



<u>Decision Ref:</u>	2022-0318
<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 mortgage loan accounts held by the Complainants with the Provider. The mortgage loan accounts are secured on the Complainants' principal private residence.

Mortgage loan account ending **8065** was drawn down in **April 2006**. The loan amount was €585,000.00 and the term of the loan was 30 years. The account commenced on a 1-year discounted variable interest rate with a standard variable interest rate to apply thereafter.

In **January 2007**, mortgage loan account ending **8065** was split to allow a 2-year staff fixed interest rate apply to a portion of the mortgage loan, which became known as mortgage loan account ending **6350**, and the balance of the loan remained on the variable interest rate under mortgage loan account ending **8065**. A tracker interest rate was subsequently applied to mortgage loan account ending **8065**. The Complainants have not raised a complaint about this mortgage loan.

In **April 2010**, the Complainants instructed the Provider to split mortgage loan account ending **6350**, by applying a 3-year fixed interest rate to the sum of €250,000.00, which became known as mortgage loan account ending **3275**, and the balance of the loan remained on a variable interest rate under mortgage loan account ending **6350**.

Mortgage loan accounts ending **6350** and **3275** are the subject of this complaint.

The Complainants' Case

The Complainants detail that they *"took [their] mortgage out in April 2006, initially on a one year discounted variable rate"* under mortgage loan account ending **8065**. In **January 2007**, the Complainants explain that they *"fixed a substantial part of the mortgage onto a 2 year [Provider] staff rate"* which became mortgage loan account ending **6350** and the remaining balance remained under mortgage loan account ending **8065**.

The Complainants submit that in **April 2007**, they instructed the Provider to apply a tracker interest rate to mortgage loan account ending **8065**. The Complainants state that by signing the Mortgage Form of Authorisation in **2007** *"a tracker option"* was introduced into the mortgage loan agreement *"and the [Provider] subsequently failed to honour this option."*

The Complainants outline that on **9 October 2008**, the Provider contacted all staff to inform them that it intended to withdraw the tracker mortgage product on **10 October 2008**. The Complainants state however that the Provider's notice *"specifically advised that any staff member on the 2 year staff rate 'will roll to ECB + 0.75% with no BIK implications'."* The Complainants state that they *"relied on this advice in making the decision not to revert [mortgage account ending **6350**] to the tracker option as at 9 October 2008"*.

The Complainants state that *"The fact that [the Provider] issued [the Complainants] with a second account number in 2007 is an operational point for [the Provider] and does not change the simple fact of the case that [they] did have a tracker rate on this mortgage as at 9 October 2008."*

The Complainants submit that the Provider wrote to them on **20 November 2008** to inform them that they would not be offered a tracker interest rate at the end of the 2-year fixed period in respect of mortgage loan account ending **6350**. The Complainants are of the view that they *"did have the option to roll onto a tracker rate as at the date the bank issued [them] with the incorrect advice that [they] did not need to revert, and [they] most certainly would have exercised the option [they] had to revert to a tracker as at 9 October had the Bank not issued [them] with misleading advice."*

The Complainants maintain that after they contacted the Provider to make a complaint, they were informed that as their original contract did not specify a tracker rate, this rate would not be offered, *“a response which [they] felt completely ignored the facts of the case.”*

The Complainants state that they *“have not disputed the 2006 Offer Letter”* however they detail that *“the 2007 MFA, marketing documentation outlined above and evidence that has been outlined where front line staff were selling this fixed option to staff on the basis that we would convert to a Tracker rate cannot be ignored.”*

The Complainants have further submitted a document indicating that the Provider altered its internal systems to introduce a *“Product Switch”* in **November 2008** which the Complainants state *“clearly shows that the product [they] signed up to was changed to remove the tracker roll over without [their] consent”*.

The Complainants are seeking redress and compensation from the Provider for losses that they incurred on foot of the Provider’s *“incorrect and misleading advice”*.

The Provider’s Case

The Provider submits that the Complainants signed a Mortgage Loan Offer Letter on **21 February 2006** which provided for a loan in the amount of €585,000.00 on a variable interest rate of 2.94%, which was a home loan variable interest rate discounted by 0.81% for the first 12 months of the loan. The Provider states that its prevailing home loan variable rate was to apply at the end of the discounted period.

The Provider details that the Complainants signed a Mortgage Form of Authorisation on **12 and 15 January 2007** whereby the Complainants elected to split their existing mortgage loan account ending **8065**. The Provider states that to facilitate this, the sum of €400,000.00 was assigned to mortgage loan account ending **6350** and a 2-year fixed interest rate of 3.95% was applied. The Provider further states that the balance of the loan remained under mortgage loan account ending **8065** on the variable rate of interest.

The Provider details that it is *“evidentially clear from the 2007 MFA that the Complainants were fully aware, prior to signing the 2007 MFA, as to what rate of interest would apply for the terms of each of their mortgage loans.”* The Provider asserts that the Complainants *“cannot seek to overlook the clear and unambiguous terms within the 2006 Offer Letter and 2007 MFA which were signed and accepted by both Complainants.”*

The Provider *“respectfully submits that the effects of the 2007 MFA are clear; the Provider offered the Complainants a new rate of interest and arrangement upon their request.”* The Provider details that there is no reference in the Mortgage Form of Authorisation *“to suggest that the Provider was obliged to provide the Complainants with a tracker rate of interest at the end of the 2 year fixed rate period.”* The Provider further details that *“there is no provision whatsoever for a tracker interest rate in the 2006 Offer Letter.”*

The Provider submits that General Conditions 6(b) and 7(b) of the Mortgage Loan Offer dated **01 February 2006** *“clearly and unequivocally state that the Provider has the sole discretion upon expiry of the fixed rate period, to provide a further fixed rate period, a choice of rates and if either of these is not selected, then the mortgage will revert to a variable rate.”* The Provider states that a variable rate is defined in General Condition 6(a) and it is clear that it does not include a tracker rate of interest.

The Provider states that *“[t]here is no ambiguity, lack of clarity or vagueness contained in the 2007 MFA when read in conjunction with the 2006 Offer Letter, concerning the rate which the Complainants mortgage loan account would revert to upon expiry of the fixed rate period.”* The Provider further states that the Complainants *“could not reasonably have expected to move to a tracker rate upon expiry of the 2 year fixed rate period in January 2009.”*

The Provider submits on expiry of the 2-year staff fixed interest rate on mortgage loan account ending **6350**, a staff variable interest rate was applied to the mortgage loan account in **December 2008**.

The Provider states that the Complainants signed a further Mortgage Form of Authorisation on **11 April 2010** whereby they elected to further split mortgage loan account ending **6350**. The Provider details that to facilitate this arrangement, the sum of €250,000 was assigned to mortgage loan account ending **3275** and a 3-year fixed interest rate of 3.60% was applied. The Provider states that the balance of the loan remained under mortgage loan account ending **6350** on a variable rate of interest pursuant to the terms of the Mortgage Form of Authorisation signed in **2007** and the Mortgage Loan Offer Letter dated **01 February 2006**.

The Provider *“respectfully submits that the effects of the 2010 MFA are clear; the Provider offered the Complainants a new rate of interest and arrangement upon their request.”* The Provider asserts that *“[t]here is nothing in the 2010 MFA to suggest that the Provider was obliged to provide the Complainants with a tracker rate of interest at the end of the 3 year fixed rate period.”*

The Provider contends that “[t]here was no general commitment made that all customers on the staff 2 year fixed rate would be offered a tracker rate at the end of the fixed rate period.” The Provider explains that “[s]ome but not all customers who had availed of the Staff 2 year Fixed Rate had an entitlement to a tracker in their original mortgage documentation.”

The Provider submits that it withdrew tracker mortgage products in **late-2008**. The Provider details that when the Mortgage Form of Authorisation from **2007** expired, “tracker rates were no longer offered by the Provider and the Complainants had no contractual entitlement to be offered a tracker rate of interest.”

In relation to the Provider’s notice to customers regarding the removal of tracker interest rates from the market in **2008**, the Provider submits that it is “entirely inconsistent for the Complainants to suggest that they relied on such publications regarding their mortgage loan account rolling to a tracker rate of interest, without any contractual documentation referencing such an entitlement.”

In relation to the Complainants’ submission that the Provider altered its internal systems to enact a “Product Switch” in **November 2008** which the Complainants state “clearly shows that the product [they] signed up to was changed to remove the tracker roll over without [their] consent”, the Provider details that the content of “an internal system does not convey any right or legitimate expectation as to the rate a mortgage loan account would roll to upon expiry of a fixed rate period”. The Provider states that the Complainants’ submission relates to “an internal operating system which is not accessible by customers and does not represent communication to [a] customer”.

The Complaint for Adjudication

The complaint for adjudication is that the Provider failed to offer the Complainants a tracker interest rate on expiry of the 2-year staff fixed interest rate in **January 2009** in respect of mortgage loan account ending **6350**.

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.

/Cont’d...

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 do 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 are sufficient to enable a Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties on **25 March 2022**, outlining a preliminary determination 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.

Following the issue of the Preliminary Decision, the parties made further submissions, copies of which were exchanged between the parties. Having considered the additional submissions made by both parties and all of the submissions and evidence furnished to this Office, I set out the final determination of this Office below.

The Complainants, in their post Preliminary Decision submissions refer to a previous decision of this Office which the Complainants say relates to the same respondent provider as the respondent provider with respect to their complaint. There is a requirement of this Office in the publication of decisions that a provider shall not be identified by name or address. The provider has not been so identified and I also will not do so here in this Decision, so as to ensure compliance with ***the Financial Services and Pensions Ombudsman Act 2017, as amended*** is observed. While I have carefully considered the Complainants' observations in this regard, I do not propose to draw an analysis between the conclusions reached in previous decisions and my determination in relation to the present complaint. This Office is not bound by the doctrine of precedent as has been suggested by the Complainants. While this Office does acknowledge that consistency in decision making is important, however, this Office is also cognisant of its statutory function which is to investigate individual complaints made by individual consumers. To this end, each complaint under consideration by this Office is decided on its own merits and by reference to the evidence and submissions contained on the individual complaint file.

In order to determine this complaint, it is necessary to review the relevant provisions of the Complainants' mortgage loan documentation and to consider certain interactions between the Complainants and the Provider between **2006** and **2010**.

/Cont'd...

The Provider issued a **Mortgage Loan Offer Letter** dated **1 February 2006** to the Complainants which provided for a loan amount of €585,000 over a term of 30 years.

Part 1 – The Statutory Loan Details of the Mortgage Loan Offer Letter details as follows:

<i>"1. Amount of credit advanced:</i>		<i>€585,000</i>
<i>2. Period of Agreement:</i>		<i>30 Years</i>
<i>3. Number of</i>		<i>4. Amount</i>
<i>Repayment</i>	<i>Instalment</i>	<i>of each</i>
<i><u>Instalments</u></i>	<i><u>Type</u></i>	<i><u>Instalment</u></i>
<i>12</i>	<i>Variable at 2.940%</i>	<i>€2,445.23</i>
<i>348</i>	<i>Variable at 3.750%</i>	<i>€2,697.93</i>
<i>...</i>		
<i>APR*:</i>	<i>3.7%</i>	
<i>...</i>		
<i>*Annual Percentage Rate of Charge"</i>		

Part 2- The Additional Loan Details of the Mortgage Loan Offer Letter details as follows:

"11. Type of Loan: Repayment
12. Interest Rate: 2.940% Variable"

Part 4- The Special Conditions of the Mortgage Loan Offer Letter details as follows:

"(a) The following Special Conditions apply to the Loan:

....

(i) The interest rate applicable to the loan has been discounted by 0.81% per annum on the amount of the Loan for a period of 12 months from the date of drawdown of the Loan. At the end of the said discount period the reduction shall cease and the interest rate applicable to the Loan shall revert to the then prevailing Home Loan variable rate."

The **Mortgage Loan Offer Letter** also details the following:

"This is an important legal document. You are strongly recommended to seek independent legal advice before signing it. This Offer Letter is regulated by the

/Cont'd...

Consumer Credit Act, 1995 and your attention is drawn to the Notices set out on the last page of this Offer Letter.

General Conditions 6 and 7 of Part 5 – The General Conditions of the Mortgage Loan Offer Letter detail as follows:

“6. Variable Interest Rates

- (a) Subject to clause 6(c), at all times when a variable interest rate applies to the Loan the interest rate chargeable will vary at the Lender’s discretion upwards or downwards. If at any time a variable rate of interest applies, repayments in excess of those agreed may be made at any time during the term of the Loan without penalty.*
- (b) The Lender shall give notice to the Borrower of any variation of the interest rate applicable to the Loan, either by notice in writing served on the Borrower in accordance with clause 1(c), or by advertisement published in at least one national daily newspaper. Such notice or advertisement shall state the varied interest rate and the date from which the varied interest rate will be charged.*
- (c) Notwithstanding anything else provided in this Offer Letter, the varied applicable interest rate shall never, in any circumstances, be less than 0.1% over one month’s money at the Euro Inter Bank Offered Rate (EURIBOR).”*

7. Fixed Interest Rates

- (a) The Lender may at its absolute discretion permit the Borrower to avail of a fixed interest rate in respect of all or any part of the Loan. In the case of a fixed rate loan, the interest rate shall, subject to these Conditions, be fixed from the date of draw down for the fixed period stated in this Offer Letter. The fixed rate of interest set out in this Offer Letter is the fixed rate which would apply were the Loan drawn down today. There is no guarantee that the fixed rate so stated will be available when the Loan is in fact drawn down. The actual fixed rate that shall apply shall be the Lender’s fixed rate available for the fixed period selected by the Borrower at the date of draw down.*
- (b) The Lender shall have sole discretion to provide any further or subsequent fixed rate period. If the Lender does not provide such a further or subsequent fixed rate period or if the Lender offers the Borrower a choice of interest rate*

/Cont’d...

at the end of any fixed rate period and the Borrower fails to exercise that choice, then in either case the interest rate applicable to the Loan will be a variable interest rate."

The Complainants signed the **Borrower's Acceptance and Consents** section of the **Mortgage Loan Offer Letter** on **21 February 2006** on the following terms:

"I confirm that I have read and fully understand the Consumer Credit Act notices, set out above, and the terms and conditions contained in this Offer Letter and I confirm that I accept this Offer Letter on such terms and conditions."

It is clear to me that the **Mortgage Loan Offer Letter** provided for an initial 12-month discounted variable interest rate of 2.94%, with the Provider's Home Loan variable interest rate to apply thereafter.

The **mortgage loan account statements** submitted in evidence show that mortgage loan account ending **8065** was drawn down on **24 April 2006**, at which point the applicable interest rate was a discounted variable interest rate of 3.18%.

The Complainants completed a **Mortgage Form of Authorisation** ("MFA") in **January 2007** in order to apply a 2-year staff fixed interest rate of 3.95% to a portion of their mortgage loan account. The Complainants sent a cover letter dated **15 January 2007** to the Provider enclosing the completed **MFA**.

The cover letter details as follows:

"Dear Sir or Madam:

Please find attached a signed Mortgage Form of Authorisation requesting Eur400,000 of my mortgage to be transferred to the new staff 2 year fixed rate (3.95%). Please note I only wish Eur400,000 of the mortgage to be fixed, the remainder I would like to remain on the current variable rate."

The **MFA** details as follows:

"APPLICATION FOR CHANGE OF INTEREST RATE:

I/We wish to apply for the Staff 2 Year Fixed Rate 3.95% Mortgage Rate as detailed above for my/our mortgage loan (the "Loan")

/Cont'd...

Note: If you change from a fixed rate during the fixed rate period, you may be liable to pay a funding sum to the Bank. See conditions overleaf.

A handwritten note by the Complainants at the bottom of the first page of the **MFA** details as follows:

"Note: Only Fix Eur400,000 of this mortgage. The rest should remain on the current variable rate."

The **Acknowledgement and Agreement** section of the **MFA** was signed by the First Complainant on **12 January 2007** and by the Second Complainant on **15 January 2007** and details as follows:

"I acknowledge and agree that:-

In converting the Loan from a fixed rate to the Staff 2 Year Fixed Mortgage Rate, I understand that I will be liable to pay a funding sum to the [Provider] calculated in accordance with the formula set out above under 'Early Repayment'.

- 1. In the event of the Borrower (or both Borrowers where both are members of the permanent staff of [the Provider]) ceasing to be employed by [the Provider] the Staff Mortgage Rate shall cease and the interest rate applicable to the Loan shall immediately revert to the prevailing Homeloan Variable Rate or such other rate which the Bank may, at its absolute discretion, offer to the Borrower.*
- 2. **If the loan is to be converted to a Tracker Mortgage Loan**, I agree that the interest rate applicable to the Loan is a variable interest rate and may vary upwards or downwards. The interest rate shall be no more than the rate notified above the prevailing European Central Bank Main Refinancing Operations Minimum Bid Rate ("Repo rate") for the term of the Loan. Variation in interest rate shall be implemented by the [the Provider] not later than close of business on the 5th working day following a change in the Repo rate by the European Central Bank. Notification shall be given to the Borrower of any variation in interest rate either by notice in writing served on the Borrower, or first named borrower where there is more than one borrower, or by advertisement published in at least one national daily newspaper. In the event that, or at any time, the Repo rate is certified by [the Provider] to be unavailable for any reason the interest rate applicable to the Loan shall be the prevailing Home Loan Variable Rate.*

/Cont'd...

3. *Save as set out in this Form of Authorisation all the terms and conditions applicable to the Loan remain unchanged."*

To facilitate the application of a staff fixed interest rate to a portion of the Complainants' mortgage loan, the Provider split the mortgage loan into mortgage loan account ending **6350** with a staff fixed interest rate applying to the sum of €400,000.00 and the remaining balance of the loan on the variable interest rate under mortgage loan account ending **8065**.

The **mortgage loan statements** submitted in evidence show that mortgage loan account ending **6350** was drawn down on **18 January 2007** on a staff fixed interest rate of 3.95%.

It is clear to me that the by signing the **MFA** on **12 and 15 January 2007**, the Complainants agreed to apply a 2-year staff fixed interest rate of 3.95% to mortgage loan account ending **6350**. The **MFA** further detailed that if the First Complainant, who was employed by the Provider, ceased employment with the Provider, then the staff interest rate would no longer apply and the applicable interest rate would switch to the Provider's "*prevailing Homeloan Variable Rate*" or such other rate which the Provider may, at its absolute discretion, offer to the Complainants. While the **MFA** had the effect of amending the applicable interest rate on a portion of the Complainants' mortgage loan from a variable interest rate to a fixed interest rate, the terms and conditions of the **Mortgage Loan Offer Letter** dated **1 February 2006** still applied.

Therefore, **General Condition 7** of **Part 5 – The General Conditions** of the **Mortgage Loan Offer Letter** dated **1 February 2006** in relation to fixed interest rates, as outlined above, applied to the Complainants' mortgage loan account from **January 2007**. Consequently, on expiry of the fixed interest rate period, the Complainants could be offered a further fixed interest rate or any other available rate or in the absence of selection of an interest rate by the Complainants, the Provider's variable interest rate would apply.

The **MFA** also outlined what would transpire if the Complainants chose to convert mortgage loan account ending **6350** to a tracker mortgage loan. I do not consider that this reference to a tracker mortgage loan in the **MFA** is sufficient to amount to a contractual entitlement on the part of the Complainants to a tracker rate of interest on expiry of the 2-year fixed interest rate. Rather, the Provider was setting out the terms and conditions applicable if the purpose of the **MFA** had been used to convert the loan to a tracker mortgage loan. In the circumstances of this complaint, that was not the purpose of the **MFA**, which was to convert a portion of the loan to the staff 2-year fixed mortgage interest rate.

The Complainants completed a further **MFA** in **May 2007** as they wished to apply a tracker interest rate of ECB + 0.75% to mortgage loan account ending **8065**. The **MFA** details as follows:

"The interest rate shall be no more than 0.75% above the prevailing European Central Bank Main Refinancing Operations Minimum Bid Rate ("Repo rate") for the term of the Loan.

APPLICATION FOR CHANGE OF INTEREST RATE:

I/We wish to apply for the tracker mortgage variable interest rate as detailed above for my/our mortgage loan (the "Loan")

[...]

**Note: If you change from a fixed rate during the fixed rate period, you may be liable to pay a funding sum to the Bank. See conditions overleaf."*

The **Acknowledgement and Agreement** section of the **MFA** was signed by the First Complainant on **16 May 2007** and by the Second Complainant on **17 May 2007** and details as follows:

"I acknowledge and agree that:-

- 1. In converting the Loan from a fixed rate, I understand that I will be liable to pay a funding sum to [the Provider] calculated in accordance with formula set out above under 'Early Repayment'.***
- 2. In the event of the Borrower (or both Borrowers where both are members of the permanent staff of [the Provider]) ceasing to be employed by [the Provider] the interest rate applicable to the Loan shall immediately revert to the prevailing Homeloan Variable Rate or such other rate which [the Provider] may, at its absolute discretion, offer to the Borrower.***
- 3. In converting the Loan to a Tracker Mortgage Loan, I agree that the interest rate applicable to the Loan is a variable interest rate and may vary upwards or downwards. The interest rate shall be no more than the percentage stated on page 1 above the prevailing European Central Bank Main Refinancing Operations Minimum Bid Rate ("Repo rate") for the term of the Loan. Variation in interest rate shall be implemented by [the Provider] not later than close of business on the 5th working day following a change in***

/Cont'd...

the Repo rate by the European Central Bank. Notification shall be given to the Borrower of any variation in interest rate either by notice in writing served on the Borrower, or first named borrower where there is more than one borrower, or by advertisement published in at least one national daily newspaper. In the event that, or at any time, the Repo rate is certified by [the Provider] to be unavailable for any reason the interest rate applicable to the Loan shall be the prevailing Home Loan Variable Rate.

4. *Save as set out in this Form of Authorisation all the terms and conditions applicable to the Loan remain unchanged.*

The **mortgage loan statements** submitted in evidence show that a tracker interest rate was applied to the Complainants' mortgage loan account ending **8065** on **21 May 2007**. It is important to note that mortgage loan account ending **6350** remained on the staff fixed interest rate, which had been applied to that mortgage loan in **January 2007**. It is also important to note that when the fixed interest rate was applied to the €400,000.00 portion of the mortgage loan in **January 2007**, the portion of the loan remaining under mortgage loan account ending **6350** remained on the discounted variable interest rate that had applied to the loan since inception.

In circumstances where the Complainants had not applied a tracker interest rate to any portion of their mortgage loan in **January 2007**, I do not accept the Complainants' argument that they had an expectation that a tracker interest rate could later apply to the portion of the mortgage loan on the 2-year fixed interest rate. Further, I do not accept that the **MFA** signed with respect to the portion of the mortgage loan under account ending **8065** created a "tracker option" with respect to the portion of the mortgage where the 2-year fixed interest rate had been applied (mortgage account ending **6350**).

The Provider issued an internal communication through its staff intranet on **9 October 2008** which detailed as follows:

"An update on staff mortgage options

[The Provider] no longer offers customer or staff tracker mortgages with effect from start of business Friday 10 October 2008

An announcement from Consumer Banking

Staff trackers are therefore not available for any new or existing staff mortgages, with the exception of those that are currently either on the staff tracker mortgage

of ECB + 0.75% or those rolling to ECB + 0.75% as per their original signed mortgage agreement (see existing staff mortgage section below).

1. New staff mortgage applications

New staff applications are entitled to avail of the best customer rates available on the matrix. Currently the best rates are:

- 2-Year Fixed Rate (currently 5.20%)
- Variable LTV products. The best available rates are for residential property, 5.30%, or for investment property, 5.65%

2. Existing staff mortgage accounts

- Staff 2-Year Fixed Rate: rate currently 3.95%

Staff who are currently on Staff 2-Year Fixed Rate – currently 3.95% - will roll to ECB +0.75% with no BIK implications as per their original signed mortgage agreement at the end of their 2-year fixed period. Staff will receive notification 30 days prior to the end of their fixed rate term. This notification will also offer a range of fixed and variable rate products. If you do not respond to this notification, your account will automatically default to the Staff Tracker ECB + 0.75%.

- Staff Tracker Mortgage: ECB + 0.75%

Staff that are currently on the Staff Tracker of ECB +0.75% will remain on this product. This product does not attract BIK.

3. Existing staff wishing to switch to alternative product options

To avail of any of the Variable LTV based product options (5.30% for Residential property and 5.65% for investment properties) staff will need to complete a Mortgage Form of Authorisation (MFA) for either Bank or [entity of the Provider] depending on where the account is held. The MFA will need to be completed and signed by all parties on the mortgage account.

Please print off and complete the appropriate Mortgage Form of Authorisation below to switch to either of these options.”

A letter from the Provider dated **20 November 2008** has been furnished in evidence. The recipient details are redacted. Nonetheless it does not appear to be disputed between the parties that this letter was sent to the Complainants.

The letter dated **20 November 2008** details as follows:

“Re: Staff Fixed Rate Mortgage 3.95%

Dear [redacted]

I am writing to let you know about Staff Fixed Rate Mortgage rollover options, which came into effect on the 7th November 2008.

As you may be aware, [the Provider] removed tracker mortgage products for new customers on the 10th October 2008. All major financial institutions have also removed their tracker products at this stage. We then assessed the impact of the removal of trackers on Fixed Rate customers at the time of their roll-over.

The key finding is that those currently on a fixed rate fall into one of two categories–

- 1. Those who opened their mortgage account on a fixed rate, or took the option of further fixed rates at previous roll-over times, will have a Tracker option on their roll-over letter, as per the terms and conditions of their Letter of Offer.*
- 2. Those who moved into a fixed rate from another product, by signing a Mortgage Form of Authorisation, will not have a tracker option on their roll-over letter. The signed Mortgage Form of Authorisation supersedes the original Letter of Offer.*

As, according to our records, your mortgage(s) is currently on the 3.95% staff fixed rate, you will fall into one of the two categories above. As per our contractual commitments to you and the terms and conditions of your agreement with us, this letter outlines your options.

It is very important to note that as we have introduced similar steps for customers, if we were to treat you as a staff member differently, it would be deemed preferential and would incur BIK. The options available to you now (with the exception of the Staff Preferential 4%) are all exempt from BIK.

As outlined above

/Cont'd...

- *If you are in category 1 you will receive your roll-over letter with the staff tracker (ECB+0.75%) option, as well as the options offered below.*
- *If you are in category 2 you will receive your roll-over letter with the options outlined below.*

Homeloans

<i>Staff Preferential Rate (for all loan amounts)</i>	<i>4% (subject to BIK)</i>
<i>Highly Competitive 2 year fixed rate</i>	<i>Currently 4.75%*</i>
<i>Variable LTV Rate</i>	<i>Currently 4.50%*</i>

If you do not respond to the roll-over letter, we will automatically roll your mortgage to the Variable LTV based rate, currently 4.50%.

Please note only staff on the 3.95% fixed rate can move the full amount of their mortgage into the 4%. This is an exception for this group of staff. For staff on all other products, normal limits apply.

RIL (Residential Investment Loan)

<i>Highly Competitive 2 year fixed rate</i>	<i>Currently 4.95%*</i>
<i>Variable LTV Rate</i>	<i>Currently 4.85%</i>

If you do not respond to the roll-over letter, we will automatically roll your mortgage to the Variable LTV based rate, currently 4.85%.

These rates above are highly competitive and we continue our policy of offering our staff the best available customer rates.

A communication was issued on [Provider's intranet] on the 9th of October indicating that the Tracker Mortgage would be available on roll over – this preceded our final assessment on our withdrawal from Tracker Mortgages and represented the most accurate information available at the time. The subsequent assessment of the impact of the decision to remove the Tracker Mortgages has led to the outcome outlined in this letter. We apologise for any confusion this has caused.

This letter is for your information only. There is no action required by you at this time. Your roll-over letter will issue about 4 weeks before you are due to roll off your fixed rate."

The Provider's letter to the Complainants dated **20 November 2008** clearly outlined that given the Complainants' mortgage loan "*moved into a fixed rate from another product*", being the discounted variable interest rate of 3.18%, they would not in fact have a tracker option with respect to their mortgage on their "*roll-over letter*". Mortgage loan account ending **6350** originated as a staff fixed interest rate loan having been split from the mortgage loan account ending **8065** which originated as a discounted variable interest rate loan. Mortgage loan account ending **6350** was never on a tracker interest rate.

The Complainants submit that the Provider altered its internal system to enact a "*Product Switch*" in **November 2008** which the Complainants maintain "*shows that the product [they] signed up to was changed to remove the tracker roll over without [their] consent*".

The Complainants are of the view that the Provider altered its internal system in relation to their mortgage loan account ending **6350** to prevent a tracker mortgage rate being applied as the default rate at the end of the fixed interest rate period. The Provider states that this information was "*an internal operating system which is not accessible by customers and does not represent communication to [a] customer.*"

It is important to note that the Provider's internal system does not form part of the terms of the mortgage loan agreement. The mortgage loan is governed by the terms and conditions detailed in the **Mortgage Loan Offer Letter** dated **1 February 2006**, which does not contain any entitlement to a tracker interest rate at any stage during the term of the Complainants' mortgage loan. While the Provider may have made changes on its internal system given the changes it made to its product offerings that it was making available to the Complainants, I do not consider the Provider to have altered its internal systems in such a way that impacted the Complainants' contractual interest rate entitlements pursuant to the **Mortgage Loan Offer Letter** dated **1 February 2006**, and the **MFA** which was signed in **January 2007**.

The Complainants, in their post Preliminary Decision submission dated **10 April 2022**, submit that the above commentary is "*entirely wrong*". They submit that "*for a 'product switch' to occur during a fixed rate period of interest and without the consent of the customer is simply wrong and cannot be allowed to stand as to do so would create a very dangerous precedent in how it is perceived.*" The Complainants state that "*no alteration to a mortgage or banking system should take place, without agreement or knowledge, as has occurred here, given the financial consequences of such an alteration and the intention and purpose of that alteration.*"

/Cont'd...

By way of “background” the Complainants detail as follows:

“A meeting took place within [the Provider], to look at the aspect of Tracker Mortgages in general and it was ‘agreed’, with strong objections from some present to alter the mortgage system with a “Product Switch” entry to prevent, what until then was an automatic roll over (and for this case that roll over was to ECB + 0.75%) the position of roll to tracker.

The ‘product switch’ entry which took place on the systems run of the overnight on the 9th of November 2008 changed the roll to position for thousands of accounts, without any notice given before or after the alteration or any consent or knowledge of the customers being sought or requested.”

The Complainants’ place great emphasis on an entry dated **10 November 2008** in the Provider’s internal system which states, “*Type of Change: Product Switch*” and “*Interest Rate 3.95*”. Before this entry was made on the Provider’s internal system, the Complainants’ mortgage loan account was availing of a 2-year staff fixed interest rate of 3.95%. The **mortgage loan account statements** show that no change occurred to the applicable interest rate on the Complainants’ mortgage loan account on **10 November 2008** when this entry was made. There is an entry dated **05 January 2009** on the Provider’s internal system which states, “*Type of Change: Product Rollover*” and “*Interest Rate: 3.75*”. With respect to the more general details given of the Provider having had a meeting about this Product switch, this Office has not been furnished with any evidence of this meeting or how this meeting, if it occurred, is relevant to the Complainants’ mortgage loan entitlements. With respect to the Complainants’ mortgage loan, the **mortgage loan account statements** show that it remained on a fixed interest rate of 3.95% until **19 January 2009**, marking the end of the fixed interest rate period and when a staff variable interest rate of 3.75% was applied. It is clear to me that despite whatever entries were made on the Provider’s internal system, the Complainants’ mortgage loan account ending **6350** operated on the correct interest rate and no change was made to the Complainants’ mortgage loan agreement by the Provider in **November 2008** that required the consent or agreement of the Complainants.

Prior to the expiry of the 2-year staff fixed interest rate period on mortgage loan account ending **6350** in **January 2009**, the Provider issued a **Product Review Notice** to the Complainants on **19 December 2008**. The Provider states that it does not hold a copy of the **Product Review Notice** that issued to the Complainants. I am disappointed to note that a copy of the **Product Review Notice** that issued to the Complainants in **December 2008** has not been furnished in evidence to this Office by the Provider.

/Cont’d...

Provision 49 of the **Consumer Protection Code 2006** (which was fully effective from **01 July 2007**) outlines as follows:

"A regulated entity must maintain up-to-date consumer records containing at least the following:

- a) a copy of all documents required for consumer identification and profile;*
- b) the consumer's contact details;*
- c) all information and documents prepared in compliance with this Code;*
- d) details of products and services provided to the consumer;*
- e) all correspondence with the consumer and details of any other information provided to the consumer in relation to the product or service;*
- f) all documents or applications completed or signed by the consumer;*
- g) copies of all original documents submitted by the consumer in support of an application for the provision of a service or product; and*
- h) all other relevant information [and documentation] concerning the consumer.*

Details of individual transactions must be retained for 6 years after the date of the transaction. All other records required under a) to h), above, must be retained for 6 years from the date the relationship ends. Consumer records are not required to be kept in a single location but must be complete and readily accessible."

The Complainants' mortgage loan was incepted for a term of 30 years commencing from **April 2006** and the **Product Review Notice** issued in **December 2008**. It is understood that the mortgage account remains presently active with the Provider. As such, it appears to me that the Provider is obliged to retain that documentation on file for 6 years from the date the relationship with the mortgage holder ends.

The Provider has however submitted a screenshot in evidence of the "Letter History" in relation to mortgage loan account ending **6350** which shows that a **Product Review Notice** issued on **19 December 2008**. In circumstances where the Complainants did not choose an alternative interest rate, mortgage loan account ending **6350** switched to the Provider's staff variable interest rate of 3.75% on **19 January 2009**, as evidenced by the **mortgage loan account statements**. The Complainants, in their post Preliminary Decision submissions dated **13 April 2022**, submit that the reference to the issuing of the **Product Review Notice** is "a cause for confusion with us as we have no record of it" and state that "as this is subsequent to the main issue at hand being the [Provider's intranet] Notice of October 2008 we do understand the relevance". The issue to be determined is whether the Provider incorrectly failed to offer the Complainants a tracker interest rate on expiry of the 2-year staff fixed interest rate in **January 2009** in respect of mortgage loan account ending

/Cont'd...

6350 therefore it is necessary to consider any evidence pertaining to the Complainants' mortgage journey at the time when the fixed interest rate period was reaching maturity.

I note that a variable interest rate was applied on the expiry of the 2-year fixed interest rate in line with **General Condition 7 (b)** of the **Mortgage Loan Offer Letter** dated **1 February 2006** and the **MFA** that was signed by the Complainants in **January 2007**. There was no obligation on the part of the Provider, contractual or otherwise, to offer the Complainants a tracker interest rate on the expiry of the 2-year fixed interest rate period in **January 2009**.

The Complainants subsequently completed a further **MFA** on **11 April 2010** as they wished to apply a 3-year fixed interest rate of 3.6% to a portion of €250,000 of mortgage loan account ending **6350**. In order to facilitate this request, the Provider split mortgage loan account ending **6350** into two separate accounts with €250,000 being moved to a 3-year fixed interest rate under the new mortgage loan account ending **3275** and the balance of €120,000 remained on the staff variable interest rate under mortgage loan account ending **6350**.

The **MFA** signed by the Complainants on **11 April 2010** detailed as follows:

"I/we wish to apply for the interest rate indicated below for my/our Mortgage Loan (the "Loan") upon the expiry of my/our existing rate. (Please note: If you move out of a fixed rate before the expiry of the fixed rate period, you may be liable to pay a funding sum to the lender. See full conditions overleaf.)"

The Complainants selected the option which detailed "3 Year Fixed 3.600%" and included a handwritten note on the **MFA** which states as follows:

"only €250,000 to be fixed remainder to remain on existing variable rate".

The **Acknowledgement and Agreement** section of the **MFA** signed by the Complainants on **11 April 2010** details as follows:

"I acknowledge that following the acceptance by the Lender of this application, the terms and conditions applicable to the Loan shall be amended/varied by the terms and conditions set out in this Form of Authorisation, and I accept the said conditions and agree to be bound by them. I acknowledge and agree that :-

- 1. If I have applied to convert to a fixed rate Loan, the interest rate shall be fixed from the date of the expiry of my existing rate. The fixed rate of interest shall apply shall be the Lender's fixed rate available for the fixed*

/Cont'd...

- period selected by the Borrower at the date of the expiry of the existing interest rate.*
- 2. In the case of a fixed rate Loan, in the event of early repayment of the Loan in whole or in part for any reason, or conversion to a variable interest rate, or other fixed rate within the initial fixed rate period or any further or subsequent fixed rate period, the Borrower shall pay a funding fee to be calculated in accordance with the formula set out above under "Early Repayment".*
 - 3. If a variable rate applies to the Loan the Lender may vary it upwards or downwards and the Lender may notify me of such variations in any manner provided for in the terms and conditions applicable to the loan.*
 - 4. If I select a tracker variable rate:- (a) the rate will be no more than the percentage above the prevailing European Central Bank ("ECB") Main Refinancing Operations Minimum Bid Rate ("Repo Rate") shown on the first page of this Form of Authorisation: (b) variations in the interest rate will be implemented by the Lender not later than the 5th working day following a change in the Repo Rate by the ECB: (c) if the Lender certifies at any time that the Repo Rate is unavailable for any reason the interest rate applicable to the Loan shall be the appropriate variable rate.*
 - 5. I may not select a tracker variable rate unless the terms and conditions applicable to the Loan expressly entitle me to.*
 - 6. If any variable interest rate other than a tracker variable rate applies to the Loan at any time, any term or condition applicable to the Loan which provides that a variable rate applicable to the Loan (i) shall be no more than a specified percentage above the Repo Rate or (ii) shall change following any change in the Repo Rate, shall no longer apply to the Loan.*
 - 7. In the event of the Borrower (or both Borrowers where both are members of the permanent staff of [the Provider]) ceasing to be employed by the [Provider], the interest rate applicable to the Loan shall immediately revert to the prevailing variable rate or such other rate which the [Provider] may, at its absolute discretion, offer the Borrower.*
 - 8. Save as set out in this Form of Authorisation, all the terms and conditions applicable to the Loan remain unchanged."*

The Complainants, in their post Preliminary Decision submissions dated **13 April 2022**, submit that the reference to the above **MFA** completed in **April 2010** "*is not relevant to the decision and should be removed*" because it occurred after the Provider "*had incorrectly denied us the Tracker Rate in 2008*". In this regard, it is to be noted the **MFA** completed in **April 2010** relates to mortgage loan account ending **3275**, which is also the subject of this complaint.

The **mortgage loan statements** provided in evidence show that a 3-year fixed interest rate of 3.6% was applied to the new mortgage loan account ending **3275** on **14 April 2010**. Prior to the expiry of the 3-year fixed interest rate on mortgage loan account ending **3275**, the Provider issued a **Product Review Notice** to the Complainants on **15 March 2013**. Again, it is disappointing that the Provider has not furnished a copy of this document in evidence however, the Provider has submitted a screenshot in evidence of the "*Letter History*" in relation to mortgage loan account ending **3275** which shows that a *Product Review Notice* issued on **15 March 2013**. In circumstances where the Complainants did not choose an alternative interest rate, mortgage loan account ending **3275** switched to the Provider's staff variable interest rate of 4.35% on **15 April 2013**, as evidenced by the mortgage loan account statements. I note that a variable interest rate was applied on the expiry of the 3-year fixed interest rate in line with **General Condition 7 (b)** of the **Mortgage Loan Offer Letter** dated **1 February 2006** and the **MFA** that was signed by the Complainants in **April 2010**. It is clear to me that the Complainants had no entitlement, contractual or otherwise, to a tracker interest rate on the expiry of the 3-year fixed interest rate on mortgage loan account ending **3275**.

Following a careful consideration of the Complainants' mortgage loan documentation, it is clear to me that the **Mortgage Loan Offer Letter** dated **1 February 2006** did not contain a contractual entitlement to a tracker interest rate at inception of the loan or indeed at any time during the term of the loan. Rather, the **Mortgage Loan Offer Letter** dated **1 February 2006** provided for an initial 12-month discounted variable interest rate with the Provider's variable interest to apply thereafter. The nature of the variable interest rate was one that "*will vary at the Lender's discretion upwards or downwards*".

The Complainants subsequently signed an **MFA** in **January 2007** to apply a 2-year staff fixed rate of 3.95% to a portion of the Complainants' mortgage loan account, which subsequently became known as mortgage loan account ending **6350**. I am satisfied that the terms of this **MFA** together with the **Mortgage Loan Offer Letter** dated **1 February 2006** were clear as to what would transpire after the fixed interest rate period ended. Further, I do not consider the **MFA** to have conferred any entitlement to a tracker interest rate mortgage on the Complainants.

The Complainants contend that the Provider incorrectly failed to offer them a tracker interest rate on mortgage loan account ending **6350** on the expiry of the 2-year fixed interest rate in **January 2009** despite the Provider's internal notice dated **9 October 2008** specifically informing them that any staff member on a 2-year fixed interest rate will switch to a tracker interest rate of ECB + 0.75% on expiry of the fixed interest rate period.

When the staff notice was issued by the Provider on **9 October 2008**, the Complainants' mortgage loan account was on a 2-year staff fixed interest rate which would roll over to a

/Cont'd...

variable interest rate on expiry of the fixed rate period if a further fixed interest rate or other alternative available interest rates were not offered by the Provider, or if offered, not selected by the Complainants. The Complainants' mortgage loan documentation in the form of the **Mortgage Loan Offer Letter** dated **1 February 2006** and the **MFA** which was signed in **January 2007**, does not stipulate that the Complainants were entitled to a tracker interest rate of ECB + 0.75% on the expiry of a fixed interest rate period and there is no evidence to suggest that the Complainants were advised otherwise. In circumstances where the Complainants' contractual mortgage loan documentation is clear and comprehensible as to what is to transpire at the end of the fixed interest rate period, there is no reasonable basis for the Complainants to maintain that they formed the understanding that their mortgage loan account would convert to a tracker interest rate at the expiry of the fixed interest rate period.

It appears to me that the purpose of the Provider's intranet notice was to notify its staff customers that it intended to withdraw its tracker interest rate offerings from **10 October 2008**, the day after the Provider circulated its internal communication. The Complainants, in their post Preliminary Decision submission dated **13 April 2022**, are of the view that the Provider's intranet notice is "*most definitely not clear*" and also appear to be of the view that the Provider and this Office "*have all concluded that the [Provider's intranet] Notice was misleading*". I do not agree that this is the case. The Provider's intranet notice specifically set out the implications for existing staff customers who were "*rolling to ECB + 0.75% as per their original signed mortgage agreement (see existing staff mortgage section below)*." The Complainants' mortgage loan agreement was not of that nature. Consequently, it was only staff customers who had a contractual entitlement to be offered a tracker interest rate at the end of their 2-year fixed interest rate period in accordance with their original mortgage loan agreements, who would be offered a specific tracker interest rate of ECB+ 0.75%. Those staff were informed in the notice that they would receive a notification 30 days prior to the end of their fixed rate term which would offer a range of fixed and variable rate products, however if they did not respond to this notification their mortgage loan account would "*automatically default to the Staff Tracker ECB + 0.75%*".

The Complainants, in their post Preliminary Decision submission dated **13 April 2022**, maintain that they "*contacted [the Provider] as soon as the [Provider's intranet] Notice was issued to clarify that [they] were in fact still rolling to a tracker rate – this was confirmed to [them] by the staff member in the [Provider branch] while it is very unfortunate that [the Provider] has not been able to provide the recordings – we have submitted substantial corroborating evidence that this was the advice provided by [the Provider] to anyone who queried the impact of the [redacted] Notice of October 2008*".

/Cont'd...

In this regard, the Complainants seek to rely on an email to a third-party colleague about that colleague's mortgage loan. The communication with the third-party colleague about that colleague's mortgage loan, has no bearing on the Complainants' mortgage loan entitlements.

The Complainants submit they had a telephone call with the Provider at the time. The Provider, in its post Preliminary Decision submission dated **3 May 2022**, submits that it has conducted "*extensive searches*" of all relevant databases for evidence of a telephone call made by the Complainants to the Provider seeking to confirm that they would roll to a tracker rate of interest. In this regard, the Provider submits that it has "*been unable to find any such evidence.*" The Complainants have also not provided any evidence of this telephone call with the Provider.

The FAQ document does not, as the Complainants suggest, represent a "*clear admission by [the Provider] that the [redacted] Notice indicated a tracker option would be available at the rollover and does not support the interpretation outlined in the Preliminary Decision.*" It remains the case that the Complainants did not have any contractual right to a tracker interest rate in their mortgage loan documentation and the Provider's intranet notice specifically set out the implications for existing staff customers who were "*rolling to ECB + 0.75% as per their original signed mortgage agreement (see existing staff mortgage section below).*"

On the basis of the evidence before me, I do not accept that the Complainants had a reasonable basis to expect that a tracker interest rate should be applied to their mortgage loan. I have not been provided with any evidence from the parties to this complaint that would indicate that the Complainants were unequivocally advised by the Provider or given any assurances or guarantee by way of written or oral communication that their mortgage loan account ending **6350** would automatically switch to a tracker interest rate of ECB + 0.75% on the expiry of the 2-year staff fixed interest rate period. Furthermore, I have not been provided with any evidence to suggest that the Provider acted in a manner that was in breach of its obligations under the **Consumer Protection Code 2006** (which was fully effective from **01 July 2007**) in its dealings with the Complainants, as suggested by the Complainants and their financial advisor.

The Complainants' mortgage loan account ending **6350** was never on a tracker interest rate of ECB + 0.75% at any stage and nor did the Complainants have a contractual or other entitlement to be offered a tracker interest rate at any stage during term of their mortgage loan. The Complainants only had a contractual entitlement to be offered a further fixed interest rate or any other interest rate made available at the discretion of the Provider or in the absence of selection of an interest rate by the Complainants, the Provider's variable interest rate would apply. Therefore, it is clear that the Provider's reference to mortgage

/Cont'd...

loans on the 2-year staff interest rate, which would “roll to ECB + 0.75% with no BIK implications as per their original signed mortgage agreement at the end of their 2-year fixed period”, in the staff intranet notice dated **09 October 2008** did not apply to the Complainants’ mortgage loan account ending **6350**.

While I accept that the Complainants had a contractual entitlement to a tracker interest rate in respect of mortgage loan account ending **8065** from **21 May 2007**, no such entitlement arose in respect of mortgage loan account ending **6350** on the expiry of the fixed interest rate period in **January 2009** and in respect of mortgage loan account ending **3275** which came into being on **14 April 2010**. Mortgage loan accounts ending **6350** and **3275** were created because the Complainants wished to apply a preferential staff fixed interest rate to certain portions of their mortgage. Neither mortgage loan account was ever on a tracker interest rate, and they were entirely separate and distinct from mortgage loan account **8065**.

For the reasons outlined in this Decision, 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

09 September 2022

/Cont'd...

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.