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| <u>Decision Ref:</u> | 2022-0114 |
| <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 was secured on the Complainants' residential investment property.

Mortgage loan account ending **005/1** consisted of the following three "*portions*":

- The Letter of Offer dated **25 October 2000** provided for a loan in the total amount €133,322.50 (£105,000 Irish punt) and the term of the loan was 15 years. The Letter of Offer dated **25 October 2000** detailed that the loan was made up of the following two portions:
 - The first portion totalling £45,000 (Irish punt) to be drawn down on a 12-month discounted variable interest rate.
 - The second portion totalling £60,000 (Irish punt) to be drawn down on a 3-year fixed interest rate of 7.03%.
- The Letter of Offer dated **02 July 2003** provided for a top-up loan in the amount of €45,000 and the term of the loan was 12 years and five months. The Letter of Offer dated **02 July 2003** detailed that the applicable interest rate was a fixed interest rate of 3.19% for 12 months.

The Complainants' mortgage loan account ending **005/1** was redeemed on **27 October 2017**.

The Complainants' Case

The Complainants submit that they have never been offered a tracker interest rate by the Provider in respect of any portion of their mortgage loan since **December 2003**, when the Provider introduced tracker interest rates as part of its product offering. The Complainants explain that they had a number of "fixed rate rollovers" on the three portions of their mortgage loan however they were "never asked to contact the [Provider] in writing or otherwise to discuss tracker rate options before [the Complainants] fixed the rate."

The Complainants submit that they contacted the Provider on **12 July 2004** to discuss the interest rates available for their mortgage loan account. The Complainants assert that "Never during the conversation did [the Provider] discuss or mention the tracker rate option." The Complainants note that the 3-year fixed interest rate "was 0.99% higher than the Tracker rate and 0.74% higher than the Standard variable rate" in **July 2004**. The Complainants state that the Provider keeps "insisting that the only discussion was on Fixing the rate on 12th July 2004", however, they maintain that it is "inconceivable" that they would not have discussed tracker interest rates and variable interest rates due to the large difference between these rates.

The Complainants assert that the "fact that [they] regularly fixed the interest rates is irrelevant as is the movement or expectations on ECB rates during the period". The Complainants detail that they would "have carefully weighed up the variable versus fixed rate before sometimes settling on the latter" but the "key issue is that no tracker rate option was offered to [the Complainants] reducing [their] alternatives". The Complainants state that the Provider "has confirmed that [they] were never given any detail of [their] [tracker interest rate] entitlement in writing or in phone conversations."

The Complainants further submit that the Provider issued them with a letter dated **11 October 2006** which encouraged them to "pre- book a fixed rate". The Complainants state that the wording in the letter dated **11 October 2006** was "a powerful inducement" to "follow that strategy." The Complainants submit that it "served [the Provider's] purposes to ensure that the mortgage account remained on their books during the fixed term period and eliminated the transferring to another financial institution with better alternatives." The Complainants detail that they chose to apply fixed interest rates to the portions of their mortgage loan on **6 November 2006** and **21 June 2007** on foot of the Provider's correspondence.

The Complainants' mortgage loan account was redeemed on **27 October 2017**.

The Complainants are seeking redress and compensation for the Provider's alleged failure to offer them a tracker interest rate on their mortgage loan account.

The Provider's Case

The Provider details that the Complainants' mortgage loan account ending **005/1** comprises the following portions:

- The first portion of the loan in the amount of €50,789.52 which drew down on **17 November 2000** on a 12-month discounted variable interest rate.
- The second portion of the loan in the amount of €76,184.23 which drew down on a 3-year fixed interest rate on **17 November 2000**.
- The third portion of the loan in the amount of €45,000 which drew down in **July 2003** on a 1-year fixed interest rate.

The Provider submits that the Complainants were not offered a tracker interest rate on their mortgage loan account from **December 2003** as *"there was no default or contractual entitlement established for the Bank to do so."* The Provider states that the Complainants chose to apply a 3-year fixed rate to the first and second portion of their mortgage loan on **10 November 2003**.

The Provider submits that it wrote to the Complainants on **11 October 2006**, prior to the expiry of the fixed interest rate period applicable to the first and second portions of the mortgage loan. The Provider states that the Complainants contacted the Provider by telephone on **07 November 2006** *"for a quotation on the available 5 year fixed rate."* The Provider submits that *"There had been 5 increases of 0.25% in the ECB rate in the preceding 12 month period and most customers were demonstrating a preference for fixed rate products in consideration of the market expectation of further increases in the ECB rate."* The Provider details that the Complainants opted to apply a 5-year fixed interest rate of 4.89% to the first and second portions of the mortgage loan until **1 November 2011** *"by which time there were no tracker rate options available from the Bank."*

The Provider explains that the third portion of the Complainants' mortgage loan was a top-up loan. The Provider states that the Complainants chose to avail of a 3-year fixed interest when the top-loan was drawn down on **16 July 2004**. The Provider notes that the fixed interest rate period on the top-up loan was due to apply until **1 July 2007**.

The Provider states that it wrote to the Complainants prior to the expiry of the fixed interest rate period applicable to the top-up portion of the mortgage and outlined the interest rate options. The Provider explains that the Complainants chose to apply a further fixed interest rate for 5 years until **July 2012**.

The Provider states that the three portions of the Complainants' mortgage loan "*originated prior to the introduction of residential tracker mortgage options*". The Provider asserts that the fixed rate agreements were availed of by way of the "*Fixed Rate Instruction form process*". In this regard, the Provider states that the Fixed Rate Instruction forms that issued between **2003** and **2007** stated the following:

Fixed rate repayments from [date] for the term as indicated above thereafter reverting to the company's standard variable rate.

The Provider submits that the Complainants signed Fixed Rate Instruction forms dated **4 November 2003**, **12 July 2004**, **6 November 2006** and **21 June 2007**. The Provider details that it considers "*that the Complainants have an established preference for longer term fixed rates, demonstrating a preference for security rather than a preference to avail of the lowest rate available.*"

The Provider confirms that the Complainants were not invited to contact the Provider to "*discuss tracker rates specifically*" but were invited to contact the Provider to discuss their options when the fixed rate periods came to an end. The Provider states that it issued correspondence to the Complainants in **October 2006** and **June 2007** inviting the Complainants to telephone or e-mail the Provider "*to discuss your options*" and to "*help you choose the rate and features that suit your lifestyle needs best.*"

The Provider states that it is satisfied that the mortgage loan documentation in relation to each portion of the Complainants' mortgage loan is sufficiently clear as to the Complainants' interest rate entitlements. The Provider details that "*there was no reference to tracker rates in any of these documents.*"

The Provider refutes the Complainants' submission that they were "*induced*" into selecting fixed interest rate products. The Provider details that "*Each Fixed Rate instruction form completed by the Complainants advised them to seek independent advice.*"

The Provider states that the Complainants' mortgage loan account was redeemed on **27 October 2017**.

The Complaint for Adjudication

The complaint for adjudication is that the Provider failed to offer the Complainants a tracker interest rate on any portion of their mortgage loan in the “*period post December 2003*”.

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 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 this complaint, it is necessary to review and set out the relevant provisions of the Complainants’ mortgage loan documentation. It is also necessary to consider the details of certain interactions between the Complainants and the Provider from **2003** to **2008**, when tracker interest rates were withdrawn from the market by the Provider.

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A 'Homeloan Application Form' was completed and signed by the Complainants on **8 September 2000**. I note that under the section 'Amount of loan required' the Complainants inserted £105,000 and requested a term of 15 years. A handwritten note beside the amount of loan required details "60k 3yr fixed / 45k disc. variable".

On foot of the Complainants' mortgage loan application, the Provider issued a **Loan Offer** dated **25 October 2000** to the Complainants. The **Loan Offer** dated **25 October 2000** details as follows:

"Amount of Credit Advanced: £105,000.00 Eur. 133,322.50
Period of agreement (Years – Months) 15 – 0
Number of Repayment Instalments 180
...

Additional Particulars of Advance

...
Type of Advance Annuity Homeloan
Interest Rate 6.49%
...

Breakdown of Annual Percentage Rate

The APR quoted on the Letter of Offer is based upon a composite interest rate using the following products;

| <u>Product</u> | <u>Start Date</u> | <u>Amount</u> | <u>Term</u> | <u>Interest Rate</u> |
|--|-------------------|---------------|-------------|----------------------|
| Annuity Homeloan 12 Month Disc Var – Existing | 01-Dec-2000 | 45,000.00 | 180 | 5.40% |
| Annuity Homeloan 3 Year Fixed" | 01-Dec-2000 | 60,000.00 | 180 | 7.30% |

The **Loan General Conditions** attached to the **Loan Offer** dated **25 October 2000** detail as follows:

"..
5. The rate of interest specified in the Particulars is the rate of interest charged by the Lender on the relevant category of home loans as of the date of the Letter of Offer.

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*While this interest rate prevails the advance and interest (in the case of Principal and Interest type Mortgages) and the interest accruing on the advance (in the case of Investment Linked Mortgages) will be payable by the monthly instalments specified in the Particulars the first of such payments to be made on the first day of the calendar month immediately following the date of the making of the advance to the Applicant's Solicitor and each subsequent payment to be made on each subsequent calendar month thereafter unless otherwise directed by the Lender. However, **this rate may vary before the advance is drawn down and will be subject to variation throughout the term.** The amount of the monthly instalments will fluctuate in accordance with fluctuations in the applicable interest rate. Payment of the monthly repayments must be made by Direct Debit Mandate." [My emphasis]*

The **Loan General Conditions** further detail as follows:

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

The **Form of Acceptance** attached to the **Loan Offer** dated **25 October 2000** was signed by the Complainants on **6 November 2000** on the following terms:

"I/We the undersigned, accept the offer of an advance made to me/us by [the Provider] on foot of the Loan Application Form signed by me/us and on the terms and conditions set out in: -

- (i) the Letter of Offer*
- (ii) the Particulars*
- (iii) the Special Conditions (if any)*
- (iv) the Lender's General Conditions for Home Loans*
- (v) the Lender's standard Form of Mortgage*
- (vi) the Assignment of Life Policy*

Copies of which I/We have received and in respect of which I/We have been advised upon by my/our solicitors(s)"

The **Statement of Account** submitted in evidence shows that the Complainants' mortgage loan account was drawn down on **17 November 2000**.

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It is clear to me that the **Loan Offer** dated **25 October 2000** envisaged the mortgage loan to be drawn down in two portions on two separate interest rates; £45,000 (Irish punt) on a 12-month discounted variable interest rate of 5.40% and £60,000 on a 3-year fixed interest rate of 7.30%. The variable rate in this case made no reference to varying in accordance with variations in the ECB refinancing rate, rather it was a variable rate which could be adjusted by the Provider. The Complainants accepted the **Loan Offer**, and in doing so, detailed that they had been advised upon the terms and conditions of the mortgage loan by their solicitor.

Upon the expiry of the initial 12-month discounted variable interest rate period on the first portion of the Complainants' mortgage loan, the Provider's standard variable rate was applied on **29 September 2001**.

Upon the expiry of the 3-year fixed interest rate on the second portion of the Complainants' mortgage loan, the Complainants chose to apply a 3-year fixed interest rate to that portion of the loan on **10 November 2003**. At the same time, the Complainants also chose to apply a 3-year fixed interest rate to the second portion of their mortgage loan.

The Complainants applied for additional borrowings in the amount of €45,000 by completing a 'Homeloan Top-up' application on **16 May 2003**.

On foot of the Complainants' application for a top-up loan, the Provider issued a **Loan Offer** dated **02 July 2003** to the Complainants which details as follows:

| | |
|---|-----------------------------------|
| <i>"Amount of Credit Advanced:</i> | <i>€45,000.00</i> |
| <i>Period of agreement (Years – Months)</i> | <i>12 – 5</i> |
| <i>Number of Repayment Instalments</i> | <i>149</i> |
| ... | |
| <i>Additional Particulars of Advance</i> | |
| ... | |
| <i>Type of Advance</i> | <i>Annuity Homeloan</i> |
| <i>Interest Rate</i> | <i>3.19% Fixed for 12 months"</i> |

The **Loan General Conditions** relating to the mortgage loan detail as follows:

"5. The rate of interest specified in the Particulars is the rate of interest charged by the Lender on the relevant category of home loans as of the date of the Letter of Offer.

While this interest rate prevails the advance and interest (in the case of Principal and Interest type Mortgages) and the interest accruing on the advance (in the case of Investment Linked Mortgages) will be payable by the monthly instalments specified in the Particulars the first of such payments to be made on the first day of the calendar month immediately following the date of the making of the advance to the Applicant's Solicitor and each subsequent payment to be made on each subsequent calendar month thereafter unless otherwise directed by the Lender. However, this rate may vary before the advance is drawn down and will be subject to variation throughout the term. The amount of the monthly instalments will fluctuate in accordance with fluctuations in the applicable interest rate. Payment of the monthly repayments must be made by Direct Debit Mandate."

The **Loan General Conditions** relating to the mortgage loan further detail as follows:

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

The **Form of Acceptance** was signed by the Complainants on **04 July 2003** on the following terms:

"I/We the undersigned, accept the offer of an advance made to me/us by [the Provider] on foot of the Loan Application Form signed by me/us and on the terms and conditions set out in: -

- (i) the Letter of Offer*
- (ii) the Particulars*
- (iii) the Special Conditions (if any)*
- (iv) the Lender's General Conditions for Home Loans*
- (v) the Lender's standard Form of Mortgage*
- (vi) the Assignment of Life Policy;*

Copies of which I/We have received and in respect of which I/We have been advised upon by my/our solicitor(s)"

The **Statement of Account** submitted in evidence shows that the Complainants' top-up loan was drawn down on **18 July 2003**.

It is clear to me that the **Loan Offer** dated **02 July 2003** provided for a 12-month fixed interest rate of 3.19%. The Complainants accepted the **Loan Offer**, and in doing so detailed that they had been advised upon the terms and conditions of the mortgage loan by their solicitor.

The Provider's **File Notes** indicate that the First Complainant contacted the Provider on **12 July 2004** as follows:

"Mr rang in rel to going on 3 yr fxd rate".

A **Fixed Rate Instruction form** was completed and signed by the Complainants on **12 July 2004** in relation to the third portion of their mortgage loan and details as follows:

"I/We hereby instruct [the Provider] to fix the interest rate on my/our homeloan account for a period of (please mark with an X the appropriate box below)

Fixed until 1st July 2005 at 3.45% (3.51% Typical APR)

Fixed until 1st July 2006 at 3.84% (3.59% Typical APR)

Fixed until 1st July 2007 at 4.19% (3.74% Typical APR)

Fixed until 1st July 2009 at 3.84% (4.25% Typical APR)

in accordance with the terms set out below. I/We hereby agree once a letter is issued by [the Provider] to me/us, confirming that the interest rate on my/our Home Loan account has been fixed for the period requested by me/us then the terms below shall be binding on me/us for the fixed rate period in addition to the terms and conditions of my/our mortgage.

TERMS

*Fixed rate repayments from the **1st August 2004** for the term as indicated above thereafter reverting to the company's standard variable rate. In order to provide this facility [the Provider] has entered commitments to fund same. If, during the fixed rate period, the Applicant redeems in whole or in part or converts the loan into a variable interest rate or to another fixed rate loan, on that date, (the redemption date) a "break funding fee" will be payable to the Lender. The break funding fee will be calculated by reference to the wholesale cost then prevailing for the unexpired portion of the fixed rate period and the wholesale rate prevailing at the date of drawdown. If, at the redemption date or switching date the wholesale rate prevailing is higher than the wholesale rate at drawdown no break funding fee arises. If however, the wholesale rate is lower a break funding fee will be chargeable.*

/Cont'd...

[...]

WE RECOMMEND THAT YOU SEEK INDEPENDENT LEGAL ADVICE IN CONNECTION WITH THIS MATTER”

The Provider issued a letter to the Complainants dated **16 July 2004** which details as follows:

“Dear [Complainants]

Thank you for your recent request to fix your mortgage account. I wish to confirm that the portion of your mortgage, which had recently reverted back to the Standard Variable Rate, has been fixed at 4.19% until 1st July 2007. Your monthly repayment as at 1st August 2004 will be €1,365.05. Your repayment breakdown is as follows:

| <u>Loan</u> <u>Rate</u> | <u>Balance</u> <u>Monthly</u> | <u>Interest</u> <u>Rate</u> <u>Repayment</u> | <u>Interest</u> | <u>Type</u> | <u>Fixed</u> <u>Roll-off Date</u> | <u>Fixed</u> |
|----------------------------|----------------------------------|--|-----------------|-------------|--------------------------------------|--------------|
| HL Annuity | € 42,229.25 | 4.19% | Fixed | 01/07/2007 | € 388.35 | |
| HL Annuity | € 64,005.51 | 4.29% | Fixed | 01/11/2006 | € 591.72 | |
| HL Annuity | €41,641,93 | 4.29% | Fixed | 01/11/2006 | € 384.98 | |

I trust this is in order and should you have any further queries please do not hesitate to call our Customer Services Department.”

The Provider’s **File Notes** indicate that the First Complainant contacted the Provider on **27 May 2005** as follows:

“Mr rang to confm rates and roll off dates”.

Prior to the expiration of the fixed interest rate period on the first and second portions of the Complainants’ mortgage loan in **November 2006**, the Provider issued a letter dated **11 October 2006** to the Complainants which details as follows:

“Dear [Complainants],

At [the Provider], we like to stay in touch with our customers and are writing to tell you about some upcoming changes to the interest rate on your mortgage.

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The fixed rate or discount period on your mortgage is coming to an end shortly which means that your rate will change to our current standard variable rate for the 1st December 2006 repayment. This will change the amount of your monthly mortgage repayment.

Given the current environment of rising interest rates many customers are choosing to fix their interest rate to allow peace of mind.

As a valued customer we are delighted to offer you the opportunity to pre-book a fixed rate now which we will hold for you at today's rates until your current rate expires.

*I am enclosing a 'Fixed Rate Instruction Form' listing all the fixed rates you can choose from. To complete please tick the appropriate rate, sign the form and return to us by **Wednesday 22 November 2006**. Within 5 days of receiving the signed fixed rate instruction form we will write to you to confirm that your chosen fixed rate has been received and approved."*

On the expiration of the fixed rate period on **01 November 2006**, the Provider issued correspondence to the Complainants detailing as follows:

"Dear [Complainants]

A fixed rate interest period on your mortgage has expired, and has reverted to the current variable rate of 4.70%.

As a result your total revised monthly repayment will be €1,382.26.

This change to your account will also be reflected in a change to TRS credits due from the Revenue Commissioners.

Should you require any further information, please contact our Customer Services Department."

The First Complainant sent a letter to the Provider dated **07 November 2006** detailing as follows:

"Dear Sirs,

I refer to your letter dated 1st November 2006 and I am returning the completed fixed rate instructions form duly completed as requested.

/Cont'd...

Can you please fix the rate at 4.89% to 1st November 2011. I understand that the new direct debit applicable from 1st December 2006 will be € 1,390 per month,”

The **Fixed Rate Instruction form** that was enclosed with the letter was completed and signed by the Complainants on **06 November 2006** and details as follows:

“I/We hereby instruct [the Provider] to fix the interest rate on my/our homeloan account for a period of (please mark with an X the appropriate box below)

Fixed until 1st November 2007 at 4.69% (4.80% Typical APR)

Fixed until 1st November 2008 at 4.69% (4.80% Typical APR)

Fixed until 1st November 2009 at 4.69% (4.80% Typical APR)

Fixed until 1st November 2011 at 4.89% (4.90% Typical APR)

in accordance with the terms set out below. I/We hereby agree once a letter is issued by [the Provider] to me/us, confirming that the interest rate on my/our Home Loan account has been fixed for the period requested by me/us then the terms below shall be binding on me/us for the fixed rate period in addition to the terms and conditions of my/our mortgage.

TERMS

*Fixed rate repayments from the **1st December 2006** for the term as indicated above thereafter reverting to the company’s standard variable rate. In order to provide this facility [the Provider] has entered commitments to fund same. If, during the fixed rate period, the Applicant redeems in whole or in part or converts the loan into a variable interest rate or to another fixed rate loan, on that date, (the redemption date) a “break funding fee” will be payable to the Lender. The break funding fee will be calculated by reference to the wholesale cost then prevailing for the unexpired portion of the fixed rate period and the wholesale rate prevailing at the date of drawdown. If, at the redemption date or switching date the wholesale rate prevailing is higher than the wholesale rate at drawdown no break funding fee arises. If however, the wholesale rate is lower a break funding fee will be chargeable.*

[...]

/Cont’d...

WE RECOMMEND THAT YOU SEEK INDEPENDENT LEGAL ADVICE IN CONNECTION WITH THIS MATTER"

It is clear to me that the Complainants chose to apply a 5-year fixed interest rate fixed to the first and second portions of their mortgage loan.

The Provider issued a letter to the Complainants dated **23 November 2006** confirming the application of a fixed interest rate to the first and second portions of the Complainants' mortgage loan as follows:

"Dear [Complainants]

Thank you for your recent request to fix your mortgage account. I wish to confirm that your interest rate is fixed at 4.89% until 1st November 2011 on the balance of €88,040.06. The remaining balance of €35,156.28 is fixed at 4.19% until 1st July 2007.

Your revised monthly repayment will be €1,390.29 for the 1st December 2006.

I trust this is in order."

The Provider issued correspondence to the Complainants dated **15 June 2007** prior to the expiry of the fixed interest rate period on the third portion of the Complainants' mortgage loan which details as follows:

"Dear [Complainants]

At [the Provider], we like to stay in touch with our customers and are writing to tell you about some upcoming changes to the interest rate on your mortgage.

The fixed rate or discount period on your mortgage is coming to an end shortly which means that your rate will change to our current standard variable rate for the 1st August 2007 repayment. This will change the amount of your monthly mortgage repayment.

Given the current environment of rising interest rates many customers are choosing to fix their interest rate to allow peace of mind.

As a valued customer we are delighted to offer you the opportunity to pre-book a fixed rate now which we will hold for you at today's rates until your current rate expires.

/Cont'd...

*I am enclosing a 'Fixed Rate Instruction Form' listing all the fixed rates you can choose from. To complete please tick the appropriate rate, sign the form and return to us by **Tuesday 24th July 2007**. Within 5 days of receiving the signed fixed rate instruction form we will write to you to confirm that your chosen fixed rate has been received and approved."*

The Complainants completed and signed a **Fixed Rate Instruction form** on **21 June 2007** which details as follows:

"I/We hereby instruct [the Provider] to fix the interest rate on my/our homeloan account for a period of (please mark with an X the appropriate box below)

Fixed until 1st July 2008 at 5.39% (5.34% Typical APR)

Fixed until 1st July 2009 at 5.19% (5.32% Typical APR)

Fixed until 1st July 2010 at 5.24% (5.33% Typical APR)

Fixed until 1st July 2012 at 5.24% (5.34% Typical APR)

in accordance with the terms set out below. I/We hereby agree once a letter is issued by [the Provider] to me/us, confirming that the interest rate on my/our Home Loan account has been fixed for the period requested by me/us then the terms below shall be binding on me/us for the fixed rate period in addition to the terms and conditions of my/our mortgage.

TERMS

Fixed rate repayments from the 1st August 2007 for the term as indicated above thereafter reverting to the company's standard variable rate. In order to provide this facility [the Provider] has entered commitments to fund same. If, during the fixed rate period, the Applicant redeems in whole or in part or converts the loan into a variable interest rate or to another fixed rate loan, on that date, (the redemption date) a "break funding fee" will be payable to the Lender. The break funding fee will be calculated by reference to the wholesale cost then prevailing for the unexpired portion of the fixed rate period and the wholesale rate prevailing at the date of drawdown. If, at the redemption date or switching date the wholesale rate prevailing is higher than the wholesale rate at drawdown no break funding fee arises. If however, the wholesale rate is lower a break funding fee will be chargeable.

[...]

/Cont'd...

WE RECOMMEND THAT YOU SEEK INDEPENDENT LEGAL ADVICE IN CONNECTION WITH THIS MATTER”

It is clear to me that the Complainants chose to apply a 5- year fixed interest rate of 5.24% to the third portion of their mortgage loan.

The Provider subsequently issued a letter to the Complainants dated **07 July 2007** setting out the interest rate applicable to each portion of the mortgage loan as follows:

“Dear [Complainants]

Thank you for your recent request to amend your mortgage account. I can confirm that your account has been amended as requested with your revised account details outlined below. Your repayment for 1st August 2007 will be €1,406.77 and is charged as follows:

| Loan Type | Balance | Term | Interest | Repayment | |
|--------------------------------------|-------------------|---------------|-----------------|------------------|--------------|
| Fixed Rate | Fixed Rate | | | | |
| | (€) | (Mths) | Rate | (€) | (Y/N) |
| <u>End Date</u> | | | | | |
| ILHL Annuity Homeloan 01 Nov 2011 | 32,644.46 | 101 | 4.89% | 394.92 | Y |
| ILHL Annuity Homeloan 01 Nov 2011 | 50,176.20 | 101 | 4.89% | 607.02 | Y |
| ILHL Annuity Homeloan 01 Jul 2012 | 33,005.36 | 101 | 5.24% | 404.83 | Y |

If you pay by direct debit we will automatically notify your bankers of this change. Otherwise you need to take the necessary steps to amend your repayments to reflect this revised amount. If a rate discount applies to any portion of your loan, you will be notified separately upon expiry of the discount”

The Provider’s **File Notes** indicate that the First Complainant contacted the Provider on **21 July 2009** as follows:

“Mr called re rates, doesn’t think he is on the correct one, conf he signed for these rates, sent copies of signed forms to show, conf mr was on a lower rate before he fixed back in 06 so maybe this is where the confusion was”.

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On expiry of the fixed interest rate on the first and second portions of the Complainants' mortgage loan in **November 2011**, the statements of account show that both loan portions moved to the Provider's standard variable rate of interest in accordance with the terms of the **Fixed Rate Instruction form**. Similarly, the third portion of the loan switched to the Provider's standard variable rate of interest on expiry of the fixed interest rate in **July 2012**.

The evidence shows that the Complainants applied a 3-year fixed interest rate of 4.15% to all three portions of the mortgage loan on **22 September 2015** by completing a **Fixed Rate Instruction for Homeloan Standard Variable Rate Loan** on **16 September 2015**.

The Complainants fully redeemed the mortgage loan on **27 October 2017**.

The Complainants contend that the Provider incorrectly failed to offer them a tracker interest rate on any portion of their mortgage loan from **December 2003** onwards. While I acknowledge that tracker interest rates were introduced as part of the Provider's product offering from **early 2004**, it is important to note that the Complainants did not have a contractual entitlement to a tracker interest rate during the term of the mortgage loan. Therefore, the Provider was under no obligation to offer the Complainants a tracker interest rate on the expiry of the various fixed interest rate periods or indeed at any stage during the term of the loan.

It is ultimately a matter for the customer to decide which interest rate is the most suitable for them. The Complainants chose to apply fixed interest rates to all three portions of their mortgage loan by signing **Fixed Rate Instruction forms** on **4 November 2003**, **12 July 2004**, **6 November 2006** and **21 June 2007** and **16 September 2015**. By doing so, the Complainants agreed to the terms of the **Fixed Rate Instruction forms** and agreed to have a fixed interest rate applied to the mortgage loan.

This Office understands that tracker interest rates were made available to existing customers of the Provider, where requested subject to criteria such as the loan balance and loan to value ratio, from **early 2004** to **mid-2008**. If the Complainants wished to pursue the potential option of applying a tracker interest rate to their mortgage loan during this period, they could have contacted the Provider to discuss their options. However, I have not been provided with any evidence that would indicate to me that the Complainants contacted the Provider in this regard. It is important to note that even if the Complainants contacted the Provider to discuss tracker interest rate options, 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 for a tracker interest rate as the Complainants had no entitlement to a tracker rate of interest on their mortgage loan account.

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For the reasons outlined 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.

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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.