



<u>Decision Ref:</u>	2022-0289
<u>Sector:</u>	Banking
<u>Product / Service:</u>	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 a mortgage loan account held by the Complainants with the Provider. The mortgage loan that is the subject of this complaint was secured on the Complainants' private dwelling house.

The loan amount was €1,350,000.00 and the term of the loan was 30 years. The Mortgage Loan Offer Letter which was signed by the Complainants on **27 June 2006** detailed that the interest rate was a 3-year fixed interest rate of 3.95%.

The Complainants' Case

The Complainants submit that they drew down their mortgage loan with the Provider on **05 July 2006** as a "split" fixed-term mortgage. The Complainants detail that "Part 1" of the mortgage was on a "2-year fixed term" and "Part 2" was on a "3-year fixed term".

The Complainants submit that on the expiry of the 2-year fixed interest rate in respect of "Part 1" of the mortgage in **June 2008**, they contacted the Provider and were informed that the "fixed term mortgages expired in May of the final year and were not in fact full 2

and 3 year mortgages". The Complainants state that they requested that "*Part 1*" of their mortgage loan be placed on a tracker interest rate.

The Complainants submit that they were informed by the Provider that the tracker interest rate was a "*LTV product*" and they needed an up-to-date valuation of the mortgaged property. The Complainants note that they obtained a property valuation in or around **July 2008**.

The Complainants submit that they were required to attend a meeting with the Provider in **July 2008** to complete the relevant paperwork. During this meeting, the Complainants explain that they asked the Provider could they also complete the relevant paperwork to apply a tracker interest rate to "*Part 2*" of their mortgage loan before the expiry of the 3-year fixed interest rate applicable to that portion of the loan. The Complainants submit that they were informed by the Provider that it was not possible to "*fulfil such an advance request as the 3-year term had to expire first*". The Complainants state that they were "*advised to contact the bank the month before the fixed term was due to expire in order to put in place the necessary arrangements.*"

The Complainants detail that they enquired whether they would "*be able to easily merge the two separate mortgage accounts into a single account going forward*". The Complainants submit that they were informed by the Provider that it "*may in fact require the accounts to be merged into a single account as [it] had not heard of split LTVs mortgages*". The Complainants contend that during the meeting, the representative of the Provider "*indicated clearly that [the Complainants] would only have one mortgage agreement going forward, [the representative] had never heard of an LTV being split, and they would be merged at that point*".

In **early December 2008**, the Complainants submit that they had learned that the ECB interest rate had dropped to 0.75% and they contacted the Provider with a "*view to moving [their] 3-year fixed immediately into a Tracker*" and also "*enquired as to what penalty might be involved to break the 3-year fixed term*". The Complainants explain that the Provider informed them that it had stopped offering tracker mortgages earlier in **2008**. The Complainants detail that the Provider was unable to provide them with the amount of the penalty but did indicate that it would be significant.

The Complainants maintain that they should have been offered "*a choice as to which variable rate mortgage product*" to apply to their mortgage loan account on the expiry of the 3-year fixed term on "*Part 2*" of their mortgage loan. The Complainants contend that whilst the term "*standard variable rate*" is used in the schedule of their mortgage loan agreement, they submit that the term "*standard*" is "*not defined, specified or elaborated*" in the terms and conditions, and is therefore "*open to interpretation*".

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The Complainants submit that Clause 11.4 of the Mortgage Loan Offer Letter provides that their mortgage loan account can convert to the then *“applicable variable home loan rate”* at the end of the fixed term, which they submit could have been either a variable interest rate or tracker variable interest rate, and that both of these *“were arguably “standard” at the time”*.

The Complainants are of the view that in circumstances where they had an LTV tracker interest rate in place for the same property on the same 30-year term, they should have been given the opportunity to merge the two mortgage loan accounts, irrespective of whether tracker products were being offered or not.

The Complainants detail that the Provider acknowledged in a letter sent to them on **14 January 2016**, that *“a tracker-variable was indeed a defined option in our contract”* and that they were *“entitled to avail of the Tracker Option prior to October 2008”*. In this regard, the Complainants contend that the Provider had *“no such right to remove this option at their sole discretion”*. The Complainants maintain that the Provider was obliged to provide them with due notice in relation to any significant changes affecting their mortgage loan agreement, such as the withdrawal of tracker interest rates. The Complainants detail that they, *“in particular should have been given advance notice (and due consideration) of the LTV withdrawal given that the personal banking manager assigned to [them] was aware of [their] prior request only 2 months earlier in July 2008 to move to their LTV tracker mortgage.”*

The Complainants state that they are *“currently still entitled to be offered, as per [their] contract, either i) a new LTV tracker or ii) an extension (by merger) with [their] existing LTV tracker.”*

The Complainants submit that *“it is clear that the bank has effectively structured [their] home mortgage, in two interrelated parts regardless of how [the Provider] may wish to deny this overarching common-sense viewpoint.”* The Complainants further submit that these loans are *“tied-together for all practical purposes and since no bank (including themselves) will allow switching of one part of the loan without the other”* they believe that the Provider’s position is *“patently unreasonable.”*

The Provider’s Case

The Provider submits that the Complainants drew down *“two separate and distinct loan facilities on 5 July 2006 pursuant to two separate credit applications and governed by the terms and conditions of two separate facility letters.”*

The Provider states that whilst the two separate loan facilities were secured on the same property, they were *“standalone facilities with each facility being subject to separate terms and conditions as contained in individual facility letters.”* The Provider asserts that the Complainants’ mortgage loan account was not split into a *“Part 1”* or a *“Part 2”*. The Provider also explains that the Complainants were *“at all times issued with documentation including bank statements which confirmed that two different loans were in existence.”*

The Provider details that the Complainant drew down mortgage loan account ending **3086** and mortgage loan account ending **3051** in **July 2006**.

The Provider explains that the facility letter in respect of mortgage loan account ending **3086** provided for a 2-year fixed interest rate, with the Provider’s standard variable interest rate to apply thereafter. The Provider notes that the fixed interest rate period on mortgage loan account ending **3086** expired in **May 2008**. The Provider states that the Complainants sought to apply a tracker interest rate to the mortgage loan account however the loan documentation for mortgage loan account ending **3086** did not entitle the Complainants to an ECB tracker rate of interest. The Provider explains that the Complainants were required to complete the approval and drawdown process for a new loan facility to apply for a tracker interest rate mortgage. The Provider notes that the Complainants completed the credit approval process for a new tracker mortgage loan and subsequently drew down a new mortgage loan on a tracker interest rate in **July 2008**. The Provider explains that mortgage loan account ending **3086** was redeemed in full and mortgage loan account ending **8381** drew down on a tracker rate of interest.

The Provider states that the Complainants drew down mortgage loan account ending **3051** in the sum of €1,350,000.00 on **05 July 2006**, pursuant to the terms and conditions of a facility letter dated **06 June 2006**. The Provider details that the facility letter confirmed that the term of the loan was 30 years and that a fixed interest rate applied until **01 May 2009**. The Provider explains that the facility letter provided that following the expiry of the fixed interest rate period, the interest rate would convert to the Provider’s standard variable interest rate.

The Provider explains that in **July 2008**, the Complainants requested if they could complete paperwork to move mortgage loan account ending **3051** to a tracker interest rate on the expiry of the 3-year fixed interest rate period. The Provider states that this was not possible as the fixed interest rate period was not due to expire until **May 2009**, which was 10 months away.

The Provider submits that it has checked all hard copy files and computerised records that it holds, and states that it does not have detailed minutes of the meeting which took place in **July 2008**. In these circumstances the Provider asserts that it cannot comment on the meeting which took place in **July 2008** as the Provider does not have a detailed record of that meeting. The Provider details that its representative from the branch is no longer employed by the Provider.

The Provider states that it sent a letter to the Complainants on **18 March 2009** in relation to mortgage loan account ending **3051** to inform the Complainants that the fixed interest rate period was due to expire on **01 May 2009**. The Provider details that the Complainants were offered the option to choose *“between a standard variable rate or a new fixed rate period”*. The Provider submits that this letter also stated that if the Complainants failed to choose an interest rate option, their mortgage loan account would default to the *“standard variable rate”*. The Provider maintains that in circumstances where the Complainants did not select to fix the interest rate on their mortgage loan account, the Provider’s standard variable rate of interest was applied to the mortgage loan account on expiry of the fixed interest rate period.

The Provider details that it withdrew its tracker loan products from the market in **late 2008** therefore tracker interest rates were no longer available when the 3-year fixed interest rate period ended in respect of mortgage loan account ending **3051**. The Provider submits that mortgage loan account ending **3051** was never on a tracker interest rate and there was no contractual or regulatory obligation on the Provider to apply a tracker interest rate to this loan on the expiry of the fixed interest rate period.

In response to the Complainants’ assertion that in **July 2008** the Provider *“indicated clearly that [the Complainants] would only have one mortgage agreement going forward”* and that the Provider’s representative *“had never heard of an LTV being split, and they would be merged at that point”*, the Provider states that *“ECB Tracker interest rate loans were still on sale”* in **July 2008**. The Provider maintains therefore that the representative of the Provider who met with the Complainants in **July 2008** *“would not have been in a position to predict that ECB Tracker interest rate loans would be withdrawn by the Provider as a loan product in [late] 2008 and, accordingly, could not have so informed the Complainants.”* The Provider submits that if the tracker interest rate loan product had not been withdrawn from the market, the Complainants could have applied for a new tracker mortgage loan on the expiry of the fixed interest rate period, as they had previously done with their other mortgage loan.

The Provider contends that the Complainants had no contractual right to convert to an LTV tracker interest rate under the terms of the facility letter in respect of mortgage loan account ending **3051**. The Provider submits that the facility letter dated **06 June 2006**,

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“which was signed and accepted by the Complainants in the presence of their solicitor confirmed that, following the expiry of the fixed interest rate period, the interest rate would revert to the Provider’s standard variable interest rate.” The Provider refers to Clause 12.1 of the facility letter regarding the meaning of *“variable home loan rate”*. The Provider states that it is satisfied that the content of the loan documentation is sufficiently clear and transparent in its meaning, and it is satisfied that the correct rate of interest was applied to mortgage loan account ending **3051** *“at all times”*.

The Complaints for Adjudication

The complaints for adjudication are:

- a. The Provider incorrectly failed to offer the Complainants the option of a tracker interest rate on the expiry of the fixed interest rate period on mortgage loan account ending **3051** (which the Complainants refer to as *“Part 2”* of the mortgage loan);
- b. The Provider incorrectly failed to offer the Complainants the option to extend the *“LTV”* tracker interest rate applying to *“Part 1”* of the mortgage loan (mortgage loan account ending **3086**, by way of *“merger”* with *“Part 2”* of the mortgage loan (mortgage loan account ending **3051**); and
- c. The Provider failed to give the Complainants advance notice of the withdrawal of tracker interest rate offerings.

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

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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 **06 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.

At the outset, I note that the Complainants' submissions refer to "Part 1" and "Part 2" of their mortgage loan. In circumstances where it appears that the Complainants hold two separate mortgage loan accounts with the Provider, in the interests of clarity, I will refer to "Part 1" as mortgage loan account ending **3086** and "Part 2" as mortgage loan account ending **3051**.

In order to determine this complaint, it is necessary to review and set out the relevant provisions of the Complainants' mortgage loan documentation. It is also relevant to set out certain interactions between the Provider and the Complainants between **2006** and **2009**.

A copy of the **Credit Application** dated **26 May 2006** for mortgage loan account ending **3051** has been furnished in evidence. **Page 1** of the **Credit Application** details as follows:

"...

Application for EUR 1, 350, 000.00 Fixed Rate Home Loan

...

Pricing: Standard 3 year fixed rate of 3.95%

...

approved, see related home loan applicn [sic] for full details of conditions of approval ltv"

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The “Comments” section of the application on **page 2** outline as follows:

“App 2.7M split 50/50 in 2 fixed rates – so 2 applications to consider.”

A **Housing Loan Agreement** in relation to mortgage loan account ending **3051** was issued to the Complainants on **06 June 2006**, which details as follows:

“ Important Information as at 6 June 2006

1. Amount of credit advanced EUR 1,350,000.00
2. Period of Agreement: 30 years 1 month(s) from drawdown
3. Number of Repayment Instalments: 359 plus any final balance.
4. Amount of Each Instalment:

35 payment(s) of	EUR 6,404.81
324 payment(s) of	EUR 6,433.51
1 payment(s) of	EUR 6,429.55

...

APR: 4.06% fixed”*

The **Schedule** on **page 2** of the **Housing Loan Agreement** details as follows:

“Purpose of the Loan:

Home Purchase, as specified in your Loan Application.

...

Rate of Interest: 3.95% per annum, fixed.

3.99% per annum, variable.

Fixed rate Roll-over dated: 1 May 2009. The Roll-over Date is the start date of the standard variable interest rate at that time. The fixed rate period expires on the date preceding this day.

...”

The **Statutory Notices** contained in the **Housing Loan Agreement** detail as follows:

“WARNING: THE PAYMENT RATES ON THIS HOUSING LOAN MAY BE ADJUSTED BY THE LENDER FROM TIME TO TIME (This will not apply during any period of fixed interest rate).”

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Condition 11 of the **General Conditions for Annuity Home Loans** details as follows:

“11 Interest – Fixed Rate Loans

- 11.1 *If the Loan is a fixed rate loan the rate of interest applicable to the Loan for the Fixed Period specified in the Schedule will be our applicable fixed home loan rate on the date of drawdown of the Loan or, if a margin over or under that rate is specified in the Schedule, the aggregate from time to time of that margin and the applicable fixed home loan rate. The applicable fixed home loan rate at the date specified in the Important Information Notice is the rate specified in the Schedule.*
- 11.2 *The APR and other details quoted in the Important Information Notice assume that at drawdown of the Loan the applicable fixed rate for the Fixed Period will be the rate applicable on the date indicated in the Important Information Notice. However our rates of interest are altered in response to market conditions and if our rates of interest change between the date indicated in the Important Information Notice and the date of drawdown of the Loan, the rate of interest on the Loan for the Fixed Period specified in the Schedule will be our applicable fixed home loan rate for such period prevailing at the date of drawdown of the Loan or, if a margin over or under that rate is specified in the Schedule, the aggregate from time to time of that margin and the applicable fixed home loan rate.*
- 11.3 *You may, prior to the expiration of a Fixed Period, request us to fix the rate of interest on the Loan for such further period as you may specify (so long as it is a period for which we offer fixed rates on home loans). If we agree to such request (and we have no obligation to do so) the rate of interest applicable to the Loan for the requested Fixed Period shall be our applicable fixed home loan on the first date of the requested Fixed Period or, if a margin is specified in the Schedule, the aggregate from time to time of that margin and such fixed home loan rate.*
- 11.4 *Unless a further Fixed Period is agreed in accordance with clause 11.3, at the end of a Fixed Period the rate of interest applicable to the Loan will revert to our then applicable variable home loan rate.*
- 11.5 *You may at any time the rate of interest applicable to the Loan is variable request us to fix the rate of interest on the Loan for such period as you may specify (so long as it is a period for which we offer fixed rates on home*

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loans). If we agree to such request (and we have no obligation to do so) the rate of interest applicable to the Loan for the requested Fixed Period shall be our applicable fixed home loan rate on the first date of the requested Fixed Period or, if a margin is specified in the Schedule, the aggregate from time to time of that margin and such fixed home loan rate. You may not make such a request where you are in breach of any provision of the Agreement.

- 11.6 You may at any time during a Fixed Period opt to convert to our variable home loan rate (plus or minus any margin specified in the Schedule) by notifying us in writing. Upon conversion, a redemption fee shall be payable by you calculated in accordance with clause 9.3 above. You may not exercise this option where you are in breach of any provision of the Agreement.”

Condition 12 of the **General Conditions for Annuity Home Loans** details as follows:

12 Interest – Variable Rate Loans

- 12.1 If the Loan is a variable rate loan which is not linked to the ECB Refinance rate, the rate of interest applicable to the Loan will be our applicable variable home loan rate or if a margin over or under that rate is specified in the Schedule the aggregate from time to time of that margin and the applicable variable home loan rate. Our variable home loan rate is subject to variation from time to time in response to market conditions and such rate at the date specified in the Important Information Notice is the rate quoted in the Schedule.
- 12.2 If the Loan is an ECB Tracker Variable Rate Home Loan, then the interest rate is linked to the ECB Refinance Rate. The rate of interest specified in the Schedule is the rate applicable to the Loan at the date of the facility letter, and it represents the sum of the ECB Refinance Rate on that date and an agreed margin (“the ECB rate margin”). The ECB Refinance Rate is subject to variation, and the rate of interest applicable to the Loan shall be the ECB rate margin added to the ECB Refinance Rate from time to time, and shall vary accordingly.
- 12.3 The APR and other details quoted in the Important Information Notice assume that the variable home loan rate throughout the Period of Agreement will be variable home loan rate as at the date specified in the Important Information Notice. However due to variations in our variable

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home loan rate the actual rate of interest applicable to the Loan from time to time may be different.

...”

The **Acceptance and Authority** section on **page 4** of the **Housing Loan Agreement** details as follows:

“WARNING – THIS IS AN IMPORTANT LEGAL DOCUMENT AND YOU ARE STRONGLY ADVISED TO SEEK INDEPENDENT LEGAL ADVICE BEFORE YOU SIGN YOUR ACCEPTANCE

*I/We have read and understand the nature and contents of this Loan Agreement
I/We agree to be bound by this Loan Agreement*

Where applicable I/We irrevocably authorise my/our solicitor to give the undertaking(s) referred to in clause 3 of the General Conditions and I/We irrevocably authorise you to pay the Loan through my/our Solicitor (unless another mode of payment is agreed by my/our Solicitor).”

The Complainants accepted and signed the **Housing Loan Agreement** on **27 June 2006**. The **mortgage loan account statements** submitted in evidence show that mortgage loan account ending **3051** was drawn down on **05 July 2006**.

It is clear to me that the **Housing Loan Agreement** dated **06 June 2006** in relation to mortgage loan account **3051**, envisaged a fixed interest rate of 3.95% with a variable interest rate to apply thereafter. The **Schedule** did not contain any reference whatsoever to the ECB rate or an agreed margin as set by the Provider, such as would have been required for the application of a tracker interest rate to the Complainants’ mortgage loan under **Condition 12.2**. **Condition 12.1** of the **General Conditions for Annuity Home Loans** detailed that the “*variable home loan rate*” was one that was “*not linked to the ECB Refinance rate*” and was “*subject to variation from time to time in response to market conditions*”.

A **Credit Application** dated **26 May 2006** in relation to mortgage loan account ending **3086** has been furnished in evidence. **Page 1** of the **Credit Application** details as follows:

“...

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Application for EUR 1, 350, 000.00 Fixed Rate Home Loan

...

Pricing: Standard 2 year fixed rate to apply

....

approved for 1, 350, 000.

(fixed rate portion of overall 2.7m home loan)"

A **Housing Loan Agreement** was subsequently issued to the Complainants on **05 July 2006**.

The **Important Information** section of the **Housing Loan Agreement** dated **05 July 2006** details as follows:

1. *"Amount of credit advanced* *EUR 1,350,000.00*
2. *Period of Agreement: 30 years 0 month(s) from drawdown*
3. *Number of Repayment Instalments: 359 plus any final balance.*
4. *Amount of Each Instalment:*

<i>22 payment(s) of</i>	<i>EUR 6,290.02</i>
<i>324 payment(s) of</i>	<i>EUR 6,429.86</i>
<i>1 payment(s) of</i>	<i>EUR 6,418.90</i>

...

APR: 4.04% fixed."*

The **Schedule** on **page 2** of the **Housing Loan Agreement** dated **05 July 2006** details as follows:

"Purpose of the Loan:

Home Purchase, as specified in your Loan Application.

...

Rate of Interest: 3.80% per annum, fixed

4.24% per annum, variable

Fixed rate: Roll-over date: 1 May 2008. The Roll-over Date is the start date of the standard variable interest rate at that time. The fixed rate period expires on the date preceding this day".

The **Statutory Notices** in the **Housing Loan Agreement** detail as follows:

"WARNING: THE PAYMENT RATES ON THIS HOUSING LOAN MAY BE ADJUSTED BY THE LENDER FROM TIME TO TIME (This will not apply during any period of fixed interest rate)."

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Conditions 11 and 12 of the **General Conditions for Annuity Home Loans** contained in the **Housing Loan Agreement** dated **05 July 2006** in respect of mortgage loan account ending **3086** are the same as the conditions detailed above in respect of mortgage loan account ending **3051**. For the sake of brevity, I do not propose to repeat the wording of these conditions.

The **“Acceptance and Authority”** section on **page 4** of the **Housing Loan Agreement** dated **05 July 2006** details as follows:

“WARNING – THIS IS AN IMPORTANT LEGAL DOCUMENT AND YOU ARE STRONGLY ADVISED TO SEEK INDEPENDENT LEGAL ADVICE BEFORE YOU SIGN YOUR ACCEPTANCE

*I/We have read and understand the nature and contents of this Loan Agreement
I/We agree to be bound by this Loan Agreement*

Where applicable I/We irrevocably authorise my/our solicitor to give the undertaking(s) referred to in clause 3 of the General Conditions and I/We irrevocably authorise you to pay the Loan through my/our Solicitor (unless another mode of payment is agreed by my/our Solicitor).”

The **Housing Loan Agreement** submitted in evidence by the Provider to this Office in relation to mortgage loan account ending **3086** is unsigned. However, it does not appear to be disputed between the parties that the terms and conditions of the **Housing Loan Agreement** dated **05 July 2006** were accepted by the Complainants. I note from the **mortgage loan account statements** that mortgage loan account ending **3086** was drawn down by the Complainants on **05 July 2006**.

The **Housing Loan Agreement** dated **05 July 2006** provided for a fixed interest rate of 3.80%, with a variable interest rate to apply thereafter. The **Schedule** did not contain any reference to an ECB rate, such as would have been required for the application of a tracker interest rate to the Complainants’ mortgage loan under **Condition 12.2**. **Condition 12.1** of the **General Conditions for Annuity Home Loans** provided that the variable home loan rate was one that was *“not linked to the ECB Refinance rate”* and was *“subject to variation from time to time in response to market conditions”*. For the Complainants to have a contractual right to apply a tracker interest rate to mortgage loan account ending **3086**, that right would have to have been specifically outlined in the mortgage loan documentation, that was signed by the parties. However, no such right was set out in writing in the **Housing Loan Agreement** dated **05 July 2006**.

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The fixed interest rate period on mortgage loan account ending **3086** expired on **01 May 2008** and the Provider's standard variable interest rate was applied in the absence of selection of a further fixed interest rate period by the Complainants.

The evidence shows that the Complainants requested mortgage loan account ending **3086** to be placed on a tracker interest rate in **June 2008**. The Provider's **internal note** dated **16 June 2008** details as follows:

"LTV discussed with customer. Rate change to be looked into. Pack sent out. Life and Home to be reviewed."

The evidence shows that the "LTV" interest rate referred to the Provider's LTV ECB tracker mortgage loan product. The Provider's **internal note** dated **02 July 2008** details as follows:

"Documents in from customer for LTV [Provider's employee] to look after with [Provider's employee]. Customer called today to confirm."

The Complainants maintain that they met with a representative of the Provider in **July 2008** at which time they also requested that a tracker interest rate be applied to mortgage loan account ending **3051**, however, they were informed by the Provider that this was not possible in circumstances where the fixed interest rate period had not yet concluded on mortgage loan account ending **3051**. I have not been provided with any contemporaneous notes of this meeting.

The Provider issued correspondence to Complainants on **10 July 2008** which detailed as follows:

*"Final Financial Summary
Re: Internal transfer*

...

Thank you for meeting with me to discuss your requirements regarding

- *Home Loan*

If anything has changed since our meeting, please let me know as soon as possible as this may affect your product choice.

...

The agreed LTV ratio, reference rate and difference between reference rate and the total LTV interest rate for this application is 73.73%, 4.25% 0.74% respectively.

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An increase of 2% in interest rates will increase your repayments by E1008.19.

This final financial summary was signed by the Complainants on **14 July 2008**.

The Provider's **internal note** dated **16 July 2008** details as follows:

"LTV mortgage organised for customer along with package.

In circumstances where the Complainants' existing **Housing Loan Agreement** with respect to mortgage loan ending **3086** dated **05 July 2006** did not provide for a tracker interest rate to be applied to that loan, the Complainants entered into a new mortgage loan agreement with the Provider when they wished to avail of the Provider's LTV ECB tracker mortgage product in **July 2008**. To facilitate the drawdown of an LTV ECB tracker mortgage loan, the Provider required the Complainants to redeem mortgage loan account ending **3086** and draw down a new mortgage loan facility.

In this regard, the Provider issued a **Housing Loan Agreement** dated **10 July 2008** to the Complainants in relation to new mortgage loan account ending **8381**. The Complainants accepted and signed the **Housing Loan Agreement** dated **10 July 2008** on **14 July 2008**.

In **July 2008**, the Complainants had redeemed mortgage loan account ending **3086**, drawn down a new tracker mortgage loan under mortgage loan account ending **8381** and mortgage loan account ending **3051** remained on a fixed interest rate. The fixed interest rate period on mortgage loan account ending **3051** was due to mature the following year on **01 May 2009**.

Prior to the expiry of the fixed interest rate period in respect of mortgage loan account ending **3051**, the Provider issued a letter dated **18 March 2009** to the Complainants which details as follows:

"The agreed Fixed Rate period matures on the 01.05.2009, so you now have the opportunity to review and agree the interest terms for the amount outstanding on your loan.

...

You have the option to choose between a standard variable rate and a new fixed rate period. The fixed interest rate will be determined on the day you agree the new agreement.

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If you wish to continue with a new fixed interest rate period, please contact your local branch on [redacted telephone number] to arrange a meeting to discuss your options.

If you do not respond to this letter by 28.04.2009 the interest rate on your Fixed Rate Home Loan will be changed to standard variable rate, as agreed in the original Terms and Conditions of your loan."

In circumstances where the Complainants did not respond to this letter, mortgage loan account ending **3051** defaulted to the Provider's standard variable interest rate on **01 May 2009**. The **mortgage loan account statements** show that the interest rate changed to 3.65% on **01 May 2009**, which represented the Provider's standard variable rate of interest at that time.

The Complainants appear to be of the view that the Provider should have offered them a tracker interest rate on the expiry of the fixed interest rate period mortgage loan account ending **3051** in **May 2009**.

However, as detailed above, the **Housing Loan Agreement** dated **06 June 2006** provided for a fixed interest rate to apply until **01 May 2009** and the Provider's standard variable interest rate was to apply on expiry of the fixed interest rate period. The Provider's standard variable interest rate in this instance did not equate to an ECB tracker interest rate. For the Complainants to have a contractual right to apply a tracker interest rate on the expiry of the fixed interest rate period or indeed at any time during the term of the mortgage loan, that right would have to have been specifically outlined in the mortgage loan documentation, that was signed by the parties. However, no such right was set out in writing in the **Housing Loan Agreement** dated **06 June 2006**.

Therefore, in circumstances where the Complainants did not have contractual or other entitlement to a tracker interest rate on the expiry of the fixed interest rate period and the Provider had withdrawn its tracker interest rate product offering from the market in **late 2008**, there was no obligation on the Provider to offer a tracker interest rate to the Complainants in **2009**.

If the Complainants were not satisfied with the terms and conditions of the **Housing Loan Agreement** for mortgage loan account ending **3051**, in particular the applicable interest rate on the expiry of the fixed interest rate period, the Complainants could have decided not to accept the loan offer made by the Provider, or indeed explore other interest rate options with the Provider before drawing down the mortgage loan. Instead, the Complainants accepted and signed the **Housing Loan Agreement** on **27 June 2006** in the

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presence of their solicitor confirming that they had read and understood the nature and contents of the loan agreement.

It was open to the Complainants to approach the Provider at any point up until **late 2008** to apply for a tracker interest rate. The Complainants maintain that during a meeting with the Provider in **July 2008**, they queried whether a tracker interest could be applied to mortgage loan account ending **3051**. I have not been provided with any record of discussions of this nature between the parties. Nevertheless, it is important to note that in **July 2008**, mortgage loan account ending **3051** was on a fixed interest rate that was not due to expire until **01 May 2009**. In circumstances where the Complainants did not have a contractual entitlement to a tracker interest rate, the Provider was not obliged to accede to any request by the Complainants to apply a tracker interest rate to mortgage loan account ending **3051** during the term of the fixed interest rate period.

The Complainants also submit that the Provider incorrectly failed to offer the Complainants the option to “*extend*” the LTV tracker interest rate applicable to mortgage loan account ending **8381** to mortgage loan account ending **3051** by way of “*merger*” of both mortgage loan accounts.

The Complainants appear to be of the view that they had a “*split*” mortgage with the Provider. However, it is clear that mortgage loan account ending **3086**, mortgage loan account ending **8381** and mortgage loan account ending **3051** were three separate and distinct loan facilities governed by different terms and conditions. The Complainants did not have a split mortgage loan with the Provider and therefore the Provider was under no obligation to “*merge*” any of the mortgage loan accounts.

The Complainants are also of the view that the Provider failed to give them advance notice of the withdrawal of tracker interest rates from the market. At no stage did a tracker interest rate apply to the Complainants’ mortgage loan account ending **3051** nor did the Complainants have any future contractual entitlement to a tracker interest rate at any stage during the term of the loan. Consequently, there was no contractual or regulatory obligation on the part of the Provider to notify the Complainants that it intended to withdraw tracker interest rates from its product offering. It is important to note that the withdrawal of tracker interest rates from the market was a business decision that the Provider was entitled to make.

For the reasons outlined above, I do not uphold the complaint.

Conclusion

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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.



Handwritten signature of Jacqueline O'Malley in black ink.

**JACQUELINE O'MALLEY
HEAD OF LEGAL SERVICES**

26 August 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—

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(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.

