



<u>Decision Ref:</u>	2022-0273
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Tracker Mortgage
<u>Conduct(s) complained of:</u>	Failure to offer a tracker rate throughout the life of the mortgage
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

This complaint relates to two of three mortgage loan sub-accounts held by the Complainants with the Provider. The mortgage loans were secured on three of the Complainants' residential investment properties.

1. The **Loan Offer** in respect of mortgage loan account ending **9233 (01)** was not provided in evidence by the Provider however the loan amount was for €133,263.73, and the loan was drawn down on a standard variable rate of interest in **2001**.
2. The **Loan Offer** in respect of mortgage loan sub-accounts ending **9246 (01) and (02)** was signed and accepted by the Complainants on **8 July 2002**. The loan was divided into two facilities comprising Facility A in the sum of **€100,000** and Facility B in the sum of **€250,000**, repayable over a term of 15 years and 12 years, respectively. The interest rate applicable to the loan was a discounted variable interest rate for 24 months with the appropriate Buy-to-Let variable interest rate to apply thereafter. Mortgage loan sub-account ending **9246 (01)** is not the subject of this complaint.

The Complainants' Case

The Complainants submit that they met with a representative of the Provider in **January/February 2007** and enquired whether a tracker interest rate would be available to them at the end of a 2-year fixed interest rate period. The Complainants state that the *“answer to this was ‘yes’”*.

The Complainants outline that following the discussion with the representative of the Provider, they *“decided to opt for a fixed rate for 2 years on two of the accounts and to take the Tracker rate on the third account”* and *“this was on the understanding that [they] could transfer to a Tracker Rate when the fixed period elapsed unless [they] opted for a further fixed rate on the expiration of the 2 years Fixed rate”*.

The Complainants submit that on expiry of the 2-year fixed interest rate period, one of their mortgage loan accounts (mortgage loan sub-account ending **9246(01)**) was transferred to a tracker interest rate but *“nothing was done about the other 2 accounts”*. The Complainants submit that they signed Letters of Authority in relation to two of the mortgage loan accounts on **04 February 2007**, however, the Complainants note that the Provider maintains that it only received the Letters of Authority on **02 April 2007**. The Complainants contend that they *“don’t know how [the Provider] would have received them almost 2 months later, particularly as [the Provider] must have had the correct documentation for the Tracker rate on the other account which was correctly put in place”*.

In relation to the Provider’s assertion that it wrote to the Complainants on **11 April 2007**, informing them that the Letters of Authority were out of date and the instructions could therefore not be implemented, the Complainants maintain that they have no record of having received this letter.

The Complainants submit that they recall meeting with a representative of the Provider *“sometime subsequent”* requesting that the Provider’s representative *“ensure that [they] were put on”* a tracker rate of interest, however the Provider’s representative informed them that *“there was nothing he could do”*.

The Complainants contend that they have *“been wrongly denied (a) Fixed rate for 2 years & (b) Tracker rate following that 2 year period”*. The Complainants assert that they should have obtained a tracker interest rate of ECB plus a margin of 1.15%, following the 2-year fixed interest rate period on two of their mortgage loan accounts.

The Complainants are seeking the following:

- (a) A tracker interest rate of ECB + 1.15% to be applied to their mortgage loan accounts ending **9246(02)** and **9233(01)**;

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(b) A full refund of any interest overcharged; and

(c) Redress and compensation.

The Provider's Case

The Provider submits that despite extensive searches, it is unable to locate a copy of the Loan Offer letter in respect of mortgage loan sub-account ending **9233(01)**. The Provider outlines that its records confirm that mortgage loan sub-account ending **9233(01)** drew down in **2001** on a standard variable interest rate and there was no contractual entitlement to have a tracker interest rate applied to this mortgage loan sub-account.

The Provider outlines that the Complainants' mortgage loan account ending **9246(01)** drew down in **July 2002** on a discounted standard variable interest rate. The Provider details that the Complainants' mortgage loan account ending **9246(02)** drew down in **December 2002** "*on a discounted variable interest rate of -0.50%*" which later defaulted to a standard variable interest rate.

The Provider submits that the Complainants signed a Transfer Authority Form to change the interest rate in respect of mortgage loan sub-account ending **9246(01)** from a standard variable interest rate to a tracker interest rate on **25 January 2007**. The Provider explains that it wrote to the Complainants on **06 February 2007** to acknowledge receipt of the Transfer Authority Form and confirmed to the Complainants that a tracker interest rate had been applied to mortgage loan sub-account ending **9246 (01)**.

The Provider submits that it has no record of the Complainants requesting a tracker interest rate to be applied to mortgage loan sub-account ending **9233 (01)** and mortgage loan sub-account ending **9246(02)**. The Provider states that it "*received two signed Letter of Authority forms signed by customers on 04 February 2007...requesting for a fixed interest rate of 4.54%*" to be applied to mortgage loan sub-account ending **9233 (01)** and mortgage loan sub-account ending **9246(02)** on **02 April 2007**.

The Provider details that it wrote to the Complainants on **11 April 2007** notifying them that the Letter of Authority forms had not been received within the specified 7-day time period and therefore their request could not be processed. The Provider states that mortgage loan sub-account ending **9233(01)** and mortgage loan sub account ending **9246(02)** remained on standard variable interest rates.

The Provider submits that it did not receive a response to its letter dated **11 April 2007** from the Complainants. The Provider further submits that the Complainants never followed up with the Provider or made a subsequent request to change the interest rate

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on mortgage loan sub-account ending **9233(01)** or mortgage loan sub account ending **9246(02)** to a tracker interest rate, while tracker interest rates were still available.

The Provider maintains that both Letter of Authority forms stated that on expiry of the fixed interest rate period, the Complainants may either "*choose a further fixed rate of interest for a certain period*" or if a fixed interest rate option was not available, the Complainants could avail of the Provider's variable interest rate.

The Provider asserts that it does not have a record of "*any agreement in relation to any understanding that the customers would transfer to a tracker interest rate when the fixed interest rate period expired*". The Provider also states that it has no record of a meeting between the Complainants and staff of the Provider at the Provider's branch in **January/February 2007** in relation to the interest rates on their mortgage loan sub-accounts. The Provider maintains that its staff "*were not authorised to and did not provide advice or recommendations to customers as to what interest rate option to select.*"

The Provider contends that the Complainants had no contractual entitlement to have a tracker interest rate applied to mortgage loan sub-account ending **9246 (02)** and mortgage loan sub-account **9233 (01)**. Further, the Provider submits that it fails "*to see how the customers could have any expectation or 'understanding' that the accounts would have changed to a tracker interest rate.*" The Provider notes that tracker interest rates were available from **early 2004** to **late 2008**, at which time tracker interest rates were withdrawn from the market and ceased to be available to customers who did not have a contractual entitlement to such rates.

The Provider submits that mortgage loan sub-account ending **9246 (02)** is still active with the Provider and mortgage loan sub-account ending **9233 (01)** was redeemed in **July 2019**.

The Complaints for Adjudication

The complaints for adjudication are:

- (a) The Provider incorrectly failed to apply a fixed interest rate period to the Complainants' mortgage loan sub-accounts ending **9246(02)** and **9233(01)** in **February 2007**; and
- (b) the Provider incorrectly failed to apply a tracker interest rate of ECB + 1.15% to mortgage loan sub-accounts ending **9246(02)** and **9233(01)** on expiry of the 2-year fixed interest rate period in **2009**.

Decision

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainants were given the opportunity to see the Provider's response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

In arriving at my Legally Binding Decision, I have carefully considered the evidence and submissions put forward by the parties to the complaint.

Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties on **22 July 2022**, outlining the preliminary determination of this Office in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

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

In order to determine this complaint, it is necessary to review and set out the relevant provisions of the Complainants' mortgage loan documentation in relation to mortgage loan sub-account ending **9246(02)** and mortgage loan sub-account ending **9233(01)**. It is also necessary to consider certain interactions between the Provider and the Complainants between **2002** and **2009**.

It should be noted that while reference is made to mortgage loan sub-account ending **9246(01)** in the submissions from both parties, this mortgage loan sub-account is not the subject of this complaint however certain aspects of this mortgage loan sub-account will be considered by way of background to the complaint.

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I will now consider the particulars of mortgage loan sub-account ending **9246(02)** and mortgage loan sub-account ending **9233(01)** in turn below.

Mortgage loan sub-account ending 9246(02)

The Provider issued a **Loan Offer** to the Complainants dated **02 July 2002** in relation to a split mortgage loan facility comprising mortgage loan sub-account ending **9246(01)** and mortgage loan sub-account ending **9246 (02)**, which detailed as follows:

"I am pleased to advise you that, subject to the terms and conditions contained herein, and in the attached schedule, [the Provider] ("the Bank") has approved the following facility ("the Loan") for you, jointly and severally, referred to as "the Borrower".

Type/Term: Facility A - The Loan is repayable on demand. In the absence of demand, this Loan facility is repayable over 15 years.
Facility B – The loan is repayable on demand. In the absence of this demand, this loan facility is repayable over 12 years.

Amount: Facility A – €100,000 (One hundred thousand euro).
Facility B - €250,000 (Two hundred and fifty thousand euro).

Purpose: Facility A – To assist with the purchase of a Residential Investment Property at [Location A] costing €198.800.
Facility B - To assist with the acquisition of a Residential Investment Property, [Location B] costing €258.800.

Rate: The interest rate in respect of the Loan and or any part thereof is currently 4.24% per annum, subject to variation in line with changes in the Bank's interest rates.

The discount rate quoted is 0.50% less than the prevailing variable interest rate and is subject to variation in accordance with the mortgage terms. The interest rate will revert to the appropriate Buy to Let variable interest rate 24 months after issue of the loan cheque. If the account falls more than two repayments in arrears during the discount period, the interest rate will automatically revert to the full buy to let variable interest rate and the discount rate will not be available to the borrower thereafter.

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Interest will be charged monthly based on the outstanding balance, including arrears on the last day of the preceding month.

...

Standard Loan Conditions:

The attached Standard Loan Conditions form an integral and important part of this Loan Offer and should be read and understood by the Borrower.

...

Acceptance:

The Borrower shall indicate acceptance of the terms and conditions of the Loan set out above and in the attached Schedule by signing and returning the attached duplicate letter, along with the expenses set out above. This offer shall remain open for ten business days from the date of this Loan Offer letter and if the acceptance is not received within this time, the offer will lapse.”

The relevant section of the **Standard Loan Conditions** of the **Loan Offer**, provides as follows:

“8. Interest

Interest will be charged monthly based on the outstanding balance, including arrears on the last day of the preceding month.

The Borrower, on the expiry of a fixed term may, by prior notice in writing to the Bank, opt to choose a further fixed rate of interest for a certain period if such an option is made available by the Bank. Where such an option is not available or, if available, the Borrower fails to exercise the option, the interest rate applicable will be a rate of interest which may be increased or reduced by the Bank from time to time and at any time (a variable interest rate), and if in this respect, the decision of the Bank will be final and conclusively binding on the Borrower.”

The Complainants signed and dated the **Acceptance** section of the **Loan Offer** on **08 July 2002**, on the following terms:

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“The Borrower hereby accepts the above Loan Offer on the terms and conditions (including the Standard Loan Conditions) detailed above and in the attached Schedule.”

The **Loan Offer** in relation to mortgage loan sub-account **9246(01)** and mortgage loan sub-account **9246(02)** provided for a discounted prevailing variable interest rate of 4.24% for a period of 24 months, moving to the *“appropriate Buy to Let variable interest rate”* thereafter. The nature of the prevailing variable interest rate was one that could be varied with changes in the Provider’s interest rates.

The **mortgage loan account statements** relating to mortgage loan sub-account **9246(01)** have not been submitted in evidence, however the Provider has outlined that this mortgage loan sub-account was drawn down in **July 2002**.

The **mortgage loan account statements** relating to mortgage loan sub-account ending **9246(02)** have been submitted in evidence and show that the mortgage loan sub-account was drawn down on **12 December 2002**.

I have not been provided with any evidence or contemporaneous records of any meetings or discussions that may have taken place between the parties in **January** or **February 2007** in relation to the interest rates applicable to mortgage loan sub-account ending **9246(01)** and mortgage loan sub-account ending **9246(02)**. However, the Complainants signed a **Transfer Authority Form** on **25 January 2007** in relation to mortgage loan sub-account ending **9246(01)** wherein they chose to apply a tracker interest rate of ECB base rate + 1.15% to that mortgage loan sub-account. The signed **Transfer Authority Form** is stamped as having been received by the Provider on **29 January 2007**. The Provider wrote to the Complainants by way of letter dated **06 February 2007** which states as follows:

“Dear Sir/Madam,

I refer to your recent communication with our office. I wish to confirm that as agreed your account has been transferred to our Tracker Mortgage at the current rate of 4.65% (i.e. 1.15% above the European Central Bank rate)”.

Mortgage loan sub-account ending **9246(01)** is not the subject of this complaint.

Following a request from the Complainants, the Provider also sent an **Options Letter** to the Complainants dated **25 January 2007** detailing the fixed interest rate options available in relation to mortgage loan sub-account ending **9246(02)**, as follows:

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“Further to your recent request please find below repayment quotes for our available fixed rates:

<i>Rate Options</i>	<i>Rate %</i>	<i>Loan Repayment per Month Including Any Insurances</i>	<i>TRS</i>	<i>Total Repayment per month</i>
<i>2 Year Fixed</i>	<i>4.54%</i>	<i>€963.84</i>		<i>€963.84</i>
<i>3 Year Fixed</i>	<i>4.70%</i>	<i>€997.81</i>		<i>€997.81</i>
<i>5 Year Fixed</i>	<i>4.99%</i>	<i>€1,059.37</i>		<i>€1,059.37</i>
<i>10 Year Fixed</i>	<i>5.39%</i>	<i>€1,144.29</i>		<i>€1,144.29</i>
<i>The information quote above relates to your mortgage.</i>				

*If you decide that a fixed rate is the best for you, simply complete the enclosed Letter of Authority and **return it to us within seven days.***

We will then transfer your existing Mortgage to the option chosen. Should you have any specific queries in relation to re-fixing your mortgage, or the availability of tracker variable rate options, please contact us at [Provider’s number]. [my emphasis]

Please note the repayments quoted are approximate and may vary. All repayments are subject to the terms and conditions of your loan.

Also note a change in interest rate may alter the monthly TRS credit on your account. This change will not be known to the Company until next month and if applicable a letter will be issued to you confirming your new TRS details.”

The **Options Letter** also included a **Letter of Authority/Acknowledgement** which the Complainants were required to complete if they wished to apply a fixed interest rate to mortgage loan sub-account ending **9246(02)**. The Complainants completed the **Letter of Authority/Acknowledgement**. It was signed and dated **04 February 2007**. It details as follows:

“Please transfer my/our existing mortgage to a fixed rate mortgage with immediate effect. I/We wish to apply for the fixed interest rate of:

<i>2 Year Fixed</i>	<i>4.54% (✓)</i>
<i>3 Year Fixed</i>	<i>4.70% ()</i>
<i>5 Year Fixed</i>	<i>4.99% ()</i>
<i>10 Year Fixed</i>	<i>5.39% ()</i>

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I/We acknowledge the following Fixed Rate Mortgage conditions:

1. FIXED TERM DETAILS

The rate of interest applicable to this loan will be fixed for the period specified.

2. DISCONTINUANCE FEE

In the event that I/We wish to transfer my/our mortgage from the fixed rate to a variable rate, prior to the expiry of the fixed term, or in the event of early redemption of the fixed rate mortgage (or part thereof) additional interest will be paid b[y] the borrower. The amount of additional interest will be equivalent of a sum equal to six months interest, calculated at the fixed rates applicable prior to the transfer or redemption on the balance of the loan outstanding at the date of the transfer or the date of redemption or part redemption whichever is applicable.

3. TRANSFER FROM FIXED RATE TO VARIABLE RATE AT THE END OF FIXED NOTICE

On the expiry of the fixed term I/We may, by prior notice in writing to the Company, opt to choose a further fixed rate of interest for a certain period, if such an option is made available by the Company. Where such an option is not available or I/We fail to exercise the option if available, the interest rate applicable will be a rate of interest which may be increased or reduced by the company from time to time and at any time in line with market interest rates (the variable rate)."

The evidence shows that the Provider did not receive the signed **Letter of Authority/Acknowledgement** until **02 April 2007**, which was over two months after the Complainants completed and signed the **Letter of Authority/Acknowledgement** and outside the 7-day period within which the Complainants were required to return the **Letter of Authority/Acknowledgement** to the Provider.

The Provider wrote a letter to the Complainants dated **11 April 2007** in relation to mortgage loan sub-account ending **9246(02)** and mortgage loan sub-account ending **9233(01)**, which details as follows:

"I refer to your letter of authority that we received recently.

Unfortunately, I will not be able to process your request because the letters that we received are outdated. Please note, repayment quotes are approximate and valid for seven days.

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In order to process your request, I would be grateful if you could complete the enclosed authority forms and return it to us within seven days. Please ensure that all parties sign this form.

I trust that the above is in order. However, should you have any further queries please do not hesitate to contact our Customer Services Team on [Provider's telephone number]."

The letter dated **11 April 2007** contained an **Options Letter** dated **11 April 2007** and a further **Letter of Authority/Acknowledgement** dated **11 April 2007** in relation to mortgage loan sub-account ending **9246(02)**.

The **Options Letter** dated **11 April 2007** detailed as follows in relation to the fixed interest rates available in respect of in relation to mortgage loan sub-account ending **9246(02)**:

"I refer to your recent communication with this office in relation to your above numbered mortgage account.

Please find below repayment quotations for our available fixed rates.

<i>Rate Options</i>	<i>Rate %</i>	<i>Approximate Loan Repayment per Month</i>	<i>Insurance</i>	<i>Total Repayment per month</i>
<i>2 Year Fixed</i>	<i>4.85%</i>	<i>€1,029.55</i>	<i>€0.00</i>	<i>€1,029.55</i>
<i>3 Year Fixed</i>	<i>4.85%</i>	<i>€1,029.55</i>	<i>€0.00</i>	<i>€1,029.55</i>
<i>5 Year Fixed</i>	<i>4.89%</i>	<i>€1,038.04</i>	<i>€0.00</i>	<i>€1,038.04</i>

The information quoted above relates to your mortgage. This quotation does not include your monthly TRS deduction, which currently amounts to €0.00.

*If you wish to change the rate on the above mortgage simply complete the attached Letter of Authority and return it to the above address within **Seven Days**.*

Please note the repayments quoted are approximate, and may vary. All repayments are subject to the terms and conditions of your loan.

Also note a change in interest rate may alter the monthly TRS credit on your account. This change will not be known to the Company until next month and if applicable a letter will be issued to your confirming your new TRS details.

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Should you have any questions in relation to your mortgage, please contact your local [Provider's branch] or phone our "Customer Support Team" on [Provider telephone number]."

I have not been provided with any evidence to suggest that the Complainants completed and signed the requisite **Letter of Authority/Acknowledgment** and returned it to the Provider. The Provider states that in circumstances where it did not receive a completed and signed **Letter of Authority/Acknowledgment** from the Complainants, mortgage loan sub-account ending **9246(02)** remained on the Provider's variable rate of interest.

Mortgage loan sub-account ending 9233(01)

The Provider has submitted that, despite extensive searches, it has been unable to locate a copy of the **Loan Offer** in relation to mortgage loan sub-account ending **9233(01)**. While it is disappointing that Provider has not furnished this Office with a copy of the **Loan Offer**, there is no breach of the **Consumer Protection Code 2006**, as this **Loan Offer** issued in **2001**.

In any event, it does not appear that the details of this **Loan Offer** are in dispute between the parties. The Provider has submitted that this mortgage loan account drew down on a standard variable rate of interest and that the **Loan Offer** did not contain any contractual entitlement for the Complainants to have a tracker interest rate applied to their mortgage loan. The **mortgage loan account statements** for mortgage loan sub-account ending **9233(01)** show that the mortgage loan was drawn down on **17 January 2001** in the sum of £133,263.73.

Following a request from the Complainants, the Provider sent an **Options Letter** to the Complainants dated **25 January 2007** detailing the fixed interest rate options available in relation to mortgage loan sub-account ending **9233(01)**, which provides as follows:

"Further to your recent request please find below repayment quotes for our available fixed rates:

<i>Rate Options</i>	<i>Rate %</i>	<i>Loan Repayment per Month Including Any Insurances</i>	<i>TRS</i>	<i>Total Repayments per month</i>
<i>2 Year Fixed</i>	<i>4.54%</i>	<i>€1,118.83</i>		<i>€1,118.83</i>
<i>3 Year Fixed</i>	<i>4.70%</i>	<i>€1,129.03</i>		<i>€1,129.03</i>
<i>5 Year Fixed</i>	<i>4.99%</i>	<i>€1,147.66</i>		<i>€1,147.66</i>
<i>10 Year Fixed</i>	<i>5.39%</i>	<i>€1,173.64</i>		<i>€1,173.64</i>

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The information quote above relates to your mortgage.

If you decide that a fixed rate is the best for you, simply complete the enclosed Letter of Authority and **return it to us within seven days**. We will then transfer your existing Mortgage to the option chosen. Should you have any specific queries in relation to re-fixing your mortgage, or the availability of tracker variable rate options, please contact us at [Provider's number]. [my emphasis]

Please note the repayments quoted are approximate and may vary. All repayments are subject to the terms and conditions of your loan.

..."

The **Options Letter** also included a **Letter of Authority/Acknowledgement** which the Complainants were required to complete if they wished to apply a fixed interest rate to mortgage loan sub-account ending **9233(01)**. The Complainants completed and signed the **Letter of Authority/Acknowledgement**. It was dated **04 February 2007**. It details as follows:

"Please transfer my/our existing mortgage to a fixed rate mortgage with immediate effect. I/We wish to apply for the fixed interest rate of:

2 Year Fixed	4.54% (<input checked="" type="checkbox"/>)
3 Year Fixed	4.70% (<input type="checkbox"/>)
5 Year Fixed	4.99% (<input type="checkbox"/>)
10 Year Fixed	5.39% (<input type="checkbox"/>)

I/We acknowledge the following Fixed Rate Mortgage conditions:

1. FIXED TERM DETAILS

The rate of interest applicable to this loan will be fixed for the period specified.

2. DISCONTINUANCE FEE

In the event that I/We wish to transfer my/our mortgage from the fixed rate to a variable rate, prior to the expiry of the fixed term, or in the event of early redemption of the fixed rate mortgage (or part thereof) additional interest will be paid by the borrower. The amount of additional interest will be equivalent of a sum equal to six months interest, calculated at the fixed rates applicable prior to the transfer or redemption on the balance of the loan outstanding at the date of the transfer or the date of redemption or part redemption whichever is applicable.

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3. TRANSFER FROM FIXED RATE TO VARIABLE RATE AT THE END OF FIXED

NOTICE

On the expiry of the fixed term I/We may, by prior notice in writing to the Company, opt to choose a further fixed rate of interest for a certain period, if such an option is made available by the Company. Where such an option is not available or I/We fail to exercise the option if available, the interest rate applicable will be a rate of interest which may be increased or reduced by the company from time to time and at any time in line with market interest rates (the variable rate)."

The Complainants selected a 2-year fixed interest rate option of 4.54% by accepting and signing the terms of the **Letter of Authority/Acknowledgement** on **04 February 2007**. However, the evidence shows that the Provider did not receive the signed **Letter of Authority/Acknowledgement** until **02 April 2007**, which was over two months after the Complainants completed and signed the **Letter of Authority/Acknowledgement** and outside the 7-day period within which the Complainants were required to return the **Letter of Authority/Acknowledgement** to the Provider.

The Provider subsequently issued the letter dated **11 April 2007**, as detailed above, to the Complainants which referred to mortgage loan sub-account ending **9233(01)** and mortgage loan sub-account ending **9426(02)**.

The letter dated **11 April 2007** contained an **Options Letter** dated **11 April 2007** and a further **Letter of Authority/Acknowledgement** dated **11 April 2007** in relation to mortgage loan sub-account ending **9233(01)**. The **Options Letter** dated **11 April 2007** detailed as follows in relation to the fixed interest rates available in relation to mortgage loan sub-account ending **9233(01)**:

"Further to your recent request please find below repayment quotes for our available fixed rates:

<i>Rate Options</i>	<i>Rate</i>	<i>Loan Repayment per</i>	<i>TRS</i>	<i>Total</i>
	<i>%</i>	<i>Month Including</i>		<i>Repayments</i>
		<i>Any Insurances</i>		<i>per month</i>
<i>2 Year Fixed</i>	<i>4.85%</i>	<i>€1,138.94</i>		<i>€1,138.64</i>
<i>3 Year Fixed</i>	<i>4.85%</i>	<i>€1,138.64</i>		<i>€1,138.64</i>
<i>5 Year Fixed</i>	<i>4.89%</i>	<i>€1,141.16</i>		<i>€1,141.16</i>

The information quote above relates to your mortgage.

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*If you decide that a fixed rate is the best for you, simply complete the enclosed Letter of Authority and **return it to us within seven days**. We will then transfer your existing Mortgage to the option chosen. Should you have any specific queries in relation to re-fixing your mortgage, or the availability of tracker variable rate options, please contact us at [Provider's number]. [my emphasis]*

Please note the repayments quoted are approximate and may vary. All repayments are subject to the terms and conditions of your loan..."

I have not been provided with any evidence to suggest that the Complainants completed and signed the requisite **Letter of Authority/Acknowledgment** and returned it to the Provider. The Provider states that in circumstances where it did not receive a completed and signed **Letter of Authority/Acknowledgment** from the Complainants, mortgage loan sub-account ending **9233(01)** remained on the Provider's variable rate of interest.

The Complainants submit that the Provider incorrectly failed to apply a fixed interest rate period to the Complainants' mortgage loan sub-accounts ending **9246(02)** and **9233(01)** in **February 2007**. In this regard, the evidence shows that although the Complainants completed and signed **Letters of Authority/Acknowledgement** on **04 February 2007**, the Provider did not receive the requisite **Letters of Authority/Acknowledgement** until **02 April 2007**, which was outside the 7-day period within which the Complainants were required to return the **Letters of Authority/Acknowledgement** to the Provider. The terms of the **Options Letters** and **Letters of Authority/Acknowledgement** dated **25 January 2007** were clear in that the Complainants had to complete the requisite forms in order to apply for a fixed interest rate from the Provider and once the Provider received the forms within 7 days of **25 January 2007**, the Provider would transfer the existing mortgage to the fixed rate options chosen. The signed **Letters of Authority/Acknowledgement** did not reach the Provider until **02 April 2007**. Consequently, there was no obligation on the Provider to amend the terms and conditions of the Complainants' mortgage loan sub-accounts ending **9233(01)** and **9426(02)** by applying the fixed interest rates as set out in the **Letters of Authority/Acknowledgement** dated **25 January 2007**.

The evidence shows that, having received the completed **Letters of Authority/Acknowledgement**, the Provider proactively contacted the Complainants on **11 April 2007** to explain that the chosen fixed interest rates could not be applied to their respective mortgage loan sub-accounts because the repayment quotes listed in the correspondence dated **25 January 2007** were only valid for 7-days and therefore the **Letters of Authority/Acknowledgement** signed on **04 February 2007** and received by the Provider on **02 April 2007** were outdated. Therefore, the Complainants' instructions could not be actioned by the Provider.

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The Complainants maintain that they did not receive the correspondence that issued from the Provider on **11 April 2007** in relation to mortgage loan sub-account ending **9246(02)** and mortgage loan sub-account ending **9233(01)**. I note that this correspondence was sent to the same correspondence address as the Provider's correspondence to the Complainants dated **25 January 2007**, which the Complainants received. The evidence also shows that **mortgage loan account statements** were issued to the Complainants on a regular basis since the inception of the mortgage loan sub-accounts.

The **mortgage loan account statements** show all the rate changes that occurred from the inception of the mortgage loans. There is no indication that fixed interest rates were applied to mortgage loan sub-account ending **9246(02)** and mortgage loan sub-account ending **9233(01)** in **2007**. There is no evidence to suggest that the Complainants followed up with the Provider when their request to apply a fixed interest rate to mortgage loan sub-account ending **9246(02)** and mortgage loan sub-account ending **9233(01)** was not actioned by the Provider in **early 2007**. However, the evidence shows that the Provider issued new **Letters of Authority** to the Complainants to afford the Complainants another opportunity to apply a fixed interest rate to their mortgage loan sub-accounts in **April 2007**. In circumstances where no response was received from the Complainants, no action was taken by the Provider and therefore the mortgage loan sub-accounts ending **9246(02)** and **9233(01)** remained on the Provider's standard variable interest rate.

In addition, the Complainants submit that the Provider incorrectly failed to apply a tracker interest rate of ECB + 1.15% to mortgage loan sub-accounts ending **9246(02)** and **9233(01)** on expiry of a 2-year fixed interest rate period in **2009**. However, it is clear from my analysis above that a 2-year fixed interest rate period was never applied to mortgage loan sub-accounts ending **9246(02)** and **9233(01)** in **2007**. Moreover, the Complainants did not have a contractual entitlement to have a tracker interest rate applied to mortgage loan sub-accounts ending **9246(02)** and **9233(01)** in **2009**.

Tracker interest rates were available from the Provider as part of its suite of mortgage products from **early 2004** to **late 2008** subject to certain eligibility and lending criteria. Even though the Complainants' mortgage loan sub-accounts ending **9246(02)** and **9233(01)** were on the Provider's standard variable interest rate, it was also open to the Complainants to contact the Provider to make enquiries in relation to the Provider's tracker interest rate offerings at any time up until such rates were withdrawn from the market by the Provider in **late-2008**. In fact, the **Options Letters** to the Complainants dated **25 January 2007** specifically invited the Complainants to contact the Provider to discuss the availability of tracker interest rates. However, there is no evidence that Complainants did so.

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It should be noted that, even if the Complainants had applied a 2-year fixed interest rate to mortgage loan sub-accounts ending **9246(02)** and **9233(01)** in **2007**, the Complainants would not have been entitled to a tracker interest rate on the expiry of the fixed interest rate period in **2009**. In accordance with the terms of the **Letters of Authority/Acknowledgement**, the Complainants would have been entitled to a further fixed interest rate if available.

If a further fixed interest rate was not made available, or if the Complainants did not select a further fixed interest rate, the applicable interest rate would have been the Provider's variable interest rate that could be varied by the Provider from time to time. In any event, a 2-year fixed interest rate was never applied to the Complainants' mortgage loan sub-accounts ending **9246(02)** and **9233(01)** in **2007** therefore the Complainants were only contractually entitled to remain on the Provider's standard variable interest rate in **2009**.

For the reasons outlined above, 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**

16 August 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.