



<b><u>Decision Ref:</u></b>	2022-0136
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Tracker Mortgage
<b><u>Conduct(s) complained of:</u></b>	Failure to offer a tracker rate throughout the life of the mortgage
<b><u>Outcome:</u></b>	Rejected

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

This complaint relates to mortgage loan accounts held by the Complainants with the Provider. The mortgage loans which are the subject of this complaint were secured on the Complainants' private dwelling house.

The Second Complainant drew down mortgage loan account ending **7404** with the Provider on **15 September 2006**. The loan amount was for the sum of €214,000 and the term of the loan was 23 years and 1 month. The Housing Loan Agreement dated **25 July 2006** detailed that the interest rate applicable to the loan was a fixed interest rate of 3.95% that would apply until **1 June 2009**. Mortgage loan account ending **7404** moved to the Provider's standard variable interest rate on the expiry of the initial fixed interest rate period. The Second Complainant subsequently requested the Provider to apply a further fixed interest rate to the mortgage loan account in **September 2010**. However, in order to facilitate this request, the Second Complainant had to redeem mortgage loan account ending **7404** and draw down a new mortgage loan on the new fixed interest rate.

In **September 2010**, the Complainants drew down mortgage loan account ending **9048** in their joint names on foot of a request for a fixed interest. The loan amount was for the sum of €190,000 and the term of the loan was 19 years. The Housing Loan Agreement dated **7 September 2010** detailed that the interest rate applicable to the loan was a fixed interest rate of 3.99% that would apply until **1 October 2013**. Mortgage loan account ending **9048** was secured on the same mortgaged property the subject of mortgage loan account ending **7404**.

The loan monies from the Complainants' mortgage loan account ending **9048** were subsequently used to repay the outstanding balance on the Second Complainant's mortgage loan account ending **7404** and mortgage loan account ending **7404** was redeemed in full on **9 September 2010**.

Mortgage loan account ending **9048** which is in the joint names of the Complainants is the subject of this complaint.

### **The Complainants' Case**

The Complainants explain that they held the following two mortgage loan accounts with the Provider:

- Mortgage loan account ending **9048** which was drawn down in their joint names on **9 September 2010** and the loan monies of which were used to redeem mortgage loan account ending **7404** which was held in the name of the Second Complainant and was originally drawn down on **15 September 2006**; and
- Mortgage loan account ending **6809** which was drawn down in their joint names on **18 August 2008** in the amount of €180,000 on a tracker interest rate.

In **August 2008**, the Complainants submit that they attended a meeting at a branch of the Provider where they were informed by a representative of the Provider that on the expiry of the fixed interest rate period in respect of mortgage loan account ending **7404** in **June 2009**, the mortgage loan would *"be transferred to the tracker mortgage"*.

The Complainants detail that, they *"were led to believe"* that a tracker interest rate would apply *"automatically"* to mortgage loan account ending **7404** on the expiry of the fixed interest rate in **June 2009**. The Complainants state that they were *"not at any stage, prior to the cessation of [the] fixed term mortgage, advised that there would be an issue moving the mortgage to the tracker rate."* The Complainants contend that it was because of the *"advice and instruction"* received from the Provider's representative that they did not *"cease the fixed term at the time and transfer to the tracker rate mortgage"*.

On the expiry of the fixed interest rate period in **June 2009**, the Complainants maintain that mortgage loan account ending **7404** did not roll on to a tracker interest rate as they *"were advised"*, and instead rolled on to the Provider's standard variable interest rate. The Complainants detail that they found this hard to understand as they had *"the second mortgage on a tracker rate and [an employee of the Provider] had assured [the Complainants] that it would transfer automatically."*

The Complainants *“contend that on the call made to [the Provider] on 23rd July 2009 [they] queried the transfer of [their] ‘non tracker’ mortgage to [their] tracker mortgage but this does not appear to be recorded on [the Provider’s] system.”*

The Complainants are seeking that mortgage loan account ending **9048** be placed on a tracker interest rate for the remainder of the term of the loan *“as promised”*.

### **The Provider’s Case**

The Provider submits that the Second Complainant drew down mortgage loan account ending **7404** in the amount of €214,000 on **15 September 2006** on a fixed interest rate in accordance with the terms and conditions contained of Housing Loan Agreement dated **25 July 2006**. The Provider states that the Second Complainant signed and accepted the Housing Loan Agreement dated **25 July 2006** in the presence of his solicitor on **4 August 2006**.

The Provider details that the Housing Loan Agreement dated **25 July 2006** detailed that the loan was a *“Fixed Rate Home Loan”*, and the loan was for a term of 23 years and 1 month. The Provider further details that **Clause 11.4** of the terms and conditions in the Housing Loan Agreement states that unless the Second Complainant exercised the option to apply a further fixed interest rate at the end of the initial fixed interest rate period, the rate of interest applicable to the loan would switch to the Provider’s then applicable variable home loan rate.

The Provider states that it sent the Second Complainant a notification letter on **17 April 2009** to advise that the fixed interest rate period was due to expire on **2 June 2009**. The Provider explains that this letter also advised the Second Complainant that he had the opportunity to *“review and agree the interest terms for the amount outstanding on his loan and he had the option to choose between a standard variable rate or a new fixed interest rate”*. The Provider notes that the letter detailed that if the Second Complainant did not respond to the notification letter the *“interest rate on your Fixed Rate Home Loan will be changed to standard variable rate”*.

The Provider states that it is *“satisfied that the content of the loan documentation for [mortgage loan account ending **7404**] is sufficiently clear and transparent in its meaning.”* The Provider asserts that the terms and conditions in relation to the fixed interest rate and what would transpire at the end of the fixed interest rate period were sufficiently clear and transparent and *“could not lead to a customer having a reasonable expectation that they would be restored to an ECB tracker interest rate loan on the expiry of a fixed interest period.”*

/Cont’d...

The Provider further states that mortgage loan account **7404** was never on an ECB tracker interest rate and there was no contractual or regulatory obligation on the Provider to apply an ECB tracker interest rate to this loan on the expiry of the fixed interest rate period in **June 2009**.

The Provider submits that in circumstances where the Second Complainant did not opt to apply a further fixed interest rate to mortgage loan account ending **7404** on the expiry of the fixed interest rate period in **June 2009**, the interest rate moved to the Provider's standard variable interest rate *"as per the agreed contractual terms of the facility letter."*

The Provider states that it received a telephone call from the Second Complainant on **23 July 2009** to enquire whether it would be possible to reduce the standard variable interest rate on mortgage loan account ending **7404**. The Provider states that its internal records show that the Second Complainant was informed that the Provider would require a *"valuation and proof of income to proceed with application"*. The Provider states that its internal notes also detail that the *"Customer will call back to make an appointment"*. The Provider maintains that *"this comment appears to suggest that the Complainant was fully aware that his loan was on a standard variable interest rate and there is no recorded evidence that the Complainant sought an ECB Tracker interest rate on the expiry of his fixed interest rate period."*

The Provider states that a standard variable interest rate was applied to mortgage loan account ending **7404** until **9 September 2010** when that mortgage loan was redeemed.

The Provider explains that both Complainants subsequently drew down mortgage loan account ending **9048** in their joint names on **9 September 2010**. The Provider further explains that the loan monies from this mortgage loan account were used to redeem mortgage loan account ending **7404** in full on **9 September 2010**.

The Provider details that it withdrew its ECB tracker loan products from the market in **late 2008** therefore it was not possible for the Complainants to draw down mortgage loan account ending **9048** on an ECB tracker interest rate. The Provider states that mortgage loan account ending **9048** was drawn down on a fixed interest rate in accordance with the terms and conditions of the Housing Loan Agreement dated **7 September 2010**.

The Provider submits that its current computer system has a record of a meeting which took place between the Complainants and the Provider on **8 August 2008**, the purpose of which was recorded as *"Meeting regarding Equity Release"*. The Provider notes that the representative who met with the Complainants on **8 August 2008** no longer works with the Provider and the Provider does not have a detailed record of the minutes of the meeting or any record of any discussions regarding the Second Complainant's existing loans.

/Cont'd...

The Provider submits therefore that it *“cannot comment in any further detail on the specific discussions which took place at the meeting.”* The Provider states that representative who met with the Complainants on **8 August 2008** *“would not have been aware that the Provider was going to withdraw ECB Tracker interest rate loans in October 2008.”*

The Provider explains that following the meeting on **8 August 2008**, a Housing Loan Agreement issued to both Complainants for a new ECB tracker loan facility in the amount of €180,000. The Provider notes that mortgage loan account ending **6809** was drawn down on **18 August 2008** and this mortgage loan is held jointly by the Complainants.

### **The Complaint for Adjudication**

The complaint for adjudication is that the Provider misadvised and misled the Complainants in respect of their entitlements to a tracker interest rate on mortgage loan account ending **7404** on the expiry of the fixed interest rate period in **2009**.

### **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 25 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' loan documentation in relation to mortgage loan account ending **7404** and to also consider the relevant provisions of mortgage loan account ending **9048**. It is also necessary consider certain interactions between the Complainants and the Provider between **2006** and **2009**.

The Provider issued a **Housing Loan Agreement** dated **25 July 2006** (mortgage loan account ending **7404**) to the Second Complainant which details as follows under the "Important Information" section:

1. "Amount of credit advanced" EUR 214,000.00
2. Period of Agreement: 23 years 1 months from drawdown\*\*\*
3. Number of Repayment Instalments: 275 plus any final balance.
4. Amount of Each Instalment:     35 payment(s) of     EUR 1,178.67  
  240 payment(s) of     EUR 1,182.80  
  1 payment(s) of        EUR 1,181.27

...

7. APR\*: 4.06% fixed

...

\*Annual Percentage Rate of Charge

..

\*\*\*The Period of Agreement is based on our discussion with you, when we estimated when you would draw down the Loan and when you would make your first payment.

*If you selected a first repayment date in a calendar month after the month in which the estimated drawdown date occurs, the Period of Agreement will be extended to reflect one or more extra calendar months. The number of instalments that you will pay will remain the same.”*

The “Schedule” on **page 2** of the **Housing Loan Agreement** details as follows:

*“Purpose of the Loan:  
External Transfer, as specified in your Loan Application.*

*...*

*Rate of Interest: 3.95 % per annum, fixed.  
4.25% per annum, variable.*

*Fixed rate: Roll-over date: 1 June 2009. The Roll-over Date is the start date of the standard variable interest rate at that time. The fixed rate period expires on the date preceding this day.”*

The **Statutory Notices** detail as follows:

*“WARNING: THE PAYMENT RATES ON THIS HOUSING LOAN MAY BE ADJUSTED BY THE LENDER FROM TIME TO TIME (This will not apply during any period of fixed interest rate).”*

**Condition 11** of the **General Conditions for Annuity Home Loans** details as follows:

**“11 Interest – Fixed Rate Loans**

**11.1** *If the Loan is a fixed rate loan the rate of interest applicable to the Loan for the Fixed Period specified in the Schedule will be our applicable fixed home loan rate on the date of drawdown of the Loan or, if a margin over or under the rate is specified in the Schedule, the aggregate from time to time of that margin and the applicable fixed home loan rate. The applicable fixed home loan rate at the date specified in the Important Information Notice is the rate specified in the Schedule.*

**11.2** *The APR and other details quoted in the Important Information Notice assume that at drawdown of the Loan the applicable fixed rate for the Fixed Period will be the rate applicable on the date indicated in the Important Information Notice.*

/Cont’d...

*However our rates of interest are altered in response to market conditions and if our rates of interest change between the date indicated in the Important Information Notice and the date of drawdown of the Loan, the rate of interest on the Loan for the Fixed Period specified in the Schedule will be our applicable fixed home loan rate for such period prevailing at the date of drawdown of the Loan or, if a margin over or under that rate is specified in the Schedule, the aggregate from time to time of that margin and the applicable fixed home loan rate.*

*11.3 You may, prior to the expiration of a Fixed Period, request us to fix the rate of interest on the Loan for such further period as you may specify (so long as it is a period for which we offer fixed rates on home loans). If we agree to such request (and we have no obligation to do so) the rate of interest applicable to the Loan for the requested Fixed Period shall be our applicable fixed home loan on the first date of the requested Fixed Period or, if a margin is specified in the Schedule, the aggregate from time to time of that margin and such fixed home loan rate.*

*11.4 Unless a further Fixed Period is agreed in accordance with clause 11.3, at the end of a Fixed Period the rate of interest applicable to the Loan will revert to our then applicable variable home loan rate.*

*11.5 You may at any time the rate of interest applicable to the Loan is variable request us to fix the rate of interest on the Loan for such period as you may specify (so long as it is a period for which we offer fixed rates on home loans). If we agree to such request (and we have no obligation to do so) the rate of interest applicable to the Loan for the requested Fixed Period shall be our applicable fixed home loan rate on the first date of the requested Fixed Period or, if a margin is specified in the Schedule, the aggregate from time to time of that margin and such fixed home loan rate. You may not make such a request where you are in breach of any provision of the Agreement.*

*11.6 You may at any time during a Fixed Period opt to convert to our variable home loan rate (plus or minus any margin specified in the Schedule) by notifying us in writing. Upon conversion, a redemption fee shall be payable by you calculated in accordance with clause 9.3 above. You may not exercise this option where you are in breach of any provisions of the Agreement.”*



**Condition 12** of the **General Conditions for Annuity Home Loans** details as follows:

**12 Interest – Variable Rate Loans**

- 12.1 *If the Loan is a variable rate loan which is not linked to the ECB Refinance rate, the rate of interest applicable to the Loan will be our applicable variable home loan rate or if a margin over or under that rate is specified in the Schedule the aggregate from time to time of that margin and the applicable variable home loan rate. Our variable home loan rate is subject to variation from time to time in response to market conditions and such rate at the date specified in the Important Information Notice is the rate quoted in the Schedule.*
- 12.2 *If the Loan is an ECB Tracker Variable Rate Home Loan, then the interest rate is linked to the ECB Refinance Rate. The rate of interest specified in the Schedule is the rate applicable to the Loan at the date of the facility letter, and it represents the sum of the ECB Refinance Rate on that date and an agreed margin (“the ECB rate margin”). The ECB Refinance Rate is subject to variation, and the rate of interest applicable to the Loan shall be the ECB rate margin added to the ECB Refinance Rate from time to time, and shall vary accordingly.*
- 12.3 *The APR and other details quoted in the Important Information Notice assume that the variable home loan rate throughout the Period of Agreement will be variable home loan rate as at the date specified in the Important Information Notice. However due to variations in our variable home loan rate the actual rate of interest applicable to the Loan from time to time may be different.  
...”*

The Second Complainant signed the **Acceptance and Authority** section on **page 4** of the **Housing Loan Agreement** on **4 August 2006**, which details as follows:

*“WARNING – THIS IS AN IMPORTANT LEGAL DOCUMENT AND YOU ARE STRONGLY ADVISED TO SEEK INDEPENDENT LEGAL ADVICE BEFORE YOU SIGN YOUR ACCEPTANCE*

*I/We have read and understand the nature and contents of this Loan Agreement  
I/We agree to be bound by this Loan Agreement*

/Cont’d...

*Where applicable I/We irrevocably authorise my/our solicitor to give the undertaking(s) referred to in clause 3 of the General Conditions and I/We irrevocably authorise you to pay the Loan through my/our Solicitor (unless another mode of payment is agreed by my/our Solicitor)."*

The **Statement of Account** provided in evidence shows that the mortgage loan account ending **7404** was drawn down on **15 September 2006**.

It is clear to this Office that the **Housing Loan Agreement** dated **25 July 2006** provided for a fixed interest rate of 3.95% to apply to the mortgage loan until **31 May 2009** with a variable interest rate to apply thereafter, unless a further fixed interest rate period was agreed between the parties. The standard variable home loan interest as provided for in the mortgage loan documentation made no reference to being linked to the ECB refinancing rate but rather was subject to variation from time to time by the Provider in response to market conditions.

For the Second Complainant to have a contractual entitlement to a tracker interest rate on the expiry of the fixed interest rate period in **June 2009**, that entitlement would have to have been specifically outlined in the **Housing Loan Agreement** dated **25 July 2006**. However, no such right to a tracker interest rate was set out in writing in the **Housing Loan Agreement** dated **25 July 2006** and which was signed by the Second Complainant on **4 August 2006**.

If the Second Complainant was not satisfied with the particulars of the **Housing Loan Agreement** dated **25 July 2006**, including the nature of the interest rate that would apply at the end of the fixed interest rate period, he could have decided not to accept the loan offer made by the Provider. Instead, the Second Complainant signed the **Housing Loan Agreement** on **4 August 2006** noting that he had read and understood the contents of the loan agreement which included details of the applicable interest rate and what would transpire on the expiry of the initial fixed interest rate period.

The Complainants detail that they met with a representative of the Provider in **August 2008** who informed them that mortgage loan account ending **7404** would switch to a tracker interest rate upon the expiration of the fixed interest rate period. I have not been provided with any evidence from either party in relation to any discussions regarding applying a tracker interest rate to mortgage loan account ending **7404**.

The Provider has however submitted into evidence an internal system note dated **8 August 2008** which details as follows:

*"Meeting regarding Equity release".*

/Cont'd...

The evidence shows that it was on foot of this particular meeting, that the Provider issued a new loan facility to the Complainants by way of **Housing Loan Agreement** dated **07 August 2008** which provided for a loan in the amount of €180,000 on a tracker interest rate of 4.75% for the purposes of “*home improvement*”. The Complainants accepted and signed the terms of this Housing Loan Agreement on **13 August 2008** and mortgage loan account ending **6809** was subsequently drawn down on **18 August 2008** on a tracker interest rate. Mortgage loan account ending **6809** is not the subject of this complaint.

Prior to expiry of the fixed interest rate period on mortgage loan account ending **7404**, the Provider wrote to the Second Complainant by way of letter dated **17 April 2009** outlining the interest rate options available him. The letter dated **17 April 2009** details as follows:

*“The agreed Fixed Rate period matures on your Fixed Rate Home Loan matures on 02.06.2009, so you now have the opportunity to review and agree the interest terms for the amount outstanding on your loan.*

***Variable interest rate or a new fixed interest period?***

*You have the option to choose between a standard variable rate and a new fixed rate period. The fixed interest rate will be determined on the day you agree the new agreement.*

...

*If you do not respond to this letter by 27.05.2009 the interest rate on your Fixed Rate Home Loan will be changed to standard variable rate, as agreed in the original Terms and Conditions of your loan.”*

In circumstances where the Provider did not receive a response from the Second Complainant, mortgage loan account ending **7404** rolled on to the Provider’s standard variable interest rate of 3.4% on **2 June 2009**.

The Provider has submitted an internal system note dated **23 July 2009** into evidence which details as follows:

*“RDU – Customer was enquiring about bringing rate down on SVRMTG, said to customer I would require valuation and proof of income to proceed with application. Customer will call back to make an appointment.”*

This internal note indicates that the Second Complainant was seeking a reduction in the standard variable interest rate that applied to mortgage loan account ending **7404**.

/Cont’d...

By way of letter dated **17 August 2010**, the Second Complainant sought to apply a 3-year fixed interest of 3.99% to mortgage loan account ending **7404**. The letter dated **17 August 2010** details as follows:

*"...I wish to switch to the fixed rate of 3.99% for a period of 3 years – effective immediately. Currently @3.29% interest".*

The Provider's internal system dated **24 August 2010** stats as follows:

*"customer has requested that loan account [ending 7404] be moved to 3 year fixed at 3.99%".*

In order to facilitate this request, the Provider issued a **Housing Loan Agreement** dated **7 September 2010** to both Complainants which details as follows under the "Important Information" section:

1. "Amount of credit advanced" EUR 190,000.00
2. Period of Agreement: 19 years 0 months from drawdown.\*\*\*
3. Number of Repayment Instalments: 228 plus any final balance.
4. Amount of Each Instalment:     37 payment(s) of     EUR 1,185.79  
  240 payment(s) of     EUR 1,203.87  
  1 payment(s) of        EUR 1,201.59

...

7. APR\*: 4.18% fixed

...

\*Annual Percentage Rate of Charge

..

\*\*\*The Period of Agreement is based on our discussion with you, when we estimated when you would draw down the Loan and when you would make your first payment. If you selected a first repayment date in a calendar month after the month in which the estimated drawdown date occurs, the Period of Agreement will be extended to reflect one or more extra calendar months. The number of instalments that you will pay will remain the same."

/Cont'd...

The “*Schedule*” on **page 2** of the **Housing Loan Agreement** details as follows:

*“Purpose of the Loan:*

*Internal Transfer, as specified in your Loan Application.*

...

*Rate of Interest: 3.99 % per annum.*

*4.15% per annum, variable.*

*Fixed rate: Roll-over date: 1 October 2013. The Roll-over Date is the start date of the standard variable interest rate at that time. The fixed rate period expires on the date preceding this day.”*

The **Statutory Notices** detail as follows:

*“WARNING: THE PAYMENT RATES ON THIS HOUSING LOAN MAY BE ADJUSTED BY THE LENDER FROM TIME TO TIME (This will not apply during any period of fixed interest rate).”*

**Condition 11** of the **General Conditions for Annuity Home Loans** attached to the **Housing Loan Agreement** dated **7 September 2010** is the same as **Condition 11** of the **Housing Loan Agreement** dated **25 July 2006**, as detailed above. For the sake of brevity, I do not propose to repeat the text here.

The **Statement of Account** provided in evidence shows that the mortgage loan account ending **9048** was drawn down in the joint names of the Complainants on **9 September 2010**.

It is clear to me that the **Housing Loan Agreement** dated **7 September 2010** provided for a loan in the amount of €190,000 with a fixed interest rate of 3.99% to apply to the mortgage loan until **1 October 2013** with a standard variable interest rate to apply thereafter, unless a further fixed interest rate period was agreed between the parties. The standard variable home loan interest as provided for in the mortgage loan documentation made no reference to being linked to the ECB refinancing rate but rather was subject to variation from time to time by the Provider in response to market conditions.

The loan monies in respect of mortgage loan account ending **9048** were used to repay the outstanding balance on mortgage loan account ending **7404** on **9 September 2009**. The **Statement of Account** in relation to mortgage loan account ending **7404** contains an entry called “*loan transfer*” on **9 September 2009** for an amount of €190,000 which cleared the outstanding balance on that mortgage loan account.

/Cont’d...

Upon considering the mortgage loan documentation in relation to mortgage loan account ending **7404**, it is clear that the Second Complainant did not have a contractual entitlement to a tracker interest rate on the expiry of the fixed interest rate period in **June 2009**. The terms and conditions of the **Housing Loan Agreement** dated **25 July 2006** were sufficiently clear that mortgage loan account ending **7404** would commence on fixed interest rate with the Provider's standard variable interest rate to apply on the expiry of the fixed rate period.

The Complainants submit that they were informed by a representative of the Provider in **August 2008** that mortgage loan account ending **7404** would automatically roll onto a tracker interest rate in **June 2009**. The Complainants therefore submit that a tracker interest rate should be applied to mortgage loan account ending **9048**. Although tracker interest rates were on offer generally by the Provider as part of its suite of products in **August 2008**, there was no obligation on the Provider to offer a tracker interest rate to the Second Complainant at that time or indeed at any time during the term of the loan. If the Second Complainant wanted to apply a tracker interest rate to mortgage loan account ending **7404**, the Provider would have had to formally agree to such a request as this amounted to a substantive change in the terms and conditions of the loan agreement. This Office has not been provided with any evidence of such a request made by the Second Complainant to the Provider in this regard.

The evidence submitted does not support the Complainants' contention that they were given a guarantee or assurance from the Provider that a tracker interest rate would apply to mortgage loan account ending **7404** in **June 2009**. Even if such a verbal guarantee was given, it could not give rise to a contractual right to a tracker interest rate on mortgage account ending **7404**. For such an agreement to be enforceable, it would have to be formalised by the parties as an amendment to the original loan agreement. No such formal amendment was made to the terms and conditions of mortgage account ending **7404**.

I am also satisfied that the terms and conditions of the **Housing Loan Agreement** dated **7 September 2010** were sufficiently clear as to the Complainants' interest rate entitlements. I do not consider it reasonable for the Complainants to have expected to have been offered a tracker interest rate in relation to mortgage loan account ending **9048** simply because they held another mortgage loan with the Provider that was on tracker interest rate, being mortgage loan account ending **6089**.

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

**Conclusion**

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

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

*Jacqueline O'Malley*

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

21 April 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.