



<b><u>Decision Ref:</u></b>	2022-0208
<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
<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 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 was for an amount of €190,000.00 and the term of the loan was 40 years. The particulars of the Loan Offer Letter dated **27 August 2008** detailed that the loan type as *"5Y Fixed Rate 6.27% until 31/08/13 95% Capital and Interest"*.

**The Complainant's Case**

The Complainant details that she *"explicitly requested"* a tracker interest rate when she applied for her mortgage loan with the Provider in **2008**. The Complainant submits that she was informed by the Provider that tracker mortgages were about to be withdrawn from the market and that it would not be in her best interest to take this option.

The Complainant contends that she *"later found out that this information was incorrect"* and that the Provider *"did not act in [her] best interests by refusing [her] request"* for a tracker mortgage.

The Complainant asserts that the Provider was *“completely negligent and reckless in advising [her of] this information”*. The Complainant asserts that a tracker mortgage *“would have been 100% the best option for [her] as a single applicant taking on a mortgage.”*

The Complainant states that when the Provider approved her mortgage loan application, it was *“based on interest rates from the tracker mortgage”*. The Complainant submits that upon signing for the mortgage loan account, she was advised by the Provider’s mortgage advisor that *“a tracker mortgage was not available to [her]”*. The Complainant also submits that the mortgage advisor *“strongly advise[d] against it anyway”*. The Complainant states that she has since discovered that a tracker interest rate *“was 100% available”* to her.

The Complainant submits that she was subsequently advised by the Provider’s mortgage advisor to take out a mortgage on a 5-year fixed interest rate between 4.8% and 5%. The Complainant states that the Provider’s mortgage advisor informed her that this interest rate would not vary for 6 months. The Complainant details that the Provider’s mortgage advisor submitted that the *“payments would be between €600 - €650 per month and would not vary much from this amount given the fact [she] was going to be on a five year fixed rate.”*

The Complainant states that after she had signed the mortgage loan agreement, she received a payment plan detailing monthly mortgage repayments of €1,200.00, which was approximately €300.00 more than what she had expected. The Complainant explains that the increased mortgage repayments were due to an increase in the interest rate to 6.27%.

The Complainant submits that she contacted the Provider to query the increase in the interest rate and monthly repayments and *“was basically told the interest rate was advertised in the paper and its tough luck [she] didn’t check them.”*

The Complainant states that the Provider has *“lost all correspondence on [her] file from 11 years ago”* and is of the view that it is *“very convenient”* that the Provider has lost all of this correspondence. The Complainant states that she raised a complaint 11 years ago with the Provider in relation to the conduct of the mortgage advisor. The Complainant questions *“How can [the Provider] refute that [the Provider’s] mortgage advisor did not advise [her] and deny [her] a tracker mortgage”*.

The Complainant details that after some research she *“came across the Consumers code of conduct”* and asserts that the Provider *“did not act within these guidelines.”* The Complainant submits that the Provider *“did not act in [her] best interests [or] follow their own guidelines”*.

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The Complainant submits that she is a single mother of two children and has to pay the Provider *“one and a half times the amount [she] should be paying each month and it has totally and completely crippled [her] and [her] family.”* The Complainant maintains that she has overpaid at least €30,000.00 in interest.

The Complainant is seeking the following:

- a) A tracker interest rate to be applied to her mortgage loan account;
- b) A full refund of overpaid interest from **2008** to present;
- c) Compensation for *“loss of monies / over payments from 2008 – to date”*;
- d) Compensation for the *“devastation”* caused to her family; and
- e) Restoration of the Complainant’s credit rating.

#### **The Provider’s Case**

The Provider submits that the Complainant applied for a mortgage loan in **June 2008** by signing a mortgage loan application form on **14 June 2008**. The Provider states that it subsequently issued a Loan Offer Letter to the Complainant on **24 June 2008**. The Provider details that this Loan Offer Letter provided for a mortgage loan of €190,000.00 repayable over a term of 40 years on a 5-year fixed interest rate of 5.04% until **30 June 2013**, with a variable interest rate to apply thereafter. The Provider states that the Complainants accepted and signed the loan offer on **27 June 2008**.

The Provider submits that in the intervening period between when the Complainant's Loan Offer Letter was issued on **24 June 2008** and when the mortgage loan was drawn down on **12 September 2008**, the 5-year fixed interest rate of 5.04% had increased to 6.27%.

The Provider explains that given the interest rate had changed prior to the drawdown of the mortgage loan on **12 September 2008**, the Provider issued the Complainant with a new Loan Offer Letter. The Provider submits that this revised Loan Offer Letter provided for the same mortgage loan amount of €190,000.00 repayable over a term of 40 years but was based on a 5-year fixed interest rate of 6.27% until **31 August 2013**, with a variable interest rate to apply thereafter.

The Provider asserts that it was *“able to rely on the original Suitability Statement signed and dated 19 June 2008 as the change required in the issuing of the second Loan Offer Letter was an amendment to reflect the change in the actual interest rate applicable to the*

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*5 year Fixed Rate option previously selected*". The Provider submits therefore that there was no requirement for the completion of a new Suitability Statement or a signed Loan Acceptance.

The Provider contends that the Complainant's mortgage loan account was reviewed and assessed as affected under a remediation programme entitled "*Mortgage Interest Rate Review*", which was separate from the Central Bank of Ireland directed Tracker Mortgage Examination. The Provider submits that "*Following an internal review of the Bank's mortgage accounts the Bank wrote to the Complainant on 16 July 2019 in relation to the interest rate that had been applied to her mortgage account at draw down.*"

The Provider explains that the Loan Offer Letter dated **24 June 2008** detailed a fixed interest rate of 5.04%, which the Complainant accepted and signed. The Provider states that "*[p]rior to the mortgage commencing, the interest rate changed to 6.27% and the Bank acknowledged that the customer may not have been fully informed as to the change at that time.*"

The Provider explains that in circumstances where the Complainant "*paid a higher amount of interest than was detailed in her original Loan Offer Letter of 24 June 2008*", the Complainant "*overpaid an amount which required redress*". The Provider states that it issued a letter dated **16 July 2019** to the Complainant enclosing a cheque for €21,297.41. The Provider details that this payment "*consisted of a refund of €16,420.85, being in respect of the interest overpayment and a compensation payment of €4,876.56.*"

The Provider submits that "*tracker interest rates were available both at the time the customer completed her mortgage loan application in June 2008 and when her mortgage loan drew down on 12 September 2008.*"

The Provider contends that "*No advice or recommendation regarding products or suitability of products was provided to the customer by the Bank at the time of her mortgage loan application in 2008.*" The Provider details that at that time, the Provider's practice was to outline "*the range of interest rate options (including fixed, variable and tracker interest rates) that were available to customers, subject to credit criteria, eligibility and terms & conditions*".

The Provider submits that it provided information to customers, when requested, in relation to the various available interest rate options. The Provider states that its staff "*were not authorised to and did not provide advice to customers as to what interest rate to select.*"

The Provider further states that “[t]he decision as to what interest rate to select rested with the customers based on what suited their individual circumstances” and that the Provider’s role was as the provider of the product.

The Provider notes that it contacted the mortgage advisor referred to in the Complainant’s submissions. The Provider details that “the staff member has confirmed that she cannot recall the specifics of any discussion with the customer”. The Provider further details that “[t]he staff member has confirmed that she was aware that she could not provide advice to customers and confirmed that she did not provide advice to customers in relation to mortgage applications.”

The Provider contends that the Complainant chose the option of a fixed interest rate and that the details of this interest rate were contained in the Complainant's Loan Offer Letters dated **24 June 2008** and **27 August 2008**. The Provider maintains that “there was no reference to a tracker interest rate in either of the Loan Offer Letters that issued to the customer nor did these documents contain any condition specifying that a tracker interest rate would be made available to [the Complainant] when the initial fixed interest rate period ended, or at any other future date”. The Provider explains that “[s]uch a reference would have been necessary for a tracker interest rate to apply”.

The Provider submits that if the Complainant required any advice in relation to interest rate products, the Complainant “had the option at all times to seek independent professional financial advice to assist with her decision, if she so wished”.

The Provider further submits that it is “satisfied that the customer was provided with the relevant information throughout the mortgage loan application, which allowed her to make an informed decision in respect of the interest rate to apply to her mortgage loan”.

The Provider states that it “did not have any specific policy with respect to tracker interest rate offerings in June 2008 for new customers”. The Provider explains that tracker interest rate products were available from **late-2001** until **late-2008**, when they were withdrawn from the market by the Provider. The Provider states that “[a]ll mortgage products that were available to customers were subject to lending criteria, eligibility and terms and conditions”. The Provider details that it has been “unable to locate any evidence to support the customer's contention that she was informed that tracker interest rates were not available in or around June 2008” and “that she was specifically advised to apply a 5 year fixed interest rate to her mortgage loan in June 2008”.

The Provider submits that it acknowledges the reference to “Tracker Mortgage” in the **Loan Offer Acceptance** section of the mortgage loan agreement. The Provider explains that the purpose of this paragraph was for the Complainant to acknowledge that she fully

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understood the specific nature of the mortgage, that the debt owed to the Provider was secured on the mortgaged property and must be repaid in full before the title deeds would be returned or the security released.

The Provider outlines that the reference to “*Tracker Mortgage*” was a typographical error and did not in itself create a right or expectation to a tracker interest rate.

The Provider states that it is “*satisfied that the customer's mortgage loan documentation was sufficiently clear and transparent, in relation to the customer's interest rate entitlements (i.e. there was no contractual entitlement to have a tracker interest rate applied to the mortgage account).*”

### **The Complaints for Adjudication**

The complaints are that:

- (a) The Provider misadvised the Complainant in relation to the availability of tracker interest rates in or around **June 2008** and incorrectly failed to allow the Complainant to draw down the mortgage loan on a tracker interest rate from in or around **June 2008 to September 2008**.
- (b) The Provider misadvised the Complainant regarding variations in the fixed interest rate contained in the mortgage loan offer letter from **June 2008 to September 2008**.

### **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 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 do not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also

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satisfied that the submissions and evidence furnished are sufficient to enable a Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties on **21 April 2022**, outlining the preliminary determination 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, the Complainant wrote to this Office seeking clarification. A copy of this exchange was sent to the Provider.

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

In order to determine this complaint, it is necessary to review and set out the relevant documentation relating to the Complainant's mortgage loan account and consider the details of certain interactions between the Complainant and the Provider in **2008** during the mortgage loan application process.

The Complainant completed and signed a **General Mortgage Application Form** on **14 May 2008**. The application form noted that the Complainant required a mortgage in the amount of €190,000.00 for a term of 40 years.

The Complainant also signed a **Mortgage Suitability Statement** on **19 June 2008** which details as follows:

*"Having discussed all [the Provider] mortgage options available to you, you have chosen to avail of our First Time Buyer Mortgage. The various rate and repayment options were also discussed with you and you have chosen the option below based on your requirements. This option has also been confirmed as affordable by us".*

There are four interest rate options detailed in the **Mortgage Suitability Statement** to include a "*Fixed Rate*", "*Variable Rate*", "*Tracker Variable Rate*" and "*Interest Only*". The fixed rate option was selected and there is a handwritten note that says "*5 year*" beside the fixed rate option. The "*Reason*" for selecting the fixed rate option details as follows:

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*“You wish to fix your repayments over a fixed term to allow you to budget your monthly outgoings and to ensure your repayments remain unaffected by rate changes over the fixed term.”*

The Provider has indicated that it does not hold any record of notes, minutes, and memoranda in relation to any discussions between the Provider’s representative and the Complainant when the mortgage loan application was completed in **May 2008**. However, it is clear from the **Mortgage Suitability Statement** that the Complainant signed to confirm that she had a preference for a 5-year fixed interest rate. I note that while a tracker interest rate option was available for selection on the **Mortgage Suitability Statement**, the evidence shows that the Complainant did not select the tracker interest rate option.

The Provider subsequently issued a **Loan Offer Letter** dated **24 June 2008** to the Complainant which details as follows:

<i>“Loan Type</i>	<i>: 5Y Fixed Rate 5.04% until 30/06/13 95% Capital and Interest</i>
<i>Loan Amount</i>	<i>:€190,000.00</i>
<i>Interest Rate</i>	<i>:5.04%</i>
<i>Interest Type</i>	<i>:Fixed</i>
<i>Term</i>	<i>:40 years”</i>

The **Specific Loan Offer Conditions** contained in the **Loan Offer Letter** detail as follows:

*“...The fixed rate quoted shall be subject to variation prior to drawdown in accordance with any variations in the fixed rate offered by the Company.”*

**Condition 14** of the **Standard Mortgage General Terms and Conditions** attaching to the **Loan Offer Letter** states as follows:

**“14. Interest Rate**

*(a) Subject to Sub-Clause 14(b), all Loans are subject to the Bank’s Mortgage Rate at the date the Loan is drawn down.*

*(b) In the case of a Tracker Mortgage the conditions of this Sub-Clause shall apply:*

*(i) The Loan is subject to the Tracker Mortgage variable interest rate at the date of payment of the Loan. This rate will depend on the Loan to Value*

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set out in the Specific Loan Offer Conditions. In the event of a movement in the European Central Bank ("ECB") rate the Lender will adjust the Tracker Mortgage variable interest rate within 30 days of the ECB rate movement.

(ii) There will be no reduction in the Tracker Mortgage interest rate as a result of the Loan to Value reducing during the term of the Loan.

(c) In the case of a fixed interest rate Mortgage, the following conditions will apply:-

(i) The rate of interest applicable to the Loan will be fixed at the rate and for the period specified in the Loan Offer.

(ii) The Borrower on the expiry of the Fixed Rate Period may, by prior notice in writing to the Lender, opt to choose a fixed interest rate for a further Fixed Rate Period if such an option is made available by the Lender and on terms and conditions as may be specified by the Lender. Where such an option is not made available by the Lender or if available, where the Borrower fails to exercise the option, the interest rate applicable will be a variable interest rate which may be increased or decreased by the Lender at any time, and in this respect, the decision of the Lender will be final and conclusively binding on the Borrower".

The Complainant signed the **Loan Acceptance** on **27 June 2008** on the following terms:

*"I/We acknowledge receipt of the General Terms and Conditions and Specific Conditions attached to the Loan Offer. I/We have had the Loan Offer, the Specific Loan Offer Conditions and the General Terms and Conditions explained to me/us by my/our Solicitor and I/we fully understand them. I/We hereby accept the Loan Offer on the terms and conditions specified. I/We undertake to complete the Mortgage Deed as soon as possible.*

*I/We fully understand and accept the specific nature of this Purchase Mortgage. I/We further understand that any outstanding debt owing (whether owing now or in the future) to [Provider] by me/us at any given time is secured on the Property the subject of the Tracker Mortgage and must be repaid in full before the relevant title deeds can be returned or the relevant mortgage deed released."*

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The Provider submits that it issued the Complainant with a further **Loan Offer Letter** dated **27 August 2008** in circumstances where the fixed interest rate had increased prior to the drawdown of the mortgage loan.

The **Loan Offer Letter** dated **27 August 2008** details as follows:

<i>“Loan Type</i>	<i>: 5Y Fixed Rate 6.27% until 31/08/13 95% Capital and Interest</i>
<i>Loan Amount</i>	<i>:€190,000.00</i>
<i>Interest Rate</i>	<i>:6.27%</i>
<i>Interest Type</i>	<i>:Fixed</i>
<i>Term</i>	<i>:40 years”</i>

The **Loan Offer Letter** dated **27 August 2008** also details as follows:

**“WARNING  
THE PAYMENT RATES ON THIS HOUSING LOAN MAY  
BE ADJUSTED BY THE LENDER FROM TIME TO TIME”**

**Condition 14** of the **Standard Mortgage General Terms and Conditions** attaching to the **Loan Offer Letter** dated **27 August 2008** contains the same text as **Condition 14** of the **Standard Mortgage General Terms and Conditions** attaching to the **Loan Offer Letter** dated **24 June 2008** as detailed above. For the sake of brevity, I will not repeat the text here.

The Provider has not submitted the signed **Loan Acceptance** attaching to the **Loan Offer Letter** dated **27 August 2008** into evidence which is disappointing. However, on the basis of the Provider’s evidence, it does not appear the Loan Acceptance was signed at the time. The **Mortgage Transaction Summary** provided in evidence shows that the Complainant’s mortgage loan account ending **9835** was drawn down on **12 September 2008** on a fixed interest rate.

The **Loan Offer Letter** dated **27 August 2008** envisaged that a 5-year fixed interest rate of 6.27% would apply to the Complainant’s mortgage loan account until **31 August 2013**. **Condition 14 (c)** of the **Standard Mortgage General Terms and Conditions** attaching to the **Loan Offer Letter** dated **27 August 2008** provides that, on the expiry of the fixed interest rate period on the Complainant’s mortgage loan account, a variable interest rate would apply, or a further fixed rate if it was made available by the Provider and selected by the

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Complainant. The nature of the variable interest rate set out in **Condition 14 (c)** was one which could be increased or decreased by the Provider at any time. **Condition 14 (c)** does not stipulate that a tracker interest rate will apply to the Complainant's mortgage loan at any stage.

The Complainant submits that she was "*misadvised*" by the Provider as to the availability of tracker interest rates in **2008** and as a result was unable to draw down her mortgage loan on a tracker interest rate. I have not been provided with any evidence as to any interactions, either verbal or written, between the Provider's mortgage advisor and the Complainant wherein the Provider's mortgage advisor purportedly advised the Complainant that "*a tracker mortgage was not available to [her]*". Although tracker interest rates were on offer generally by the Provider as part of its suite of products when the Complainant applied for the mortgage loan in **May 2008**, there was no contractual or regulatory obligation on the part of the Provider to offer the Complainant a tracker interest rate on the loan at that time. It was entirely a matter for the Complainant to decide which interest rate best suited her needs and circumstances.

I note that the **Mortgage Suitability Statement** outlined the types of interest rate options available generally on mortgage loans, including a tracker rate. If the Complainant wished to seek a tracker interest rate on the mortgage loan at the time, the Complainant could have selected this option on the **Mortgage Suitability Statement**. However, the Complainant chose the fixed interest rate option for the loan.

It is important to also note that the mortgage advisor was a person employed by the Provider and selling the Provider's mortgage products. In the circumstances there was no reason for the Complainant to expect that any advice given to her by the Provider was independent. If the Complainant wanted independent advice about interest rates available in the market in **2008**, the Complainant could only get that advice from an independent third-party advisor. It is difficult to understand how it would have been of benefit to the Provider's representative to seek to discourage the Complainant from applying for a tracker rate of interest, if that is what the Complainant wanted.

The evidence shows that the Complainant applied for a 5-year fixed interest rate mortgage loan with the Provider and the Provider subsequently issued a **Loan Offer Letter** dated **24 June 2008** offering a 5- year fixed interest rate of 5.04% to the Complainant followed by a revised Loan Offer Letter dated **27 August 2008** offering a 5-year fixed interest rate of 6.27%, as the previous fixed interest rate was no longer available from the Provider. The Complainant subsequently drew down mortgage loan account ending **9835** on **12 September 2008** on a fixed interest rate of 6.27%. If the Complainant was not satisfied with the type of interest rate offered to her in **2008**, the Complainant could have sought an alternative interest rate from the Provider before drawing down the loan or indeed

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with another mortgage provider. However, the Complainant did not do so and decided to draw down her mortgage loan on a fixed interest rate.

The Complainant also submits that the Provider “*misadvised*” her regarding variations to the original fixed interest rate contained in the **Loan Offer Letter** dated **24 June 2008**. The **Specific Loan Offer Conditions** contained in the **Loan Offer Letter** dated **24 June 2008** detail that the fixed interest rate quoted in the **Loan Offer Letter** “*shall be subject to variation prior to drawdown in accordance with any variations in the fixed rate offered by the Company*”. It appears from the evidence that in the intervening period between when the **Loan Offer Letter** dated **24 June 2008** issued and when the Complainant drew down her mortgage loan on **12 September 2008**, the 5-year fixed interest rate product of 5.04% was no longer available from the Provider. Instead, a 5-year fixed interest rate of 6.27% was available from **27 August 2008**.

Following an internal review of the Complainant’s mortgage loan account as part of one of the Provider’s remediation programmes, the Provider acknowledged that the Complainant may not have been fully informed as to the change in interest rate prior to drawing down her mortgage loan. The Provider therefore considered the Complainant’s mortgage loan account to be on a higher interest rate (6.27% as opposed to 5.04%) during the overcharge period from the date of draw down on **12 September 2008** to the expiry of the 5-year fixed interest rate period on **30 August 2013**. Consequently, the Provider made an offer of redress and compensation to the Complainant by way of letter dated **16 July 2019** which details as follows:

*“We are writing to let you know it has been identified that you were overcharged on your mortgage account.*

...

***How did this happen?***

*When you received your loan offer the document quoted a specific interest rate. Prior to the mortgage commencing, the interest rate changed and you may not have been fully informed at that time.”*

The Provider summarised its redress and compensation offering as follows:

<i>Refund and Compensation Summary</i>	
<i>Payment</i>	€
<i>1) Refund payment</i>	<i>16,420.85</i>

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2) Compensation payment	4,876.56
Payment Total	21,297.41

The refund payment of €16,420.85 represented the difference between the amount that the Complainant repaid when the interest rate applied to her mortgage loan was 6.27% compared to what she would have paid if the original interest rate of 5.04% had been applied to her mortgage loan. The Provider also made a compensation payment of €4,876.56 to compensate the Complainant for the time the overcharged money was not available to her. Following a consideration of the mortgage loan documentation and the redress and compensation already paid to the Complainant, this Office is of the view that the refund and compensation payment of €21,297.41 was a satisfactory attempt by the Provider to resolve this aspect of the complaint in relation to the inadequacy of the information provided to the Complainant in relation to variations to the fixed interest rate prior to the commencement of her mortgage in **September 2008**.

Prior to the expiry of the fixed interest rate period in **2013**, the Provider issued a Product Expiry Letter dated **12 August 2013** to the Complainant noting that the fixed interest rate would default to the Provider's standard variable interest rate of 4.50% unless the Complainant selected an alternative interest rate. The alternative interest rates on offer at the time included a range of fixed interest rates or discounted variable interest rates. I am satisfied that the interest rates offered to the Complainant on the expiry of the initial 5-year fixed interest rate period were in line with the **Condition 14 (c)** of the **Standard Mortgage General Terms and Conditions**. The Complainant was not offered a tracker interest rate on the expiry of the fixed interest rate period because the Complainant had no contractual entitlement to a tracker interest rate at the inception of the loan or at any stage during the term of the loan.

I note however that there is a reference to "*Tracker Mortgage*" in the second paragraph of the **Loan Acceptance** pertaining to the **Loan Offer Letter** dated **24 June 2008**, which was signed by the Complainant on **27 June 2008**. This appears to be an error on the part of the Provider as the sentence that contains this erroneous reference to "*Tracker Mortgage*" is in relation to potential outstanding debt being secured on the property which was the subject of the mortgage loan and confirming that the Complainant understood this had to be repaid before the deeds of the property could be released and returned. Whilst this error on the part of the Provider is entirely unsatisfactory, I am satisfied that the particulars of the **Loan Offer Letter** dated **24 June 2008** and the revised **Loan Offer Letter** dated **27 August 2008** are sufficiently clear as to the type of mortgage offered to the

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Complainant and confirm that the Complainant was offered a mortgage loan on a fixed interest rate as opposed to a tracker interest rate.

There is no other mention of “*Tracker Mortgage*” in either Loan Offer Letters apart from **Condition 14 (b)** of the **Provider’s Standard Mortgage General Terms & Conditions**, as outlined above.

However, I am of the view that **Condition 14(b)** did not apply to the Complainant’s mortgage loan given the interest rate applicable was a fixed interest rate as opposed to a tracker interest rate. If the Complainant’s mortgage loan was a tracker mortgage, then I would expect the particulars of the Loan Offer Letter and Specific Loan Offer Conditions to contain details of the loan to value applicable to the tracker interest rate, in accordance with **Condition 14(b)**, however, there is no reference to a fixed rate margin or an ECB rate in the Complainant’s mortgage loan documentation.

However, while I am of the view that there was no contractual entitlement to a tracker interest rate on the Complainant’s mortgage loan account, I am also of the view that the information provided to the Complainant’s mortgage loan documentation was somewhat confusing.

The standards expected of the Provider in all its dealings with the Complainant are set out in **Chapter 1** of the **Consumer Protection Code 2006**, which came into force on **1 August 2006**, and provides that:

*“A regulated entity must ensure that in all its dealings with customers and within the context of its authorisation it acts with due skill, care and diligence in the best interests of its customers”*

I am of the view that the Provider did not act with due skill, care and diligence in its dealings with the Complainant. Whilst I accept that “*typographical*” errors can occur and in this circumstance that error did not affect the Complainant’s underlying contractual entitlements, I am of the view that the Provider should have been proactive and brought this typographical error to the Complainant’s attention.

I note that by way of letter dated **14 May 2021** addressed to the Complainant, the Provider offered the Complainant a goodwill payment of €1,250.00 with a view to resolving their complaint and noted that the offer “*remains open to [the Complainant] to accept at any time up until the FSPO makes a final decision on [her] complaint*”. A copy of this letter was furnished to the Complainant, and she responded by way of email on **17 May 2021** detailing that she “*would like to politely decline this offer from [the Provider] and leave the decision with [this office]*”. By way of letter to this Office dated **26 May 2021**, the Provider

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clarified to this Office that the goodwill offer “remains open to the customer to accept at any time, and it remains open should the Ombudsman wish to take it into consideration in terms of reaching a decision on the complaint”. A copy of this letter was furnished to the Complainant.

After the Preliminary Decision issued, the Complainant wrote to this Office and requested the Provider to “honour the gesture of the goodwill offer of €1250 dated 14<sup>th</sup> May 2021 & May 26<sup>th</sup> 2021”.

In light of all the foregoing, I consider the Provider’s offer of €1,250.00 to be a reasonable attempt to resolve this complaint in the context of its error and therefore 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**

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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.