



| | |
|---|---|
| <u>Decision Ref:</u> | 2022-0206 |
| <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 Complainant with the Provider. The mortgage loan that is the subject of this complaint was secured on the Complainant's private dwelling house.

The mortgage loan account was initially held in the joint names of the Complainant and a third party however the mortgage loan account is now held solely in the Complainant's name.

The loan amount was €370,500.00 and the term of the loan was 35 years. The **Amended Letter of Offer** dated **02 November 2006** provided for a 1-year fixed interest rate of 4.19%, with a variable interest rate to apply thereafter.

The mortgage loan was drawn down on **24 May 2007** on a fixed interest rate of 4.69%.

The Complainant's Case

The Complainant outlines that he drew down a mortgage loan with the Provider in **2007** on a 1-year fixed interest rate. The Complainant details that in or around **May 2008**, prior to the expiry of the fixed interest rate period on **01 June 2008**, both he and his broker

contacted the Provider and requested that a tracker interest rate be applied to his mortgage loan account from **01 June 2008**.

The Complainant submits that this request *“fell on deaf ears and was procrastinated on”* by the Provider, and on the expiry of the fixed interest rate period in **June 2008**, the mortgage loan account rolled on to the Provider’s standard variable rate of interest. The Complainant asserts that he brought this to the Provider’s attention in early **June 2008** and his broker *“attempted to remedy”* this, but the Provider did not respond.

The Complainant submits that the Provider subsequently *“pulled their tracker rates from the market”* shortly thereafter. The Complainant maintains that the Provider should have honoured his request to be moved to a tracker interest rate on the expiry of the fixed interest rate period in **June 2008**. The Complainant contends that the Provider *“knew they were removing tracker rates from the market a few weeks earlier and denied [him] that option in advance”*.

The Complainant submits that he is aware of the existence of a flyer which issued from the Provider to brokers, which stated that fixed interest rate mortgage loan accounts would roll on to tracker interest rates instead of standard variable interest rates. The Complainant submits that he is aware that redress and compensation was offered to certain customers who applied for mortgages with the Provider between **November 2006** and **February 2008** on the basis of this flyer. The Complainant states that he has not been offered compensation.

The Complainant submits that the Provider’s refusal to apply a tracker interest rate on his mortgage loan account in **2008** has caused him a great deal of stress and financial hardship, which resulted in him having to sell the mortgaged property at a loss *“having overpaid massive amounts interest”*.

The Complainant is seeking a refund of the difference between the interest he has paid on his mortgage loan account and the interest he would have paid had a tracker interest rate been applied to his mortgage loan from **01 June 2008** to **November 2018**.

The Provider’s Case

The Provider submits it was not its practice to engage directly with mortgage loan applicants who were introduced to the Provider by brokers, with the exception of the issue of the requisite loan assessment and loan approval documentation. The Provider outlines that it would primarily deal with the broker appointed by the new mortgage loan applicant to act as the mortgage intermediary.

The Provider explains that it offered tracker interest rate products to both new and existing customers from in or around **late 2006 to mid-2008**, subject to certain lending and eligibility criteria. The Provider states however that the Complainant did not apply for a tracker interest rate in **2007**, but rather applied for a fixed interest rate.

The Provider states that the Complainant drew down a mortgage loan with the Provider in **2007** on a 1-year fixed interest rate of 4.69%. The Provider details that **General Condition 7** of the **Amended Letter of Offer** dated **02 November 2006** detailed that the Provider's prevailing variable interest rate would apply at the end of the initial fixed interest rate period. Therefore, the Provider details that when the initial 1-year fixed interest rate period expired, the Provider applied its variable interest rate for home loan properties to the mortgage loan account from **01 June 2008**. The Provider states that the Complainant was informed as to what transpire at the end of the fixed interest rate period by way of letter dated **10 April 2008**.

The Provider explains that the Complainant was not offered a tracker interest rate on the expiry of the fixed interest rate period in **June 2008** *"as there was no default or contractual entitlement established for the Bank to do so."*

The Provider details that the Complainant's broker contacted the Provider on **29 May 2008** to discuss the option of a tracker interest rate and enquired whether a tracker interest rate comprising the ECB rate and a margin of 1.10% was still available. The Provider states that its representative informed the broker that no such interest rate was available at that time, but the representative indicated that the query would be escalated internally to see if any other interest rate options could be offered to the Complainant.

The Provider outlines that on **3 June 2008**, the broker followed up with it again as agreed and the Provider returned the broker's call to let him know that *"based on the loan to value, a tracker rate option was not available for the account"*. The Provider notes that the broker was disappointed with this outcome and contacted the designated mortgage manager by email *"asking whether a 1.25% margin tracker might be secured for the case"*. The Provider submits that the broker was informed again that a tracker rate option was not available as an option for the Complainant's mortgage loan account.

The Provider submits that it does not accept that both the Complainant and his broker made numerous attempts to contact the Provider to request a tracker interest rate and *"that these were procrastinated on as has been suggested"*. The Provider maintains that the broker's

/Cont'd...

contact records, that were enclosed with the Complainant's submission to this Office, correlate with the Provider's records in this regard.

The Provider submits that it *"was quite clear that a tracker rate was not available at that time, nor was the Provider obligated to provide one"*.

The Provider submits that it is satisfied that the terms and conditions of the **Amended Letter of Offer** are sufficiently clear as to the interest rate to be applied on the expiry of the fixed interest rate period. The Provider states that there is no reference to the Provider's prevailing variable interest rate as being a variable interest that was linked in any way to the ECB rate. The Provider further notes that the **Amended Letter of Offer** contains no commitment to provide a range of interest rate options to the Complainant at any time during the term of the loan. The Provider states that the Complainant had the benefit of both independent financial and legal advice as the **Amended Letter of Offer** issued to both their broker and solicitor and was ultimately witnessed by a solicitor.

The Provider details that it offered a product for new private dwelling house mortgage loan customers from **November 2006** to **February 2008** which provided a specific guarantee of a tracker interest rate on the expiry of an initial fixed rate period. The Provider submits that the Complainant applied for his mortgage loan with the Provider prior to the introduction of this new mortgage product offering and before the circulation of the *"flyer"* to brokers.

The Complaint for Adjudication

The complaints for adjudication are as follows:

- a) On receipt of requests from both the Complainant and the Complainant's broker in or around **May 2008** to apply a tracker interest rate on the mortgage loan account, the Provider *"ignored [the Complainant's] request"* because the Provider *"knew they were removing the tracker rates from the market as few weeks later and denied [the Complainant] that option in advance"*; and
- b) The Provider failed to apply a tracker interest rate to the Complainant's mortgage loan account on the expiry of the fixed rate period in **June 2008**, despite requests to do so.

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

/Cont'd...

information. The Provider responded in writing to the complaint and supplied a number of items in evidence.

The Complainant was 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 **24 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.

Following the issue of the Preliminary Decision of this Office, further submissions were received from the parties.

Copies of these additional submissions were exchanged between the parties.

Having carefully considered these additional submissions and all submissions and evidence furnished by both parties to this Office, the final determination of this Office is set out below.

Before dealing with the substance of the complaint, I note that the application for the mortgage loan was submitted by the Complainant to the Provider through a third-party broker. As this complaint is made against the respondent Provider only, it is the conduct of this Provider and not the broker which will be investigated and dealt with in this Decision.

In order to determine this complaint, it is necessary to review and set out the relevant provisions of the Complainant's mortgage loan documentation and to also set out the

/Cont'd...

interactions which took place between the Complainant (and representatives on his behalf) and the Provider between **2006** and **2008**.

The Complainant completed and signed a **Loan Application** dated **08 June 2006**. Section G of the Loan Application details as follows:

"Type of loan required Variable Tracker Fixed ✓ for years Split"

The Complainant selected a fixed interest rate but did not specify the number of years that he wanted the fixed interest rate to apply.

The Provider offered the following new business rate options to new mortgage loan customers from **August 2006**:

| <i>Term</i> | <i>Standard Variable</i> | <i>Discount variable (12 mths)</i> | <i>Discount Tracker, Over €150k (12 mths)</i> | <i>"Tracker 95" <80% LTV, Over: €300k</i> | <i>"Tracker 110" up to 92% LTV: Over €250k</i> | <i>"Tracker 125" up to 92% LTV: €150k - 250k</i> | <i>Capped Tracker Mortgage</i> | <i>1yr fixed</i> | <i>2 yr fixed</i> | <i>3yr fixed*</i> | <i>5yr fixed</i> |
|-------------|--------------------------|------------------------------------|---|--|--|--|--------------------------------|------------------|-------------------|-------------------|------------------|
| YR | 4.45% | 3.69% | 3.69% | 3.95% | 4.10% | 4.25% | 4.25% | 4.19% | 4.59% | 4.79% | 4.89% |
| 1 | € 85.36 | € 85.01 | € 85.01 | € 85.13 | € 85.20 | € 85.26 | € 85.26 | € 85.24 | € 85.42 | € 85.51 | € 85.56 |

I note that the Provider offered a range of interest rates at the time to include its standard variable interest rate, a discount variable interest rate, a number of tracker interest rate options and fixed interest rate options.

It appears from the evidence that the Provider received the Complainant's completed mortgage loan application from the broker on **11 October 2006**. The Provider subsequently issued a **Letter of Offer** to the Complainant dated **12 October 2006** which details as follows:

"1. Amount of Credit Advanced: EUR 370,500.00
2. Period of Agreement: 35 Years 0 months
 ...
19. Interest Rate: 4.19% Fixed For 36months"

The **Letter of Offer** dated **12 October 2006** was not signed by the Complainant. However, I note that this Office has been provided with a copy of an internal note from the Provider which states the following:

"Broker contact regarding rate change in App stage

31st October 2006

/Cont'd...

INBOUND: cmca: [redacted] broker looking for an amended offer for 1 year fixed rate”.

It appears that on foot of a request from the broker to amend the loan offer to provide for a fixed interest rate for a period of 1 year instead of 3 years, the Provider issued an **Amended Letter of Offer** dated **02 November 2006** to the Complainant which details as follows:

| | |
|---------------------------------------|----------------------------------|
| <i>“1. Amount of Credit Advanced:</i> | <i>EUR 370,500.00</i> |
| <i>2. Period of Agreement:</i> | <i>35 Years 0 months</i> |
| <i>...</i> | |
| <i>3. Interest Rate:</i> | <i>4.19% Fixed For 12 Months</i> |
| <i>..</i> | |
| <i>17. Type of Advance:</i> | <i>Flexi Annuity”</i> |

General Condition 5 of the **General Mortgage Loan Approval Conditions** outlines as follows:

“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.... However, this rate may vary before the advance is drawn down and will be subject to variation throughout the term”.

General Condition 7 of the **General Mortgage Loan Approval Conditions** outlines as follows:

“The rate of interest applicable to this loan will be fixed for 12 months from the date of drawdown. The interest rate and fixed rate term specified may vary on or before the date of drawdown of the mortgage and in such event, the prevailing fixed rate and fixed rate term at the date of drawdown will be notified to the Applicant(s) Solicitor.

*...
At the expiry of the fixed rate period the Lenders prevailing variable rate will apply.”*

General Condition 17 of the **Loan General Conditions** details as follows:

“THE LENDER RECOMMENDS THAT APPLICANT(S) SEEK(S) HIS/HER/THEIR SOLICITORS ADVICE IN RELATION TO THE LETTER OF OFFER, THESE CONDITIONS AND THE ATTACHED DOCUMENTS. THE ACCEPTANCE SHOULD BE SIGNED IN THE

/Cont’d...

PRESENCE OF THE SOLICITOR(S) CONCERNED WHO SHOULD BE A PRINCIPAL OR PARTNER IN THE FIRM(S) CONCERNED ..."

A **WARNING** also detailed in the **General Mortgage Loan Approval Conditions** provides as follows:

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

The **Special Conditions** attaching to the **Amended Letter of Offer** dated **02 November 2006** detail as follows:

"149 This Letter of Offer replaces the Letter of Offer dated 02/11/2006 which is hereby cancelled".

The **Form of Acceptance** was signed by the Complainant and witnessed by a solicitor on **08 November 2006** and details as follows:

"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 Lender's General Conditions for Home Loans;*
- (iv) the Special Conditions (if any);*
- (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)."

It is clear that the **Amended Letter of Offer** dated **02 November 2006** provided for a 1-year fixed interest rate of 4.19%. **General Condition 7** clearly details that the Provider's prevailing variable interest rate would apply at the end of the fixed interest rate period. 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. In fact, there is no mention whatsoever in the Complainant's mortgage loan documentation that a tracker rate of interest would apply to the Complainant's mortgage

/Cont'd...

loan at any stage during the term of the loan. The Complainant accepted the **Amended Letter of Offer**, and in doing so detailed that he had been advised upon the terms and conditions of the mortgage loan by his solicitor.

The evidence shows that the Provider engaged with the broker after the **Amended Letter of Offer** dated **02 November 2006** had been signed by the Complainant for the purposes of seeking outstanding documents before the Complainant could draw down the mortgage loan. Following engagement between the parties in that regard, the Provider subsequently issued an **Amended Letter of Offer** dated **12 April 2007** to the Complainant which details as follows:

| | |
|---------------------------------------|-----------------------------------|
| <i>"1. Amount of Credit Advanced:</i> | <i>EUR 370,500.00</i> |
| <i>2. Period of Agreement:</i> | <i>35 - 0</i> |
| <i>...</i> | |
| <i>3. Interest Rate:</i> | <i>4.69% Fixed For 12 Months"</i> |

I have not been provided with any evidence to suggest that the **Amended Letter of Offer** dated **12 April 2007** was signed by the Complainant.

The Complainant, in his post Preliminary Decision submission dated **13 April 2022**, refers to **Special Condition 149** of the **Amended Letter of Offer** dated **02 November 2006**, as detailed above. The Complainant's questions how the **Amended Letter of Offer** dated **02 November 2006** could be deemed to be the operative loan offer when it was "*cancelled*" by the Provider. It is accepted by the Provider, in its post Preliminary Decision submission dated **03 May 2022**, that the reference to the letter of offer dated **2 November 2006** in **Special Condition 149** was an administrative error in the course of producing the **Amended Letter of Offer** dated **02 November 2006**.

The Complainant appears to be of the view that the **Amended Letter of Offer** dated **12 April 2007** is the operative loan offer on the basis of the inclusion of **Special Condition 149** in the **Amended Letter of Offer** dated **02 November 2006**. However, in circumstances where the Complainant did not sign the **Amended Letter of Offer** dated **12 April 2007**, it cannot be said that this is the operative loan offer. In the interest of clarity, I have reviewed both **Amended Letter of Offer** dated **02 November 2006** and the **Amended Letter of Offer** dated **12 April 2007** and both loan offers provide for a fixed interest rate for the first 12 months of the term of the loan, with the Provider's prevailing variable interest rate to apply thereafter.

/Cont'd...

In light of the foregoing, it is clear that the **Amended Letter of Offer** dated **02 November 2006** is the operative loan offer which forms the basis of the contractual relationship between the parties.

Mortgage loan account ending **210/1** was drawn down on **24 May 2007** on a fixed interest rate of 4.69%. I note that the fixed interest rate had increased from 4.19% in **November 2006** when first offered to the Complainant, to 4.69% in **May 2007** when the Complainant ultimately drew down the mortgage loan.

Prior to the expiry of the 1-year fixed interest rate period, the Provider wrote to the Complainant on **10 April 2008** as follows:

“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 June repayment. This will change the amount of your monthly mortgage repayment.

Currently the European Central Bank remains concerned that inflation is well above its target, which creates an uncertain economic environment. With this in mind, it would pay to have certainty about your mortgage interest rate.

Why not switch to a fixed interest rate?

Please call us today on [number redacted] to discuss our extensive range of fixed rates. Alternatively you can e-mail us at [redacted e-mail address]. We’ll be more than happy to help you choose the rate and featured that suits your lifestyle needs best”.

I note that on the expiry of the 1-year fixed interest rate period, the Complainant’s mortgage loan account defaulted to the Provider’s standard variable interest rate of 5.45% on **01 June 2008** which was the Provider’s prevailing variable interest rate at the time in line with General **Condition 7** of the **General Mortgage Loan Approval Conditions**

The Complainant, in his post Preliminary Decision submission dated **13 April 2022**, refers to the above letter dated **10 April 2008** and submits that the Provider did not disclose that a tracker interest rate was not being offered to him. The Complainant is of the view that the failure to offer a tracker interest rate, when other customers had been offered such rates at that time, is a “clear breach of duty of care”. The Complainant, in his post Preliminary Decision submission dated **13 April 2022**, submits that the Provider failed in its

/Cont’d...

regulatory duties under the “*European communities Unfair Terms in Consumer Contracts Regulations 1995 and the Consumer Protection code 2006*”. The Complainant does not refer to any particular provisions of the legislation that the Provider has purportedly failed to comply with.

The Complainant however states that the Provider failed in its “*regulatory requirements*” as the letter date **10 April 2008** “*pushed for customers to opt for a fixed rate*”. The Complainant submits that “[n]owhere on this letter did it highlight, or ask, if a fixed rate was appropriate to me or meet my needs at the time”. The Complainant further submits that the Provider did not disclose “*current published rate/products*” in the letter dated **10 April 2008** and did not ask him “*to discuss [his] current circumstances with them i.e the value of [his] property at the time of writing to [him] (which had appreciated considerably)- didn’t want to know or ask about [his] LTV or [his] personal financial situation, which could have seen [him] pay off a lump sum at the end of [his] fixed term to both decrease [his] mortgage and reduce [his] LTV even further*”.

The Provider, in its post Preliminary Decision submission dated **03 May 2022**, submits that the letter dated **10 April 2008** was sent to “*notify the Complainant of the expiry of the agreed fixed rate and to notify him of similar rates available*” and “*invited the Complainant to contact them to discuss the interest rates and features that would suit [him] best*”. The Provider further submits that “*all interest rates are subject to criteria and no guarantee of interest rate availability was made*” and “[i]t remained within the Banks commercial discretion at all times to determine what interest rate options would be made available to the Complainant”. In addition, the Provider submits that “[w]ith reference to the LTV criteria, which was considered by the Bank when the Bank declined to make a tracker option available following the fixed rate expiry, this was not the basis for there being no tracker rate option in the 10th April 2008 letter”. The Provider explains that the Complainants signed the **Amended Loan Offer** dated **02 November 2006** which “*provided for a default variable rate to apply on expiry of the fixed rate and did not include any obligation or entitlement to the offer of any range of interest rate options*”.

For the avoidance of doubt, the **Amended Loan Offer** dated **02 November 2006**, which was accepted by the Complainant, did not contain a contractual or other entitlement to be offered a tracker interest rate on the expiry of the fixed interest rate period. The Provider was only contractually obliged to change the interest rate on the Complainant’s mortgage loan account to its prevailing variable interest rate at the end of the fixed interest rate period. Therefore, the Provider was under no obligation, regulatory or otherwise, to offer the Complainant a tracker interest rate in the letter dated **10 April 2008** or indeed to apply a tracker interest rate to the Complainant’s mortgage loan account on the expiry of the fixed interest rate period. While the Provider invited the Complainant to discuss potential

/Cont’d...

fixed interest rate options that might be suitable to him, I do not consider the wording of the letter dated **10 April 2008** to have “*pushed for customers to opt for a fixed rate*”, as asserted by the Complainant. The letter notified the Complainant that the interest rate on his mortgage loan account was due to change to the Provider’s current standard variable interest rate from **01 June 2008**.

However, it was entirely a matter for the Complainant to contact the Provider if he wished to discuss alternative available interest rate options be it fixed rate options or tracker interest rate options or other variable rate options. If the Complainant sought to apply a fixed interest rate or a tracker interest rate to his mortgage loan account, it would have been with the Provider’s commercial discretion to accede to any such request from the Complainant.

Further, if the Complainant felt that the value of the mortgaged property had increased and/or that he was in a position to pay a lump sum to decrease the outstanding mortgage balance, it was a matter for the Complainant to contact the Provider and proactively engage with the Provider in relation to his mortgage arrangements. There was no obligation on the Provider to take the steps outlined by the Complainant with respect to obtaining or discussing property valuations or other financial circumstances with the Complainant.

I have been provided with notes and email correspondence detailing certain interactions between the Complainant’s broker and the Provider in **May and June 2008**. I note that the broker queried with the Provider as to the possibility of applying a tracker rate of ECB + 1.10% to the mortgage loan account. The Provider’s internal notes detail as follows:

“290508 passed broker [redacted] to rets for tracker...[redacted]

...

290508 ...conf this rate will not be available but will refer to see what we can offer.

...

030608 no tracker available. rang broker to confirm. he was disappointed with same & said would be s/w...”

The broker sent an email to the Provider dated **04 June 2008** which details as follows:

“...

As per our conversation, please could you try and influence the above case reference into moving a 1.25% tracker...”

The Provider’s internal note dated **18 June 2008** outlines the following:

/Cont’d...

“confirm to broker [redacted] that this has been escalated twice and we cannot do any better on the rate [redacted]”

The Complainant submits that the request for a tracker interest rate *“fell on deaf ears and was procrastinated on”* by the Provider, however it appears to this Office that the evidence does not support the Complainant’s assertions in that regard. The evidence shows that the broker’s requests for a tracker interest rate in **May and June 2008**, were responded to by the Provider. There is no evidence to suggest that the broker’s requests were in any way ignored, or not considered by the Provider. The evidence shows that the Provider did not accede to the broker’s request to apply a tracker interest rate of either ECB + 1.10% or ECB + 1.15% to the mortgage loan account. The Provider explains that while tracker interest rates were available at the time the broker made the request for a tracker interest rate in **May and June 2008**, all interest rates, to include tracker interest rates, were available subject to certain lending and eligibility criteria. The Provider details that based on the loan to value, it was not in a position to offer a tracker interest rate on the Complainant’s mortgage loan account in **May and June 2008**. Moreover, the Provider was only contractually obliged to apply its prevailing variable interest rate to the Complainant’s mortgage loan account after the fixed interest rate period expired in **May 2008** in accordance with the term of the **Amended Loan Offer** dated **02 November 2006**.

The evidence shows that the Complainant subsequently sought to apply a fixed interest rate to his mortgage loan account. The Provider issued a **Fixed Rate Instruction form** to the Complainant. The rate options form detailed as follows:

“Fixed until 1st August 2010 at 5.85%

Fixed until 1st August 2011 at 5.85%

Fixed until 1st August 2013 at 5.99%

...

Fixed rate repayments from the 1st September 2008 for the term as indicated above. From the date of expiry of this fixed rate term the Lenders prevailing Standard Variable Rate will apply”

/Cont’d...

The Complainant completed and signed the **Fixed Rate Instruction form** on **19 August 2008** and in doing so, selected to apply a 2-year fixed interest rate of 5.85% to his mortgage loan account.

The Provider wrote to the Complainant by way of letter dated **22 August 2008** as follows:

“Thank you for your recent request to amend your mortgage account. I can confirm your account has been amended as requested with your revised account details outlined below. Your repayment for 1st September 2008 will be €2,092,69 and is charged as follows:

| Loan Type | Balance (€) | Term (Mths) | Interest Rate |
|------------------------|------------------------|------------------------|--------------------------|
| FLEXI ANNUITY HOMELOAN | 369,670.04 | 406 | 5.85%...” |

The Complainant refers to a communication that was issued by the Provider to brokers on **07 November 2006**. This broker communication states as follows:

*“All [the Provider’s] Homeloan fixed rates will now **roll onto** tracker rate upon expiry. Offering your clients even better value.*

...

*[the Provider] is delighted to launch a **NEW Tracker product**.*

*Offering excellent value to you and your clients, this **‘Tracker product’** is available to **ALL NEW CUSTOMERS**, who wish to take out a mortgage with [the Provider].*

...

***Rate Update** (effective 8th November 2006)”.*

I understand that this communication was issued to brokers rather than to customers of the Provider and provided details of certain products. The Complainant appears to be of the view that this product offering meant that he should have been offered a tracker interest rate on the expiry of the initial fixed interest rate period in **June 2008**.

However, a “flyer” communication does not amount to a mortgage loan contract between the Complainant and the Provider. The Complainant’s mortgage loan is governed by the

/Cont’d...

terms and conditions of the **Amended Letter of Offer**, that was signed and accepted by the Complainant on **08 November 2006**, which provided for a 1-year fixed interest rate that would convert to the Provider's prevailing variable rate on expiry.

It is clear to me that in circumstances where the Complainant engaged the service of a broker with respect to the mortgage loan application in **2006/2007** and on expiry of the fixed interest rate period in **2008**, there was no requirement for the Provider to communicate directly with the Complainant in relation to the application form or the interest rate options for the mortgage loan. Although tracker interest rates were on offer by the Provider at the time the Complainant applied for his mortgage loan in or around **May 2006**, subject to certain qualifying criteria, the **Amended Letter of Offer** dated **02 November 2006** did not contain an offer of a tracker interest rate or an expectation that a tracker interest rate would apply either at the time of drawdown or at any other time during the term of the mortgage loan. It follows that the Complainant was not entitled as a matter of policy or contract to a tracker interest rate on the mortgage loan at the end of the fixed interest rate period in **June 2008**. Therefore, I cannot accept the Complainant's submission that the Provider incorrectly failed to apply a tracker interest rate to the mortgage loan account at the inception of the loan or on the expiry of the initial 1-fixed interest rate period in **June 2008**.

In order for the Complainant to have a contractual right to a tracker interest rate either on drawdown or on expiry of the fixed interest rate period in **June 2008**, that right would need to be specifically provided for in the Complainant's mortgage loan documentation. However, no such right was set out in writing in the **Amended Letter of Offer** dated **02 November 2006**, which was accepted and signed by the Complainants on **08 November 2006**. The Complainant was contractually entitled to the Provider's prevailing variable interest rate on the expiry of the initial fixed interest rate period in **2008**, and that is the interest rate that the Provider applied to his mortgage loan account in accordance with **General Condition 7**. It was open to the Complainant to decline the Provider's offer if he was dissatisfied that the terms and conditions did not provide that a tracker interest rate would apply at the end of the initial fixed interest rate period.

While I acknowledge that the Complainant, through his broker, contacted the Provider to explore the option of applying a tracker interest rate to his mortgage loan account in **May** and **June 2008**, before tracker interest rates were withdrawn by the Provider, it was a matter of commercial discretion on the part of the Provider as to whether it wished to

/Cont'd...

accede to the Complainant's request given the Complainant did not have a contractual entitlement to a tracker interest rate.

In circumstances where the Provider did not accede to the request to apply a tracker interest rate to Complainant's MLA in **May and June 2008**, I am satisfied that this was a commercial decision which the Provider was entitled to make.

Moreover, in circumstances where the Complainant's mortgage loan documentation did not provide an entitlement to a tracker interest rate at any stage during the term of the mortgage loan, the Provider was under no obligation to apply a tracker interest rate to the mortgage loan account in **May and June 2008**. The decline of a request to apply a tracker interest rate, did not amount to a breach of the Complainant's contractual entitlements or any consumer protection legislation as has been suggested by the Complainant.

I am of the view that the Complainant's mortgage loan documentation is sufficiently clear and transparent regarding the Complainant's interest rate entitlements, and I am satisfied that the Provider acted in accordance with the terms and conditions of the **Amended Letter of Offer** dated **02 November 2006** and its obligations under the consumer protection legislation in its dealings with the Complainant.

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

22 June 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.

/Cont'd...

