



<b><u>Decision Ref:</u></b>	2022-0112
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Tracker Mortgage
<b><u>Conduct(s) complained of:</u></b>	Refusal to move existing tracker to a new mortgage product
<b><u>Outcome:</u></b>	Rejected

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

This complaint relates to two successive mortgage loan accounts held by the Complainants with the Provider. Both mortgage loans were secured on the Complainants' then private dwelling house (PDH).

The particulars of the **Letter of Offer of Mortgage Loan** in relation to mortgage loan account ending **0053** which was signed and accepted by the Complainants on **20 January 2005** detailed that the loan type was "Annuity" and that the interest rate was fixed at 2.75% for 1 year. The loan amount was €662,400.00 and the term of the loan was 30 years. Mortgage loan account ending **0053** was redeemed on **04 August 2011**. This is the mortgage loan account that is the subject of this complaint.

Mortgage loan account ending **4179** was drawn down on **28 September 2011**. The loan amount was €943,000.00 and interest rate applicable to the loan was a variable interest rate of 3.49%. The term of the loan was 25 years. Mortgage loan account ending **4179** was fully redeemed on **30 October 2015**.

**The Complainants' Case**

The Complainants state that from **2006**, their mortgage loan account was on a tracker rate of 0.75% over the ECB base rate and that a tracker rate was "*stated to be guaranteed for the full term of the loan*".

The Complainants detail that in **2011**, they moved house but sought to retain their tracker mortgage with the Provider. The Complainants submit that the Provider “*forced*” them “*to close down*” their tracker loan and “*take out an entirely new loan for the new house*”.

The Complainants maintain that this was the case “*despite the fact that there was to be no break in the loan continuity and [the Provider] would retain more than adequate security for the loan*”. The Complainants are of the view that the Provider should have “*confirmed the tracker rate for the original portion of the loan...and then provided the additional funds*” for the Complainants’ new house “*at the prevailing standard variable rate or fixed rate*”.

The Complainants state that they raised their concerns with the Provider’s mortgage advisor however their “*concerns were dismissed out of hand*”. The Complainants maintain that they were told that the only way the Provider could deal with their situation “*was to close the tracker loan account and open a completely new one*”. The Complainants submit that they are “*troubled*” that the Provider has no record of this meeting and are “*surprised*” that it does not appear in the Provider’s records. The Complainants state that at this meeting they made it clear that they were requesting that the Provider retain their tracker rate and that they continue to pay the sum off in accordance with the terms and conditions of the loan. The Complainants assert that this request was “*rejected out of hand at this meeting*”.

The Complainants note that the Provider issued correspondence dated **30 September 2006** and **20 November 2007** which provided “*that the guarantee of the Tracker Rate is for the ‘full term of the loan unless there is a material change in the terms of the loan’*”. The Complainants assert that the “*material change in the terms of the loan*” is not defined in the mortgage loan documentation. The Complainants maintain that a “*material change*” may involve a change that puts the Provider “*in a more risky or precarious position than was previously the case*”. The Complainants submit that in the absence of a definition of “*material change*” they have assumed that it must mean a “*material adverse change*”.

The Complainants state that the change that actually occurred, that is, the Complainants moving home, was not adversely material since it did not put the Provider in a “*less safe/secure position*” than it was already in. The Complainants submit as follows:

“ ...

1. *With the payment by us of circa €38,000 to cover the negative equity portion of the loan (as a pre-requisite insisted by the Provider in order for them to provide the*

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- additional funds needed for the new house) the Bank's security position went from negative (i.e. circa 107% loan to value) to positive (i.e. 92% loan to value)*
- 2. The house used as security for the 2006 and subsequent 2007 Tracker Rate loan was a 4 bedroom, semi-detached property in [named location]*
  - 3. The house we moved to in 2011 was a 6 bedroom, detached property in [other named location] ....*
  - 4. As borrowers we had a flawless record of mortgage payments (and still do have to this day)*
  - 5. Neither of the borrowers had changed jobs or gone from being employed to self-employed. In fact, as is shown in the financial records that we had to provide in 2011, both borrowers had increased their earning capacity significantly*
  - 6. We were not looking for [the Provider] to provide us with the additional funds we required to purchase the new property on a Tracker Rate. We accepted that this was an additional sum (i.e. the additional €250,000 required) and that the prevailing variable rate would apply thereto*
  - 7. What we asked for was to continue with the loan as previously agreed (with a guarantee of a tracker for the full term) whilst providing the Provider with additional, higher grade security, a cash payment to cover the negative equity portion of the loan and the ability to charge us an increased rate on the balance of the funds."*

The Complainants state that when they first heard of the Central Bank directed Tracker Mortgage Examination, they made a complaint to the Provider which was refused.

The Complainants are seeking redress and compensation from the Provider.

### **The Provider's Case**

The Provider submits that a **Letter of Offer of Mortgage Loan** issued to the Complainants on **16 November 2004** and was signed and accepted by the Complainants on **20 January 2005**. The Provider notes that mortgage loan account ending **0053** was subsequently drawn down on **23 September 2005** on a 1-year fixed rate of 2.75%. The Provider states that the **Letter of Offer of Mortgage Loan** does not contain any terms and conditions that *"permitted a change in the mortgaged property on which the loan was secured during the term of the mortgage."*

The Provider states that on **14 September 2006**, the Complainants requested to avail of a tracker interest rate and a tracker interest rate of 4.1% (ECB plus a margin of 1.1%) was applied to the mortgage loan account ending **0053** on **30 September 2006**. On **20 November 2007**, the Provider outlines that a tracker interest rate of 4.75% (ECB plus a margin of 0.75%) was applied to the mortgage loan account. The Provider maintains that

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the tracker rate *“was applicable to the Mortgage Loan Account ending 0053 until the closure of the account on 8 August 2011”*.

The Provider acknowledges that the Complainants submitted a mortgage loan application in **May 2011** *“for the purchase of a new separate property”*. The Provider maintains that it *“assesses each individual mortgage loan application based on the lending criteria applicable at the time.”* The Provider submits that there were a number of *“material changes between the mortgage loan application in 2005 and the mortgage loan application in 2011 which meant that the two applications were not comparable”*. The Provider asserts that the *“subject matter in relation to both these mortgage loans was entirely different in terms of the amount of funds advanced, the term and security which was to be provided as a condition of each loan”*. The Provider submits that it can find *“no evidence to suggest the Complainants intended to retain ownership of the property which was the security provided for the original loan”*.

The Provider asserts that the Complainants sold the mortgaged property the subject of mortgage loan account ending **0053** and the sale proceeds were applied to the mortgage loan account to redeem the loan in full. The Provider states that mortgage loan account ending **0053** was closed on **04 August 2011**.

The Provider notes that a **Letter of Offer of Mortgage Loan** issued on **07 September 2011** for mortgage loan account ending **4179** which provided for a loan in the amount of €943,000 in order to purchase a new private dwelling house. The Provider submits that the Complainants signed and accepted the **Letter of Offer of Mortgage Loan** on **13 September 2011** and the new mortgage loan account was drawn down on **28 September 2011**. The Provider notes that a *“PDH Loan to Value variable interest rate of 3.49%”* applied to mortgage loan account ending **4179**.

The Provider asserts that there *“were no terms or provisions contained within or attaching to the Letter of Offer for Mortgage Loan Account ending 4179 that permitted the Complainants to retain their previously held Tracker interest Rate from Mortgage Loan Account ending 0053.”* The Provider submits that as the loan in **2011** was secured by a legal charge over a different property *“it was not possible for the Bank to facilitate this without entering into a new Mortgage Loan agreement with the Complainants.”*

The Provider details that the tracker interest rate was withdrawn from the market in **late 2008**. The Provider explains that a Tracker Interest Rate Retention (“TIRR”) product was introduced by the Provider on **01 July 2014** which *“allowed customers to retain their existing Tracker interest rate (plus a margin of 1%) on a new mortgage loan, up to the limit of the term and the balance remaining on their existing loan.”* The Provider notes that

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when the Complainants submitted their mortgage loan application in **2011**, the tracker interest rate was no longer available and the TIRR product did not exist.

The Provider is of the view that the Complainants had no entitlement to retain or transfer their tracker rate to a new mortgage loan account. The Provider states that none of the 7 factors put forward by the Complainants in their submissions *"would have made Tracker interest rates available to new Mortgage applications at the time of the meeting."*

The Provider states that the **Letter of Offer of Mortgage Loan** dated **07 September 2011** includes a **Special Condition** which *"clearly and unambiguously details that the Complainants were aware they must enter into a binding contract for sale of their existing PDH prior to the drawdown of funds for the 2011 mortgage loan."* The Provider maintains that the Complainants decided to sell their existing home before applying for a new mortgage loan *"and this is supported by the fact that they had yet to identify a new PDH property at the time of their mortgage application in May 2011."*

The Provider details that it *"has no records or files relating"* to the meeting which took place in **2011**. The Provider details that they contacted the staff member who met with the Complainants at that time and states that the staff member explained that the First Complainant was informed *"that retaining the tracker interest rate would not have been possible."*

In relation to the Complainants' submission regarding the fact that a *"material change"* was not defined in the mortgage loan documentation, the Provider asserts that *"material change included differentiating factors like a change to the mortgaged property..., a change in the amount of the loan funds..., and a change to the term of the Mortgage Loan."* The Provider is of the view that a material change is *"one that has the effect of changing the significant and important terms that were agreed upon by both parties at outset"*.

### **The Complaint for Adjudication**

The complaint for adjudication is that the Provider failed to allow the Complainants to transfer the tracker interest rate from their mortgage loan account ending **0053** to a new mortgage secured against a new property.

### **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

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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 4 March 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 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 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 **2011** when the Complainants redeemed mortgage loan account ending **0053** and applied for mortgage loan account ending **4179**.

#### **Mortgage loan account ending 0053**

The Provider issued a **Letter of Offer of Mortgage Loan** dated **16 November 2004** to the Complainants which details as follows:

*"Dear [Complainants]*

*I am pleased to offer you a mortgage loan of the principal sum specified in Part 1 attached, subject to the loan value secured by a first legal mortgage/charge for present and future advances in favour of the Bank over the property described in Part 1, and the acceptance of and compliance with the Special Conditions, the Pre-*

*/Cont'd...*



Drawdown requirements and the General Terms and Conditions detailed in Parts 2,3 and 4 respectively.

...

**PART 1**  
**PARTICULARS OF OFFER OF MORTGAGE LOAN**

Offer Date	16 November 2004
Customer Name	[the Complainants]
Mortgage Loan Amount	€662,440.00
Loan Term	30 years/360 months
Loan Type	Annuity
Applicable Interest Rate (at Offer Date)	2.75% Fixed, for 1 years after which the rate will revert to the Bank's Variable Interest Rate, unless borrower(s) avail(s) of another interest rate option then on offer by the Bank. (Rates include margin 0.00%). APR 3.298%.
Property to be Mortgaged	[Address of PDH]
Property Price/Estimated Value of Property	€720,000.00"

The particulars of **Letter of Offer of Mortgage Loan** dated **16 November 2004** outline the address of the secured property under "*Property to be Mortgaged*".

**Part 4 – General Terms and Conditions** of the **Letter of Offer of Mortgage Loan** details as follows:

"...

**2 AGREEMENT**

2.1 The policy document relating to the mortgage protection policy stipulated in Part 1 of the Particulars of Offer of Mortgage Loan and any additional or

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*substituted policy or policies approved of and accepted by the Bank must be lodged with the Bank.*

*The policy document will be held by the Bank for the duration of the Mortgage Loan term but may be substituted with an alternative policy with the Bank's prior consent.*

*2.2 The Customer agrees to repay the Mortgage Loan and Interest to the Bank and, as security therefore, agrees to grant to the Bank a first legal mortgage/charge over the property and, where required by the Bank, an assessment of the Mortgage Protection or Endowment Term policy mentioned in Part 1 of the Particulars of Offer of Mortgage Loan. In addition the customer agrees with the Bank to comply with all relevant terms and conditions of this Offer and to keep the property fully insured in its full reinstatement cost against fire and all other usual risks at all times at the Customer's expense.*

### **3 INTEREST RATES**

...

#### **3.2 FURTHER FIXED INTEREST RATE OPTIONS/CHOICE**

*The Bank in its sole discretion, at the end of any fixed interest rate period, may provide any further fixed interest rate period, but if it elects not to do so or the Bank offers the Customer a fixed interest rate choice at the end of any fixed interest rate period and the Customer fails to exercise this choice then the Mortgage Loan will convert to a variable interest rate Mortgage Loan.*

...

#### **3.4 FIXED INTEREST RATE MORTGAGE LOAN**

*In the case of a fixed interest rate Mortgage Loan, the interest rate is fixed for the period of time stated in the Particulars, subject to these conditions.*

#### **3.5 VARIABLE INTEREST RATE MORTGAGE LOAN**

*In the case of a variable interest rate Mortgage Loan the interest rate applicable, at any time, will vary according to the prevailing rates set generally by the Bank from time to time, subject to these conditions.*

..."

/Cont'd...



The Complainants signed **Part 7 - Acceptance and Consent** section of the **Letter of Offer of Mortgage Loan** on **20 January 2005** on the following terms:

“...  
*I/We accept the conditions of this offer and agree to mortgage the property to the Bank as Security for the Mortgage Loan.*  
...”

The Complainants' signatures were witnessed by a solicitor.

I note that the Provider has submitted that mortgage loan account ending **0053** was subsequently drawn down on **25 September 2005**.

It is clear to me that the **Letter of Offer of Mortgage Loan** envisaged a fixed interest rate of 2.75% for a 1-year period which could convert to either a further fixed interest rate if the Provider offered such a rate or variable interest rate thereafter.

The variable rate specified in the **Letter of Offer** 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.

The Provider issued a letter dated **12 September 2006** to the Complainants, which details as follows:

*“...The fixed rate period on your above mortgage loan expires on 25/09/2006 and I should be obliged for your further instructions as to the rate you wish to avail of from that date. In the absence of any reply [the Provider's] current standard Variable rate (plus the existing agreed adjustment of 0.00%) will be applied but may subsequently be revised at your request to any fixed rate option available in the future.*

...

*Here is a sample of the rates currently on offer from [the Provider]. To avail of a fixed rate please complete the attached tear-off section below and return it to [the Provider] at the above address, immediately.*

/Cont'd...

...

<u>RATE</u>	<u>%</u>	<u>APR</u>	<u>REPAYMENT</u>
Tracker Home Mortgage Ln>250K	1.100	4.1640	3178.69
Tracker3 Home Mortgage <60%LTV	3.950	4.0100	3123.49
Tracker3 Home Mortgage >60%LTV	4.250	4.3190	3234.37
Variable Rate	4.250	4.3190	3234.37
1 Year Fixed	4.650	4.3520	3385.20
3 Year Fixed	4.850	4.4650	3461.87
5 Year Fixed	5.150	4.6670	3578.39
10 Year Fixed	5.400	5.0910	3676.86
..."			

I note that the Complainants completed and signed the form and returned it to the Provider on **14 September 2006**, detailing that they wished to apply a "Tracker Home Mortgage Ln>250k" at a rate of 1.1% to their mortgage loan account.

The Provider wrote to the Complainants on **30 September 2006** to inform them that a tracker rate of 4.10% (including a margin of 1.1% over ECB) had been applied to mortgage account ending **0053** on the same date. I note that this letter also detailed that the tracker interest rate would apply for the duration of the loan, on the following terms:

*"...Your agreed margin as set out above will not change, even if the Bank subsequently introduces a different Tracker Mortgage offering, at a margin which may be either higher or lower than your agreed margin. This margin is guaranteed for the full term of the loan unless there is a material change in the terms of the loan...."*

The Complainants wrote to the Provider on **14 November 2007**, detailing as follows:

*"...  
I would request that you transfer our mortgage onto the tracker rate for mortgages where the loan to value ratio is greater than 50% but less than 80%. My understanding is that the current rate for such mortgages is 4.75% and that our rate will remain for the life of the mortgage, at 75bp over ECB base rate.  
..."*

The Provider notified the Complainants by way of letter dated **20 November 2007** that a tracker interest rate of 4.75% (including a margin of 0.75% over ECB) had been applied to mortgage loan account ending **0053**. I note that the same statement regarding the tracker

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interest rate applying for the full term of the loan as contained in the letter dated **30 September 2006**, as detailed above, is also included in the letter dated **20 November 2007**.

The **mortgage account statements** for loan account **0053** show that the mortgage loan was redeemed in full on **4 August 2011** and the mortgage loan account was closed. The Provider also issued a letter dated **8 August 2011** to the Complainants confirming that the Complainants' mortgage loan account ending **0053** had been repaid in full.

### **Mortgage loan account ending 4179**

Prior to redeeming mortgage loan account ending **0053**, it appears that the Complainants approached the Provider to seek additional borrowings as they decided to move house.

The Complainants submit that they wished to retain that tracker interest rate in respect of the new property that they intended to purchase, and they expressed this at a meeting with an employee of the Provider in **2011**.

The Provider explains that it does not hold any record of that meeting but that the employee who met with the Complainants in **2011** has confirmed that the Complainants were informed that *"it was not possible for the Bank to facilitate this without entering into a new Mortgage Loan agreement with the Complainants."*

I have not been provided with any evidence of any communications of this nature between the parties. However, the Provider has submitted documentation in relation to the Complainants' application for additional borrowings to include a **Mortgage Loan Application Form** which was signed by the Complainants on **13 May 2011**. I note that the Complainants state that the purpose of the mortgage loan is *"House Purchase"* and the purchase cost is *"€1.1m approx."* **Section F – Mortgage Loan Details** of the **Mortgage Loan Application Form** outlines as follows:

"...

#### **Section F Mortgage Loan Details (continued)**

##### **Sale of Existing Property**

Is the existing house sold?  If yes, expected sale completion date

Agreed price of sale

##### **Details of Mortgage Loan Requested**

/Cont'd...

Amount of total mortgage loan required  Mortgage loan term: 25 years (Please Specify)

Please tick repayment method: Annuity  Endowment

Please tick your choice of interest rate:

Variable  Fixed  & if fixed, for how many years? \_\_\_\_\_

..."

The evidence shows that the Complainants applied for a mortgage loan in the sum of €1,012,000.00 in order to purchase a new home. The Complainants sought a repayment term of 25 years on a variable rate of interest.

The Provider issued a letter to the Complainants dated **29 June 2011** which details as follows:

"...

**Part: 1**

<b>Loan Amount (EUR)</b>	<b>Product</b>	<b>Interest Rate</b>	<b>APR</b>	<b>Repayment Type</b>	<b>No. of Repayments</b>	<b>Repayment Amount (EUR)</b>
989,000.00	PDH LTV Var >80%	3.49%	3.54%	Annuity for the Term	300	4,942.52

...

*We refer to your recent application and are pleased to confirm that a Mortgage Loan has been sanctioned in your name(s) in the amount outlined above, subject to receipt of a satisfactory Independent Valuation Report. Please note that due to fluctuations in interest rates, the bank does not warrant or guarantee that the rate specified will apply.*

..."

The Provider issued a **Letter of Offer of Mortgage Loan** dated **07 September 2011** to the Complainants which details as follows:

"...

*Dear [Complainants]*

/Cont'd...

I am pleased to offer you a mortgage loan of the principal sum specified in Part 1 attached, subject to the mortgage loan being secured by a first legal mortgage/charge for present and future advances in favour of the Bank over the property described in Part 1, and acceptance of and compliance with the Special Conditions, the Pre-Drawdown requirements and the General Terms and Conditions detailed in Parts 2,3 and 4 respectively.

...

**PART 1**

**PARTICULARS OF OFFER OF MORTGAGE LOAN**

Offer Date 07 September 2011

Customer Name [the Complainants]

Mortgage Loan Amount €943,000.00

Loan Term 25 years/300 months

Repayment Details as at date of Offer

	<b>Term (Months)</b>	<b>Loan Type</b>	<b>Interest Rate Description</b>	<b>Rate</b>	<b>Adjustment</b>	<b>Net Rate</b>	<b>Amount of Each Instalment</b>
1	300	Annuity for the Term	PDH LTV Var >80%	3.49%	0.0%	3.49%	€4,712.32

*\*The rate adjustment (if any) takes into account the particular circumstances of the customer's case.*

...

Property to be Mortgaged [Address of new PDH]

Property Price/Estimated Value of Property €1,025,000.00"

The particulars of the **Letter of Offer of Mortgage Loan** dated **07 September 2011** outline the address of the secured property under "*Property to be Mortgaged*".

I note that **Part 2 – Special Conditions** the **Letter of Offer of Mortgage Loan** dated **07 September 2011** provides as follows:

"...

/Cont'd...

*Solicitors confirmation of irrevocable and unconditional contract for sale being in place for €540,000.00 re sale of existing primary dwelling house, prior to drawdown of the facility.*

*...”*

I note that the relevant sections of **Part 4 – General Terms and Conditions of Offer of Mortgage Loan** also provides as follows:

**“2 AGREEMENT**

...

**2.2** *The Customer agrees to repay the Mortgage Loan and Interest to the Bank and, as security therefore, agrees to grant to the Bank a first legal mortgage/charge over the property and, where required by the Bank, an assessment of the Mortgage Protection or Endowment Term policy mentioned in Part 1 of the Particulars of Offer of Mortgage Loan. In addition the customer agrees with the Bank to comply with all relevant terms and conditions of this Offer and to keep the property fully insured in its full reinstatement cost against fire and all other usual risks at all times at the Customer’s expense.*

...

**3.6 LTV VARIBALE INTEREST RATE MORTGAGE LOAN**

**3.6.1** *LTV variable rate is available only where the property is or is intended to be the principal residence of the Customer. The applicable rate band will depend on the loan-to-value rate (“LTV”) of the amount of the mortgage loan relative to the value of the property set out in the Particulars of Offer of Mortgage Loan. The interest rate applicable at any time will vary according to the prevailing LTV variable rates set by the Bank from time to time, subject to these conditions.*

**3.6.2** *The Bank may adjust the LTV variable rate upwards if the Valuations Report values the property at less than the Property Price/Estimated Value shown in the Particulars of Offer of Mortgage Loan. The Bank will notify the Customer in writing of the new LTV variable rate.*

**3.6.3** *The Customer may at any time convert a LTV variable rate to a fixed interest rate Mortgage Loan at the Bank’s then prevailing rates appropriate to the Mortgage Loan. However, the Customer may not convert the LTV variable Rate directly or indirectly from one LTV variable rate to another LTV variable rate in order to avail of a lower LTV variable rate.*

/Cont’d...



...”

The Complainants accepted and signed **Part 7 – Acceptance and Consent** of the **Letter of Offer of Mortgage Loan** on **13 September 2011** on the following terms:

*“I/We accept the conditions of the Offer and agree to mortgage the property to the Lenders as Security for the Mortgage Loan.*

...

*I/We hereby confirm, that I/we have read the within Terms and Conditions attaching to this Offer, and acknowledge that I/we have received a copy thereof.*

...”

The Complainants’ signatures were witnessed by a solicitor.

The Complainants’ solicitor wrote to the Provider on **14 September 2011** enclosing the signed **Letter of Offer of Mortgage Loan** dated **07 September 2011** along with the relevant solicitor’s undertaking and outlined as follows:

“...

*With regard to the special conditions of the letter of loan offer we confirm that irrevocable and unconditional contracts for sale for our client’s existing primary dwelling at [address of PDH] have been signed and the Sale has in fact at this stage been closed*

...”

It is clear to me that the **Letter of Offer of Mortgage Loan** dated **07 September 2011** provided for variable interest rate of 3.49% to apply to the Complainants’ new mortgage loan. 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 by the Provider, in accordance with the Terms and Conditions of the mortgage loan agreement.

From a review of the **mortgage account statements** for mortgage loan account ending **4179**, I note that the sum of €943,000.00 drew down on **28 September 2011** at a lending rate of 3.490% which was in line with the terms of the **Letter of Offer of Mortgage Loan** dated **07 September 2011**.

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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 **0053** and purchase a new principal private residence.

Having considered the documentation provided in evidence, it is clear to me that the **Letter of Offer of Mortgage Loan** dated **16 November 2004** together with the terms and conditions provided for a first legal charge or mortgage over the specific property named in the **Letter of Offer of Mortgage Loan**.

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. Any change to the underlying security of a mortgage loan would be a material change to the terms and conditions of a mortgage loan.

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 sell the property that was held as security for that mortgage loan. By doing so, the Complainants opted to terminate the mortgage contract with the Provider and had to redeem mortgage loan account **0053** which was on a tracker rate.

The Complainants applied for a new mortgage in **2011** to facilitate the purchase of the new property and signed and accepted **Letter of Offer of Mortgage Loan** dated **07 September 2011**, which provided for a LTV variable interest rate.

At the time of the application, the Provider was no longer offering tracker rates for new mortgage lending. Furthermore, the Provider's Tracker Interest Rate Retention product did not become available as part of the Provider's product offering until some three years later in **July 2014**.

If the Complainants had decided not to sell the mortgaged property the subject of mortgage loan account **0053** and redeem mortgage loan account ending **0053** early, they would, subject to the Terms and Conditions of that mortgage loan, have been entitled to avail of the tracker interest rate until the term of the mortgage ended.

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However, the Complainants 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 **Letter of Offer of Mortgage Loan** dated **07 September 2011** which provided for a LTV variable rate of interest.

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. If Complainants were not satisfied with the interest rate applicable to the mortgage loan, they could have decided not to accept the Provider's offer.

However, the Complainants chose to accept the Provider's offer by signing the **Acceptance and Consent** section of the **Letter of Offer of Mortgage Loan** dated **07 September 2011**, having confirmed that they had read the terms and conditions set out in the loan offer.

In light of all the foregoing, I accept that the Provider acted correctly in its dealings with the Complainants in **2011** 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 **4179** or transfer the tracker interest rate from mortgage loan account **0053** to their new mortgage loan account ending **4179**, or substitute the secured property on mortgage loan account **0053**

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.**



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

30 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.