



<u>Decision Ref:</u>	2022-0274
<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 Failure to offer a tracker rate at point of sale
<u>Outcome:</u>	Partially upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

This complaint relates to a mortgage loan account which is held by the Complainants with the Provider. The mortgage loan which is the subject of this complaint was initially secured on the Complainants' investment property, which was subsequently changed to the Complainants' private dwelling house in **March 2013**.

The loan amount was €562,500.00 and the term of the loan was for 25 years. The **Letter of Offer** dated **20 September 2005** outlines that the interest rate applicable to the loan was a fixed interest rate of 2.89% for the first 12 months of the loan.

The mortgage loan account that is the subject of this complaint was redeemed in full on **02 March 2020**.

The Complainants' Case

The Complainants outline that they engaged the services of a mortgage broker to apply for a mortgage loan with the Provider, which was subsequently approved.

The Complainants assert that their mortgage loan was to be drawn down on a tracker interest rate, however it was changed to a fixed interest rate without any signed authorisation from them.

The Complainants submit that the Provider has not provided sufficient evidence to show that they requested the interest rate to be changed prior to the drawdown of the mortgage loan. The Complainants detail that the Provider is *“unable to provide any written contract signed by [them] to change from a tracker to a fixed rate mortgage, apart from an email from a broker”*. The Complainants contend that they have *“had numerous emails from the [Provider] but no evidence from them of a record to show clearly why the rate was changed”*. The Complainants further assert that *“[i]t is clear that the broker worked as a direct agent of the [Provider] and not as an independent broker as claimed”*.

The Complainants submit that when they subsequently engaged with their broker in **February 2008** to discuss interest rate options, the broker produced a flyer *“making it clear that the customer could roll on to a tracker on expiry”* of the fixed interest rate period. The Complainants state that they *“placed a lot of emphasis on that advice”* and did not understand that they would be *“prevented [from] return[ing]”* to a tracker rate of interest.

The Complainants maintain that they were subject to *“abusive unfair treatment”* on the part of the Provider during the course of their complaint. In this regard, the Complainants note that on 17 occasions, the Provider incorrectly notified the Central Credit Register of missed mortgage loan repayments. The Complainants detail that such systemic errors have caused them *“significant difficulties in securing credit”* from a number of financial service providers, including the respondent Provider. In addition, the Complainants submit that they have been *“forced, under threat of repossession to enter into a number of term variable interest only arrangements”*.

The Complainants are of the view that the Provider *“clearly exploited the sales process”* and *“did not fulfil its duty of care”* to the Complainants. The Complainants also state that the Provider has failed in its duty *“by disguising via the broker [its] intention to use the opportunity to remove [the Complainants] from the tracker”* rate of interest.

The Complainants are seeking the following:

- (a) A tracker interest rate to be applied to their mortgage loan account; and

- (b) Compensation for any excess interest they have paid on their mortgage loan account since **September 2005**.

The Provider's Case

The Provider details that in **2005**, it received a mortgage application from the Complainants' nominated broker representative "*who they selected to act on their behalf in relation to the mortgage application*". The Provider asserts that for "*Broker introduced cases such as this, it was not the [Provider's] practice to engage directly with the applicant with the exception of the issue of the requisite loan assessment and approval documentation*". The Provider explains that it would instead engage primarily with the broker appointed by the Complainants. The Provider states that the broker "*did not act on behalf of [the Provider] but was engaged by the Complainants to act on their behalf*".

The Provider contends that the Complainants "*clearly accepted*" that their broker was entitled to instruct the Provider on their behalf, as the Provider "*had already received instruction from the [Complainants'] Broker to amend the original variable rate (not tracker rate) preference in the application form to a tracker rate*".

The Provider outlines that it received an instruction from the Complainants' broker by email on **19 September 2005**, to amend the interest rate offered to the Complainants from a tracker interest rate to a 1-year fixed interest rate of 2.89%. The Provider states that, on foot of this instruction, it issued an **Amended Letter of Offer** to the Complainants dated **20 September 2005**, which provided for a mortgage loan on a 1-year fixed interest rate. The Provider submits that a copy of this **Amended Letter of Offer** was also sent to the Complainants' solicitor.

The Provider details that the Complainants' solicitor telephoned the Provider on **17 January 2006**, explaining that the Complainants were abroad and were "*unable to sign the amended letter of offer until their return*". The Provider outlines that it was agreed to issue the loan cheque subject to the Complainants' solicitors "*providing an undertaking to return the signed Letter of Offer*" dated **20 September 2005**. The Provider submits that it received a written undertaking from the Complainants' solicitor and subsequently issued the loan cheque to the Complainants' solicitors.

The Provider outlines that it is "*satisfied*" that the Complainants' solicitors were on notice that the **Amended Letter of Offer** dated **20 September 2005** "*incorporated an amendment to the interest rate terms previously offered*". The Provider notes that in contrast to the **Letter of Offer** dated **15 September 2005** that provided for a tracker interest rate, "*the Amended Letter of Offer contained no Special Condition providing for a tracker rate of interest to apply*".

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The Provider details that the Complainants drew down their mortgage loan on **01 March 2006** on a fixed interest rate and were later advised on **08 December 2006**, that the fixed interest rate period was coming to an end and that a standard variable interest rate would apply thereafter. The Provider submits that this evidences that the Complainants were *“clearly aware they were on a fixed rate and had no issue with same and continued to make payments consistent with the Amended Letter of Offer dated 20 September 2005”*.

The Provider notes that the Complainants have submitted that the Provider is unable to provide any written contract signed by the Complainants to change the applicable interest rate from a tracker interest rate to a fixed interest rate, apart from an email from a broker. In this regard, the Provider asserts that it *“received a clear instruction”* from the Complainants’ broker, prior to the commencement of the mortgage, to issue the mortgage on a fixed interest rate basis. The Provider details that it is satisfied that it has provided evidence of *“a clear record as to the change in the rate, both from the initial stated preference of a variable rate to a tracker rate as offered on 15th September 2005, and then to the fixed rate as offered on 20th September 2005, replacing the offer of 15th September 2005 as stated”*. The Provider submits that the terms of the **Amended Letter of Offer** dated **20 September 2005** were confirmed as accepted by the Complainants in their solicitor’s letter to the Provider dated **16 January 2006**.

In response to the Complainants’ submission in relation to the flyer that was brought to their attention by the broker which they state made it clear to them that they could roll on to a tracker interest rate on the expiry of a fixed rate period, the Provider outlines that the flyer in question was circulated by the Provider to its broker network on or around **07 November 2006**. The Provider submits that this was *“the first and only such product available”* from the Provider. The Provider explains that the Complainants completed their mortgage loan application on **20 May 2005**, this was submitted to the Provider by their broker on **11 August 2005** and the loan funds were subsequently advanced on **18 January 2006**. The Provider therefore explains that at the time of the Complainants’ mortgage loan application and subsequent drawdown of funds, there was *“no fixed to tracker products available from the [Provider], of which brokers would have been well aware”*. In addition, the Provider outlines that *“[i]t is clear that the Complainants knew they had been on a fixed rate from loan origination and knew they had been on a standard variable rate from February 2007”* prior to discussing this flyer with their broker. The Provider therefore contends that the Complainants could not have placed any emphasis on this flyer.

In addition, the Provider notes that the Complainants have suggested that their nominated broker was acting for the Provider, however the Provider asserts that *“this was not the case”*. The Provider further notes that the Complainants refer to the broker as a *“[t]ied*

Broker” of the Provider, which the Provider contends is “*not correct*” as the broker in question is a mortgage intermediary rather than a tied agent of the Provider.

The Provider asserts that the Complainants’ mortgage loan account “*has never operated on a tracker rate of interest*”. In addition, the Provider asserts that it “*did not act in an advisory capacity*” in relation to the Complainants’ mortgage loan account and did not provide any sales advice to the Complainants. The Provider states that the Complainants “*had the benefit of independent financial and independent legal advice*”.

In response to the Complainants’ submissions that on 17 occasions, the Provider incorrectly notified the Central Credit Register of missed mortgage loan repayments, the Provider states that it “*offered an acknowledgement and apology for the error*” and confirmed to the Complainants that “*the record had been rectified and the Central Credit Register had been accurately updated*”. The Provider submits that “*the Complainants ICB record has not been affected by this error*”.

The Complaints for Adjudication

The complaints are as follows:

- (a) The Provider incorrectly amended the interest rate to be applied to the Complainants’ mortgage loan account from a tracker interest rate to a fixed interest rate in **September 2005** without authorisation from the Complainants; and
- (b) The Provider failed to correctly report the Complainants’ mortgage payment history to the Central Credit Register from **June 2017 to November 2018** causing difficulty for the Complainants to obtain credit.

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.

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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.

Before dealing with the substance of the complaint, I note the application for the mortgage loan was submitted by the Complainants to the Provider through a third-party broker. As this complaint is made against the respondent Provider only, it is the conduct of the Provider and not the broker which will be investigated and dealt with in this Decision. The Complainants were informed of the parameters of the investigation by this Office, by letter dated **05 November 2019**, which outlined as follows:

“In the interests of clarity, the complaint that you are maintaining under this complaint reference number is against [the Provider] and this office will not be investigating any conduct of the named Broker in the course of investigating and adjudicating on this complaint.”

Therefore, the conduct of the third-party broker engaged by the Complainants, does not form part of this investigation and decision for the reasons set out above.

In order to determine this complaint, it is necessary to review and set out the relevant documentation relating to the Complainants' mortgage loan. It is also necessary to consider the details of certain interactions between the Complainants and the Provider in **2005** and **2006**.

An **Application Form** was completed by the Complainants on **20 May 2005** with a third-party broker. The Complainants were given a choice to apply for a mortgage loan on a tracker interest rate, a variable interest rate, a fixed interest rate, a discounted interest rate or split loan under the “*Mortgage Required*” section of the **Application Form**. The

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Complainants indicated on the **Application Form** that they wished to apply for a variable rate of interest.

The Provider issued an initial **Letter of Offer** dated **15 September 2005** to the Complainants for a loan amount of €562,500.00.

The **Particulars of Advance** contained in the **Letter of Offer** dated **15 September 2005** detail as follows:

“IMPORTANT INFORMATION AS AT 15th September 2005

<i>Amount of Credit Advanced</i>	<i>€ 562,500.00</i>
<i>Period of Agreement (Years – Months)</i>	<i>25 – 0</i>
<i>Number of repayment Instalments</i>	<i>300”</i>

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

“ ...

<i>Type of Advance</i>	<i>LETTING ANNUITY</i>
<i>Interest Rate</i>	<i>3.00</i>

Variable.”

The **Special Conditions** attaching to the **Letter of Offer** detail as follows:

“The interest rate applicable to the loan identified on page 1 of the letter of offer is a variable interest rate and may vary upwards or downwards. The interest rate shall be no more than 1.1% above the prevailing European Central Bank Refinancing Rate Operations Minimum Bid Rate (“REFI rate”) for the term of the loan...”

The Complainants accepted and signed the **Form of Acceptance** to the **Letter of Offer** on **22 September 2005**, which was also witnessed by their solicitor. I note however that this loan was ultimately not drawn down as the Complainants’ broker requested an alternative interest rate to apply to the mortgage loan.

The Complainants’ nominated broker issued an email to the Provider dated **19 September 2005** to request that the interest rate on the mortgage loan be changed to a fixed interest rate as follows:

“Please amend the loan offer for the above clients to the 1 year fixed rate at 2.89% with immediate effect & please ensure commission rate is changed to 1%”

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I note that the Complainants have submitted that the Provider does not have a written authorisation from them requesting this amendment to the interest rate. In this regard, it is important to note that where a customer avails of the services of a third-party broker, that broker is authorised to act on behalf of that customer. Accordingly, the Provider was entitled to rely on the above instruction from the Complainants' broker, on their behalf.

On foot of this request, the Provider issued an **Amended Letter of Offer** dated **20 September 2005** to the Complainants.

The **Particulars of Advance** contained in the **Amended Letter of Offer** detail as follows:

"IMPORTANT INFORMATION AS AT 20th September 2005

<i>Amount of Credit Advanced</i>	<i>€ 562,500.00</i>
<i>Period of Agreement (Years – Months)</i>	<i>25 – 0</i>
<i>Number of repayment Instalments</i>	<i>300"</i>

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

"...

<i>Type of Advance</i>	<i>LETTING ANNUITY</i>
<i>Interest Rate</i>	<i>2.89</i>
	<i>Fixed For</i>
	<i>12 months"</i>

General Condition 5 of the **Loan General Conditions** details as follows:

"The rate of interest specified in the Particulars is the rate of interest charged by the Lender on the relevant category of home loans as of the date of the Letter of Offer. While this interest rate prevails the advance and interest (in the case of Principal and Interest type Mortgages) and the interest accruing on the advance (in the case of Investment Linked Mortgages) will be payable by the monthly instalments specified in the Particulars the first of such payments to be made on the first day of the calendar month immediately following the date of the making of the advance to the Applicant's Solicitor and each subsequent payment to be made on each subsequent calendar month thereafter unless otherwise directed by the Lender. However, this rate may vary before the advance is drawn down and will be subject to variation throughout the term. The amount of the monthly instalments will fluctuate in accordance with the fluctuations in the applicable interest rate. Payment of the monthly instalments must be made by Direct Debit Mandate. ..."

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

“The rate of interest applicable to this loan will be fixed for 12 months from date of drawdown.

The interest rate and fixed rate term specified may vary on or before the date of drawdown of the mortgage and in such event, the prevailing fixed rate and fixed rate term at the date of drawdown will be notified to the Applicant(s) Solicitor. If during the fixed rate period, the Applicant(s) fully or partially redeem the advance or convert it to variable interest rate or another fixed interest rate loan, a break funding fee may be payable to the Lender ... At the expiry of the fixed rate period the Lenders prevailing variable rate will apply.”

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

“THE LENDER RECOMMENDS THAT APPLICANT(S) SEEK(S) HIS/HER/THEIR SOLICITORS ADVICE IN RELATION TO THE LETTER OF OFFER, THESE CONDITIONS AND THE ATTACHED DOCUMENTS. THE ACCEPTANCE SHOULD BE SIGNED IN THE PRESENCE OF THE SOLICITOR(S) CONCERNED WHO SHOULD BE A PRINCIPAL OR PARTNER IN THE FIRM(S) CONCERNED ...”

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

“WARNING:

...

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

The **Special Conditions** attaching to the **Amended Letter of Offer** dated **20 September 2005** detail as follows:

“This Letter of Offer replaces the Letter of Offer dated 15/9/2005 which is hereby cancelled”

The **Form of Acceptance** attached to the **Amended Letter of Offer** states as follows:

“I/We the, undersigned, accept the offer of an advance made to me/us by [the Provider] on foot of the Loan Application Form signed by me/us and on the terms and conditions set out in:-

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- (i) the Letter of Offer;
- (ii) the Particulars;
- (iii) the Lender's General Conditions for Home Loans;
- (iv) the Special Conditions (if any);
- (v) the Lender's standard Form of Mortgage;
- (vi) the Assignment of Life Policy

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

I have not been provided with a copy of the signed and dated **Form of Acceptance**; however the Provider issued a letter to the Complainants' solicitor dated **04 October 2005** acknowledging receipt of the **Loan Acceptance** as follows:

"We acknowledge receipt of the Loan Acceptance and write to advise you that the following items are outstanding:

...

**Loan Acceptance*

- Require signed amended loan offer dated 20/09 to be returned."

The Provider issued a further letter to the Complainants' solicitor dated **13 December 2005**, which states as follows:

"Further to our previous correspondence regarding the above loan account. Please note the following items are outstanding:

...

**Loan Acceptance*

- Require signed amended loan offer dated 20/09 to be returned."

I note that the Provider issued a further letter to the Complainants' solicitor dated **16 January 2006**, again requesting that the signed amended loan offer dated **20 September 2005** be returned.

The Complainants' solicitor issued a letter to the Provider dated **16 January 2006**, which states as follows:

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"Further to our telephone [call] with [Provider's representative] of your Cheque Issue Department we now reply as follows to your fax of the 16th inst.:-

Herewith:

...

(5) *We confirm our clients Acceptance of Loan Offer extends to the Amended Letter of Loan Offer dated 20th September 2005.*

...

(7) *Solicitors Undertaking duly completed.*

We would be obliged if you could give this matter your urgent attention and upon receipt of confirmation that a loan cheque is available we will arrange to collect same."

The Provider issued a letter to the Complainants' solicitor dated **17 January 2006**, notifying the Complainants' solicitor that it could not progress with the drawdown of funds until the signed **Amended Letter of Offer** dated **20 September 2005** was returned.

A note was recorded in the Provider's internal systems on **17 January 2006** detailing as follows:

"s/w solr, clients are in [named location] at the moment so cannot sign amended offer - agreed to release cheque providing we receive undertaking to have same signed and returned to us. He is to fax in same now, chq provisionally queued for issue tomorrow pending receipt of same."

The Complainants' solicitor issued a letter to the Provider dated **17 January 2006**, which states as follows:

"Further to our telephone conversation WE HEREBY UNDERTAKE that in consideration of you releasing the loan Cheque in this matter to us that we will arrange for our Clients next week to sign the amended Letter of Loan Offer dated the 20th September, 2005 and return same to you."

It is unclear whether a signed copy of the **Amended Letter of Offer** was ultimately submitted to the Provider by the Complainants' solicitor, however I am satisfied that the Provider was entitled to rely on the Complainants' solicitor's undertaking in this regard.

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The Complainants' mortgage loan was subsequently drawn down on **21 February 2006**. By the time the mortgage loan was drawn down, the applicable fixed interest rate had increased to 3.19%.

The Complainants' solicitor was notified of this change in the interest rate prior to the drawdown of the mortgage loan by way of letter dated **18 January 2006** in accordance with **General Condition 7** of the **Loan General Conditions**.

It is clear to me that the **Amended Letter of Offer** dated **20 September 2005** provided for a 1-year fixed interest rate with the Provider's prevailing variable interest rate to apply on the expiry of the fixed interest rate period, in accordance with **General Condition 7** of the **Amended Letter of Offer**. The nature of the Provider's prevailing variable interest rate was one that could be adjusted at the discretion of the Provider. The mortgage loan documentation made no reference to the Provider's variable rate of interest as one that varied in accordance with variations in the ECB refinancing rate.

Prior to the expiry of the 1-year fixed interest rate period, the Provider issued a letter to the Complainants dated **08 December 2006**, which outlined as follows:

"The fixed rate or discount period on your mortgage is coming to an end shortly which means that your rate will change to our current standard variable rate for the 1st February 2007 repayment. This will change the amount of your monthly mortgage repayment.

Given the current environment of rising interest rates many customers are choosing to fix their interest rate to allow peace of mind.

As a valued customer we are delighted to offer you the opportunity to pre-book a fixed rate now which we will hold for you at today's rates until your current rate expires.

*I am enclosing a 'Fixed rate Instruction Form' listing all the fixed rates you can choose from. To complete please tick the appropriate rate, sign the form and return to us by **Tuesday 23 January 2007**. Within 5 days of receiving the signed fixed rate instruction form we will write to you to confirm that your chosen fixed rate has been received and approved."*

At the end of the 1-year fixed interest rate period, the Complainants were informed that a standard variable interest rate would apply in accordance with the terms and conditions of the **Amended Letter of Offer**. The Complainants were also offered a number of further fixed interest rate options. However, the Complainants did not opt for a further fixed

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interest rate and the mortgage loan switched to the Provider's prevailing variable rate of interest of 5.09% on **01 February 2007**.

The Complainants submit that they contacted their broker in **February 2008** to discuss their interest rate options. The Complainants state that the broker produced a "flyer", that was issued by the Provider to mortgage brokers which provided details of a fixed interest rate product that would convert to a tracker interest rate on the expiry of the fixed interest rate period. A copy of this flyer dated **07 November 2006** has been submitted in evidence and details as follows in relation to new product offerings from the Provider:

"...

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

Product Features

- ✓ *For loan amounts greater than €150k the tracker applicable will be 1.25%.*
- ✓ *For loan amounts less than €150k the tracker that will apply will be 1.40% tracker.*

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

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

...

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

..."

I understand that this communication was issued to brokers rather than to customers of the Provider and provided details of certain new product offerings from the Provider from on or around **07 November 2006**. The Complainants appear to be of the view that this product offering meant that they should have been offered a tracker interest rate on the expiry of the 1-year fixed interest rate period in **February 2007**.

It is important to note however that this new product offering of a fixed interest rate rolling to a tracker interest rate was only introduced and made available by the Provider in **November 2006**, after the Complainants applied for and drew down their mortgage loan with the Provider. Therefore, this product was not available to the Complainants at the time they applied for their mortgage loan or at any time thereafter to include on the expiry of the fixed interest rate in **February 2007**.

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Moreover, it is important to note that a “flyer” communication does not amount to a mortgage loan contract between the Complainants and the Provider. The Complainants’ mortgage loan is governed by the terms and conditions of the **Amended Letter of Offer** dated **20 September 2005**, which provided for a 1-year fixed interest rate that would convert to the Provider’s prevailing variable interest rate on expiry.

It is clear to me that in circumstances where the Complainants engaged the service of a broker with respect to the mortgage loan application, there was no requirement for the Provider to communicate directly with the Complainants in relation to the application form or to discuss their preferred interest rate option. I have been provided with no evidence to suggest that the broker in question operated as a tied agent or “direct agent” of the Provider, as submitted by the Complainants. The evidence shows that the broker operated as a mortgage intermediary independent of the Provider.

Tracker interest rates were on offer by the Provider at the time the Complainants applied for their mortgage loan in **September 2005**, subject to certain qualifying criteria. The initial **Letter of Offer** dated **15 September 2005** provided for an interest rate which would be “no more than 1.1% above the prevailing European Central Bank Refinancing Rate Operations Minimum Bid Rate”. However, the Provider received instructions from the Complainants’ nominated broker to amend the interest rate to a 1-year fixed interest rate. The Provider duly acted on those instructions and issued an **Amended Letter of Offer** dated **20 September 2005**, which entirely replaced the **Letter of Offer** dated **15 September 2005**, did not contain an offer of a tracker interest rate or an expectation that a tracker interest rate would apply to the mortgage loan either at the time of drawdown, or at any time during the term of the mortgage loan. It follows that the Complainants were not entitled as a matter of policy or contract to a tracker interest rate on the mortgage loan at inception of the loan or on the expiry of the initial 1-fixed interest rate period in **2007**.

In order for the Complainants to have a contractual right to a tracker interest rate either on drawdown or on expiry of the fixed interest rate period, that right would need to be specifically provided for in the Complainants’ mortgage loan documentation. However, no such right was set out in writing in the **Amended Letter of Offer** dated **20 September 2005**. The Complainants were contractually entitled to the Provider’s prevailing variable interest rate on the expiry of the initial fixed interest rate period in **2007**, and that is the interest rate that the Provider applied to the mortgage loan account in accordance with **General Condition 7**.

In addition, the Complainants submit that on 17 occasions, the Provider incorrectly notified the Central Credit Register of missed mortgage loan repayments. The

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Complainants detail that such systemic errors have caused them “*significant difficulties in securing credit*” from a number of financial service providers, including the respondent Provider.

The Provider issued a letter to the Complainants dated **06 February 2019**, which addresses this issue. This letter provides as follows:

“Dear [Complainants]

We are writing to you in relation to your account referenced above. This is for your information and no further action is required of you.

Following a review of your account, we wish to advise you that inaccurate late payment information has been reported by [the Provider] to the Central Credit Register. We would like to apologise and reassure you that the issue has been rectified and your Central Credit Register has been accurately updated.

Please find overleaf details of the information reported for your records [...]

What is the Central Credit Register?

Since 30th June 2017, all lending institutions (including banks, credit unions, and other lender that provide consumer credit of €500 and above are obliged to supply personal and credit information relating to certain credit agreements (borrowings) to the Central Credit Register which is operated by the Central Bank of Ireland, under the Credit Reporting Act 2013. These credit agreements include credit cards, mortgages, overdrafts and personal loans.

Banks can refer to both the ICB and CCR for credit information. No inaccurate late payment data was reported to the ICB by [Provider] and no financial charges have been incurred on your account as a result of this reporting error.”

The **Consumer Protection Code 2012** details as follows:

“Chapter 2 – General Principles

A regulated entity must ensure that in all its dealings with customers and within the context of its authorisation it:

...

2.2 acts with due skill, care and diligence in the best interests of its customers;

...

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2.8 corrects errors and handles complaints speedily, efficiently and fairly.”

The **Guidance on the Central Credit Register For Credit Information Providers Version 2.3 October 2021** details as follows:

“Chapter 6 – Amending Data on the CCR

6.1 Introduction

The Act and associated regulations place a requirement on CIPs to take all reasonable steps to ensure the accuracy of personal and credit information provided to the CCR and to inform the CCR of any changes to the information of which it becomes aware.”

...

6.4 Notification of Amendments

When data is amended on the CCR via the Amendment Process, the Act envisages the notification of the amendment being issued to the following parties:

*The CIS to whom the data relates;
Any other CISs that are party to the underlying credit agreement;
The CIP that provided the credit agreement and submitted data in question;
and
CIPs that made an enquiry in the 12 months prior, or since the incorrect information was entered on the CCR if later.*

The practical implementation of these provisions, as outlined below, takes cognisance of privacy concerns and the existing data protection rights of the CIS embedded in national and European legislation.”

The Provider’s incorrect reporting of late payment information on the part of the Complainants to the Central Credit Register occurred over the course of 17 months between **June 2017** and **November 2018**. It appears that this reporting error was not rectified by the Provider until **February 2019**, which is a considerable period of time for such an error to persist. I note that the Complainants submit that the incorrect reporting by the Provider made it difficult for them to obtain credit with other lenders.

The Complainants have submitted an email in relation to a declined personal loan application in evidence to show that this incorrect reporting on the part of the Provider impacted their ability to secure credit.

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That email records that in making the decision to decline “*we took into account all available information, including your personal circumstances, credit history and financial status*”.

The Provider was under a duty to take reasonable steps to ensure the accuracy of credit information provided to the CCR. While I note that the Provider discovered the error following a review of the Complainants’ account and informed the Complainants of the error, I am cognisant of the fact that this reporting error persisted for a period of 17 months, which is most disappointing and conduct on the part of the Provider which I consider to be unreasonable.

In the circumstances, the Provider did not take reasonable steps to ensure the accuracy of reporting during that 17-month period. This had an impact on the Complainants’ credit record.

To conclude, the Complainants did not have a contractual entitlement to a tracker interest rate when their mortgage loan was drawn down in **February 2006**. The **Amended Letter of Offer** dated **20 September 2005** provided for a 1-year fixed interest rate with the Provider’s prevailing variable interest rate to apply on the expiry of the fixed interest rate period. This offer of a 1-year fixed interest rate was made by the Provider on foot of a request from the Complainants’ nominated broker who was acting on behalf of the Complainants at the time. It was open to the Complainants to decline the Provider’s **Amended Letter of Offer** or instruct their broker to seek an alternative interest rate on their behalf, if they were dissatisfied that the terms and conditions did not provide that a tracker interest rate would apply at the inception of the mortgage loan or at the end of the initial fixed interest rate period. However, the Complainants did not do so, and their solicitor gave an undertaking to the Provider that the Complainants accepted the terms and conditions of the **Amended Letter of Offer**. Furthermore, the Complainants ultimately drew down the mortgage loan in **February 2006** and commenced making repayments on the basis of a fixed interest rate.

However, I am of the view that there has been a failure on the part of the Provider in relation to the inaccurate reporting of late payment information to the Central Credit Register. I take the view that the Provider’s conduct in this respect has been unreasonable within the meaning of **Section 60(2)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

Accordingly, on the evidence before me, I partially uphold this complaint.

/Cont’d...

To mark the Provider's shortcomings, I direct pursuant to **Section 60(4)(d) of the Financial Services and Pensions Ombudsman Act 2017** that the Provider pay to the Complainants a sum of €1,500.00 compensation.

Conclusion

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is partially upheld, on the grounds prescribed in **Section 60(2)(b)**.

Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to make a compensatory payment to the Complainants in the sum of €1,500.00, to an account of the Complainants' choosing, within a period of 35 days of the nomination of account details by the Complainants to the Provider.

I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in **Section 22** of the **Courts Act 1981**, if the amount is not paid to the said account, within that period.

The Provider is also required to comply with **Section 60(8)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

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

17 August 2022

PUBLICATION

Complaints about the conduct of financial service providers

/Cont'd...

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.