



<b><u>Decision Ref:</u></b>	2022-0233
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Tracker Mortgage
<b><u>Conduct(s) complained of:</u></b>	Failure to offer a tracker rate throughout the life of the mortgage
<b><u>Outcome:</u></b>	Rejected

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

This complaint relates to a mortgage loan account held by the Complainants with the Provider. The mortgage loan that is the subject of this complaint is secured on the Complainants' principal private residence.

The loan amount was €190,460.00 and the term of the loan was for 24 years. The **Letter of Offer** dated **18 July 2008** outlined that the "Loan Type" was a "Variable Interest Only" loan for the first year and a "Variable Annuity" for the remainder of the term of the loan. The interest rate applicable to the loan was a staff preferential home loan rate of 3%.

**The Complainants' Case**

The Complainants state that the First Complainant was an employee of the Provider.

The Complainants submit that they drew down mortgage loan account ending **8542** in **July 2008** on a tracker interest rate of ECB + 0.60%. The Complainants note that this mortgage loan account is not subject of this complaint. The Complainants outline that they requested to move a portion of mortgage loan account ending **8542** to the Provider's staff preferential variable interest rate of 3% in **September 2008**.

The Complainants detail that in **October 2008**, a sum of €190,460.00 was debited from mortgage loan account ending **8542**, and mortgage loan account ending **8112** was drawn down on the staff preferential variable interest rate of 3%. The Complainants note that mortgage loan account ending **8112** is the subject of this complaint.

The Complainants detail that in **December 2008**, the First Complainant sent an internal email to a representative of the Provider seeking advice on moving mortgage loan account ending **8112** from the staff preferential variable interest rate to a tracker interest rate. The Complainants detail that they were informed that they could not move to a tracker rate of interest and were only given the option of a variable interest rate. The Complainants contend that the Provider had a “*duty of care*” to provide them with all of their options “*as stated in the contract.*”

The Complainants submit that mortgage loan account ending **8112** was “*unilaterally moved onto the variable rate despite the fact that [they] asked for it to be put back onto the tracker as per the remainder of the mortgage*”.

The Complainants are seeking the following:

- a) a tracker interest rate to be applied to mortgage loan account ending **8112**;
- b) repayment of monies paid as a result of not being on a tracker rate of interest; and
- c) compensation for the hardship suffered.

### **The Provider’s Case**

The Provider submits that the Complainants submitted an application on **26 March 2007**, “*seeking mortgage loan finance to assist with the self-build of their new main residence*”. The Provider explains that staff customers could borrow up to a maximum amount of €190,460.00 on the staff preferential variable rate of interest, with a fixed, variable or tracker interest rate to apply to the balance of the loan.

The Provider notes that the Complainants’ mortgage loan application was approved for an amount of €630,000.00. The Provider states that it issued two **Letters of Offer** to the Complainants on **12 May 2007**, one for the sum of €190,460.00 on the staff preferential variable interest rate and another for the balance of €439,540.00 on a tracker interest rate of 4.65% (ECB 3.75% plus a margin of 0.9%, with a discounted margin of 0.6% for the first year). The Provider details that in circumstances where the Complainants did not proceed with the self-build, the funds were not drawn down pursuant to those Letters of Offer.

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The Provider submits that the Complainants submitted a further mortgage loan application on **18 September 2007** seeking mortgage loan finance in the sum of €800,000.00 to fund the self-build of a new private dwelling house. The Provider notes that the Complainants did not select their preferred choice of interest rate on the application form.

The Provider states that it subsequently issued two **Letters of Offer** to the Complainants on **10 October 2007**. The Provider details that the **Letter of Offer** pertaining to mortgage loan account ending **8542** provided for a loan amount of €609,540.00 on a tracker interest rate for a term of 24 years. The Provider notes that mortgage loan account ending **8542** commenced on interest only repayments for the first year of the term of the loan.

The Provider submits that the other **Letter of Offer** for mortgage loan account ending **8812** provided for a loan amount of €190,460.00 on a staff preferential variable home loan interest rate of 3% for a term of 24 years with the first year being a period of interest only repayments.

The Provider submits that the Complainants accepted and signed both **Letters of Offer** on **21 November 2007**. The Provider notes that mortgage loan account ending **8542** was drawn down on **20 February 2008** on a 1-year discounted tracker rate of interest of ECB 4% plus a margin of 0.45%.

The Provider details that in circumstances where the Complainants already had a mortgage loan account with the Provider that was on a staff preferential rate at the time, the Complainants could not draw down the staff preferential rate portion of the new mortgage loan until the existing mortgage loan account was closed. The Provider states that the Complainants contacted the Provider on **03 July 2008**, "*requesting for the Mortgage Loan amount to be increased by €400,000 to €1,200,000 in total*". The Provider outlines that it responded the same day, advising that it would "*set up the application with the proposal*". The Provider submits that, on **15 July 2008**, it informed the Complainants that the additional amount requested had been sanctioned. The Provider details that it issued two new **Letters of Offer** to the Complainants on **18 July 2008**. The Provider states that the Complainants accepted and signed the new **Letters of Offer** dated **18 July 2008** on **10 December 2008**.

The Provider submits that the Complainants closed their existing mortgage loan account that was on a staff preferential interest rate on **30 September 2008** therefore they were able to draw down the new mortgage loan on a staff preferential interest rate on **03 October 2008**. The Provider notes that a loan amount of €190,460.00 was advanced to the Complainants in respect of mortgage loan account ending **8112** on the staff preferential variable interest rate of 3%, as set out in the Letter of Offer dated **18 July 2008**.

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In **December 2008**, the Provider explains that the Complainants requested to convert mortgage loan account ending **8112** from a staff preferential interest rate to an alternative rate of interest. The Provider submits that it informed the Complainants that the only available interest rates were either fixed or variable rates of interest.

The Provider states that in circumstances where it had withdrawn tracker interest rates from the market by **December 2008**, a tracker interest rate option was no longer available for customers.

The Provider submits that the staff preferential variable interest rate *“did not have a pre-determined term”* but rather staff customers could benefit from the rate so long as they remained employed by the Provider. The Provider relies on the **Special Conditions** of the Letter of Offer in relation to mortgage loan account ending **8112** which provides that following the resignation or dismissal of the First Complainant, the Provider’s variable interest rate would apply.

The Provider explains that the staff preferential interest rate is *“ultimately a Variable interest rate product and, therefore, was not applied”* to the Complainants’ mortgage loan account ending **8112** for a defined period of time, unlike a fixed interest rate. The Provider details that the Complainants could switch from the staff preferential interest rate *“to any other available interest rate product at any time without incurring a penalty”*.

The Provider maintains that it was under *“no contractual obligation”* to offer the Complainants a tracker interest rate in respect of mortgage loan account ending **8112** if the staff preferential interest rate *“was no longer a more favourable rate for staff customers”*. The Provider notes that it was open to the Complainants to apply for a tracker rate of interest on mortgage loan account ending **8112** at any time up until **late-2008**, when the Provider withdrew tracker products from the market.

The Provider outlines that it issued a letter to staff customers on **16 January 2009** to inform staff customers that the Provider’s standard variable rate of interest of 3.25% was lower than the staff preferential interest rate and therefore a *“switch”* to the standard variable rate would occur at the end of **January 2009**. The Provider submits that this letter *“clearly stated”* that if staff customers wished to opt out of the *“switch”*, they needed to send a written instruction to the Provider by **26 January 2009**. The Provider states that in circumstances where it did not receive an instruction from the Complainants, mortgage loan account ending **8112** was converted to a standard variable rate of interest on **29 January 2009**.

The Provider notes that the staff preferential rate period did not come to an end in **January 2009**, rather staff customers who were on the staff preferential rate of interest “*were transferred to a more favourable*” standard variable rate, “*while retaining the right to switch back*” to the staff preferential rate at any time, provided they remained an employee of the Provider.

The Provider submits that it “*refutes the assertion*” that the Complainants’ **Letter of Offer** for mortgage loan account ending **8112** provided the Complainants with the option of moving to a tracker interest rate. The Provider states that it is satisfied that the mortgage loan documentation pertaining to the Complainants’ mortgage loan account ending **8112** is clear in terms of the Complainants’ interest rate entitlements

### **The Complaint for Adjudication**

The complaint is that the Provider incorrectly failed to convert mortgage loan account ending **8112** to a tracker interest rate when the Complainants made a request to do so in or around **December 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 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 22 June 2022, outlining the preliminary determination of this office in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

In the absence of additional submissions from the parties, within the period permitted, the final determination of this office is set out below.

In order to determine this complaint, it is necessary to set out and review the relevant provisions of the Complainants' mortgage loan documentation. It is also necessary to consider details of certain interactions between the Complainants and the Provider between **2007** and **2009**.

The evidence shows that the Complainants submitted a mortgage loan application together with a written proposal dated **18 September 2007** seeking mortgage loan finance in the sum of €800,000.00 to assist with a new self-build project.

The mortgage loan application form listed variable, tracker, fixed and preferential interest rate options however the Complainants did not specify a preferred interest rate. The Provider subsequently issued two **Letters of Offer** dated **10 October 2007** to the Complainants.

The first **Letter of Offer** dated **10 October 2007** relates to mortgage loan account ending **8542** which provided for a loan in the amount of €609,540.00 for a term of 25 years, commencing on a discounted tracker interest rate of ECB + 0.45% for the first year of the term of the loan, with a tracker interest rate of ECB + 0.75% to apply for the remainder of the term of the loan. This **Letter of Offer** was accepted and signed by the Complainants on **21 November 2007** and a portion of the loan (€466,072.97) drew down on **20 February 2008** on a 1-year discounted tracker interest rate of 4.45% under mortgage loan account ending **8542**.

The second **Letter of Offer** dated **10 October 2007** provided for a loan in the amount of €190,460.00 on a staff preferential interest rate of 3%. This **Letter of Offer** was accepted and signed by the Complainants on **21 November 2007**. However, the evidence shows that the mortgage loan was not drawn down in circumstances where the Complainants were already availing of a staff preferential interest rate on another mortgage loan in respect of their then existing private dwelling house.

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The Complainants were therefore informed by the Provider that they were required to redeem the mortgage loan in respect of their existing private dwelling house before drawing down the new loan in the amount of €190,460.00.

I have been provided with correspondence detailing certain interactions between the Complainants and the Provider in **July 2008** and **August 2008**. The evidence shows that the Complainants contacted the Provider on **03 July 2008** requesting that the total amount of finance be increased from €800,000.00 to €1,200,000.00. The Provider agreed to sanction the additional amount sought on **15 July 2008** and informed the Complainants that a tracker interest rate of 5.15% would apply. The First Complainant contacted the Provider by way of email on **16 July 2008** noting that the Complainants “*were not willing to put the entire amount on the new rate*” and suggested that they should be on a lower tracker rate of 4.75% given the loan to value ratio of the mortgage. I note that the Provider responded to the Complainants on **17 July 2008**, confirming that the “*overall rate on [their] mortgage will have a margin of .6% bringing it in line with existing funds*” that had been drawn down.

The Provider issued two new **Letters of Offer** on **18 July 2008** to reflect the new amount of the mortgage loans. The first **Letter of Offer**, which governs mortgage loan account ending **8542**, provides for a loan sum of €1,009,540.00 on a tracker interest rate of ECB plus a margin of 0.6%. The **Letter of Offer** on **18 July 2008** in relation to mortgage loan account ending **8542** was signed by the Complainants on **10 December 2008**.

The **Letter of Offer** dated **18 July 2008** in relation to mortgage loan account ending **8112** details as follows:

“ ...

*I am pleased to offer you a supplemental mortgage loan of the principal sum specified in Part 1 attached....*

**IMPORTANT INFORMATION AS AT 18 July 2008**

- |                                    |                                     |
|------------------------------------|-------------------------------------|
| 1. Amount of Credit Advanced       | €190,460.00                         |
| 2. Type of Loan                    | Interest Only                       |
| 3. Period of Agreement             | 24 years/ 288 months                |
| 4. Number of Repayment Instalments | 288                                 |
| 5. Amount of Each Instalment       | (1) 12@ €476.55<br>(2) 276@ €955.68 |

...

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**LEGAL ADVICE SHOULD BE TAKEN BEFORE THIS DOCUMENT IS SIGNED."**

**Part 1 - Particulars of Offer of Mortgage Loan** details as follows:

	<i>Term</i>	<i>Loan Type</i>	<i>Interest Rate Description</i>	<i>Rate</i>	<i>Margin</i>	<i>Net Rate</i>	<i>Amount of Each Instalment</i>
1	1 Year	Variable Interest Only	STAFF PREF HOME LOAN INT ONLY	3%	0%	3%	€476.55
2	23 Years	Variable Annuity	STAFF PREF HOME LOAN ANNUITY	3%	0%	3%	€955.68

The relevant sections of the **Special Conditions** detail as follows:

*"The existing Home Loan, account [number], must be cleared in full on drawdown of the facility now approved. (If the existing loan is on a fixed rate of interest a Breakage cost may occur).*

...

*The repayments quoted in this Letter of Offer are interest only for 12 months after which they will revert to principal and interest repayments.*

*In respect of a Staff Mortgage on a Preferential Rate the following conditions will apply:*

*While the customer (or, if the Offer is addressed to more than one person, all of them) remains in the service of the Bank, a Staff Preferential Fixed Home Loan interest rate of 3% will apply to the Mortgage Loan.*

...

*Interest from the date of resignation or dismissal will be charged on the Mortgage Loan at the Bank's advertised variable Home Mortgage loan rate applicable from time to time."*

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The relevant sections of **General Terms and Conditions Governing Supplemental Home Mortgage Loans** attaching to the **Letter of Offer** detail as follows:

*"3 INTEREST RATES*

...

**3.2 FURTHER FIXED INTEREST RATE OPTIONS/CHOICE**

*At the end of any fixed interest rate period, the Customer may choose between:*

- (a) a further Fixed Interest Rate period, or*
  - (b) conversion to a Variable Interest Rate Supplemental Loan, or*
  - (c) conversion to a Tracker Interest Rate Supplemental Loan,*
- at the Bank's then prevailing rates appropriate to the Supplemental Loan. If the Customer does not exercise this choice, then the Supplemental Loan will automatically convert to a Variable Interest Rate Supplemental Loan.*

...

**3.4 FIXED INTEREST RATE SUPPLEMENTAL LOAN**

*In the case of a fixed interest rate Supplemental loan, the interest rate is the rate which prevails at the date of drawdown, and will be fixed for the period of time stated in the Particulars of the Letter of offer subject to these Terms and Conditions.*

**3.5 VARIABLE INTEREST RATE SUPPLEMENTAL LOAN**

*In the case of a Variable Interest Rate Supplemental Loan the interest rate applicable, at any time, will vary according to the prevailing rates set generally by the Bank from time to time, subject to the Terms and Conditions hereof and the provisions of the Letter of Offer."*

**Part 5 - Statutory Notices and Other Notices** details as follows:

**"WARNING**

...

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

*(Note: This will not apply during any Fixed Rate interest Period/s)"*

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The **Acceptance and Consent** section of the **Letter of Offer** dated **18 July 2008** was signed by the Complainants and witnessed by their solicitor on **10 December 2008**, on the following terms:

*"I/we accept the terms and conditions of this Supplemental Mortgage Loan Offer including the General Terms and Conditions applicable to the Supplemental Home Mortgage Loans which I/we have read through fully and agree and accept.*

*I/We agree that the Lender's Mortgage over the Property described in the Particulars shall secure the Supplemental Loan in conjunction with my/our existing loan (or loans) from the Lenders and/or other obligations which are secured or purported to be secured thereby.*

...

*I/we confirm that I/we have been advised by the Lenders to obtain independent legal advice.*

...

*I/We hereby confirm, that I/we have read the within Terms and Conditions attaching to this Letter of Offer, and acknowledge that I/we have received a copy thereof."*

It is clear to me that the **Letter of Offer** dated **18 July 2008** in relation to mortgage loan account ending **8112** provided for a staff preferential variable interest rate of 3.00% with interest only repayments to apply for the first year of the loan.

The **Letter of Offer** dated **18 July 2008** envisaged that the staff preferential interest rate would apply for the term of the mortgage loan while the First Complainant remained in the employment of the Provider.

The mortgage loan account statements in relation to mortgage loan account ending **8112** show that the mortgage loan account was drawn down on **03 October 2008** on an interest rate of 3.00%. The special conditions stipulated that an existing loan had to be cleared in full on drawdown of the facility. The other mortgage loan account was closed on **30 September 2008** and mortgage loan account ending **8112** was subsequently drawn down on **03 October 2008**.

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The First Complainant emailed the Provider on **04 December 2008**, stating as follows:

*"...I have €190K on the 3% staff rate and I'm paying hefty BIK should I go on the commercial rate and no longer have Bik – your advice would be appreciated – also who do I now advise to stop BIK..."*

The Provider responded to the above email on **04 December 2008**, stating as follows:

*"... If you come off the 3% the only rate available is fixed or variable – no decision has been made on whether proposed ECB interest rate reductions are to be passed onto the variable rate at this stage but should they reduce it would be beneficial to switch to the variable rate, thus removing any BIK liability."*

The Provider subsequently issued an email to staff customers who were availing of the staff preferential mortgage rate on **19 December 2008**, which states as follows:

*"Reduction in Benefit in Kind Reference Rate and Impact on Staff Mortgage Loans*

*The Benefit in Kind (BIK) reference rate will reduce to 5% with effect from 1<sup>st</sup> January 2009.*

*This means that with effect from 1<sup>st</sup> January 2009 the:  
Net rate for staff on the higher rate of Income Tax will be – 3.86%  
Net rate for staff on the lower rate of Income Tax will be – 3.52%*

*This compares to the Bank's Standard Variable Rate for Owner Occupiers of 3.75% (effective 16th December 2008).*

*As a result, the Staff Preferential Mortgage Rate of 3% is no longer a better rate for staff on the HIGHER RATE of Income Tax.*

*...*

*At the end of January, Staff Business will carry out a switch of ALL Preferential Rate Staff Home Loans for staff on the Higher Rate of Income Tax, to the Bank's Standard Variable Rate. Staff will also retain the option to remain on their Preferential Rate Staff Home Loan.*

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*Every staff member holding a Preferential rate Mortgage Loan will be written to at the start of January in order to:*

- 1. outline the details of the switch and any actions required by staff members,*
  - 2. advise what other interest rates are available,*
  - 3. confirm that where they opt to switch their Preferential Rate Staff Home Loan, that BIK will cease to accrue, and*
  - 4. that Tax Relief at Source (TRS) will continue to apply to eligible accounts.*
- ..."*

While the staff preferential interest rate of 3% was to apply for the term of the loan while the First Complainant remained in the employment of the Provider, the Provider submits that when the Provider's standard variable interest rate for private dwelling house mortgage loans became lower than the staff preferential interest rate, the Provider carried out a "switch" so that staff customers who were availing of the staff preferential rate benefitted from the lower standard variable interest rate. Having considered the evidence before me, it appears to me that this "switch" occurred on the Complainants' mortgage loan account ending **8112 in January 2009**. This was following the Government's budgetary changes which had an impact on benefit-in-kind. In this regard, the Provider issued a letter to the Complainants dated **16 January 2009** which details as follows:

*"Dear Colleague,*

*With effect from 1<sup>st</sup> January 2009, the Benefit in Kind (BIK) reference rate reduced to 5%.*

*For staff with a Preferential Rate Mortgage Loan, this means that the net rate payable is:*

<i>Higher Rate of Income Tax (41%)</i>	<b><i>3.86%</i></b>
<i>Lower Rate of Income Tax (20%)</i>	<b><i>3.52%</i></b>

**Note:** *The above figures excludes PRSI and the new Income Levy.*

*This compares to the Bank's Standard Variable Rate for Owner Occupiers of 3.25% (APR 3.3%) (effective close of business 27<sup>th</sup> January) and means that the Staff Preferential Mortgage Rate of 3% (APR 3.05%) with the addition of BIK is no longer a more favourable rate for staff.*

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*Staff Business commits to ensure that Staff are not at a disadvantage by availing of the Staff Preferential Mortgage Rate and as a result Staff Business will carry out a switch of ALL Staff Preferential Rate Staff Mortgage Loans to the Bank's Standard Variable Rate for Owner Occupiers on 30<sup>th</sup> January 2009.*

*You have the following options:*

<i>Option</i>	<i>Action Required</i>
<i>You wish to switch your Staff Preferential Home Loan to the Bank's Staff Variable Rate*</i>	<i>NO ACTION IS REQUIRED</i>
<i>You wish to remain on the Staff Preferential Mortgage Rate (i.e. Opt out of the switch)</i>	<i>You will need to confirm in writing that you want to opt out of the Switch and send to Staff Business by 26th January 2009, co signed by any guarantor or co-owner</i>
<i>You wish to switch to a Fixed Rate (current rates detailed overleaf) Instead of the Bank's Standard Variable Rate</i>	<i>You will need to confirm in writing that you want to opt out of the Switch and send to Staff Business by 26th January 2009, co signed by any guarantor or co-owner</i>

*Once your Staff Preferential Rate Mortgage is switched to any of the Bank's commercial rates, Benefit in Kind (BIK) will automatically cease to be applied. As BIK is posted monthly in arrears, the BIK due up to the date of conversion will be applied as normal in your February salary. After this time no BIK will be applied unless you have opted to remain on the Staff Preferential Mortgage Rate.  
..."*

The letter dated **16 January 2009** also included a **"Questions and Answers"** information sheet which details as follows:

*"  
..."*

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<b>Questions &amp; Answers on Switch of Preferential Mortgage Accounts</b>		
<i>No</i>	<i>Question</i>	<i>Answer</i>
...	...	...
...	...	...
3.	<i>Can I switch funds to my existing Tracker Mortgage?</i>	<i>Tracker mortgages were withdrawn on [Redacted] 2008 and balances <b>cannot</b> be topped up.</i>
...	...	...
...	...	...
6.	<i>What happens when rates change?</i>	<i>Changes in the Bank's Standard Variable Rate will be passed onto Staff Mortgage Loans where you have opted to switch from the Staff Preferential Mortgage Rate. Note: Staff Business commits to switch eligible accounts back to the Staff Preferential Mortgage Rate if rates increase or BIK reference rates decrease making the Staff Rate more beneficial.</i>
...	...	...
...	...	...
...	...	...
10	<i>Can I switch back to preferential rate at any time?</i>	<i>Yes – you will need to request this in writing, co signed by co-owner or guarantor</i>
...	...	...
...	...	...
...	...	...

...”



The letter dated **16 January 2009** also listed the fixed interest rate options that were available from the Provider at that time as follows:

<b>Table of Owner Occupiers Mortgage Interest Rates (as at 15<sup>th</sup> January 2009)</b>		
<i>Rate Category</i>	<i>Rate for Owner Occupier</i>	<i>APR over 20 years</i>
...	...	...
<b>Fixed rates (as at 18<sup>th</sup> December 2008)</b>		
<i>1 year existing customer</i>	<i>4.00%</i>	<i>3.84%</i>
<i>2 year</i>	<i>3.55%</i>	<i>3.77%</i>
<i>3 year</i>	<i>3.9%</i>	<i>3.86%</i>
<i>4 year</i>	<i>4.10%</i>	<i>3.95%</i>
<i>5 year</i>	<i>4.20%</i>	<i>4.03%</i>
<i>10 year</i>	<i>4.75%</i>	<i>4.62%</i>

I note from the **mortgage account statements** that the Provider's standard variable interest rate of 3.25% was applied to mortgage loan account ending **8112** on **29 January 2009**. There is no evidence to suggest that the Complainants instructed the Provider that they wished to opt out of the "switch" by choosing to remain on the staff preferential interest rate or by choosing to switch to one of the fixed interest rates on offer by the Provider at the time.

The Complainants submit that mortgage loan account ending **8112** was moved onto the Provider's standard variable interest rate "*despite the fact that [they] asked for it to be put back onto the tracker as per the remainder of the mortgage*". The Complainants appear to be of the view that mortgage loan account ending **8112** was transferred from a tracker interest rate to a staff preferential interest rate and then to the Provider's standard variable interest rate in **2008**. It is important to note however that mortgage loan account ending **8112** is a separate and distinct loan facility to mortgage loan account ending **8542**. Mortgage loan account ending **8542** was drawn down on a tracker interest rate while mortgage loan account ending **8112** was drawn down on a staff preferential rate of interest. While both mortgage loans are secured against the same property, each mortgage loan facility is governed by the terms and conditions applicable to that individual loan. The fact that both mortgage loan accounts were secured on the same property does not entitle the Complainants to the same interest rate on both mortgage loan accounts.

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Mortgage loan account ending **8112** was never on a tracker rate of interest. In order for the Complainants to have a contractual right to a tracker interest rate, that right would need to have been specifically outlined in the mortgage loan documentation that was agreed by the parties. However, no such right was set out in writing in the **Letter of Offer** dated **18 July 2008** in relation to mortgage loan account ending **8112**.

Therefore, I am satisfied that the Provider was under no obligation to apply a tracker interest rate to mortgage loan account ending **8112** in **2008**.

For the reasons set out 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**

18 July 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.