



<b><u>Decision Ref:</u></b>	2022-0207
<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 at point of sale 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 a mortgage loan account held by the Complainants with the Provider. The mortgage loan that is the subject of this complaint was secured on the Complainants' principal private residence.

The loan amount was €231,840.00 and the term of the loan was 30 years. The particulars of the **Mortgage Loan Offer** accepted by the Complainants on **12 April 2005**, detailed that the interest rate was "*Fixed For 24 months*".

The mortgage loan account which forms the basis of this complaint was redeemed in full on **28 August 2009**.

**The Complainants' Case**

The Complainants submit that during the "*offer stage*" of the mortgage loan journey in early **2005**, they were invited to the Provider's office to "*select options offered in writing under the banks [guidance] /Supervision*". The Complainants state that the Provider offered them "*a number of options*" including a fixed interest rate and a tracker interest rate.

The Complainants submit that they initially selected a tracker interest rate in their application form, but that they were advised by the Provider that if they selected the fixed interest rate *“then all the options would be available post the fixed rate including the tracker”*. The Complainants submit that they *“relied on this fact and entered into the Contract on good faith that fixing would not limit [their] options on the roll off”*.

The Complainants submit that they drew down their mortgage loan account with the Provider which *“consisted of a rolling 1 yr fixed rate into 2yrs followed by another 2yr fixed rate in 07”*. On the expiry of the 2-year fixed interest rate period in or around **April 2007**, the Complainants submit that they *“were not offered all the options including a Tracker”*. The Complainants state that they *“did complain a number of times on enquiry”*, but in **April 2007** they *“finally settled on another fixed”* interest rate. The Complainants contend that at this time, the tracker interest rate was lower than the fixed interest rates they were offered.

The Complainants submit that they feel *“hard done by”* and state that the Provider was not transparent and *“misrepresented”* the Complainants’ interest rate options *“from the beginning”*. The Complainants state that they relied on the Provider’s expertise when they *“entered the contract in good faith”* and *“suffered financial loss as a result”*. The Complainants submit that this amounts to misrepresentation. The Complainants also submit that the Provider made a public statement *“advising of the Tracker Option for all Fixed Rate holders issued in 2006.”*

The Complainants maintain that their right to a tracker interest rate on their mortgage loan account can be *“inferred or implied from the original application”* and in their view contractual rights are not just *“what is written down but what was intended”*.

The Complainants are seeking the following:

- (a) The Provider to *“rescind”* the contract; or
- (b) Damages to be awarded.

### **The Provider’s Case**

The Provider details that tracker interest rates were available for both new and existing customers when the Complainants applied for their mortgage loan in **2005**. The Provider details that the following interest rates were available at the time of the Complainants’ mortgage loan application:

- Variable 3.45%

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- Discount variable (12 months) 2.69%
- Discount variable (24 months) 2.99%
- Tracker up to 92%, LTV €150k - €250k 3.25%
- Tracker up to 92%, LTV over €250k 3.1%
- 1 year fixed 2.69%
- 2 year fixed 3.55%
- 3 year fixed 3.89%
- 5 year fixed 4.39%

The Provider details that the Complainants initially opted for a fixed interest rate by selecting the “fixed” option on the application form. The Provider states that it subsequently issued four separate loan offers to the Complainants which provided for various fixed interest rate options. The Provider submits that the Complainants ultimately signed a letter of offer which provided for a 24-month fixed interest of 3.55%. The Provider notes that the mortgage loan drew down on **12 May 2005** on a fixed interest rate of 3.55%.

The Provider indicates that the *“Complainants signed the letter of offer with the benefit of legal advice”*. The Provider states that the *“terms under which the Bank agreed to advance funds, and the Complainants drew down those funds, are clear, unambiguous and set out in the Letter of Offer”*. The Provider asserts that *“[t]here was no default or contractual entitlement to a tracker rate”* at the end of the fixed interest rate period or at any time during the term of the loan.

The Provider details that the First Complainant contacted the Provider on **23 February 2007** and was *“provided with a quotation on fixed rates, and on the variable rate”*. During this contact the Provider outlines that *“the standard variable rate at that time was 4.95%”* and *“[t]here was no reference to a tracker rate and at that time the ECB rate was 3.50%”*. The Provider further details that the First Complainant contacted the Provider again on **28 February 2007** regarding interest rates and *“was provided with a quotation on fixed rates, and on interest only repayments”*.

Prior to the expiration of the fixed interest rate period, the Provider submits that it issued a letter to the Complainants dated **13 April 2007**. The Provider states that the Complainants were offered a suite of fixed rates and advised to contact the Provider if they wished to discuss their options. The Provider indicates that it *“has no record of a request for, or an inquiry in relation to, a tracker rate”* and *“Even if such a request or inquiry had been made the Complainants had no entitlement to same, nor was the Bank obliged to provide same.”*

The Provider details that the Complainants signed a fixed rate instruction form on **16 April 2007** and in doing so, elected to apply a fixed interest rate to the mortgage loan account.

The Provider details that the following interest rate changes were applied to the Complainants' mortgage loan account as follows:

<i>Effective Date</i>	<i>Reflected in Repayment Date</i>	<i>Interest Rate</i>	<i>Notes</i>
<i>12/05/2005</i>	<i>01/06/2005</i>	<i>3.55%</i>	<i>2 year fixed rate</i>
<i>01/05/2007</i>	<i>n/a</i>	<i>5.20%</i>	<i>standard variable rate</i>
<i>08/05/2007</i>	<i>01/06/2007</i>	<i>5.09%</i>	<i>2 year fixed rate</i>
<i>05/05/2009</i>	<i>01/06/2009</i>	<i>3.49%</i>	<i>standard variable rate</i>
<i>10/06/2009</i>	<i>01/07/2009</i>	<i>3.24%</i>	<i>standard variable rate</i>

The Provider submits that tracker interest rates were withdrawn "*on a phased basis*" from its product offering from **mid-2008**.

In response to the Complainants' submission that they were advised by the Provider that if they selected the fixed interest rate "*then all the options would be available post the fixed rate including the tracker*", the Provider states that it "*did not act as an advisor to the Complainants*" and "*the Complainants had the benefit of independent legal advice and additionally could have sought independent financial advice.*"

In response to the Complainants' assertion that they contacted the Provider to request a tracker interest rate in **April 2007**, the Provider states that the "*the Complainants have not provided any substantiation of their position that they contacted the Bank seeking a tracker rate option and that this was not available to them*".

In response to the Complainants' submission that a public statement issued by the Provider "*advising of the Tracker Option for all Fixed Rate holders issued in 2006*", the Provider details that the Complainants applied for their mortgage loan in **2005** and the Provider issued the loan offer, which the Complainants accepted, prior to the introduction of the new product offering and the Provider's communication to brokers in **November 2006**. The Provider further explains that the "*availability of this product was made known via the Banks broker communicate process and did not form any part of an advertisement from the Bank to the general public, nor was any public statement made, rather it was a communicate provided to brokers only.*"

The Provider details that the Complainants chose to redeem their mortgage loan on **28 August 2009**.

### **The Complaints for Adjudication**

The complaints are as follows:

- a) The Provider misadvised the Complainants in respect of their interest rate options for their mortgage loan account in early **2005**; and
- b) The Provider failed to offer the Complainants a tracker interest rate for their mortgage loan account on the expiry of the fixed interest rate period in or around **April 2007**.

### **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 **29 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.

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Following the issue of the Preliminary Decision, additional 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.

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 in **2005** and **2007**.

An **Application Form** was signed on **4 February 2005**. The Complainants were given a choice of a variable interest rate, a fixed interest rate or a tracker interest rate under the "*Mortgage type, rate and term details*" section of the **Application Form**.

The Complainants and the Provider both refer to the following extract from the **Application Form** in their post Preliminary Decision submissions:

Please tick your choice of interest rate    Variable  Fixed  or Tracker  Fixed rate term *1 yr New Bus* years

A fixed interest rate was selected with a tick placed beside the "*Fixed*" option on the Application Form and a handwritten note was placed beside the "*Fixed rate term*" section which reads "*1 yr New Bus*".

I note that the **Application Form** details the following under the "*Your declaration and authority*" section:

*"This form must not be construed as an offer on behalf of [the Provider]."*

The Provider issued a **Letter of Offer** to the Complainants dated **10 March 2005** and two subsequent **Amended Letter of Offers** dated **16 March 2005**, and **29 March 2005**. The Letter of Offer dated **10 March 2005** and the **Amended Letter of Offer** dated **16 March 2005** were not accepted and signed by the Complainants.

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The **Particulars of Advance** contained in the **Amended Letter of Offer** dated **29 March 2005** detail as follows:

***“IMPORTANT INFORMATION AS AT 29th March 2005***

<i>Amount of Credit Advanced</i>	<i>€231,840.00</i>
<i>Period of Agreement (Years – Months)</i>	<i>30 – 0</i>
<i>...”</i>	

The **Additional Particulars of Advance** detail as follows:

<i>“ ...</i>	
<i>Type of Advance</i>	<i>FLEXI ANNUITY</i>
<i>Interest Rate</i>	<i>3.55</i>
	<i>Fixed For</i>
	<i>24 months”</i>

**General Condition 5** of the **Loan General Conditions** details 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. 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 the fluctuations in the applicable interest rate. Payment of the monthly instalments must be made by Direct Debit Mandate...”*

**General Condition 7** of the **Loan General Conditions** details as follows:

*“The rate of interest applicable to this loan will be fixed for 24 months from 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)*

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*Solicitor. If during the fixed rate period, the Applicant (s) fully or partially redeem the advance or convert it to variable interest rate or another fixed interest rate loan, a break funding fee may be payable to the Lender ... 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 PRESENCE OF THE SOLICITOR(S) CONCERNED WHO SHOULD BE A PRINCIPAL OR PARTNER IN THE FIRM(S) CONCERNED ..."***

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

***"WARNING:***

***...***

***"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** detail as follows:

***"This Letter of Offer replaces the Letter of Offer dated 16/03/2005 which is hereby cancelled."***

The **Form of Acceptance** was signed by the Complainants on **12 April 2005** 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 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***

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

The **mortgage loan statements** provided in evidence show that the mortgage loan was drawn down on **12 May 2005**.

It is clear that the **Amended Letter of Offer** provided for a fixed interest rate of 3.55% for the first 24 months of the term of the loan. **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 Complainants' mortgage loan documentation that a tracker rate of interest would apply to the Complainants' mortgage loan at any stage during the term of the loan. The Complainants accepted the **Amended Letter of Offer**, and in doing so detailed that they had been advised upon the terms and conditions of the mortgage loan by their solicitor.

The Complainants, in their post Preliminary Decision submissions dated **27 April 2022**, refer to a meeting that took place in the Provider's head office to discuss their interest rate options at the time of the mortgage loan application. The Complainants state that they "*selected the options on the form for rate types at [the Provider's] request in [their] head office under [their] own advice and [guardianship] and not in the Solicitors office*". I have not been provided with any records or notes of any meeting that may have taken place between the parties prior to the issuance of the **Amended Letter of Offer** dated **29 March 2005**. It appears from the Complainants' submissions that they are of the view that they would not have proceeded to apply for the mortgage loan on a fixed interest rate in **February 2005** if not for the advice that they purportedly received from the Provider.

While the Provider may have provided information about the rates available at the time from the Provider's suite of interest rate products, if the Complainants wanted independent advice about the available and most suitable interest rate options for them or the market generally, the Complainants should have been aware that they could only get that advice from an independent third-party advisor as opposed to the Provider. The decision as to which type of mortgage and interest rate option best suited the Complainants' circumstances was ultimately a matter for the Complainants.

With regard to the **Application Form** dated **4 February 2005**, the Complainants, in their post Preliminary Decision submission dated **11 April 2022**, detail that the "*term fixed and or tracker option should not have been presented by the provider as was [unambiguous] and unclear as per the Unfair Consumer Terms Directive EC 2019*".

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In addition, the Complainants, in their post-Preliminary Decision submissions dated **28 April 2022**, question “*why [the Provider] didn't simply put the tracker option out on its own to avoid any confusion for Customers like [it] did on the variable and fixed options.*”

In response to the Complainants' submission, the Provider details that the Complainants “*indicated a preference for a fixed rate and for the term of the fixed rate to be 1 year. There is no ambiguity or lack of clarity in this regard. To the right of each interest rate option there is a space to indicate your preference and the tracker rate option was not selected or filled in.*”

**Article 5 of the Council Directive 93/13/EEC on Unfair Terms in Consumer Contracts** details as follows:

*“In the case of contracts where all or certain terms offered to the consumer are in writing, these terms must always be drafted in plain, intelligible language.*

*Where there is doubt about the meaning of a term, the interpretation most favourable to the consumer shall prevail. This rule on interpretation shall not apply in the context of the procedures laid down in Article 7 (2).”*

The Complainants appear to place particular emphasis on the format of the **Application Form** and how the interest rate options were represented. I have carefully considered the Application Form submitted in evidence and I am satisfied that the interest rate options were set out clearly. The Complainants had a choice of a “*variable*”, “*fixed*” or “*tracker*” interest rate. The Complainants appear to submit that there was some form of hybrid “*fixed or tracker*” option available and this is what they selected. However, this is not the case. The Complainants chose a fixed interest rate by placing a tick beside “*fixed*” and specifically selected a 1-year fixed interest rate term. I do not consider there to be any ambiguity in this regard, despite the Complainants' submissions.

Regardless, it is important to highlight that the **Application Form** does not form part of the mortgage loan contract between the parties for the purposes of **Article 5 of the Council Directive 93/13/EEC on Unfair Terms in Consumer Contracts**. The **Application Form** is the document by which the Complainants applied for a mortgage loan with the Provider. Upon an assessment of the Application Form and the Complainants' financial circumstances, the Provider made a formal loan offer to the Complainants. Even if the Complainants had selected a tracker interest rate in the Application Form, the Provider was under no obligation to offer a tracker interest rate to the Complainants.

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Rather it was a matter for the Provider to decide firstly whether to formally make a loan offer to the Complainants and secondly how the mortgage loan would be structured to include the applicable interest rate. It would then be a matter for the Complainants to decide whether they wanted to accept that offer. In this instance, the Provider issued an **Amended Letter of Offer** dated **29 March 2005** which provided for a fixed interest rate of 3.55% for the first 24 months of the term of the loan with the Provider's prevailing variable interest to apply thereafter. The Complainants accepted and signed the terms of the mortgage loan contract on **12 April 2005**.

Having carefully reviewed and considered the terms and conditions of the **Amended Letter of Offer** dated **29 March 2005** as detailed above, I am satisfied that the mortgage loan contract between the parties is drafted in clear terms.

The Complainants refer to a communication that was issued by the Provider to brokers in **November 2006**. The Complainants state that a public statement issued by the Provider "*advising of the Tracker Option for all Fixed Rate holders issued in 2006.*" This was not a public statement and was rather a flyer that the Provider issued to brokers in **November 2006**.

A communication of this nature does not amount to a mortgage loan contract between the Complainants and the Provider. The Complainants' mortgage loan is governed by the terms and conditions of the **Amended Letter of Offer** dated **29 March 2005** which was signed and accepted by the Complainants on **12 April 2005** which provided for a fixed interest rate for period of 24 months that would convert to the Provider's prevailing variable rate on expiry. In those circumstances I cannot accept the Complainants' submission that the broker communication was applicable to their mortgage loan account to the extent that it conferred an entitlement to a tracker interest rate on the Complainants.

The Complainants issued a letter to the Provider dated **12 April 2007**, detailing as follows:

*"Dear Sir / Madam*

*As discussed with [named representative], we wish to change to loan type Annuity Homeloan from May 07 on.*

*If we could avail of this rate for a two year period, it would be appreciated.*

*The repayments worked out at €1,292.49 as shown attached.*

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*Could you confirm the above by way of a call to the above no.*

*Thanks for your help."*

The Provider issued a response to the Complainants dated **27 April 2007**, detailing as follows:

*"Dear [Complainants],*

*I confirm your mortgage has been switched to Annuity payments.*

*The revised direct debit due 1<sup>st</sup> May 2007 is €1086.39. From 1<sup>st</sup> June 2007 your monthly repayment will be €1307.39.*

***"Currently rate change notification letters are issuing under separate cover and repayment details may differ as they were compiled at the beginning of the month. The information contained in this letter is the most up-to-date information and takes account of recent rate change."***

*If you have any further queries, please do not hesitate to contact our Customer Services Department on [telephone number] or by e-mail at [email address]"*

The **mortgage loan statements** provided in evidence reflect that capital and interest repayments commenced from **May 2007**.

Prior to expiration of the initial fixed interest rate period in **May 2007** the Provider issued correspondence to the Complainants dated **13 April 2007**, detailing 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 June 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.*

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*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 Tuesday 22 May 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.*

*If you want to discuss your options please call us on [telephone number]. Alternatively you can e-mail us at [email address]. We'll be more than happy to help you choose the rate and features that suit your lifestyle needs best."*

The Complainants completed and signed a **Fixed Rate Instruction Form** on **16 April 2007**, where they selected to apply a further fixed interest rate of 5.09% to their mortgage loan account until **1 May 2009**.

The **Fixed Rate Instruction Form** 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)*

- |   |                                     |
|---|-------------------------------------|
| <i>Fixed until 1<sup>st</sup> May 2008 at 5.09% (5.08% Typical APR)</i> | <input type="checkbox"/>            |
| <i>Fixed until 1<sup>st</sup> May 2009 at 5.09% (5.09% Typical APR)</i> | <input checked="" type="checkbox"/> |
| <i>Fixed until 1<sup>st</sup> May 2010 at 5.09% (5.11% Typical APR)</i> | <input type="checkbox"/>            |
| <i>Fixed until 1<sup>st</sup> May 2012 at 5.09% (5.13% Typical APR)</i> | <input type="checkbox"/>            |

*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 had been fixed for the period requested by me/us then the terms below shall be binding on me/us for the fixed period in addition to the terms and conditions of my/our mortgage.*

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**Terms**

*Fixed rate repayments from **1st June 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 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.*

...

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

The Provider issued correspondence to the Complainants on **16 May 2007** detailing that a fixed interest rate had been applied to the mortgage loan account as follows:

*"Thank you for your recent request to fix your mortgage account,*

*Your mortgage interest is fixed at 5.09% until 1st May 2009.*

*Your monthly repayment will be €1,291.98 from 1st June 2007"*

The Provider details that the fixed interest rate of 5.09% was applied to the mortgage loan account on **08 May 2007**.

The evidence shows that on the expiry of the fixed interest rate period on **5 May 2009**, a standard variable interest rate of 3.49% was applied to the mortgage loan account in accordance with **General Condition 7** of the **Loan General Conditions**. The standard variable interest rate decreased to 3.24% on **10 June 2009**.

The mortgage loan statements show that the mortgage loan was fully redeemed on **28 August 2009**.

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The Complainants maintain that they were advised by the Provider to select a fixed interest rate option when applying for the mortgage loan and were given assurances that a tracker interest rate would be offered at the end of the fixed interest rate period. The evidence shows that the Complainants completed a mortgage loan application on **04 February 2005** and chose to apply for a fixed interest rate. While the Provider could provide information to the Complainants on its product offerings in **2005**, the decision as to which interest rate to select rested solely with the Complainants. If the Complainants wanted independent advice about rates available in the market in **2005**, the Complainant could only get that advice from an independent third-party advisor as opposed to a representative of the Provider who was employed by the Provider to sell the Provider's mortgage products.

In circumstances where the Complainants indicated that they had a preference for a fixed interest rate, the Provider subsequently issued an **Amended Letter of Offer** dated **29 March 2005** offering the Complainants a 24-month fixed interest rate with the Provider's prevailing interest rate to apply on the expiry of the fixed interest rate. In order for the Complainants to have a contractual entitlement to a tracker interest rate at draw down of the loan or on expiry of the fixed interest rate period, that right would need to be specifically provided for in the Complainants' mortgage loan documentation. However, no such right was set out in writing in the **Amended Letter of Offer** dated **29 March 2005**, which was accepted and signed by the Complainants on **12 April 2005**.

The Complainants clearly applied for a fixed interest rate, and this was the interest rate that was offered by the Provider in the **Amended Letter of Offer** dated **29 March 2005**. It was open to the Complainants to decline the Provider's loan offer if they were dissatisfied that the terms and conditions did not provide that a tracker interest rate would apply from the date of drawdown or if they were dissatisfied with the interest rate that would apply at the end of the initial fixed interest rate period.

However, the Complainants decided to accept the terms and conditions of the **Amended Letter of Offer** having confirmed that their solicitor had advised them on the contents of the loan offer.

If the Complainants wished to pursue the potential option of applying a tracker interest rate on the mortgage loan account at any stage before tracker interest rates were withdrawn by the Provider in **mid-2008**, the Complainants could have contacted the Provider. The Complainants maintain that they made a request for a tracker interest rate in **April 2007**, however this Office has not been provided with any evidence from the Complainants or the Provider to support this.

The evidence shows that the Complainants were offered the Provider's variable interest rate at the end of the fixed interest rate period, in accordance with the terms and conditions of the **Amended Letter of Offer**, together with a range of fixed interest rates. The Complainants chose to apply a 2-year fixed interest rate of 5.09%. Even if the Complainants had contacted the Provider to explore the option of applying a tracker interest rate, it would then have been a matter of commercial discretion for the Provider as to whether it wished to accede to any such request made by the Complainants to apply a tracker interest rate to the mortgage loan.

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  
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.