



<u>Decision Ref:</u>	2022-0331
<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 one of several mortgage loan accounts held by the Complainants with the Provider. The mortgage loan that is the subject of this complaint was secured on the Complainants' buy-to-let ("BTL") property.

The loan amount was €306,000.00 and the term of the loan was 25 years. Mortgage loan account ending **9024(01)** was drawn down in **March 2006** commencing on a discounted standard variable interest rate of 3.38% for a period of two years, with a standard variable interest rate to apply thereafter.

The Complainants' Case

The Complainants state that they approached the Provider in **late 2005** to apply for a mortgage loan and spoke to a staff member. The Complainants maintain that they were guided by the Provider's "*personnel dealing with [their] loan and completely and utterly trusted them with [their] finances*". The Complainants explain that they "*had other mortgages all on Trackers*".

The Complainants note that when they applied for further financing in **2005** *“it was suggested that the mortgage be split”* with a portion of the mortgage loan to be placed on a tracker interest rate and the balance of the mortgage loan to be placed on a discounted variable interest rate. The Complainants detail that they were advised by the Provider that, given the total mortgage loan amount, *“it was best to split it”*.

The Complainants accept that they applied for a standard variable interest rate mortgage loan but note that *“this was on the advice and recommendation of the bank official and a short time afterwards went onto the fixed rate.”*

The Complainants state that they decided to place a portion of the mortgage loan (mortgage loan account ending **9024(01)**) on a 5-year fixed interest rate following advice from the Provider that this was the best option. The Complainants submit however that they were of the understanding that a tracker interest rate would be applied to that portion of the mortgage loan on the expiry of the fixed interest rate period. The Complainants state that the Provider advised them *“not to worry”* and that once the fixed interest rate period expired, they could move to a tracker interest rate if they *“wished”*.

The Complainants submit that they *“do not have this in writing”* and do not have *“documentary evidence”* to prove their case. However, the Complainants assert that they *“do not understand the reason”* why they would have a tracker interest rate on one portion of the mortgage loan and a different interest rate on their other mortgage loans. The Complainants assert that they *“should be on a tracker on all mortgages.”*

The Complainants state that the Provider has an obligation *“to be honest and fair and work in the best interest of the customer.”* The Complainants state that they were *“misled”* in that the Provider did not give them the *“real or perceived advantages or disadvantages of the products available”*. The Complainants submit that the Provider should *“act with care, skill, professionalism and diligence”*. The Complainants maintain that the Provider was *“very convincing on what options to take”*.

The Complainants refute the Provider’s assertion that its staff members are trained to give information and not advice in terms of the interest rates available. The Complainants assert that they were *“guided, advised and recommended on what product to take in regards the mortgages.”* The Complainants also refute the Provider’s submission that there was no *“legal or regulatory requirement on the bank to confirm suitability of the product selected by the customer”* under the Consumer Protection Code 2006.

The Complainants are of the view that they could have *“went to a different bank”* but they *“believed the advice”* they were given and they *“stayed and expected the mortgage to go onto a Tracker as promised after the fixed rate.”* The Complainants assert that they *“have always respected the banks authority”*. The Complainants maintain that *“the verbal*

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agreement should have been honoured” and a tracker interest rate applied to mortgage loan account ending **9024 (01)** on the expiry of the fixed interest rate period.

The Complainants are seeking the following:

- (a) A tracker interest rate to be applied to their mortgage loan account ending **9024(01)**;
- (b) A refund of the interest they have overpaid since the expiry of the fixed interest rate period in **2011**; and
- (c) Compensation.

The Provider’s Case

The Provider details, for the purposes of providing background to the complaint, that the Complainants have another mortgage loan with the Provider under mortgage loan account ending **9008**, which was previously referenced as mortgage loan account ending **4879**. The Provider states that this is the *“main mortgage account and drew down in March 2006”*. The Provider explains that this mortgage is split into two separate mortgage loan sub-accounts being mortgage loan sub-account ending **9008 (01)** (previously referenced as mortgage loan account ending **4879 (9403)**) and mortgage loan sub-account ending **9008 (02)** (previously referenced as mortgage loan account ending **4879 (9402)**). The Provider states that both mortgage loan sub-accounts were drawn down in **March 2006** on a discounted variable rate of interest. The Provider states that a tracker interest rate of ECB + 0.80% was applied to mortgage loan sub-accounts ending **9008 (1)** and **9008 (2)** in **February 2008**.

The Provider explains that mortgage loan account ending **9024 (01)** is a buy-to-let mortgage loan held by the Complainants and is *“not part of a split mortgage.”* The Provider submits that the Complainants’ mortgage loans *“are not connected”* and that each mortgage loan *“followed different mortgage journeys”*. The Provider is of the view that just because a tracker interest rate applied to another mortgage loan held by the Complainants with the Provider, *“does not give the customers an automatic entitlement to have a tracker interest rate to be applied”* to mortgage loan account ending **9024 (01)**.

The Provider states that the Complainants applied for the buy-to-let mortgage loan in **December 2005** and the Provider received an application form which was signed by the Complainants on **28 December 2005**. The Provider maintains that the Complainants chose a standard mortgage and *“did not select the option of a tracker”*.

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The Provider states that following the affordability assessment, a mortgage loan under mortgage loan account ending **9024(01)** (which was previously referenced as mortgage loan account ending **4879 (9401)**) *“was approved subject to terms and conditions as outlined in the customers’ Letter of Loan Offer dated 20 January 2006”*. The Provider maintains that the Mortgage Loan Offer *“clearly confirmed that the customers’ mortgage was to draw down on a discounted variable interest rate.”* The Provider asserts that the Mortgage Loan Offer *“did not contain any reference to a tracker interest rate nor did this document state that a tracker interest rate would be made available to the customers when the initial discounted rate period ended, or at any future date.”* Therefore, the Provider submits that there was no *“contractual entitlement”* on the part of the Complainants to a tracker interest rate at the end of the initial discounted interest rate period. The Provider relies on Specific Condition 3 of the Mortgage Loan Offer in this regard. The Provider submits that the Complainants accepted and signed the Mortgage Loan Offer on **16 February 2006** and that this constitutes the loan agreement with the Provider.

The Provider states that in **March 2006**, the Complainants decided to transfer their mortgage loan account from the discounted variable interest rate to a fixed interest rate. The Provider states that it wrote to the Complainants on **29 March 2006** with details of the fixed interest rate products which were available at that time. The Provider maintains that there was *“no reference to a tracker interest rate in the Letter of Authority /Acknowledgement Form”* that issued to the Complainants. The Provider submits that a Letter of Authority/Acknowledgement was signed by the Complainants on **31 March 2006** wherein the Complainants chose a 5-year fixed interest rate of 4.40%. The Provider submits that the **Letter of Authority/Acknowledgement** details that if a further fixed interest rate was not available at the end of the fixed interest rate period, the interest rate would convert to the Provider’s variable interest rate. The Provider explains that the variable interest rate is the Provider’s standard variable rate while the tracker interest rate is linked with the European Central Bank base rate and varies in line with the European Central Bank base rate.

The Provider notes that the mortgage loan account drew down in **March 2006** which was prior to the introduction of the Consumer Protection Code 2006. As such, the Provider states that there was *“no legal or regulatory requirement on the Bank at that time of the customers’ mortgage application or mortgage drawdown to confirm suitability of the product selected by the customers.”*

The Provider submits that tracker interest rates were available from **early-2004** to **mid-2008** when the product was withdrawn from the market. The Provider asserts that the availability of all interest rates *“is subject to credit criteria, eligibility and terms and*

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conditions.” The Provider reiterates that the Complainants “did not apply for a tracker interest rate in respect of their mortgage.” The Provider notes that the Provider’s staff “were trained to provide information in relation to the various interest rate options that were available when such information was requested.” The Provider maintains that the staff were not authorised to provide advice or give recommendations to customers “as to what interest rate option to select.” The Provider is of the view that the decision “rested with the customers to select the interest rate option that best suited their individual circumstances.”

The Provider notes that on **25 March 2011**, prior to the expiration of the 5-year fixed interest rate period, it wrote to the Complainants confirming the expiry date and the interest rate options available to them. The Provider explains that tracker interest rates were not included as tracker rates had been withdrawn from the market at that stage. The Provider states that in circumstances where the Complainants did not choose an alternative available interest rate option, the mortgage loan account switched to the Provider’s standard variable rate of interest on the expiry of the fixed interest rate period.

The Provider submits that all interest rates are “*subject to change and could be withdrawn by the Bank at any time.*” The Provider maintains that, as a result, “*confirmation, either verbally or written, guaranteeing the availability of a specific interest rate product (e.g. a tracker interest rate) at a future date was not and could not have been provided to the customers by the Bank in March 2006.*” The Provider is of the view that the Complainants could have sought “*independent financial professional advice*” if they required such advice or information in relation to the interest rates available. The Provider asserts that at all times throughout the Complainants’ mortgage journey, “*the customers were provided with all of the necessary information and documentation in order for them to make informed decisions regarding their interest rate choices.*” The Provider submits that there was “*no guarantee in place that a tracker interest rate would be made available to the customers at another future date.*”

The Provider refutes the Complainants’ assertions that the Provider would “*discredit*” the Complainants and outlines that it “*would never seek to do so*”. In relation to the Complainants’ submission regarding being “*misled*” by the Provider and not being advised of the “*real or perceived advantages or disadvantages*” of the interest rates available, the Provider states that the staff members “*were not authorised to and did not provide advice or recommendations to customers regarding the choice or suitability of interest rate options during the mortgage application process*”.

The Complaints for Adjudication

The complaints for adjudication are that:

- (a) The Provider incorrectly misadvised the Complainants in respect of their interest rate options for the mortgage loan sub-account ending **9024(01)** in **2006**; and
- (b) The Provider incorrectly failed to offer the Complainants a tracker interest rate in respect of mortgage loan sub-account ending **9024(01)** at the end of the 5-year fixed interest rate period in **2011**.

Decision

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainants were given the opportunity to see the Provider's response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

In arriving at my Legally Binding Decision, I have carefully considered the evidence and submissions put forward by the parties to the complaint.

Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties on **09 September 2022**, outlining the preliminary determination of this Office in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

In the absence of additional submissions from the parties, within the period permitted, the final determination of this Office is set out below.

In order to determine this complaint, it is necessary to review and set out the relevant provisions of the Complainants' mortgage loan documentation and to consider the details

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of certain interactions between the Provider and the Complainants between **March 2006** and **March 2011**.

The Complainants completed a **Mortgage Application Form** in **December 2005**, which details as follows:

“...

8a. Loan Details – If split facility (2 accounts over 2 different terms) is required please complete section 8a and 8b.

If refinancing please give details -> Institution Refinance Amount

Amount Required €400,000 **Term** 25 years **LTV** %
Loan A **(Loan to Value)**

Type of Loan Annuity Pension
Interest Only Option Deferred Start **Term of Facility** months

Rate Type Variable Tracker Variable Fixed Discount
Interest Rate **3.38%** **Fixed Term** years

...”

The **Mortgage Application Form** was signed by the Complainants on **28 December 2005**. The Complainants signed the **Declaration** section on the following terms:

“...

2. *The information given in this application is true to the best of my/our knowledge and belief. If [the Provider] (“the Company”) accepts this application and loan approval is given, I/we agree that this application and declaration shall form part of the loan contract between me/us and the Company as if all the terms and conditions, declaration and consents contained herein were incorporated into such contract in full...*

5. *The rate of interest will be that which the Company is charging on the date on which the loan cheque is issued and subsequently the rate may vary within the terms of the mortgage.*

...”

The evidence shows that the Complainants selected a discounted interest rate of 3.38% in the **Mortgage Application Form**.

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The Provider subsequently issued a **Mortgage Loan Offer** dated **20 January 2006** to the Complainants which details as follows:

“ ...

IMPORTANT INFORMATION AS AT 20/01/2006

Amount of credit advanced :€306,000.00

Period of agreement :25 YRS

Number of Repayment Instalments : 300

...

Purpose of Loan:

R.I.P. €360,000.00

Repayment Details

Customer/Loan Account Number

Loan Type:

Loan Account

*****4879 9401

INTEREST ONLY for 60 months with repayment of capital and interest thereafter for the remainder of the term

Loan Amount: €306,000.00

Interest Rate: 3.38%

Interest Type: 2 YEAR DISCOUNT VARIABLE

Term: 25 YRS

...”

The following warning is contained on the first page of the **Mortgage Loan Offer**:

“ WARNING

YOUR PROPERTY/HOME IS AT RISK IF YOU DO NOT KEEP UP PAYMENTS IN A MORTGAGE OR ANY OTHER LOAN SECURED ON IT.

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

The **Specific Loan Offer Conditions** detail as follows:

“

(1) What you (applicant(s)) have to attend to

...

This is an Investment Property. It is in the Borrower(s) interest to have a tenancy or lease agreement in place prior to letting the property.

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...

(3) What requires no further action

[The Provider] has agreed that the Borrower(s) pay interest only for the first 60 months of this loan facility. Thereafter, repayment will revert to capital and interest for the remaining term of the loan.

THE 2YR DISCOUNT RATE QUOTED IS 0.40% LESS THAN THE PREVAILING VARIABLE INTEREST RATE AND IS SUBJECT TO VARIATION IN ACCORDANCE WITH MORTGAGE TERMS. THE INTEREST RATE WILL REVERT TO THE APPROPRIATE VARIABLE INTEREST RATE 24 MONTHS AFTER ISSUE OF THE LOAN CHEQUE. IF THE ACCOUNT FALLS MORE THAN TWO REPAYMENTS IN ARREARS DURING THE DISCOUNT PERIOD, THE INTEREST RATE WILL AUTOMATICALLY REVERT TO THE FULL VARIABLE INTEREST RATE AND THE DISCOUNT RATE WILL NOT BE AVAILABLE TO THE BORROWER THEREAFTER.

..."

General Condition 14 of the **Standard Mortgage General Terms and Conditions** details as follows:

"...

14. Interest Rate

(a) Subject to subsection (b), all loans are subject to the prevailing interest rate at the date the loan is drawn down. Subsequently, the interest rate may vary in accordance with the terms and conditions of the Loan Offer.

...

(e) The manner in which interest is charged may be altered from time to time by agreement in writing between [the Provider] and the Borrower.

..."

The Complainants signed the **Loan Acceptance** section of the **Mortgage Loan Offer** on **10 February 2006** on the following terms:

"...

I/We acknowledge receipt of the General Terms and Conditions and Specific Conditions attached to the Loan Offer. I/We have had the Loan Offer, the Specific Loan Offer Conditions and the General Terms and Conditions explained to me/us by my/our Solicitor and I/we fully understand them. I/We hereby accept the Loan Offer

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on the terms and conditions specified. I/We undertake to complete the Mortgage Deed as soon as possible.

*I/We fully understand and accept the specific nature of this Standard Mortgage. I/We further understand that any outstanding debt owing (whether owing now or in the future) to [the Provider] by me/us at any given time is secured on the Property the subject of the Standard Mortgage and must be repaid in full before the relevant title deeds can be returned or the relevant mortgage deed released.
..."*

The **Mortgage Loan Offer** provided for a 2-year discounted variable interest rate with interest only repayments to apply for the first 60 months of the term of the loan. On expiry of the 2 -year discounted variable interest rate, the **Specific Loan Offer Conditions** provided that the interest rate will switch to the appropriate variable interest rate. The nature of the variable interest rate in this instance made no reference to varying in accordance with the European Central Bank main refinancing rate but rather was one that varied in accordance with the terms of the mortgage loan agreement.

The **mortgage account statements** provided in evidence show that the sum of €306,000.00 was drawn down on **01 March 2006**.

It appears that following a request by the Complainants, the Provider issued a letter to the Complainants dated **29 March 2006**, which provides as follows:

*"...
Further to your recent request please find below repayment quotes for our available fixed rates:*

Rate Options	Rate %	Loan Repayment per Month Including Any Insurances	TRS	Total Repayment per month
2 Year Fixed	3.75%	€1,573.24		€1,573.24
3 Year Fixed	3.99%	€1,613.49		€1,613.49
5 Year Fixed	4.40%	€1,683.53		€1,683.53
10 Year Fixed	4.69%	€1,734.02		€1,734.02

The information quoted above relates to your mortgage.

If you decide that a fixed rate is the best for you, simply complete the enclosed Letter of Authority and return it to us within seven days. We will then transfer your existing Mortgage to the option chosen. Should you have any specific queries in

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relation to re-fixing your mortgage, or the availability of tracker variable rate options, please contact us at [Redacted].
...”

The letter dated **29 March 2006** included a **Letter of Authority/Acknowledgement** which was signed by the Complainants on **31 March 2006** and outlines as follows:

“ ...
Please transfer my/our existing mortgage to a fixed rate mortgage with immediate effect. I/We wish to apply for the fixed interest rate of:

<i>2 Year Fixed</i>	<i>3.75%</i>	<i>()</i>
<i>3 Year Fixed</i>	<i>3.99%</i>	<i>()</i>
<i>5 Year Fixed</i>	<i>4.40%</i>	<i>(✓)</i>
<i>10 Year Fixed</i>	<i>4.69%</i>	<i>()</i>

Please tick as appropriate.

I/We acknowledge the following Fixed Rate Mortgage conditions:

1. FIXED TERM DETAILS

The rate of interest applicable to this loan will be fixed for the period specified.

2. TRANSFER FROM FIXED RATE TO VARIABLE RATE AT THE END OF FIXED NOTICE

On the expiry of the fixed term I/We may, by prior notice in writing to the Company, opt to choose a further fixed rate of interest for a certain period, if such an option is made available by the Company. Where such an option is not available or I/We fail to exercise the option if available, the interest rate applicable will be a rate of interest which may be increased or reduced by the company from time to time and at any time in line with market interest rates (the variable rate).

...”

The evidence shows that the Complainants chose to apply a 5-year fixed interest rate of 4.40% to their mortgage loan account in **March 2006**, shortly after drawing down their mortgage loan on a discounted variable interest rate.

The **Letter of Authority/Acknowledgement** clearly stipulates that on the expiry of the fixed interest rate period, the Complainants could choose a further fixed interest rate if available and, if not available or if the Complainants fail to exercise the option, the

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Provider's variable rate would apply. I do not see any reference in the **Letter of Authority/Acknowledgement** that would give the expectation that a tracker interest rate would apply to the mortgage loan account at the end of the fixed interest rate period.

I note that the Provider subsequently wrote to the Complainants on **11 April 2006** for the purposes of confirming the application of the 5-year fixed rate of 4.40% to the mortgage loan account.

Prior to the expiry of the 5-year fixed interest rate period, the Provider issued a letter dated **25 March 2011** to the Complainants, which provides as follows:

"...

THE FIXED RATE PERIOD ON YOUR MORTGAGE IS ABOUT TO END

...

*The fixed rate period on your mortgage is coming to an end on 09/04/2011, so now it's time to start thinking about your next mortgage deal. Any borrowings you have on this fixed rate will automatically roll to the **Standard Variable Rate Default Option (APR 4.4%) of 4.35%**.*

You might choose a new variable rate or alternatively you could select a new fixed rate. With a fixed rate you will continue to have the security of knowing what your monthly repayments will be. The following are the range of options that are currently available for you to choose from:

<i>Rate Options</i>	<i>Rate %</i>	<i>Capital and interest Projected Standard Monthly Repayment (Exclusive of TRS and Insurances) * €</i>	<i>Interest Only Projected Standard Monthly Repayment (Exclusive of TRS and Insurances) * €</i>
<i>Investment Flexible Variable SVR +0.65% <50% LTV (APR 5.1%) This rate is only available if your LTV is less than 50%. This rate is not available to</i>	<i>5.00</i>	<i>2,013.96</i>	<i>not applicable</i>

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residential mortgage customers.			
2 Year Residential Fixed <90% LTV reverting to Standard Variable Rate (APR 4.5%) This rate is only available if your LTV is less than 90%. This rate is not available to investment mortgage customers.	4.80	1,980.28	not applicable
3 Year Residential Fixed <90% LTV reverting to Standard Variable Rate (APR 4.5%) This rate is only available if your LTV is less than 90%. This rate is not available to investment mortgage customers.	5.10	2,030.91	not applicable
Residential Discounted Variable with [named product] to SVR – 0.40% <80% LTV (APR 4.0%) This rate is only available if your LTV is less than 80% and you are a [named	3.95	1,840.64	not applicable

<p><i>product] account holder. An up to date valuation is required. This rate is not available to investment mortgage customers.</i></p>			
<p><i>Residential Discounted Variable with [named product] to SVR – 0.30% >80% LTV (APR 4.1%) This rate is only available to [named product] account holders. This rate is not available to investment mortgage customers.</i></p>	<p>4.05</p>	<p>1,856.78</p>	<p>not applicable</p>
<p><i>Residential Discounted Variable SVR – 0.20% <80% LTV (APR 4.2%) This rate is only available if your LTV is less than 80%. An up to date valuation is required. This rate is not available to investment mortgage customers.</i></p>	<p>4.15</p>	<p>1,872.99</p>	<p>not applicable</p>

<i>Residential Discounted Variable SVR – 0.10% >80% LTV (APR 4.3%) This rate is not available to investment mortgage customers.</i>	4.25	1,889.28	not applicable
<i>Standard Variable Rate Default Option (APR 4.4%)</i>	4.35	1,905.65	not applicable

...

If you choose one of the interest rate options above, other than your Default option, please complete the enclosed Letter of Authority and return it to us within 10 days of the date on this letter. We will then move your existing Mortgage to the option chosen.

Please note if you opt for a further fixed rate and your current default interest rate option is a tracker rate, at the end of this new fixed rate period the tracker interest rate option will no longer be available, and your mortgage will default to a standard variable rate. ”

I note that the Complainants did not complete the enclosed **Letter of Authority** and, as a result, the mortgage loan account defaulted to the Provider’s standard variable interest rate in **March 2011**.

The Complainants submit that the Provider “*misadvised*” them in respect of their interest rate options for the mortgage loan sub-account ending **9024(01)** in **2006**. The evidence shows that the Complainants were given the option of a range of different interest rates to apply for in the **Mortgage Application Form**. A tracker rate option was clearly included as an option in the **Mortgage Application Form**. It was entirely a matter for the Complainants to select which interest rate option best suited their needs. If the Complainants wanted independent advice about the interest rates available in the market, the Complainants could have sought that advice from an independent third-party advisor. The Provider was under no obligation to offer the Complainants advice with respect to interest rate options. Any information given by the Provider with respect to interest rates available could only be given on the basis of information available at the time. It was not possible for the Provider to know that a tracker interest rate might later transpire to be more favourable.

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The evidence shows that the Complainants applied for a discounted interest rate of 3.38% when they completed the **Mortgage Application Form** in **December 2006**. If the Complainants wished to apply for a tracker interest rate, they could have indicated that they wished to apply for a tracker interest rate on the application form. However, the Complainants did not do this. Even if the Complainants did specifically apply for a tracker interest rate in **2006**, it was entirely within the Provider's commercial discretion as to whether it wished to accede to the Complainants' request and offer the Complainants a mortgage loan on a tracker interest rate. Following receipt of the Complainants' mortgage loan application for a discounted variable interest rate, the Provider issued a **Mortgage Loan Offer** dated **20 January 2006** to the Complainants offering a 2-year discounted variable interest rate. If the Complainants were of the view that the 2-year discounted variable rate offered was not suitable to them, the Complainants could have decided not to accept the offer made by the Provider. Instead, the Complainants signed the **Loan Acceptance** on **10 February 2006** in the presence of their solicitor and confirmed that they accepted the **Mortgage Loan Offer** on the terms and conditions set out therein. The Complainants subsequently chose to apply a 5-year fixed rate to the mortgage loan account shortly after they drew down the mortgage loan in **2006** and the Provider acted on the Complainants' instructions by applying a 5-year fixed interest rate of 4.40% to the mortgage loan account in or around **April 2006**.

The Complainants are of the view that the Provider incorrectly failed to offer them a tracker interest rate in respect of mortgage loan sub-account ending **9024(01)** at the end of the 5-year fixed interest rate period in **2011**. The Complainants maintain that they "*expected the mortgage to go onto a Tracker as promised*" on expiry of the 5-year fixed interest rate in respect of mortgage loan account ending **9024 (01)** and the Provider failed to advise them otherwise. However, the Complainants' mortgage loan documentation to include the **Mortgage Loan Offer** dated **20 January 2006** and the **Letter of Authority/Acknowledgement** which was signed by the Complainants on **31 March 2006** clearly detailed what would transpire on the expiry of the fixed interest rate period. The mortgage loan documentation provided that the Complainants could choose a further fixed interest rate if available and, if not available or if the Complainants failed to exercise the option, the Provider's standard variable interest rate would apply. The terms and conditions of mortgage loan account ending **9024 (01)** did not state that a tracker interest would apply at the expiry of the fixed interest rate period, or indeed at any time during the lifetime of the mortgage loan.

The evidence shows that on expiry of the fixed interest rate period in **2011**, the Provider offered the Complainants a range of fixed interest rates and variable interest rates in accordance with the terms and conditions of the mortgage loan documentation.

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While the Complainants may have held other mortgage loans with the Provider at the time which were operating on tracker interest rates, this did not confer a contractual entitlement on the Complainants to be offered a tracker interest rate on mortgage loan account ending **9024 (01)** at any time during the lifetime of the mortgage loan. Mortgage loan account ending **9024 (01)** concerns an entirely separate mortgage loan and is subject to separate and distinct terms and conditions.

For the reasons set out above, I do not uphold the 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**

04 October 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,

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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.