



<b><u>Decision Ref:</u></b>	2022-0304
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Tracker Mortgage
<b><u>Conduct(s) complained of:</u></b>	Failure to offer a tracker rate at point of sale Failure to offer a tracker rate throughout the life of the mortgage
<b><u>Outcome:</u></b>	Rejected

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

##### **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 is secured on the Complainants' principal private residence.

The loan amount was €292,100.00 and the term of the loan was 30 years. The **Loan Offer** dated **14 April 2005** outlines that the interest rate applicable to the loan was a “*variable base rate*” of 3.25%.

##### **The Complainants' Case**

The Complainants outline that they “*applied and received approval*” for their home loan in **April 2005**. The Complainants submit that the interest rate options on their Home Loan Application Form were “*Variable/Fixed only*”.

The Complainants state that they “*were not provided [with] the opportunity to select a tracker rate*” on the Home Loan Application Form at that time. The Complainants submit that “*at no stage during the application process were [they] provided with information, verbal or written, regarding the existence/availability of tracker rates*”.

The Complainants maintain that the Provider was obliged to disclose all interest rate options available when they were applying for the mortgage loan in **April 2005**, however the Provider *“failed to do so”*.

The Complainants submit that they were also not informed about the availability of tracker interest rates when applying fixed interest rates to the mortgage loan account in **November 2005** and **December 2006**.

The Complainants contend that the Provider *“failed to act in accordance with [its] duties”* as provided for in the Consumer Protection Code 2006 and the Conduct of Business Rules for Financial Services Providers, March 2004.

The Complainants are seeking a tracker interest rate to be applied to their mortgage loan account, backdating to **June 2005** when the loan was drawn down.

### **The Provider’s Case**

The Provider submits that the Complainants completed and signed a Loan Approval Certificate Application Form on **28 February 2005** to apply for a loan in the sum of €291,640.00 for the purchase of a private dwelling house. The Provider details that the Complainants were issued with a Certificate of Loan Approval on **22 March 2005**, in the amount of €291,640.00.

The Provider submits that the Complainants subsequently signed and submitted a Home Loan Application Form on **03 April 2005**. The Provider states that the interest rate options on this form were variable, fixed and split.

The Provider explains that its mortgage application form *“had not been updated since the introduction of tracker interest rates in 2004, however, this did not mean customers could not apply for a Tracker interest”* rate. The Provider maintains that the Complainants were required to complete a separate Application to Apply for a Tracker Mortgage Rate form if they wished to apply for a tracker rate of interest. The Provider submits however that the Complainants selected the variable interest rate option on the Home Loan Application Form.

The Provider outlines that it issued a Loan Offer to the Complainants on **14 April 2005**, which provided for a loan in the sum of €292,100.00 repayable over a term of 30 years on

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the Provider's variable base rate of interest. The Provider submits that it also issued a first-time buyer information booklet to the Complainants which provided information regarding the various interest rates available to first time buyers, including tracker interest rates.

The Provider submits that its internal records show that the Complainants were offered a tracker interest rate of 3.1% by way of letter dated **30 September 2005**. The Provider states that the letter "*was centrally issued, however despite having carried out an exhaustive search*", it is unable to locate a copy of this letter. The Provider submits however that its internal records show that this letter was issued on **30 September 2005**.

The Provider outlines that the Complainants completed and signed a Fixed Rate Mortgage Conversion Form on **30 November 2005**, to apply a one-year fixed interest rate to their mortgage loan account. The Provider details that it issued a letter to the Complainants on **12 December 2005**, "*confirming the conversion of the Mortgage Loan Account to a 1 Year Fixed interest rate*".

The Provider submits that in **2005**, its full range of available interest rate options included fixed, variable and tracker interest rates. The Provider details that all interest rates "*were widely available and publicly advertised through [its] website and in [its] branches*".

The Provider outlines that on the expiry of the fixed interest rate period in **December 2006**, tracker interest rates were still "*widely available and publicly advertised*". The Provider details that its records "*show that after discussion with the [Provider's] office in [branch], on the expiration of the fixed rate period in December, the Complainants chose to fix their mortgage for a further three years*" by signing and completing a Fixed Rate Mortgage Conversion Form. The Provider states that a fixed interest rate of 4.75% was applied to the Complainants' mortgage loan account for three years.

The Provider submits that the Fixed Rate Mortgage Conversion Form provided that if the Complainants wished to break away early from the fixed interest rate period to convert to a variable interest rate or a tracker interest rate, a breakage fee was payable. The Provider maintains that the reference to a tracker interest rate "*further evidences that the Complainants were aware that tracker interest were available, if they so chose*".

The Provider states that it ceased offering tracker interest rates in **late-2008** to "*new and existing customers who wished to change from their existing interest rate to a Tracker interest rate*". The Provider asserts that it has "*no record or documentation on file to show that the Complainants ever requested or were denied a Tracker interest rate during the period when they were available*".

The Provider maintains that it was not under any contractual obligation to offer the Complainants a tracker interest rate on the expiry of the relevant fixed interest rate periods. The Provider submits that the Complainants could have applied for a tracker interest rate in **April 2005, November 2005, December 2006** “or indeed at any time while the [Provider] ha[d] a Tracker interest rate product available”.

In response to the Complainants’ submission that the Provider has “*failed to act in accordance with [its] duties*” under the Consumer Protection Code 2006 and the Conduct of Business Rules for Financial Services Providers, the Provider notes that the Complainants drew down their mortgage loan in **June 2005**, prior to the introduction of the Consumer Protection Code 2006, and therefore “*the obligations for the [Provider] as required by CPC 2006 did not apply at that point in time*”. As such, the Provider submits that it did not fail to act in accordance with the Consumer Protection Code 2006, as it “*did not exist at that point in time*”.

The Provider states that the Review of Conduct of Business Rules for Financial Services Providers **March 2004** “*was a Public Consultation Paper (CP2) published by the Financial Regulator*” in **March 2004**. The Provider contends that this document “*did not impose any regulatory obligations for regulated firms to comply with*” and its purpose “*was to seek the views of the financial services industry, customers and consumer representative groups*”.

The Provider asserts that it “*is satisfied that the documentation relating to the Complainants’ Mortgage Loan Account was sufficiently clear and transparent as to the Complainants’ interest rate entitlements*” and that the mortgage loan documentation “*did not provide the Complainants with any contractual right or entitlement to a Tracker interest rate*”.

### **The Complaint for Adjudication**

The complaint for adjudication is that the Provider incorrectly failed to inform the Complainants about the availability of tracker interest rates at the following points in time:

- (a) When the Complainants applied for their mortgage loan with the Provider in **April 2005**;
- (b) When the Complainants applied a fixed interest rate to their mortgage loan in **November 2005**; and
- (c) On the expiry of the fixed interest rate period in **December 2006**.

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**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 **09 August 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. It is also necessary to set out the details of certain interactions between the Provider and the Complainants between **2005** and **2006**.

The Complainants completed and signed a **Home Loan Application Form** on **4 April 2005**. **Section E** of the **Home Loan Application Form** is titled “*Loan Details*” and details as follows:

**“LOAN TYPE (please tick one)**      *Repayment/Annuity* ✓      *Endowment*  
*Pension*

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**INTEREST RATE**

\*Variable ✓ \*\* Fixed or Split

\* Variable interest rates increase and decrease with changes in market rates.

\*\* If choosing a fixed rate, please complete the section below which outlines terms of conditions associated with fixed rate loans."

The **Home Loan Application Form** shows that the Complainants chose a variable interest rate. The Complainants could have selected a variable interest rate, a fixed interest rate or a split mortgage. The Provider explains in its submissions that the **Home Loan Application Form** used by the Complainants in **2005** had not been updated since the introduction of tracker interest rates and therefore a tracker interest rate was not included as an option in the application form. It is disappointing that the **Home Loan Application Form** had not been updated by the Provider, however I note that the Complainants were free to explore the option of availing of a tracker interest rate with the Provider. I note that all of the available interest rates, to include tracker interest rates, were publicly advertised by the Provider at the time as well as in its branches.

The Provider has submitted the following table in evidence which details the range of tracker interest rates that were on offer to new customers between **March 2005** and **June 2006**, subject to certain eligibility and lending criteria:

01/03/2005	ECB: 2.00%	Loan Amount	Standard Tracker	>=€250k	>=€300k	>=€375k			
		LTV %	<=100%	<=75%	<=75%	<=75%			
		Margin	1.25%	1.10%	1.05%	0.99%			
		Rate	3.25%	3.10%	3.05%	2.99%			
05/05/2005	ECB: 2.00%	Loan Amount	Standard Tracker	>=€250k	>=€300k	>=300k	>=€375k	>=750k	
		LTV %	<=100%	<=75%	<=75%	>75%	<=75%	<=75%	
		Margin	1.25%	1.10%	1.05%	1.15%	0.99%	0.85%	
		Rate	3.25%	3.10%	3.05%	3.15%	2.99%	2.85%	
09/06/2005	ECB: 2.00%	Loan Amount	Standard Tracker	>=€250k	>=€300k	>=300k	>=€375k	>=750k	>=1.25m
		LTV %	<=100%	<=75%	>75%	<=75%	<=75%	<=75%	
		Margin	1.25%	1.10%	1.15%	1.05%	0.99%	0.85%	0.80%
		Rate	3.25%	3.10%	3.15%	3.05%	2.99%	2.85%	2.80%
23/08/2005	ECB: 2.00%	Loan Amount	Standard Tracker	>=250k <300k	>=300k <375k	>=300k no max	>=375k <750k	>=750k <1.25m	>=1.25m
		LTV %	<=100%	<=75%	<=75%	>75%<=92%	<=75%	<=75%	<=75%
		Margin	1.25%	1.10%	1.05%	1.15%	0.99%	0.85%	0.80%
		Rate	3.25%	3.10%	3.05%	3.15%	2.99%	2.85%	2.80%
07/09/2005	ECB: 2.00%	Loan Amount	Standard Tracker	>=250k <300k	>=300k <375k	>=250 no max	>=375k <750k	>=750k <1.25m	>=1.25m
		LTV %	<=100%	<=80%	<=80%	>80% <=92%	<=80%	<=80%	<=80%
		Margin	1.25%	1.10%	1.05%	1.15%	0.99%	0.85%	0.80%
		Rate	3.25%	3.10%	3.05%	3.15%	2.99%	2.85%	2.80%
06/12/2005	ECB: 2.25%	Loan Amount	Standard Tracker	>=250k <300k	>=300k <375k	>=250 no max	>=375k <750k	>=750k <1.25m	>=1.25m
		LTV %	<=100%	<=80%	<=80%	>80% <=92%	<=80%	<=80%	<=80%
		Margin	1.25%	1.10%	1.05%	1.15%	0.99%	0.85%	0.80%
		Rate	3.50%	3.35%	3.30%	3.40%	3.24%	3.10%	3.05%
31/01/2006	ECB: 2.25%	Loan Amount	Standard Tracker	>=250k	>=250k <375k	>=375k <750k	>=250k	>=750k	
		LTV %	<=100%	>80% <=92%	<=80%	<=80%	<=60%	<=80%	
		Margin	1.25%	1.10%	1.05%	0.99%	1.00%	0.80%	
		Rate	3.50%	3.35%	3.30%	3.24%	3.25%	3.05%	
03/03/2006	ECB: 2.50%	Loan Amount	Standard Tracker	>=250k	>=250k <375k	>=375k <750k	>=250k	>=750k	
		LTV %	<=100%	>80% <=92%	<=80%	<=80%	<=60%	<=80%	
		Margin	1.25%	1.10%	1.05%	0.99%	1.00%	0.80%	
		Rate	3.75%	3.60%	3.55%	3.49%	3.50%	3.30%	
09/06/2006	ECB: 2.75%	Loan Amount	Standard Tracker	>=250k	>=250k <375k	>=375k <750k	>=250k	>=750k	
		LTV %	<=100%	>80% <=92%	<=80%	<=80%	<=60%	<=80%	
		Margin	1.25%	1.10%	1.05%	0.99%	1.00%	0.80%	
		Rate	3.75%	3.60%	3.55%	3.49%	3.50%	3.30%	

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The Provider subsequently issued a **Loan Offer** to the Complainants dated **14 April 2005**, which details as follows:

*“Dear [Complainants],*

*I am pleased to inform you that [the Provider] has approved a Repayment Home Loan of €292,100.00 towards the purchase of the above property at a cost of €317,000.00 subject to the following terms and the attached General Conditions.*

*...*

<i>Type of Loan:</i>	<i>Repayment</i>
<i>Total Amount of Loan:</i>	<i>€292,100.00</i>
<i>Cheque Issue Amount:</i>	<i>€292,100.00</i>
<i>Monthly Repayment</i>	<i>€1,271.24</i>
<i>Interest Rate (Variable):</i>	<i>3.25%</i>
<i>Interest Rate Basis:</i>	<i>Variable Base Rate</i>
<i>Repayment Period (Years):</i>	<i>30 Approx.”</i>

**Condition 3** of the **General Conditions for [Provider’s] Home Loans** states as follows:

*“Acceptance of terms and conditions: By taking the loan from [the Provider], the borrower accepts all the terms and conditions set out in the application form, offer letter, these general conditions and the mortgage”.*

**Condition 9** of the **General Conditions for [Provider’s] Home Loans** states as follows:

*“Fixed Rate Loans: When the fixed rate period ends, the interest rate will convert to a variable rate, and if [the Provider] is then offering a Fixed Home Loan rate for a defined period, the borrower may opt to convert to a fixed rate for that period, and defer conversion to a variable rate....”*

**Condition 2** of the **Provider’s Mortgage Conditions** details as follows:

**“2. How interest on the Loan is calculated and charged.**

**2.1** *The basis on which the interest rate in the Loan is calculated is stated in the Offer Letter.*

**2.2** *The interest rate on the Loan may be increased or reduced by [the Provider] from time to time, however no change in the interest rate will be applied to the Loan during any period when the interest rate is a fixed rate.*

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...”

The Provider has submitted a **first-time buyer information booklet** into evidence which was provided to the Complainants and which details as follows:

*“Important Things to Think About*

*Rate: Probably the most important aspect of a mortgage is its rate. This represents how much you’ll be paying the lender in interest each month for borrowing the money in your mortgage.*

*These are three basic types of rate: fixed, variable and tracker.”*

This Office does not appear to have been furnished with the signed **Acceptance Form** attached to the **Loan Offer**. However, the **mortgage account statements** which have been furnished in evidence show that the Complainants drew down the mortgage loan in full on **02 June 2005**.

It is clear that the **Loan Offer** dated **14 April 2005** envisaged that a variable interest rate of 3.25% would apply to the Complainants’ mortgage loan. The nature of the “*variable base*” interest rate in the Complainants’ mortgage loan documentation made no reference to varying in accordance with variations in the ECB refinancing rate. Rather, it was a variable interest rate which could be varied at the discretion of the Provider. It is therefore clear that the **Loan Offer** dated **14 April 2005** did not confer any entitlement on the Complainants to be offered a tracker interest rate at any time during the term of the loan.

The Provider has submitted a copy of its **internal records** in evidence which show that the Provider issued a letter to the Complainants on **30 September 2005** offering a tracker interest rate of 3.1%. The Provider’s internal records detail as follows:

<i>“Direction</i>	<i>Incoming</i>
<i>Description</i>	<i>TRACKER RATE OF 3.1% OFFERED</i>
<i>...</i>	
<i>Reason</i>	<i>Letter Sent to Customer”</i>

The Provider has submitted the following table in evidence which details the range of tracker interest rates that were on offer to existing customers between **September 2005** and **January 2006**, subject to certain eligibility and lending criteria:

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01/09/2005	ECB: 2.00%	Loan Amount	Standard Tracker	>=250k <300k	>=300k <375k	>=300K	>=375k <750k	>=750k<1.25m
		LTV %	<=100%	<=75%	<=75%	>75%<=92%	<=75%	<=75%
		Margin	1.25%	1.10%	1.05%	1.15%	0.99%	0.85%
		Rate	3.25%	3.10%	3.05%	3.15%	2.99%	2.85%
01/10/2005	ECB: 2.00%	Loan Amount	Standard Tracker	>=250k <300k	>=300k <375k	>=250 no max	>=375k <750k	>=750k<1.25m
		LTV %	<=100%	<=80%	<=80%	>80% <=92%	<=80%	<=80%
		Margin	1.25%	1.10%	1.05%	1.15%	0.99%	0.85%
		Rate	3.25%	3.10%	3.05%	3.15%	2.99%	2.85%
01/01/2006	ECB: 2.25%	Loan Amount	Standard Tracker	>=250k <300k	>=300k <375k	>=250 no max	>=375k <750k	>=750k<1.25m
		LTV %	<=100%	<=80%	<=80%	>80% <=92%	<=80%	<=80%
		Margin	1.25%	1.10%	1.05%	1.15%	0.99%	0.85%
		Rate	3.50%	3.35%	3.30%	3.40%	3.24%	3.10%

I note that the standard tracker interest rate for mortgage loans less than €300,00.00 like the Complainants was 3.10% which was the tracker interest rate the was offered to the Complainants on **30 September 2005**.

It is disappointing that the Provider is unable to locate a copy of the letter that purportedly issued to the Complainants on **30 September 2005**. It is not clear whether a request was made by the Complainants to the Provider seeking a tracker interest rate. In any event, there is no evidence to show that the Complainants proceeded to accept the offer of a tracker interest rate at that time.

The Complainants however opted to apply a fixed interest rate to their mortgage loan account by completing a **Fixed Rate Mortgage Conversion Form** on **30 November 2005** which details as follows:

*"I/We wish to apply to convert the balance of my/our loan account to a fixed rate for the next 1 year(s).*

*I/We understand that when this period has expired the loan will revert to the applicable variable rate then prevailing.*

...

*This document forms part of the existing documentation governing this loan, the conditions of which are outlined in the Mortgage Deed, the Loan Offer and Cheque Issue Letters".*

The evidence shows that the Complainants chose to apply a one-year fixed interest rate to their mortgage loan account. The **Fixed Rate Mortgage Conversion Form** provided that on expiry of the fixed interest rate period, the rate would revert to the *"applicable variable rate then prevailing"*. The nature of the variable rate being one that could be increased or decreased by the Provider.

The **mortgage loan account statements** show that the Complainants' mortgage loan account converted to a fixed interest rate of 3.69% on **31 December 2005**.

On the expiry of the one-year fixed interest rate period in **December 2006**, the Complainants completed a **Fixed Rate Mortgage Conversion Form** to apply a three-year fixed interest rate to their mortgage loan account. The **Fixed Rate Mortgage Conversion Form** details as follows:

*"I/We wish to apply to convert the balance of my/our loan account to a fixed rate of 4.75 for the next 3 year(s) of my/our mortgage.*

*I/we understand that when this fixed rate period has expired the loan will **convert to the applicable variable rate** then prevailing.*

...

*I/We understand that an early redemption charge is payable in the following cases where the fixed rate period has not expired:*

- 1. If a capital payment or full payment is made to the loan.*
- 2. If the loan is converted to a variable rate/tracker rate.*
- 3. If the loan is converted to another fixed rate."*

The evidence shows that they Complainants chose to apply a three-year fixed interest rate to their mortgage loan account. The **Fixed Rate Mortgage Conversion Form** provided that on the expiry of the fixed interest rate period, the interest rate would "*convert to the applicable variable rate then prevailing*". The **mortgage loan account statements** show that a fixed interest rate of 4.75% was applied to the mortgage loan account on **31 December 2006**.

The Complainants are of the view that the Provider failed to inform them about the availability of tracker interest rates when applying for their mortgage loan in **2005**. While tracker interest rates were on offer by the Provider and were publicly advertised at that time, the Provider was not under any contractual or regulatory obligation to offer the Complainants a tracker interest rate. Having considered the Complainants' mortgage loan documentation, it is clear to me that the Complainants applied for a variable interest rate during the application process in respect of their mortgage loan in **2005** by completing the **Home Loan Application Form** and selecting the variable rate option. It was a matter for the Complainants to decide what interest rate to apply for based on what best suited their needs. Indeed, if the Complainants wanted independent advice about rates available in the market or the market generally, the Complainants could only get that advice from an independent third-party advisor as opposed to the Provider. I have not been provided with any evidence to suggest that the Complainants completed an **Application to Apply for a Tracker Mortgage Rate** which appears to have been required if the Complainants wished to explore the option of applying for a tracker interest rate in **2005**.

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In circumstances where the Complainants specifically applied for a variable interest rate loan, the Provider subsequently offered the Complainants a variable base interest rate of 3.25% by way of the **Loan Offer** dated **14 April 2005**, which was accepted by the Complainants by drawing down the loan. The nature of the variable interest rate in this instance was one that could be adjusted by the Provider. There is no reference to the variable base interest rate being a tracker interest rate that fluctuated in line with variations in the ECB rate.

If it was the case that, upon considering the particulars of the **Loan Offer** dated **14 April 2005**, the Complainants were of the view that a variable interest rate loan was not suitable to them, then the Complainants could have decided not to accept and draw down the mortgage loan in **June 2005**. Instead, they could have sought an alternative interest rate, to include a tracker interest rate, with the Provider or with another mortgage provider. However, they did not do so.

The Complainants also contend that the Provider failed to inform them about the availability of tracker interest rates when they applied a fixed interest rate to their mortgage loan account in **November 2005**. In this regard, the evidence shows that the Complainants were offered a tracker interest rate of 3.1% in **September 2005** however the Complainants did not proceed with applying a tracker interest rate to their mortgage loan account at that time. Instead, the Complainants completed a **Fixed Rate Mortgage Conversion Form** on **30 November 2005** to apply a one-year fixed interest rate to their mortgage loan account. The table of tracker interest rates available for existing customers as detailed in preceding paragraphs shows that tracker interest rates were available from the Provider in **November 2005**. This information was publicly available to customers. There was no obligation on the part of the Provider to inform the Complainants of the availability of tracker interest rates or indeed offer the Complainants a tracker rate of interest in **November 2005**.

In addition, the Complainants submit that the Provider failed to inform them about the availability of tracker interest rates on the expiry of the fixed interest rate period in **December 2006**. In this regard, the evidence shows that by choosing to apply a fixed interest rate to their mortgage loan from **31 December 2005** by signing a **Fixed Rate Mortgage Conversion Form** on **30 November 2005**, the Complainants agreed that a variable interest rate would apply on the expiry of the fixed interest rate period. **Condition 9** of the **General Conditions for [Provider's] Home Loans** also stipulated that when the fixed interest period ends, the interest rate will convert to a variable interest rate, or the Complainants could opt for a further fixed interest rate if available. In **December 2006**, the evidence shows that the Complainants opted to apply a further fixed interest rate to their mortgage loan account for a period of 3 years by completing and signing a **Fixed Rate**

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**Mortgage Conversion Form.** While tracker interest rates were still on offer by the Provider in **December 2006** to existing customers, the Complainants had no contractual entitlement to be offered a tracker interest rate. The Complainants were only entitled to be offered a variable interest rate or a fixed interest rate, if available. It appears that a fixed interest rate was available and the Complainants, of their own accord, proceeded with that option. It was always open to the Complainants to explore the tracker interest rate offering with the Provider up until **late 2008**, when the Provider withdrew tracker interest rates from its suite of mortgage products. It is important to note that it would have been a matter of commercial discretion on the part of the Provider whether to accede to any such request from the Complainants to apply a tracker interest rate to their mortgage loan account.

In light of the foregoing, this Office is satisfied that the Provider has acted in accordance with its contractual obligations to the Complainants pursuant to the mortgage loan documentation together with its regulatory obligations under consumer protection legislation.

For the reasons set out 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**

31 August 2022

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## PUBLICATION

### Complaints about the conduct of financial service providers

Pursuant to *Section 62* of the *Financial Services and Pensions Ombudsman Act 2017*, the Financial Services and Pensions Ombudsman will **publish legally binding decisions** in relation to complaints concerning financial service providers in such a manner that—

(a) ensures that—

(i) a complainant shall not be identified by name, address or otherwise,

(ii) a provider shall not be identified by name or address,

and

(b) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.

### Complaints about the conduct of pension providers

Pursuant to *Section 62* of the *Financial Services and Pensions Ombudsman Act 2017*, the Financial Services and Pensions Ombudsman will **publish case studies** in relation to complaints concerning pension providers in such a manner that—

(a) ensures that—

(i) a complainant shall not be identified by name, address or otherwise,

(ii) a provider shall not be identified by name or address,

and

(b) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.