



<u>Decision Ref:</u>	2022-0339
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Tracker Mortgage
<u>Conduct(s) complained of:</u>	Failure to offer a tracker rate at point of sale Failure to offer a tracker rate throughout the life of the mortgage
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

This complaint relates to a mortgage loan account held by the Complainants with the Provider. The mortgage loan which is the subject of this complaint is secured on the Complainants' principal private residence.

The loan amount was €356,250.00 and the term of the loan was 30 years. The **Loan Offer Letter** dated **30 April 2004** outlines that the interest rate applicable to the loan was the Provider's staff fixed interest rate of 3.89% until **31 December 2006**, with a variable interest rate to apply thereafter.

The Complainants' Case

The Complainants outline that their mortgage loan account ending **8528** was drawn down "*around*" **30 April 2004**. The Complainants detail that they were only offered a fixed or variable interest rate on this mortgage and were "*never offered tracker rates*" when they applied for their mortgage. The Complainants submit that they queried the fact that they were not offered tracker interest rates at the time but were never given a reason why they were not offered such rates.

The Complainants state that, when the fixed interest rate expired on **31 December 2007**, they were again “*excluded from tracker rates even though [the Provider was] offering these to other customers*”. The Complainants assert that due to variable interest rates being so high, the only option was to select the fixed interest rate. Further, the Complainants submit that they had three interest rate reviews between **2004** and **2010**, during which time they were not offered the option of a tracker interest rate on their mortgage loan account “*when tracker products were [being] offered to others*”.

The Complainants state that they “*feel [they] have paid excessive rates since 2004 and [the Provider has] basically denied this*”. The Complainants also contend that they “*have paid huge amounts of money more that (sic) [they] should have had [they] been treated fairly and offered the correct rates*”.

Moreover, the Complainants submit that the Provider never provided any reason why they could not avail of a tracker interest rate on their mortgage loan account.

The Complainants are seeking the following:

- (a) The interest rate on mortgage loan account ending **8528** is switched to the tracker interest rate that was prevailing at the time they drew down their mortgage loan account in **2004**;
- (b) Refund of the additional interest paid since the inception of the mortgage loan.

The Provider’s Case

The Provider outlines that its tracker interest rate products were available from **early 2004** to **late 2008**, when tracker interest rates were withdrawn from the market by the Provider. The Provider states that a tracker interest rate could only be offered to new customers during this period. The Provider submits that it does “*not have any specific policy with respect to tracker interest rate offerings to existing customers from their introduction in 2004*” until they were withdrawn in **late 2008**. The Provider states that, at the time of the Complainants’ mortgage application in **April 2004**, the Provider’s practice was that “*the range of interest rate options that were available to customers, subject to credit criteria, eligibility and terms & conditions, were outlined to customers*”. The Provider submits that it therefore “*provided information, when requested, in relation to the various interest rate options that were available at that time*”.

The Provider details that there was an arrangement whereby staff from another provider could avail of a mortgage with the respondent Provider, on an interest rate which was available only to staff of this other provider.

The Provider submits that the Complainants completed a mortgage loan application form and applied for a mortgage loan in the amount of €356,250.00 repayable over a term of 30 years on the Provider's staff interest rate of 3.89%, which was fixed until **December 2006**.

The Provider details that this application form was signed by the Complainants on **20 April 2004**.

The Provider outlines that it issued a Loan Offer Letter to the Complainants dated **30 April 2004**, which provided for a loan in the amount of €356,250.00 repayable over a term of 30 years on a fixed interest rate of 3.89% until **31 December 2006**, with a variable interest rate to apply thereafter. The Provider confirms that all *"credit facilities were subject to repayment capacity, financial status checks and an affordability assessment"*.

The Provider asserts that Condition 14 (b) of the Standard Mortgage General Terms and Conditions details what was to transpire at the end of the initial fixed rate period. The Provider states that the variable interest rate described in the Complainants' Loan Offer Letter was the Provider's standard variable rate of interest, which can be increased or decreased at the discretion of the Provider. The Provider notes that, by comparison, a tracker interest rate is linked to the European Central Bank (ECB) base rate *"and so will rise and fall in line with movements in the ECB base rate"*, which cannot be altered at the discretion of the Provider. The Provider submits that the Complainants' Loan Offer Letter did not contain a contractual entitlement to avail of a tracker interest rate at the end of the initial fixed interest rate period, or at another future date. The Provider notes that the Complainants accepted and signed their Loan Offer Letter on **09 June 2004**, and the Provider asserts that *"this document constitutes the [Complainants'] loan agreement with the [Provider]"*.

The Provider outlines that it wrote to the Complainants in **December 2006** to confirm the scheduled expiry date of the Complainants' fixed interest rate period and also to confirm that the Complainants had the option to transfer their mortgage loan to either a variable interest rate or a new fixed interest rate. The Provider states that this letter *"outlined the fixed interest rate options available to customers at the time and included with the letter was a blank Letter of Authority/Acknowledgement form"* to be completed by the Complainants, should they have sought to avail of a fixed interest rate option outlined therein. The Provider maintains that the letter also *"advised the customers to contact the Bank if they had any queries or if they wanted to discuss [sic] the availability of a tracker variable rate option"*. The Provider notes that there *"was no reference to a tracker interest rate in the Letter of Authority/Acknowledgement form"*.

The Provider submits that the Complainants opted *"to avail of a further fixed interest rate, this time selecting a fixed rate of 4.56%"* for a period of two years, by completing and

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signing the **Letter of Authority/Acknowledgement form**. The Provider notes however that it does not have a copy of its letter to the customers from **December 2006**, or the **Letter of Authority/Acknowledgement Form** that the Complainants signed in **December 2006**. The Provider states that, despite extensive searches, it has not been able to locate a copy of these documents and apologises *“for any inconvenience this may cause”*. The Provider explains that when a copy of a document is not on a customer’s file, it *“conducts a review of the mortgage account, taking into account the appropriate document that would have been issued to the customer during the relevant time period”*.

The Provider outlines that it wrote to the Complainants on **04 November 2009**, prior to the expiry of the Complainants’ fixed interest rate term (which was entered into in **December 2006/January 2007**). The Provider submits that this letter is known as a Product Expiry Letter and confirmed the expiry date of the fixed interest rate period and *“outlined the alternative interest rate products (both fixed and variable) available to the [Complainants] at that time”*. The Provider details that this letter included a Rate Change Letter of Authority form, which could be completed by the Complainants, should they have wished to avail of an alternative interest rate option as set out therein. The Provider asserts however that the Provider withdrew tracker interest rate products from the market in **late-2008**, and *“therefore such an interest rate option was not included in the letter”*.

The Provider states that the Complainants opted to move their mortgage loan to a two-year fixed interest rate of 3.56% by completing and signing the Rate Change Letter of Authority form on **09 November 2009**. The Provider submits that this Rate Change Letter of Authority form *“contained all relevant information”* including what would transpire on the expiry of the fixed interest rate period.

The Provider details that it wrote to the Complainants on **28 November 2011**, confirming the expiry date of the fixed interest rate period and *“also outlined the alternative interest rate products (both fixed and variable) available to the [Complainants] at that time”*. The Provider states that this letter included a Rate Change Letter of Authority form *“to be completed and signed should the [Complainants] have wished to avail of an alternative interest rate option as outlined therein”*.

The Provider submits that the Complainants *“chose to move their mortgage”* to a two-year fixed interest rate of 4.50% by completing and signing the Rate Change Letter of Authority form on **02 January 2012**. The Provider states that this form contained all relevant information, including what would transpire at the end of the fixed interest rate period.

The Provider outlines that it wrote to the Complainants on **11 December 2013**, again confirming the expiry date of the fixed interest rate period and outlining the alternative interest rate products available to the Complainants at that time. The Provider notes that

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this letter included a Rate Change letter of Authority form, which could be completed and signed by the Complainants if they wished to avail of an alternative interest rate option as outlined therein.

The Provider outlines that the Complainants chose to move their mortgage to a fixed interest rate of 4.95% until **31 December 2016**, by completing and signing the Rate Change Letter of Authority form on **18 December 2013**.

The Provider submits that it wrote to the Complainants, prior to the expiry of the fixed interest rate period in **December 2016**, confirming the scheduled expiry date of the fixed interest rate period and outlining the alternative interest rate products available to the Complainants at that time. The Provider notes that this letter included a Rate Change Letter of Authority form to be completed and signed by the Complainants, should they have wished to avail of an alternative interest rate option as set out therein.

The Provider details that the Complainants did not select an alternative interest rate option at this time and their mortgage loan account rolled onto the Provider's standard variable interest rate when the fixed interest rate period ended in **December 2016**. The Provider notes that the Complainants' mortgage loan account has remained on the Provider's standard variable interest rate since that time.

The Provider asserts that the Complainants "*could not have been and were not offered a tracker interest rate on their mortgage*" when the fixed interest rate periods ended in **November 2009, November 2011, December 2013 and December 2016** "*as tracker interest rates has[d] been withdrawn from the market*" by the Provider in **late-2008** and were no longer available for selection.

The Provider submits that the Complainants' mortgage loan account remains active with the Provider to date.

The Complaints for Adjudication

The complaints for adjudication are as follows:

- (a) the Provider failed to offer the Complainants the option of a tracker interest rate at the time they applied for their mortgage loan; and
- (b) the Provider failed to offer the Complainants the option of a tracker interest rate on each occasion when their fixed interest rate period expired.

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 **23 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. It is also necessary to set out the details of certain interactions between the Provider and the Complainants between **2004** and **2016**.

The Complainants completed a **Mortgage Application Form**, which was signed and dated by the Complainants on **20 April 2004**, to apply for a mortgage loan with the Provider in the amount of €356,250.00 repayable over a term of 30 years on a fixed interest rate of 3.89% until **December 2006**. The **Mortgage Application Form** details as follows:

“ ...

8a. Loan Details...

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...
Amount Required €356250 Term 30 years
Loan A

Type of Loan	Annuity	Investment	Pension
	Interest Only Facility		Term of Interest Only Facility
			years

Rate Type Variable Fixed Discount

Interest Rate 3.89% Fixed Term Dec 2006 years

..."

There is a handwritten note on the application form which refers to an interest rate which was available only to staff of another provider (hereinafter referred to as “the staff rate”). This is evidently the rate which is being referenced in the handwritten note and as such, the rate which the Complainants sought from the Provider.

The Complainants signed the **Declaration at Section 15 of Mortgage Application Form** on the following terms:

“...
2 The information given in this application is true to the best of my/our knowledge and belief and I/we agree that this application and declaration shall be part of the contract between me/us and [the Provider] (“the Company”)... **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 Provider subsequently issued a **Loan Offer Letter** to the Complainants dated **30 April 2004**, which details as follows:

“Loan Type	STANDARD ANNUITY
Loan Amount:	€356,250.00
Interest Rate:	3.89%
Interest Type:	FIXED TO 31/12/06 and variable thereafter
Term:	30 YRS
Monthly Loan Repayment	€1,678.28 for the following 32 months €1,629.37 for the following 328 months*

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[...]

** Based on a calculation using the current [Provider's] variable rate"*

The **Specific Loan Offer Conditions** detail as follows under the heading 'What requires no further action':

"Should the Borrower leave the employment of [the other provider] and at the time of leaving the balance of the loan exceeds 80% of the value of the property, the Borrower hereby agrees to obtain an indemnity bond to cover the excess.

The monthly repayments will be deducted from the Borrowers salary at source."

The **Standard Mortgage General Terms and Conditions (effective from 18/02/2004)** appended to the **Loan Offer Letter** provide as follows:

"1. Introduction

(a) These General Terms and Conditions apply in all circumstances for [the Provider's] Standard Mortgage. The Loan Offer comprises the Specific Loan Offer Conditions and these General Terms and Conditions. In the event of any conflict or inconsistency between the two, the Specific Loan Offer Conditions shall apply.

...

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.

(b) In the case of a fixed interest rate Mortgage, the following conditions will apply:-

- (i) The rate of interest applicable to the loan will be fixed at the rate and for the period specified in the Loan Offer;*
- (ii) The Borrower on the expiry of the Fixed Rate Period may, by prior notice in writing to [the Provider], opt to choose a further fixed rate of interest for a certain period if such an option is made available by [the Provider] and on terms and conditions as may be specified by [the Provider].*

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Where such an option is not made available by [the Provider] or, if available, where the Borrower fails to exercise the option, the interest rate applicable will be a variable rate of interest which may be increased or decreased by [the Provider] at any time, and in this respect, the decision of [the Provider] will be final and conclusively binding on the Borrower."

The Complainants signed the **Loan Acceptance** section of the **Loan Offer Letter** on the following terms:

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

The **European Standardised Information Sheet** (ESIS) has been submitted in evidence and outlines the following:

"...

3. Interest Rate

Interest Rate: 3.89%

Interest Type: FIXED TO 31/12/06 and variable thereafter

"(a) In the case of a fixed interest rate Mortgage, the following conditions will apply:-

(i) The rate of interest applicable to the loan will be fixed at the rate and for the period specified in the Loan Offer;

(ii) The Borrower on the expiry of the Fixed Rate Period may, by prior notice in writing to [the Provider], opt to choose a further fixed rate of interest for a certain period if such an option is made available by [the Provider] and on terms and conditions as may be specified by [the Provider].

Where such an option is not made available by [the Provider] or, if available, where the Borrower fails to exercise the option, the interest rate applicable will be a variable rate

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of interest which may be increased or decreased by [the Provider] at any time, and in this respect, the decision of [the Provider] will be final and conclusively binding on the Borrower.

(b) In the case of a Monthly Rest Mortgage, interest is calculated on the Mortgage Balance at the end of each preceding month."

“ ...

The Complainants accepted and signed the **Loan Acceptance on 09 June 2004** and the **mortgage loan account statements** provided in evidence indicate that the mortgage was drawn down on **31 August 2004**.

It is clear that the **Loan Offer Letter** dated **30 April 2004** provided for the staff fixed interest rate of 3.89% to apply to the Complainants' mortgage loan account until **31 December 2006**. **General Condition 14** clearly details that, on the expiry of the fixed interest rate term, the Complainants could opt to choose a further fixed rate of interest for a certain period if such an option is made available by the Provider. However, where such an option is not made available by the Provider, or the Complainants do not select a fixed interest rate, the Provider's variable interest rate will apply. The variable interest rate in this case made no reference to varying in accordance with variations in the ECB refinancing rate, rather it was a variable rate which could be adjusted at the discretion of the Provider. There is no mention whatsoever in the Complainants' mortgage loan documentation that a tracker rate of interest would apply to the Complainants' mortgage loan at any stage during the term of the loan.

The Complainants accepted and signed the **Loan Offer Letter** on **30 April 2004**, and in doing so, confirmed that they had been advised upon the terms and conditions of the mortgage loan by their solicitor.

The Complainants submit that the Provider did not offer them the option of a tracker interest rate at the time they applied for their mortgage loan. I note that tracker interest rates were on offer generally by the Provider as part of its suite of products at the time of the Complainants' mortgage loan application in **April 2014**, however there was no contractual or other obligation on the Provider to offer the Complainants a tracker interest rate when they applied for their mortgage loan in **2004**. As detailed above, the Complainants were given an option of a variable, fixed or discounted interest rate. I have not been provided with any evidence to suggest that the Complainants enquired as to the availability of tracker interest rates in **2004**. There is also no evidence to suggest that the

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Complainants were informed by the Provider that a tracker interest rate was not available at the time of their mortgage loan application.

The choice as to which interest rate to apply for, rested solely with the Complainants. If it was the case that, upon considering the particulars of the **Loan Offer Letter** dated **30 April 2004**, the Complainants were of the view that a variable interest rate loan was not suitable to them, then the Complainants could have decided not to sign the **Loan Acceptance** and draw down the loan. Instead, they could have sought an alternative interest rate with the Provider or with another mortgage provider.

Prior to the expiry of the fixed interest rate period in **December 2006**, the Provider states that it issued a **Product Expiry Letter** and **Letter of Authority/Acknowledgement form** to the Complainants. The Provider notes that it does not hold a copy of the letters that issued however it has submitted a sample of a **Product Expiry Letter** and **Letter of Authority/Acknowledgement form**, which the Provider submits would have issued to the Complainants at this time. **Provision 49** of the **Consumer Protection Code 2006** governs retention of records and was not effective until **01 July 2007**. In these circumstances, while I am disappointed that the Provider has failed to retain any records relating to the rate change in **December 2006**, there was no breach of the **Consumer Protection Code 2006**.

The template **Product Expiry Letter** which the Provider has submitted in evidence shows the various one-year, two-year, three-year, four-year, five-year and ten-year fixed interest rate options available for selection in **2006** and also details as follows:

“...

*If you decide that a fixed rate option is best for you, simply complete the enclosed Letter of Authority and return it to us. We will then transfer your existing Mortgage to the option chosen. Should you have any specific queries in relation to refixing your mortgage, **or the availability of tracker variable rate options**, please contact us at [redacted telephone number]....*

If you choose a variable rate you do not need to contact us as your loan will automatically revert to a variable rate. The current variable rate is % and the total monthly repayment(s) is outlined in the payment plan below...” [my emphasis]

It appears therefore that if the Complainants wished to attain information in relation to the availability of a tracker interest rate, they could have contacted the Provider directly. Alternatively, if the Complainants wanted independent advice about interest rates available in the market, it was a matter for the Complainants to get that advice from an independent third-party advisor. I accept that it was not the Provider's role to offer advice to the Complainants with respect to interest rate options.

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As noted above, the Provider has submitted a template **Letter of Authority /Acknowledgement** in evidence that purportedly issued to the Complainants in **December 2006**, which outlines the following:

“ ...

3. 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).

...”

While it is disappointing that the Provider has not retained a copy of this documentation, it does not appear to be in dispute between the parties that the Complainants applied a fixed interest rate to their mortgage loan at this time. The **mortgage loan account statements** that have been submitted in evidence show that a two-year fixed interest rate of 4.54% was applied on **01 January 2007**.

There was no obligation on the Provider to offer the Complainants a tracker interest rate on their mortgage loan on the expiry of the fixed interest rate period in **December 2006**.

The Provider submits that it withdrew tracker interest rates from its suite of mortgage products in **late-2008** and thereafter, such interest rates ceased being available for selection from the Provider.

Prior to the expiry of the two-year fixed interest rate period, the Provider issued a **Product Expiry letter** to the Complainants dated **04 November 2009**, which states 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 31/12/2009, so now its 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 3.9%) of 3.85%.

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

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monthly repayments will be. The following are the range of options that are currently available for you to choose from. Please note that the only rate we can guarantee for the 1st January 2010 is the below [other provider] Staff Rate. All other below rates are valid for 10 days from the date hereof and are subject to variation.

<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>2 year [other provider] Staff Rate reverting to Standard Variable (APR 3.90%)</i>	<i>3.56</i>	<i>1,670.68</i>	<i>1,000.49</i>
<i>2 year Investment Fixed reverting to Standard Variable (APR 4.0%)</i>	<i>4.40</i>	<i>1,823.85</i>	<i>1,236.56</i>
<i>3 Year Investment Fixed reverting to Standard Variable (APR 4.1%)</i>	<i>4.50</i>	<i>1,842.56</i>	<i>1,264.66</i>
<i>5 Year Investment Fixed reverting to Standard Variable (APR 4.6%)</i>	<i>5.15</i>	<i>1,966.65</i>	<i>1,447.33</i>
<i>2 Year Residential Fixed reverting to Standard Variable (APR 4.0%)</i> <i>This rate is not available to Investment mortgage customers</i>	<i>4.20</i>	<i>1,786.72</i>	<i>1,180.35</i>
<i>3 Year Residential Fixed reverting to Standard Variable (APR 4.1%)</i> <i>This rate is not available to Investment mortgage customers</i>	<i>4.30</i>	<i>1,805.23</i>	<i>1,208.45</i>
<i>5 Year Residential Fixed reverting to Standard Variable (APR 4.5%)</i> <i>This rate is not available to Investment mortgage customers</i>	<i>4.95</i>	<i>1,928.02</i>	<i>1,391.13</i>

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<i>Flexible variable Rate (under 80% LTV) (APR 3.7%)</i> <i>This rate is not available to investment mortgage customers.</i>	3.65	1,686.74	1,025.78
<i>Flexible variable Rate (over 80% LTV) (APR 3.8%)</i> <i>This rate is not available to investment mortgage customers.</i>	3.75	1,704.68	1,053.88
<i>Investment Flexible Variable Rate (APR 4.6%)</i>	4.50	1,842.56	1,264.66
<i>Standard Variable Rate</i>	3.85%	1,722.73	1,081.99

...

In order to avail of the [other provider's] staff rate above, please complete the enclosed Letter of Authority which must be signed by all parties to the mortgage and return it to us in the pre-paid envelope supplied by Friday 13th November 2009".

A **Rate Change Letter of Authority** dated **04 November 2009** was enclosed with the **Product Expiry Letter** detailing the same interest rate options as detailed above and include the following conditions in relation to fixed interest rates:

Conditions applying to fixed rate mortgages:

1. Transfer from fixed rate to standard variable rate at the end of fixed term:

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

2. Fixed Term Details

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

The Complainants completed and signed the **Rate Change Letter of Authority** on **09 November 2009**, opting to convert their mortgage loan account to a two-year Staff Rate of 3.56%, with a standard variable interest rate to apply thereafter.

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The **mortgage loan account statements** that have been submitted in evidence indicate that the Complainants mortgage loan account defaulted to a standard variable interest rate of 3.85% on **01 January 2010** and a two-year Staff Rate of 3.56% was subsequently applied on **01 February 2010**. The Staff Rate in this instance was fixed in nature as the interest rate remained fixed at 3.56% until **01 January 2012**.

Prior to the expiry of the two-year fixed interest rate period, the Provider issued a **Product Expiry Letter** to the Complainants dated **28 November 2011**, which details as follows:

*“...The fixed rate period on your mortgage is coming to an end on 31/12/2011, 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 5.1%)**...*

Alternatively you might choose a new variable or fixed rate. To help you make an informed decision the table below outlines the advantages and disadvantages of the default Standard Variable Rate compared to other variable and fixed rate mortgages...”

The **Product Expiry Letter** detailed that the “*Standard Variable Rate Default Option*” was 4.95%. The Product Expiry Letter also offered a range of fixed interest rates to include a “*2 Year Fixed (APR 5.0%) reverting to Standard Variable Rate*” of 4.50% and a “*3 Year Fixed (APR 5.1%) reverting to Standard Variable Rate*” of 4.95% as well as a range of discounted variable interest rate options ranging from 4.10% to 4.35%. A **Rate Change Letter of Authority** dated **28 November 2011** was enclosed with the **Product Expiry Letter** detailing the same interest rate options. The Complainants completed and signed the **Rate Change Letter of Authority** on **02 January 2012** and selected to apply a two-year fixed interest rate of 4.50% to their mortgage loan account. The **Rate Change Letter of Authority** dated **28 November 2011** contained the same conditions applicable to fixed interest rates as the **Rate Change Letter of Authority** dated **04 November 2009**. The **mortgage loan account statements** submitted in evidence indicate that a two-year fixed interest rate of 4.50% was applied to the Complainants’ mortgage loan account on **01 February 2012**.

Prior to the expiry of the two-year fixed interest rate period, the Provider issued a **Product Expiry Letter** to the Complainants dated **11 December 2013**, which details as follows:

*“...The fixed rate period on your mortgage is coming to an end on 16/01/2014, 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 4.6%)**...*

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Alternatively you might choose a new variable or fixed rate. To help you make an informed decision the table below outlines the advantages and disadvantages of the default Standard Variable Rate compared to other variable and fixed rate mortgages...”

The **Product Expiry Letter** detailed that the “*Standard Variable Rate Default Option*” was 4.30%. The **Product Expiry Letter** also offered a range of fixed interest rates to include a “*Fixed until 31/12/15 reverting to Standard Variable Rate (APR 5.0%)*” of 4.65%, a “*Fixed until 31/12/16 reverting to Standard Variable Rate (APR 4.7%)*” of 4.95% and a “*Fixed until 31/12/18 reverting to Standard Variable Rate (APR 5.0%)*” of 5.25% as well as a range of discounted variable interest rate options ranging from 3.85% to 4.10% and a “*Flexible Variable SVR +0.15%*” of 4.65%. A **Rate Change Letter of Authority** dated **11 December 2013** was enclosed with the **Product Expiry Letter** detailing the same interest rate options. The Complainants completed and signed the **Rate Change Letter of Authority** on **18 December 2013** and selected to apply a fixed interest rate of 4.95% to their mortgage loan account until **31 December 2016**, with a standard variable rate of interest to apply thereafter. The **Rate Change Letter of Authority** dated **18 December 2013**, contained the same conditions applicable to fixed interest rates as the **Rate Change Letters of Authority** dated **04 November 2009** and **28 November 2011**.

Prior to the expiry of the three-year fixed interest rate period, the Provider states that it issued a **Product Expiry Letter** to the Complainants in **December 2016**. The Provider has submitted a copy of a **Product Expiry Letter** dated **31 May 2017** in evidence however the Provider explains that **31 May 2017** is the date which this letter was retrieved from the Provider’s system and that this letter was in fact issued to the Complainants in **December 2016**. In any event, the date on which this letter was issued does not appear to be in dispute between the parties. The **Product Expiry Letter** details as follows:

“..The fixed rate period on your mortgage is coming to an end on 31st December 2016, 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 SVR...”

Alternatively you might choose a new variable or fixed rate. To help you make an informed decision the table below outlines the advantages and disadvantages of the default Standard Variable Rate compared to other variable and fixed rate mortgages...”

The **Product Expiry Letter** detailed that the “*SVR*” was 4.30%. The **Product Expiry Letter** also offered a range of fixed interest rates to include a “*Fixed until 31/03/19 reverting to Standard Variable Rate (APR 5.0%)*” of 4.65%, a “*Fixed until 31/12/16 reverting to Standard Variable Rate (APR 4.6%)*” of 4.50%, a “*Fixed until 31/03/19 reverting to Standard Variable*

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Rate (APR 4.7%)" of 4.95%, a "*Fixed until 31/03/22 reverting to Standard Variable Rate (APR 4.8%)*" of 4.95% and a "*Fixed until 31/03/22 reverting to Standard Variable Rate (APR 5.1%)*" of 5.40% as well as a range of flexible variable interest rate options ranging from 4.50% to 4.95%. A **Rate Change Letter of Authority** was enclosed with the **Product Expiry Letter** detailing the same interest rate options. The letter contained the same conditions applicable to fixed interest rates as the **Rate Change Letters of Authority** dated **04 November 2009, 28 November 2011** and **18 December 2013**.

It does not appear however that the Complainants completed and signed the **Rate Change Letter of Authority** and returned it to the Provider. The **mortgage loan account statements** that have been submitted in evidence indicate that the Complainants' mortgage loan account converted to a standard variable interest rate on **31 December 2016**, in line with the terms and conditions of the Complainants' mortgage loan. The Complainants are of the view that the Provider incorrectly failed to offer them the option of a tracker interest rate on each occasion when their fixed interest rate period expired, namely in **December 2006, December 2009, December 2011, December 2013, and December 2016**. The evidence shows that the Provider issued correspondence to the Complainants in **December 2006, November 2009, November 2011, December 2013, and December 2016** advising the Complainants of the expiry dates of the various fixed rate periods and detailed the interest rate options available for selection on the expiry of the fixed interest rate periods. **General Condition 14** of the **Loan Offer Letter** dated **30 April 2004** clearly sets out what is to transpire at the end of any fixed interest rate period. **General Condition 14** provides that the Complainants could opt to choose a further fixed rate of interest or where a fixed interest rate option was made available by the Provider, or the Complainants decided not to select a further fixed interest rate, the Provider's variable interest rate would apply.

The nature of the Provider's variable interest rate was one which could be adjusted at the discretion of the Provider. The Provider's variable interest rate was not a tracker interest rate which tracked fluctuations in the ECB main refinancing rate. For the Complainants to be entitled to avail of a tracker interest rate on the expiry of any of the fixed interest rate periods, that right would need to be explicitly provided for in the documentation governing the Complainants' mortgage loan agreement with the Provider. However, no such entitlement was contained in that documentation.

Therefore, in circumstances where the Complainants did not have a contractual entitlement to be offered a tracker interest rate at any stage during the term of their mortgage loan, the Provider was not under any obligation to offer them the option of a tracker interest rate on the expiry of any of the fixed interest rate periods detailed above.

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While I acknowledge that tracker interest rates were available as part of the Provider's product offering in **December 2006** when the initial fixed interest rate period came to an end, there was no obligation on the part of the Provider to offer the Complainants a tracker interest rate. The Provider offered the Complainants a range of fixed interest rates in **2006** or the option of converting to a variable interest rate in line with the terms and conditions of their mortgage loan agreement. I have not been provided with any evidence to indicate that the Complainants contacted the Provider to discuss the availability of tracker interest rate options in **2006**. Even if the Complainants did contact the Provider directly to discuss the available tracker interest rates 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 tracker interest rate.

Tracker interest rates were withdrawn from the market by the Provider in **late-2008**, therefore tracker interest rates were no longer on offer by the Provider at the end of any of the other fixed interest rate periods in **December 2009, December 2011, December 2013, and December 2016**. The evidence shows that the Provider offered the Complainants the option to select a fixed interest rate at the maturity of the other fixed interest rate periods in **December 2009, December 2011, December 2013, and December 2016**. I am therefore satisfied that the Provider has acted in accordance with its contractual obligations to the Complainants in respect of mortgage loan account ending **8528**, as set out in the **Loan Offer Letter** dated **30 April 2004**.

Having considered the mortgage loan documentation in its entirety, it is clear to me that the Complainants did not have a contractual or other entitlement to be offered a tracker interest rate at the application stage for the mortgage loan or on the expiry of any of the fixed interest rate periods.

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

Conclusion

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

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

Suzanne O'Malley

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

18 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,

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.