/002**.

The Complainants outline that they drew down mortgage loan account ending **0/001** in **June 2004** on a 1-year fixed interest rate, and on the expiry of the fixed rate period in or around **June 2005**, this account rolled to a tracker interest rate.

The Complainants assert that the Provider has not supplied them with a satisfactory explanation as to why they were not "*supplied or offered*" a tracker interest rate for mortgage loan account ending **0/002** but they were offered a tracker interest rate for mortgage loan account ending **0/001**.

The Complainants submit that the Provider has been unable to provide them with "*any documentation*" in respect of mortgage loan account ending **0/002** or account ending **0/001** including the letters of offer or the roll over letters which issued on the expiry of the 1-year fixed interest rate periods in or around **June** and **July 2005**.

The Complainants assert that it is their understanding that "*under industry-wide standards that all letters of offer which are issued with fixed rates, the standard rate is applied on expiry of fixed-term, and at this time the full suite of prevailing rates are offered to the customer*". The Complainants submit that they "*never received*" the fixed rate expiry letter that the Provider submits issued one month prior to the expiry of the 12-month fixed interest rate period in **2005**.

The Complainants also assert that "*[t]he sample letter alleged to have been issued in 2005 is in complete contrast*" to a letter received by the Complainants in **2016** on the expiry of a fixed interest rate period.

The Complainants contend that the "*statements, which the bank has provided on both accounts*", for mortgage loan account ending **0/001** and mortgage loan account ending **0/002**, both quote the change of rate on the expiry of the fixed rate period as "*fixed to Variable*". The Complainants assert that there "*is no reference to the tracker on account [account ending 0/001] which the bank applied*" a tracker interest rate to, therefore, it was unclear as to which type of rate applied to each account.

The Complainants further submit that it "*appears that the bank is missing a large body of documentation and several errors were made on accounts*".

The Complainants are seeking the following:

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- (a) A tracker interest rate of ECB +0.6% to be applied to mortgage loan account ending **0/002**;
- (b) A refund of “*overcharged*” interest based on the interest paid, compared to, the interest they would have paid had a tracker rate of interest been applied from **July 2005**; and
- (c) Compensation “*for the financial difficulties [they] have endured as a result*” of the overpayments made on mortgage loan account ending **0/002**.

The Provider’s Case

The Provider submits that the Complainants “*approached the [Provider] in July 2004 seeking mortgage finance in the sum of €70,000*”. The Provider notes that it offered tracker rates of interest from **late 2002** until they were withdrawn from the market by the Provider in **late 2008**. The Provider submits that “*a range of mortgage interest rate options were available*” when the Complainants applied for their mortgage loan, including the “*standard Home Loan Rate, various Fixed rates and Tracker interest rate options*”.

The Provider outlines that it approved a mortgage loan for the Complainants and subsequently issued a **Letter of Offer** to the Complainants on **19 July 2004**. The Provider notes that this **Letter of Offer** provides for a loan in the amount of €70,000, repayable over a term of 25 years. The Provider further notes that this **Letter of Offer** details that a fixed interest rate of 2.75% would apply for the first 12 months of the loan, with the Provider’s variable interest rate to apply thereafter. The Provider asserts that the “*Standard Home Loan Rate which is quoted on the Letter of Offer and the [Provider’s] Standard Variable Rate (SVR) are one and the same*”.

The Provider contends that there is “*no reference to a Tracker interest rate in the Complainants’ Letter of Offer*” and states that the Complainants’ mortgage loan account ending **0/002** “*was never on a Tracker interest rate*”. The Provider asserts that the Complainants did “*not have a contractual entitlement*” to be offered any tracker interest rates at the end of their fixed interest rate period. In addition, the Provider submits that the **Letter of Offer** which was signed and accepted by the Complainants, “*strongly advised the Complainants to consult their legal advisor prior to accepting the Letter of Offer*”.

The Provider submits that it was its policy to issue a fixed rate expiry letter one month prior to the expiry of the fixed interest rate period, “*requesting the customer to contact*

the [Provider] directly for applicable rates". However, the Provider asserts that as these letters are generated automatically, it does not hold a copy of this correspondence on file.

The Provider notes that on the expiration of the initial 1-year fixed interest rate period and *"in the absence of an instruction from the Complainants to change or retain the interest rate"* on their mortgage loan account ending **0/002**, the account converted to the Provider's standard home loan variable rate *"in line with the terms and conditions"* applicable to the mortgage loan account. The Provider asserts that it has *"no evidence on file to suggest that the Complainants ever applied for a Tracker interest rate in 2005"* in respect of mortgage loan account ending **0/002**.

The Provider submits that the Complainants applied a tracker rate of interest to another mortgage loan account held by them, on the expiry of a fixed interest rate period in **2005**. The Provider maintains that its records *"note that the Complainants specifically requested a Tracker Interest rate to be applied to Account ending 0/001"*. The Provider notes that a tracker interest rate *"with a margin of 0.95%"* was applied to mortgage loan account ending **0/001**, which was subsequently reduced to a rate of ECB + 0.60% on **28 May 2007**, *"following a request from the Complainants"*. The Provider submits that mortgage loan account ending **0/001** has remained on this rate since it was applied in **May 2007**. The Provider therefore maintains that the Complainants were aware of the action that was required if they wished to apply a tracker interest rate to mortgage loan account ending **0/002** on the expiry of the fixed interest rate period, *"on the basis that Account ending 0/001 rolled off the fixed rate in June 2005"* one month before the fixed rate period expired on mortgage loan account ending **0/002**. The Provider asserts that it *"has no evidence of the Complainant contacting"* it at any point from the date of drawdown on mortgage loan account ending **0/002**, seeking information on interest rates available to them or to request a tracker interest rate.

The Provider submits that tracker interest rates were available to both new and existing customers *"both in 2004 when the Complainants applied for their mortgage and also in 2005 on expiry of their 1 year Fixed interest rate"*. The Provider maintains that tracker rates of interest were available for consideration by customers who wished to convert their current interest rate to a tracker rate of interest. The Provider submits that its *"practice was, and remains, to provide customers with information on all interest rates available on request"*. The Provider asserts that its staff *"do not give advice on rates"* but do provide information on available interest rates, when such a request is made, either at application stage or at any time during the term of the mortgage loan account.

The Provider contends that its *"obligation to the Complainants' [sic] was to honour the Terms and Conditions of the Mortgage Loan Documentation, which it did and continues to do"*.

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The Provider submits that it complied "*with all signed requests*" relating to the Complainants' mortgage loan account, which the Provider contends is "*evidenced by Mortgage Loan Account [ending 0/001] converting to a Tracker Interest rate of ECB + 0.90% margin upon expiry of the Fixed Interest Rate period in July 2005*" and also by the reduction of the margin on that account to ECB + 0.60% on foot of a subsequent request from the Complainants in **July 2007**.

The Provider maintains that the Complainants could not have had "*any reasonable expectation that they would be entitled*" to convert mortgage loan account ending **0/002** to a tracker rate of interest, without making a specific request for a tracker interest rate on the expiry of the fixed interest rate period in **July 2005**. The Provider details that the Complainants did not have any contractual entitlement to be offered tracker interest rates on the expiry of the fixed rate period. The Provider submits that the variable rate that applied to the Complainants' loan account on expiry of the fixed rate period "*is exactly the rate that applied in line with the Letter of Offer*". The Provider submits that it is satisfied that the documentation relating to the Complainants' mortgage loan account ending **0/002** "*was sufficiently clear and transparent*".

In response to the Complainants' assertion that it is their understanding that "*under industry-wide standards that all letters of offer which are issued with fixed rates, the standard rate is applied on expiry of fixed-term, and at this time the full suite of prevailing rates are offered to the customer*", the Provider submits that its policy at the time of expiry of the Complainants' fixed rate period was "*to issue a Fixed rate expiry letter one month prior to the Fixed rate expiring, requesting the customer to contact the [Provider] directly for rate options*". The Provider explains that all of its interest rates were "*available and publicly advertised through [its] website and in [its] branches*".

The Provider notes that the Complainants contend that the Provider "*did not supply, and advised that they are unable to supply, a copy of the letters of offer relating to the mortgage in question, nor did they supply the Roll over letter on expiry of the 1 year fixed period*" for mortgage loan accounts ending **0/001** and **0/002**. In response to the Complainants' contention, the Provider submits that it has since located the **Letter of Offer** in question and has made an offer of a goodwill gesture to the Complainants "*for not being able to locate the Letter of Offer for Mortgage Loan Account ending 0/001*". The Provider maintains that it does not hold a copy of the fixed rate expiry letters on file because such letters were generated on an automated system, and it has offered "*a Good Will Gesture in respect of not retaining a copy of the actual letter that was sent*".

In response to the Complainants' submission that "[t]he sample letter alleged to have been issued in 2005 is in complete contrast" to a letter received by the Complainants in **2016** on the expiry of a fixed interest rate period, the Provider submits that it has changed its processes in relation to the expiry of fixed rate periods between **2005** and **2016**.

The Complaints for Adjudication

The complaints for adjudication are as follows:

- (a) the Provider failed to offer the Complainants a tracker interest rate on mortgage loan account ending **0/002** on the expiry of the fixed interest rate period in or around **July 2005**; and
- (b) the Provider failed to maintain adequate records in relation to mortgage loan account ending **0/002**.

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 18 February 2022, outlining the preliminary determination of this office 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

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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.

In order to determine this complaint, it is necessary to review and set out the relevant provisions of the Complainants' loan documentation. It is also relevant to set out the details of certain interactions between the Provider and the Complainants between **2004** and **2005**.

In addition, while I note that mortgage account ending **0/001** is not the subject of this complaint, I believe it is helpful to detail certain documentation and exchanges between the parties in relation to account ending **0/001** given the comparisons raised in the Complainants' submissions.

The Provider issued a **Letter of Offer** dated **19 July 2004** to the Complainants, which details as follows:

"IMPORTANT INFORMATION AS AT 19 July 2004:

- | | |
|-------------------------------------------|-------------------|
| <i>1. Amount of Credit Advanced</i> | <i>€70,000.00</i> |
| <i>2. Period of Agreement</i> | <i>25 years.</i> |
| <i>3. Number of Repayment Instalments</i> | <i>300</i> |

...

The offer of a Housing Loan can be accepted by signing this letter below and returning it to us by 19th August 2004.

You are strongly advised to consult your legal adviser before you accept this Offer.

If you have any queries on your Offer of Home Loan facilities, please do not hesitate to contact the undersigned."

Appendix A – Terms and Conditions of Home Loan Offer states as follows:

"Amount: *€70,000.00 (Seventy Thousand Euro)*

Repayment: *At the pleasure of the [Provider], it being noted that Capital and Interest will be discharged over 25 years by way of consecutive monthly instalments, to commence within one month of drawdown. (At current interest rates the monthly repayment would amount to €322.77 for the first 12 months followed by €342.02 varying thereafter).*

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During the period of the loan, the [Provider] reserves the right to review and vary the instalment to an appropriate level to cover clearance of the Facility within the period agreed.

Interest:

Interest will be calculated on a day to day basis at the Standard [Provider] Home Loan Rate, fluctuating, charged and compounded quarterly in arrears and payable monthly in arrears. At present the rate is 3.30% per annum.

Notwithstanding this the rate shall be set at a fixed rate (currently 2.75% per annum and subject to quotation at date of drawdown) for 12 months from the date of drawdown (A.P.R 3.3%)

The [Provider] shall be entitled to charge an additional 0.75% per month interest on amounts due but unpaid, such amounts to be charged, compounded and payable in accordance with the basis set out above....

Acceptance and Drawdown:

The final date for acceptance of this Facility Letter shall be 19th August 2004. The final date for drawdown of this Facility shall be 19th January 2005.

...

Fixed Rate Settlement:

*The Borrowers may opt to fix the rate of interest on the mortgage at any time. The rates are subject to quotation at the time of instruction which must be received in writing from the Borrowers. **As the rates are subject to change, the rate applicable is that prevailing on the date the option is exercised.***

Appendix B – Statutory Notice and Other Notices states as follows:

“(a) ALL MORTGAGE LOANS

...

“THE PAYMENT RATES ON THIS HOUSING LOAN MAY BE ADJUSTED BY THE LENDER FROM TIME TO TIME.”

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Note: The above notice in respect of adjustments to payment rates will not apply during any period when the mortgage loan is at fixed interest rate."

The **Acceptance** section of the **Letter of Offer** was signed by the Complainants and states as follows:

"We hereby confirm our acceptance of the above offer on the terms and conditions on which it is expressed to be made."

Although this section of the **Letter of Offer** is not dated, I note that the Complainants accepted and signed this **Acceptance** of the **Letter of Offer** prior to the deadline for acceptance, which was **19 August 2004** as the mortgage loan statements for mortgage loan account ending **0/002** provided in evidence indicate that the Complainants subsequently drew down this mortgage loan on **30 July 2004**.

It is clear to me that this **Letter of Offer** dated **19 July 2004** for mortgage loan account ending **0/002** envisaged that a fixed interest rate of 2.75% would apply for the first 12 months of the mortgage loan, with a "varying" rate to apply thereafter. The varying rate was the "Standard [Provider] Home Loan Rate".

The **Letter of Offer** indicates that the nature of this "varying" rate is one which may be increased or decreased at the discretion of the Provider. The **Letter of Offer** dated **19 July 2004** does not refer to an interest rate that will vary in accordance with variations in the European Central Bank rate. I note that the particulars of the **Letter of Offer** were accepted by the Complainants by signing the **Acceptance** section of the **Letter of Offer** and subsequently drawing down mortgage loan account ending **0/002** on **30 July 2004**.

Prior to the expiry of the fixed interest rate period, the Provider submits that it issued a **fixed rate expiry letter** to the Complainants in respect of mortgage loan account ending **0/002** in or around **June 2005** "requesting the customer" to contact the Provider directly for the available interest rates. I have not been provided with a copy of the fixed rate expiry letter that purportedly issued to the Complainants in or around **June 2005** which is most disappointing. The Provider has explained that this was an automated letter that issued to the Complainants one month prior to the expiry of the fixed interest rate period therefore it does not hold a copy of the actual letter issued to the Complainants. The Complainants submit that they never received this letter.

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Provision 49 of the **Consumer Protection Code 2006** governs retention of records and was not effective until **01 July 2007**. In these circumstances, while I am disappointed that the Provider has failed to retain a copy of this letter that purportedly issued in or around **July 2005**, there was no breach of the **Consumer Protection Code 2006**.

The Provider has however submitted a sample of a fixed rate expiry letter, which it says it issued to customers rolling off a fixed interest rate at the time.

This sample letter details as follows:

“Dear Customer,

With reference to the above quoted Fixed Rate Mortgage Account, we wish to advise that the Fixed Rate Term is due to expire on the DD-MM-YYYY.

We shall be grateful, therefore, if you will contact this office at your earliest convenience in order to discuss the various Products which are now available to you. In the event that we do not hear from you prior to DD-MM-YYYY your Account will transfer automatically to the [Provider’s] prevailing Standard Variable Rate for mortgages at that time, or an alternative rate as agreed.

We trust this is satisfactory.

Yours sincerely”

I note from the mortgage loan account statements, submitted in evidence, that the Provider’s standard variable interest rate of 3.3% was applied to mortgage loan account ending **0/002** on **29 July 2005**. This was in line with the terms and conditions of the **Letter of Offer** dated **19 July 2004** which provided for interest to be calculated at the varying, “Standard [Provider] Home Loan Rate” at the end of the initial 12-month period. Mortgage loan account ending **0/002** remained on a variable interest rate until the Complainants opted to apply a fixed interest rate of 4.88% on **06 March 2013**.

The Provider issued a letter to the Complainants on **27 January 2016** in relation to mortgage loan account ending **0/002**, which states as follows:

“I am writing to let you know that the fixed rate period on your Home Mortgage Loan Account above expires on 6th March 2016. As a result of this, I would be

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grateful if you could complete the enclosed form detailing the new mortgage rate you wish to avail of and return to us at the above address.

Below is a sample of the rates currently on offer from [the Provider]. If you wish to choose one of our Loan To Value (LTV) rates and have never availed of one before, you will need to provide us with an up to date valuation report completed by an approved valuer from the [Provider's] Residential Mortgage Valuer's Panel.

In the absence of your instruction the [Provider's] Standard Variable Rate of 3.65% with repayments of €373.62 will be applied or an alternative rate as agreed. With agreement, this may be changed to another rate at a later stage".

The rates offered by the Provider in the letter dated **27 January 2016** were as follows:

Rate Description	%	Repayment
PDH LTV Var <=50%	3.350%	€366.76
PDH LTV Var >50% <=80%	3.550%	€371.15
PDH LTV Var >80%	3.750%	€375.83
1 Year Fixed	3.500%	€370.05
2 Year Fixed	3.600%	€372.52
3 Year Fixed	3.650%	€373.62
5 Year Fixed	3.800%	€376.94

While I note that there is a difference in the content of the sample options letter furnished in evidence from **2005** and the options letter issued by the Provider to the Complainants in **2016**, I do not accept that the Provider was obliged to offer "*applicable rates available at the time*" in the content of that letter in **2005**, as has been suggested by the Complainants.

I note from the **Statement of Account** that the standard variable interest rate of 3.65% was applied to the Complainants' mortgage loan account ending **0/002** on the expiry of the fixed interest rate period on **06 March 2016**.

The Complainants issued a letter to the Provider dated **23 February 2016** which stated as follows:

"Dear Sirs,

I have been reviewing my finances following your recent correspondence regarding account [ending 0/002] on which the current fixed period is due to expire. I note that my mortgage [ending 0/001] was drawn on 29/06/2004 attracted a tracker

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rate of .65% and a subsequent drawdown in July of the same year does not appear to have attracted a tracker rate. Both mortgages were initially on a fixed rate.

In 2010 I received the enclosed letter outlining that my mortgage [loan account ending 0/001] was attracting a tracker Rate and not a Standard Variable as had been previously advised would have been the case. I did however, not receive a similar letter relating to [mortgage loan account ending 0/002] and I am now querying why the tracker rate was not also applied to or offered on that account. Please note this appears to be the only portion of the mortgage not on a tracker rate.”

The letter which the Complainants enclosed was a letter from the Provider to the Complainants dated **19 November 2010**. This letter stated as follows:

“Dear Customer,

I refer to the above home loan account number and wish to advise that the current tracker rate applying to your account is ECB + 0.60%, currently 1.60%. This tracker rate was applied to your account on expiry of the fixed rate.

It has come to our attention that when we wrote to you prior to the expiry of the fixed rate on your account, we advised you that the prevailing standard variable rate would apply on expiry of the fixed rate.

We wish to apologise for any confusion that may have occurred as a result of this letter and confirm again that the tracker rate continues to apply on your account.”

The Provider issued a letter to the Complainants, dated **03 October 2016**, which states as follows:

“Dear [Complainants],

We have been corresponding with you in relation to a complaint regarding your mortgage account [ending 0/002] and would like to thank you for your patience in allowing us time to fully investigate your case.

We investigated the issue you have raised and taking everything into account, this is our response.

By way of background, we have outlined in full the details of all your mortgage with [Provider].

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Account: [ending 0/002]

... This mortgage loan was drawn down on 30th July 2004 under a mortgage loan account [ending 0/002]. The [Provider] would point out that we are unable to locate a copy of this Letter of Offer on your file and apologise for this administrative oversight. The rate that was applied was a 1 year fixed rate of 2.75% and following the expiry of this 1 year fixed period the interest rate rolled over to the [Provider's] Standard Variable Rate.

This is confirmed in the enclosed copy of our internal account systems pertaining to this mortgage loan account dated 30th July 2004. This mortgage loan account remained on the [Provider's] Standard Variable Rate (copy statements enclosed) until 6th March 2013 when you requested in writing, signed by all parties to the loan that a 3 year fixed rate of 4.88% be applied to your mortgage loan account. (Copy enclosed). On the 7th March 2013 the [Provider] complied with your request and a 3 year fixed rate of 4.88% was applied to your account. On 27th January 2016, the [Provider] wrote to you to inform you that the fixed interest rate was due to expire on 7th March 2016. The [Provider] outlined a list of sample interest rates that were then on offer by the [Provider] with a form attached which you could complete and return to the [Provider] indicating which rate you wished to avail of (copy enclosed). This letter also states that in the absence of any reply the [Provider's] Standard Variable Rate of 3.65% would be applied to the mortgage loan. As the [Provider] did not receive a response to you [sic] the standard variable rate of 3.65% was applied to your account on 6th March 2016. Your account remains to date on the [Provider's] current Standard Variable Rate currently 3.4%.

We note in your letter, dated 23rd February 2016, that you state your "mortgage ending [0/001] which was drawn down on 29/06/2004 attracted a tracker rate of 0.65% and a subsequent drawdown in July of the same year does not appear to have attracted a tracker rate. Both mortgages were initially on a fixed rate". As you will note from our investigation above, your mortgage loan account [ending 0/001] drew down on a 1 year fixed rate following which you requested a tracker rate be applied. The current margin is 0.6% not 0.65% as noted in your letter. However in relation to the subsequent drawdown which was drawn under mortgage account number [ending 0/002], this was drawn down on a 1 year fixed rate but reverted to the [Provider's] Standard Variable, subsequently fixed and then reverted to the Bank's Standard Variable rate in March 2016. This account was never on a Tracker Interest Rate.

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On review of your account we have no record of you contacting the [Provider] at any time from the date of drawdown of this mortgage loan account [ending 0/002] querying your rate or seeking information on rates that would have then been available to you. The first record we hold is your letter dated 23rd February 2016, at which point Tracker Interest Rates had been discontinued by the [Provider] since [late 2008].

We confirm that we have fully reviewed your case and while I appreciate that this is not the response you were hoping for to the issue you raised, please take this as our final response to your complaint.”

The Complainants submit that they were not “supplied or offered” a tracker interest rate for mortgage loan account ending **0/002** in **2005** but they were offered a tracker interest rate for mortgage loan account ending **0/001** in **2005**.

The Provider has submitted a copy of its internal notes with respect to the Complainants’ mortgage loan account ending **0/001**. The internal note dated **19 April 2005** details as follows:

“Product changed from [product reference number] to [product reference number] WRONG PRODUCT CODE. [Provider’s representative] HAS AGREED TRACKER ECB +0.95% AFTER FIXED RATE HAS EXPIRED, REVIEW DATE ALSO WRONG...”

A further internal note dated **28 June 2005** details as follows:

“Product changed from [product reference number] to [product reference number]”

The mortgage loan statements provided in evidence indicate that a tracker interest rate of 2.95% (ECB + 0.95%) was applied to mortgage loan account ending **0/001** on **28 June 2005**. It appears to me that a tracker interest rate was applied to mortgage loan account ending **0/001** at the request of the Complainants on expiry of an initial fixed interest rate period.

The Complainants sent a letter to the Provider dated **25 May 2007** in relation to mortgage loan account ending **0/001**, which details as follows:

“Dear [Provider]

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Please move the above account to the best tracker rate with immediate effect.

Yours sincerely"

I note that following this request, a tracker rate of ECB + 0.60% was applied to that mortgage loan account ending **0/001** on **28 May 2007**.

These various communications in respect of mortgage loan account ending **0/001** illustrate that the Complainants were aware that tracker interest rates were on offer by the Provider at that time and appeared to be aware of the actions required to request that the Provider apply such a rate to their mortgage loan

In any event, the fact that the Provider permitted the Complainants to apply a tracker interest rate to mortgage loan account ending **0/001** has no bearing on the Complainants' interest rate entitlements in respect of mortgage loan account ending **0/002**. Each mortgage loan is governed by the terms and conditions applicable to that particular mortgage loan.

Having considered the evidence submitted to this Office by both parties, it is clear that the Complainants did not have a contractual or other entitlement to a tracker interest rate with respect to mortgage loan account ending **0/002** at the end of the fixed rate period in **July 2005**, or at any other time during the term of the loan. While tracker interest rate options may have been available, as a product option, from the Provider in **2005**, the Complainants were not contractually entitled to be offered a tracker interest rate.

The Complainants only had a contractual entitlement to the Provider's variable interest on the expiry of the fixed interest rate period and that is what was applied to the mortgage loan by the Provider. Consequently, regardless of whether or not the Complainants received the Provider's letter from **June 2005**, I am satisfied that the Provider adhered to the terms and conditions of the **Letter of Offer** dated **19 July 2004**.

The Complainants were free to contact the Provider at any stage to explore the interest rate options available to them. If the Complainants wished to pursue the option of applying a tracker interest rate to mortgage loan account ending **0/002**, they could have contacted the Provider to request this, as they had done in relation to mortgage loan account ending **0/001**. That said, it would then have been a matter of commercial discretion on the part of the Provider as to whether it wished to accede to any such request made by the Complainants to apply a tracker interest rate to their mortgage loan account ending **0/002**. I have not been provided with any evidence to indicate that the Complainants contacted the Provider to discuss or explore the various products available before the expiry of the fixed interest rate on mortgage loan account ending **0/002**.

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In the circumstances the evidence does not support the Complainants' complaint that the Provider failed to offer the Complainants a tracker interest rate on mortgage loan account ending **0/002** on the expiry of the fixed interest rate period in or around **July 2005**.

In relation to the Complainants' complaint that the Provider failed to maintain adequate records in relation to mortgage loan account ending **0/002**, I note that the Provider has acknowledged its failing in this regard. While it is disappointing that the Provider failed to maintain adequate records in respect of mortgage loan account ending **0/002**, I accept that there was no breach of the **Consumer Protection Code 2006** on the part of the Provider.

I note that the Provider has offered the Complainants a goodwill gesture in the sum of €5,000 to acknowledge any inconvenience caused by the Provider's difficulty/failure to locate documents pertaining to the Complainants' mortgage loan account. I understand that this offer remains open to the Complainants to accept, if they have not already done so.

In light of the foregoing, I consider this offer of €5,000 to be a reasonable attempt to resolve this complaint in the context of the Provider's errors therefore I do not uphold this element of 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.



**JACQUELINE O'MALLEY
HEAD OF LEGAL SERVICES**

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23 March 2022

PUBLICATION

Complaints about the conduct of financial service providers

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.

Complaints about the conduct of pension providers

Pursuant to *Section 62* of the *Financial Services and Pensions Ombudsman Act 2017*, the Financial Services and Pensions Ombudsman will **publish case studies** in relation to complaints concerning pension 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.