



<u>Decision Ref:</u>	2022-0305
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Tracker Mortgage
<u>Conduct(s) complained of:</u>	Failure to offer a tracker rate throughout the life of the mortgage
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

This complaint relates to a mortgage loan account 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 €355,000.00 and the term of the loan was 25 years. The **Letter of Offer** dated **02 November 2005** provided that the interest rate applicable to the loan was a fixed interest rate of 3.45% for the first 24 months of the loan.

The Complainants' Case

The Complainants submit that they drew down their mortgage loan with the Provider in **December 2005** on a two-year fixed interest rate, which would roll to the "*Lenders Prevailing variable rate on expiry*" of the fixed rate period.

The Complainants submit that they received a notification from the Provider in **November 2007** stating that the fixed interest rate was expiring, and that they were being moved to a standard variable interest rate. The Complainants maintain that they "*should have been offered a Tracker rate*" instead of the standard variable interest rate.

The Complainants state that they requested a tracker interest rate during a telephone call with the Provider on **16 November 2007** but were “*refused*”. The Complainants submit that because they were not offered a tracker interest rate, they enquired about various fixed rate options and “*agreed to go onto the best rate offered which was the 1 year fixed*”. The Complainants contend that the note of the telephone call on **16 November 2007** submitted into evidence by the Provider is “*inadequate*”.

The Complainants submit that the “*Lenders prevailing variable rate is not defined*” in their mortgage loan documentation and it does not reference the standard variable rate. The Complainants submit that, according to Central Bank of Ireland statistics, “*the Prevailing Variable rate with Irish banks during 2006-2008 was the Tracker rate*” and therefore a tracker interest rate should have been applied to their mortgage loan account. The Complainants outline that they have not seen any legal documentation to support the Provider’s assertion that the prevailing variable rate was in fact the standard variable rate.

The Complainants also maintain that “*[they] should [have] had a Tracker when [their] Fixed Rate period ended*” in **December 2007** because a flyer communication that issued from the Provider to brokers in **November 2006**, provided “*that all fixed rates will roll onto Tracker rates*”. The Complainants assert that the flyer “*did not apply to new business only*” and instead “*applied to existing business as well as new business but was primarily directed towards existing business.*”

The Complainants submit that the Provider’s Mortgage Handbook “*clearly states that Fixed rate customers can choose between Fixed, Variable and Tracker [rates] at the end of the Fixed Rate period.*” The Complainants state that the **2007 Mortgage Handbook** should be treated the same as the flyer communication which provided a “*specific guarantee*” of a tracker interest rate. The Complainants contend that the tracker switching product as outlined in the Provider’s **2006 Financial Statement** is the same product as outlined in the flyer and that this further supports their position that the Provider should have offered them a tracker interest rate.

Moreover, the Complainants assert that the Provider failed to act in accordance with the Consumer Protection Code as the Provider is “*a regulated entity*” which “*must ensure that in all its dealings with customers are within the context of its authorisation.*”

The Complainants are seeking the following:

- (a) That a tracker interest rate be applied to their mortgage loan account,
- (b) A refund of any interest overpaid from **December 2007** to present; and
- (c) Compensation due to the “*financial loss*” incurred by the Complainants.

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The Provider's Case

The Provider submits that General Condition 7 of the Letter of Offer dated **02 November 2005** details the interest rate that would be applicable to the Complainants' mortgage loan account on the expiry of the initial fixed interest rate period in **December 2007**. The Provider explains that General Condition 7 stipulates that its prevailing variable interest rate would apply at the end of the fixed interest rate period. The Provider details that the Letter of Offer does not contain any commitment *"that the prevailing variable rate referenced would track the ECB rate or any other quoted rate."*

The Provider states that the terms 'prevailing variable rate' and 'standard variable rate' *"are not specifically defined in the Complainants' mortgage loan documentation,"* however the Provider is of the view that *"these terms were widely used and understood"*. The Provider relies on the Mortgage Handbook provided to the Complainants with the Letter of Offer which provided an explanation of the various interest rate types generally available. The Provider submits that it is satisfied that the documentation for the Complainants' mortgage loan documentation *"was sufficiently clear and transparent."*

The Provider submits that the Letter of Offer dated **02 November 2005** *"included a recommendation that the Complainants secure independent legal advice"*. The Provider states that the Complainants had the benefit of both independent financial and legal advice, and the Provider notes that the Complainants' Letter of Offer was also witnessed by their solicitor.

The Provider submits that it notified the Complainants by way of letter dated **13 November 2007** that a standard variable interest rate would apply to the mortgage loan account on the expiry of the fixed interest rate period in circumstances where that was the Provider's prevailing variable interest rate applicable at the time.

The Provider states that the Complainants were not offered a tracker interest rate on their mortgage loan account on the expiry of the fixed interest rate period in **2007** *"as there was no default or contractual entitlement established for the [Provider] to do so"*.

The Provider submits that the Complainants signed a Fixed Rate Instruction form on **12 December 2007** to apply a 1-year fixed interest rate of 5.24% to their mortgage loan. The Provider states that on the expiry of this 1-year fixed interest rate period in **December 2008**, *"the standard variable rate for residential homeloan properties of 5.49% applied"*.

The Provider submits that, although the Complainants have submitted that they had requested a tracker interest rate from the Provider in **2007** and were refused, the Provider

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states that there is no record of this. In this regard, the Provider relies on its contemporaneous telephone notes which contain no record that a tracker interest rate had been requested or discussed.

In response to the Complainants' submission that statistics from the Central Bank of Ireland show that *"the prevailing (most common) variable rates, within Irish banks during 2006-2008 period was the tracker rate"*, the Provider states that the prevailing variable rate referenced in the Letter of Offer is the *"Lenders prevailing variable rate"*, which would be the standard variable interest rate applicable to that category of loan. The Provider submits that it is clear from the Complainants' mortgage loan documentation that the term *"prevailing variable rate"* is in no way linked to the ECB rate or a *"tracker rate."*

The Provider explains that its Mortgage Handbook did not provide a specific guarantee of a tracker interest rate. In any event, the Provider states that the Mortgage Handbook referenced by the Complainants is not applicable to this complaint. The Provider details that the version of the Mortgage Handbook to which the Complainants refer, was in circulation from **May 2007**, which was *"almost two years after the Complainants drew down their loan"*. The Provider details that the Mortgage Handbook applicable to the Complainants' mortgage loan account was the one that issued to them with their Letter of Offer in **2005**. The Provider submits that the Mortgage Handbook that issued to the Complainants in **2005** did not contain terms and conditions and did not form part of the Complainants' contractual loan documentation. The Provider explains that *"rather this was an information document provided to customers at a specific point in time and in relation to a "current" offer received by the respective customers receiving same."*

In relation to the communication that issued from the Provider to brokers on **07 November 2006** and which has been referenced by the Complainants, the Provider submits that this communication *"did not alter the contractual agreement"* between the Complainants and the Provider. The Provider details that the broker communication described the launch of a new product available to new private dwelling home mortgage applicants in the period between **November 2006** and **February 2008**. The Provider explains that this new mortgage loan product provided a specific guarantee that a tracker interest rate would apply on the expiry of an initial fixed rate period. The Provider submits that the *"flyer"* is of no relevance to the Complainants' mortgage loan as the Complainants submitted their mortgage loan application in **August 2005** and their mortgage loan was ultimately drawn down in **November 2005**, which was *"12 months prior to the introduction of the product"* and the circulation of the broker communication. The Provider further details that the flyer was a broker communicate and *"did not form any part of an advertisement from the [Provider] to the general public, rather it was a communicate provided to brokers only."*

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In addition, the Provider submits that the tracker switching product referenced in the **2006 Financial Statement**, *“is not the same as that notified to Brokers in November 2006”* and does not indicate that a switch to a tracker interest rate was to be made available to customers generally. The Provider also outlines that the switcher product referenced by the Complainants was a re-mortgage product that post-dated the Complainants’ mortgage loan application and *“is of no relevance”* to the Complainants’ mortgage loan account.

The Provider maintains that the Mortgage Handbook, Financial Statement, and flyer could not *“have created any expectation for the Complainants as to the rate to apply in December 2007 when the 2005 agreed fixed rate period expired”*.

The Provider states that the Complainants’ mortgage loan account remains active with the Provider to date.

The Complaint for Adjudication

The complaint for adjudication is that the Provider incorrectly failed to offer the Complainants a tracker interest rate on their mortgage loan account on the expiry of the 24-month fixed interest rate period in **December 2007**.

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.

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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.

Before dealing with the substance of the complaint, this Office notes 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 this Provider and not the broker which will be investigated and dealt with in this Decision. 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.

This Office also notes that the Complainants included references to a data access request made to the Provider in their Complaint Form to this Office as well as in subsequent submissions to this Office. The Complainants were informed of the parameters of the investigation by this Office, by letter dated **20 May 2019**, which outlined as follows:

“Please note with respect to any issue you may have which relates to an alleged breach of data protection legislation, please be advised that the Office of the Data Protection Commissioner is the more appropriate body to raise such concerns with.”

Therefore, the conduct on the part of the Provider in relation to the data access request, 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 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 **2008**.

The Complainants completed a **Homeloan Application** form dated **28 August 2005**, which was submitted to the Provider by their broker. The **Homeloan Application** form detailed that the Complainants were seeking mortgage loan finance in the sum of €355,000.00. The Complainants did not select an interest rate type, however the options included in the application form were “*tracker*”, “*fixed*”, “*variable*”, “*discount*”, “*split*” and “*other*”.

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The Provider issued a **Letter of Offer** dated **02 November 2005** to the Complainants which details as follows:

“We are pleased to advise you that [the Provider] has approved facilities amounting to €355,000 secured on the above property subject to the attached special and standard conditions.

...

PARTICULARS OF ADVANCE

IMPORTANT INFORMATION AS AT 2nd November 2005

Amount of Credit Advanced €355,000.00

Period of Agreement (Years – Months) 25 – 0

...”

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

“...

Type of Advance ANNUITY HOMELOAN

Interest Rate 3.45

Fixed For

24 months”

The relevant provisions of the **Loan General Conditions** are as follows:

“1. These General Conditions should be read in conjunction with the Letter of Offer (“the Letter of Offer”) the Particulars of the Advance (“the Particulars”) and the Special Conditions (if any) to which they are attached.

...

5. “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

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will fluctuate in accordance with the fluctuations in the applicable interest rate. Payment of the monthly instalments must be made by Direct Debit Mandate. ...”

7. The rate of interest applicable to this loan will be fixed for 24 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.

17. 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 provide as follows:

“WARNING:

...

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

The **Form of Acceptance** was signed by the Complainants and witnessed by their solicitor on **03 November 2005** on the following terms:

“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:-

- (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*

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

The Provider submits that the Complainants were also furnished with a **Mortgage Handbook**, however this Office has not been provided with a copy of the version of the Mortgage Handbook that was circulated to the Complainants in **2005**. The Provider has however submitted a copy of the **Mortgage Handbook** which was in circulation in **2007** and which is referenced by the Complainants in their submissions. The **Mortgage Handbook** which was in circulation in **2007** as furnished by the Provider, provides as follows:

"This book is intended to assist our customers in understanding detailed aspects of the mortgage they have taken with [the Provider] and aims to provide in plain English a clear understanding of how mortgages work".

5. Rates Explained

...

fixed rate

A fixed rate is one where the interest rate charged is fixed by the lender for a specified period, typically 1 to 5 years... When the fixed rate you chose comes to an end, you can agree to another fixed rate, or you can switch to a variable or tracker rate at the time. The choice is yours.

...

variable rate

With a variable rate, your monthly repayments may rise or fall from time to time in line with general market interest rates. If rates fall, your monthly repayment reduces. However if rates rise, you pay more. A variable rate may suit you if you are in a financial position where an increase in interest rates would not adversely affect your ability to repay.

...

tracker rate

This is a 'variable rate' type mortgage that guarantees to track the European Central Bank (ECB) reference rate within a specified margin (percentage points).

The maximum rate charged is the ECB rate plus a specified % as agreed at the start of the mortgage (e.g. ECB + margin of 1.25%.) The margin charged depends on a number of factors including loan amount, loan to value, and the type of securities

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against which the loan is held (i.e. primary residence or residential investment property).

The rate charged will move up and down as the ECB rate moves. The customer will be made aware of any changes within 30 days. From the customer's perspective, this is a 'lock in' to current market rates.

...

Page 17 of the **Mortgage Handbook** details as follows:

"IMPORTANT INFORMATION

NO LEGALLY BINDING LOAN AGREEMENT SHALL COME INTO EXISTENCE UNTIL SUCH TIME AS A FORMAL LETTER (WHICH INCLUDES [THE PROVIDER'S] STANDARD TERMS AND CONDITIONS) HAS BEEN SIGNED BY BOTH THE CUSTOMER AND [THE PROVIDER].

..."

The **Mortgage Handbook** does not form part of the mortgage loan agreement between the parties in circumstances where there is no reference to any version of the Mortgage Handbook forming part of the terms and conditions of the **Letter of Offer** dated **02 November 2005**. The Mortgage Handbook was provided to the Complainants by way of information. I note that the definitions of "variable rate" and "tracker rate" contained in the version of the **Mortgage Handbook** submitted in evidence show the difference between these two types of rates.

The **mortgage loan account statements** provided in evidence show that the mortgage loan was drawn down in full on **21 December 2005**.

It is clear that the **Letter of Offer** dated **02 November 2005** provided for a fixed interest rate of 3.45% for the first 24 months of the term of the loan. **General Condition 7** clearly details that the Provider's prevailing variable interest rate will apply on the expiry of the fixed interest rate period. The prevailing variable interest rate in this case made no reference to varying in accordance with variations in the ECB refinancing rate, rather it was a variable rate which could be adjusted at the discretion of the Provider. There is no mention in the Complainants' mortgage loan documentation that a tracker rate of interest would apply to the Complainants' mortgage loan at any stage during the term of the loan. The Complainants accepted and signed the **Letter of Offer** on **03 November 2005**, and in doing so, detailed that they had been advised upon the terms and conditions of the mortgage loan by their solicitor.

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Prior to the expiry of the 24-month fixed interest rate period, the Provider issued a letter to the Complainants dated **13 November 2007**, which states as follows:

"Dear [Complainants],

At [the Provider], we like to stay in touch with our customers and are writing to tell you about some upcoming changes to the interest rate on your mortgage.

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 January 2008 repayment. This will change the amount of your monthly 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 **Wednesday 19th December 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.*

If you want to discuss your options please call us on [telephone number].

..."

The Provider submits that the standard variable rate for residential home loan properties as of **01 January 2008** was 5.24% and this was the prevailing variable interest rate applicable to the Complainants' mortgage loan in line with the **Letter of Offer** dated **02 November 2005**.

A telephone call took place between the Provider and the Complainants on **16 November 2007**, during which the Complainants state that they requested a tracker rate to apply to their mortgage loan, but the Provider "*refused*" this request. The Provider's contemporaneous note of the telephone that took place on **16 November 2007** details as follows:

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"Telephone call 16th November 2007

Customer Services Notes

16/11/07

Conf balance and fixed rates".

While it is disappointing that the contemporaneous note of the telephone call that took place on **16 November 2007** is somewhat brief, there is no record to suggest that the Complainants enquired about the availability of tracker interest rates or that a request for a tracker interest rate was denied by the Provider. Rather, the note shows that "*fixed rates*" were discussed during the telephone call.

Even if the Complainants requested a tracker interest rate at the time, it would then have been a matter of commercial discretion for the Provider as to whether it wished to accede to any such request made by the Complainants to apply a tracker interest rate to the mortgage loan in circumstances where no such entitlement was specifically provided for in the Complainants' mortgage loan documentation. The Provider submits that had a tracker interest rate been requested, although the Provider was under no obligation to accede to any such request, a tracker rate of 5.25 % (ECB + 1.25%) would have offered and if accepted, this would have been subject to the further increase of 0.25% that followed.

However, the evidence shows that the Complainants completed and signed a **Fixed Rate Instruction Form** on **12 December 2007**.

The **Fixed Rate Instruction Form** details as follows:

"Please amend the interest rate on my/our homeloan account as outlined below

Fixed until 1st December 2008 at 5.24% (5.56% Typical APR) ✓

Fixed until 1st December 2009 at 5.36% (5.57% Typical APR)

Fixed until 1st December 2010 at 5.45% (5.59% Typical APR)

Fixed until 1st December 2012 at 5.39% (5.56% Typical APR)

I/We hereby agree once a letter is issued by [Provider] to me/us, confirming that the interest rate on my/our Home loan account has been fixed for the period requested by me/us then the terms below shall be binding on me/us for the fixed rate period in addition to the terms and conditions of my/our mortgage.

Terms

/Cont'd...

Fixed rate repayments from the 1st January 2008 for the terms as indicated and thereafter reverting to the company's standard variable rate....

....

I/we have specified that I/we wish to amend certain terms of our mortgage with [Provider]. I/we acknowledge that I/we have not received any advice from [Provider] in respect of this change request. I/we do not wish to provide any further information in respect of my/our financial history and financial objectives to determine the suitability of these amendments for my/our purposes but wish to proceed with the amendment on an execution basis."

The Provider subsequently issued a letter to the Complainants dated **18 December 2007**, which details as follows:

"Dear [Complainants],

Thank you for your recent request to amend your mortgage account. I can confirm that your account has been amended as requested with your revised account details outlined below. Your repayment for 1st January 2008, will be €2,106.35 and is charged as follows:

<i>Loan Type</i>	<i>Balance (€)</i>	<i>Term (Mths)</i>	<i>Interest Rate</i>
<i>[Annuity Homeloan]</i>	<i>338,087.63</i>	<i>277</i>	<i>5.24%"</i>

The evidence shows that on the expiry of the initial fixed interest rate period in **December 2007**, the Complainants were given the option to convert their mortgage loan to a standard variable interest rate which was the Provider's prevailing variable interest rate that the time, in line with **General Condition 7** of the **Letter of Offer** dated **02 November 2005**. While the Complainants may have expressed an interest in converting to a tracker interest rate, although there is no record of any discussions of this nature, the Complainants voluntarily chose to apply a 1-year fixed interest rate of 5.24% to their mortgage loan account until **01 December 2008** by signing the **Fixed Rate Instruction Form** on **12 December 2007**.

The Complainants further submit that the Provider should have offered them a tracker interest rate at the end of the initial fixed interest rate period in **December 2007** on foot of a "flyer" communication that was issued by the Provider to brokers in **November 2006**. I understand from the parties' submissions that this communication was issued to brokers rather than to customers of the Provider and provided details of a fixed interest rate product that would roll onto a tracker interest rate on the expiry of the fixed interest rate.

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The Complainants are of the view that this product offering applied to their mortgage loan held with the Provider. The Provider submits that the “flyer” communication was issued to brokers in **November 2006**, which was after the Complainants had applied for, and drawn down their mortgage loan with the Provider in **December 2005**. It is important to note that the “flyer” communication does not amount to a mortgage loan contract between the Complainants and the Provider.

In addition, the Complainants also rely on the Provider’s **2006 Financial Statement** which briefly references a tracker switching product. The Complainants are of the view that the tracker switching product “*is the same as referenced in the flyer of November 2006*” and therefore the Provider should have offered them a tracker interest rate on the expiry of the fixed interest rate period in **2007**. The Provider explains that the tracker switching product was a re-mortgage product which was introduced after the Complainants applied for their mortgage loan with the Provider and “*is of no relevance to the Complainants loan*”. In this regard, it should be noted that the **2006 Financial Statement** also did not form part of the Complainants’ mortgage loan agreement with the Provider. The reference to any particular product in the Provider’s financial statement or otherwise does not confer any right on the Complainants to be offered a tracker interest rate.

The Complainants’ mortgage loan is governed by the terms and conditions of the **Letter of Offer** which was accepted and signed by the Complainants on **03 November 2005** which provided for a fixed interest rate for period of 24 months that would convert to the Provider’s prevailing variable rate on expiry. In those circumstances I cannot accept the Complainants’ submission that the broker communication or the **2006 Financial Statement** were applicable to their mortgage loan account to the extent that such documents conferred an entitlement or a “*specific guarantee*” to a tracker interest rate on the Complainants’ mortgage loan.

The Complainants further submit that the Provider has breached **Chapter 1 – General Principles** of the **Consumer Protection Code 2006** in its dealings with them during the term of the loan. In this regard, I note that the Complainants applied for and drew down their mortgage loan with the Provider prior to the introduction of the **Consumer Protection Code 2006** which was fully effective by **01 July 2007**. However, the provisions of the **Consumer Protection Code** were effective when the initial fixed interest rate period expired in or around **December 2007**. Having considered the entirety of the Complainants’ mortgage journey from the application stage to inception of the mortgage loan in **December 2005** to the subsequent amendments to the applicable interest rate, I have been provided with no evidence to suggest that the Provider acted in breach of its obligations pursuant to consumer protection legislation.

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For the Complainants to have a contractual right to be offered a tracker interest by the Provider at the expiry of the 24-month fixed interest rate period in **December 2007**, 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 **Letter of Offer** dated **02 November 2005**, which was accepted and signed by the Complainants on **03 November 2006**. It was open to the Complainants to decline the Provider's loan offer if they were dissatisfied that the terms and conditions did not specifically provide that a tracker interest rate would apply at the end of the initial fixed interest rate period. As previously stated, even if the Complainants had contacted the Provider, it would then have been a matter of commercial discretion for the Provider as to whether it wished to accede to any such request made by the Complainants to apply a tracker interest rate to the mortgage loan. The evidence shows however that the Complainants proactively applied for a further fixed interest rate in **December 2007** and this instruction was actioned by the Provider.

I am of the view that the Complainants' mortgage loan documentation is sufficiently clear and transparent regarding the Complainants' interest rate entitlements, and I am satisfied that the Provider acted in accordance with the terms and conditions of the **Letter of Offer** dated **02 November 2005** in its dealings with the Complainants.

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

Conclusion

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is rejected.

The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.



JACQUELINE O'MALLEY
HEAD OF LEGAL SERVICES

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31 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—

(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.