



<b><u>Decision Ref:</u></b>	2023-0111
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Tracker Mortgage
<b><u>Conduct(s) complained of:</u></b>	Failure to offer a tracker rate throughout the life of the mortgage
<b><u>Outcome:</u></b>	Rejected

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

##### **Background**

This complaint relates to one of two mortgage loan accounts held by the Complainants with the Provider. The mortgage loan that is the subject of this complaint is secured on the Complainants' principal private residence.

The **Mortgage Loan Offer** dated **28 February 2008** in relation to mortgage loan account ending **7179** describes the loan type as "*Variable Annuity*" and the interest rate as a "*STAFF PREF HOME LOAN ANNUITY*" at 3%. The term of the loan was 35 years, and the total loan amount was €190,460.00. The Complainants drew down mortgage loan account ending **7179** on **20 March 2008**.

The Complainants have a second mortgage loan under mortgage loan account ending **7096**. The **Mortgage Loan Offer Letter** dated **28 February 2008** with respect to that loan provides for a loan in the sum of €240,540.00 repayable over a term of 35 years. This mortgage loan is a tracker interest rate loan and is not the subject of this complaint.

This complaint is in relation to mortgage loan account ending **7179** only.

### The Complainants' Case

The Complainants submit that they hold a mortgage loan with the Provider on a staff fixed interest rate of 3%. The Complainants outline that they applied for a staff preferential rate of 3% as it was *"better than tracker at the time"*. The Complainants assert that had they known that tracker interest rates would not be available in the future, they would have opted to apply a tracker interest rate to their mortgage loan from inception.

The Complainants contend that it was to their understanding that they had security of a tracker interest rate in their loan offer. In this regard, the Complainants assert that it was to their understanding that *"the tracker option was for the duration of the loan and not until [the Provider] said they don't do it anymore."* The Complainants submit that upon review of the Letter of Offer in respect of mortgage loan account ending **7179**, it was to their understanding that should the First Complainant resign or be dismissed from the employment of the Provider, or if they wished to change the interest rate on the mortgage loan account, they would have an option to apply a tracker interest rate or a standard variable interest rate.

The Complainants submit that after the *"crash"*, the standard variable interest rate went below that the staff preferential rate of 3%. The Complainants submit that they were offered a standard variable interest rate in respect of mortgage loan account ending **7179** in **October 2010**.

The Complainants submit that they requested a tracker interest rate, but their request was declined *"because [the Provider] [didn't] offer it as a product anymore"*. The Complainants submit that they never received any letters of warning nor were they made aware at any stage that the option to convert the mortgage loan account to a tracker interest rate was being withdrawn.

The Complainants when making their complaint to this Office outlined that they were seeking the following:

- a) Mortgage loan account ending **7179** to be placed on a tracker interest rate for the remainder of the term of the mortgage loan;
- b) A refund of any overpayments made; and
- c) Compensation.

The Complainants have since informed this Office that they have since sold the property which was the subject of the mortgage loan and taken out a new mortgage loan on their new property with a different provider.

### **The Provider's Case**

The Provider submits that the Complainants submitted a mortgage application form along with a cover letter on **15 November 2007**.

The Provider explains that staff customers could borrow up to a maximum amount of €190,460.00 on the staff preferential variable rate of interest, with a fixed, variable or tracker interest rate to apply to the balance of the loan.

The Provider notes that the Complainants' mortgage loan application was approved for an amount of €431,000.00. The Provider submits that it issued two Letters of Offer to the Complainants on **28 February 2008**, one for a loan amount in the sum of €190,460.00 on the staff preferential variable interest rate and the other for a loan amount in the sum of €240,540.00 on a tracker interest rate of 5.10% (ECB 4.00% plus a margin of 1.10% with a discounted margin of 0.6% for the first year).

The Provider submits that the Complainants accepted and signed both **Letters of Offer** on **13 March 2008**. The Provider states that *"there is no evidence of the Complainants requesting or enquiring about a Tracker interest rate for their full Mortgage Loan prior to drawdown"*.

The Provider notes that mortgage loan account ending **7179** was drawn down on **26 March 2008** on a staff preferential rate of 3% and mortgage loan account ending **7096** was drawn down on a discounted tracker interest rate of ECB 4% plus a margin of 0.6%.

The Provider explains that the type of loan *"was a variable rate product which attracted the Staff Preferential Rate (SPR), which remained static for the life of the loan contingent on certain conditions"*. The Provider details that when the staff member resigned or was dismissed *"the loan would move to the Bank's Variable interest rate"*.

The Provider submits that if the Complainants wished to avail of a tracker interest rate following draw down, they were required to complete a staff tracker mortgage conversion request form. The Provider states that it has no record of having received a **Staff Tracker Mortgage Conversion Request Form** from the Complainants or a request that the interest rate on mortgage loan account ending **7179** be amended to a tracker interest rate at any time from drawdown up to the withdrawal of tracker interest rates in **late 2008**.

The Provider submits that it issued a letter to staff customers on **16 January 2009** to inform staff customers that the Provider's standard variable rate of interest of 3.25% was lower than the staff preferential interest rate and therefore a *"switch"* to the standard variable rate would occur at the end of **January 2009**.

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The Provider submits that this letter "*clearly stated*" that if staff customers wished to opt out of the "*switch*", they needed to send a written instruction to the Provider by **26 January 2009**. The Provider states that in circumstances where it did not receive an instruction from the Complainants, mortgage loan account ending **7179** was converted to a standard variable rate of interest on **29 January 2009**.

The Provider submits that the staff preferential variable interest rate "*did not have a pre-determined term*" but rather staff customers could benefit from the rate so long as they remained employed by the Provider. The Provider relies on the **Special Conditions** of the **Letter of Offer** in relation to mortgage loan account ending **7179** which provides that following the resignation or dismissal of the First Complainant, the Provider's variable interest rate would apply.

The Provider maintains that it was under "*no contractual obligation*" to offer the Complainants a tracker interest rate in respect of mortgage loan account ending **7179** if the staff preferential interest rate "*was no longer a more favourable rate for staff customers*".

The Provider notes that the staff preferential rate period did not come to an end in **January 2009**, rather staff customers who were on the staff preferential rate of interest "*were transferred to a more favourable*" standard variable rate, "*while retaining the right to switch back*" to the staff preferential rate at any time, provided they remained an employee of the Provider.

The Provider "*refutes*" the Complainants assertion that the **Letter of Offer** in respect of mortgage loan account ending **7179** provides them with the option to apply a tracker interest rate should the First Complainant cease to be employed by the Provider or if they wished to change the interest rate on the mortgage loan account.

The Provider states that it is satisfied that the mortgage loan documentation pertaining to the Complainants' mortgage loan account ending **7179** is clear in terms of the Complainants' interest rate entitlements.

### **The Complaint for Adjudication**

The complaint for adjudication is that the Provider failed to offer the Complainants the option of a tracker interest rate on their mortgage loan account ending **7179** in **October 2010**.

## **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 **11 April 2023**, 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 set out and review the relevant provisions of the Complainants' mortgage loan documentation. It is also necessary to consider details of certain interactions between the Complainants and the Provider from **2007 to 2010**.

The evidence shows that the Complainants submitted a **mortgage loan application** together with a written proposal dated **15 November 2007** to the Provider seeking mortgage loan finance to purchase a new private dwelling house. **Page 5** of the mortgage loan application form lists the following interest rates for selection:

"...

*Please tick your choice of interest rate:*

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Variable  Tracker  Fixed  &, if fixed, for how many years? \_\_\_\_

The evidence shows that the Complainants chose a fixed interest rate.

The Provider has submitted in evidence a template mortgage loan application form that was in use in **2007** for the purposes of showing the information sections that were attached to the application form. The “*Completing the forms*” section details as follows:

**“STAFF PREFERENTIAL RATE**

*As a Staff Member you are entitled to avail of the Staff Preferential Home Loan rate of 3%, in either your sole name or jointly with your spouse or partner, subject to Terms and Conditions as set out by the Bank. Please note that a Benefit in kind liability arises from Staff Preferential Rate Loans.*

**RESIGNATION**

*All Staff Business facilities must be refinanced outside Staff Business within three months of resignation. Interest from date of resignation will be charged on any outstanding balances at the commercial Home Loan variable rate applicable at the time”.*

The mortgage loan application form also includes an information section at **Section J** titled “**Information about your Distance Contract- Europeans Communities (Distance Marketing of Consumer Financial Services) Regulations**” which details as follows:

**“ABOUT [NAME OF PRODUCT ATTRACTING STAFF PREFERENTIAL RATE] AND HOME MORTGAGES**

*[Name of product attracting staff preferential rate] and Home Mortgages are available through Staff Business subject to lending criteria and terms & conditions) to all [Provider] staff in the Republic of Ireland who have completed at least 6 months service and who have passed probation.*

- *[Name of product attracting staff preferential rate] is a preferential home loan of up to €190,460 at a fixed interest rate, at present 3%, for the purpose of purchase, improvement or refinancing the principal residence of the staff member.*
- *Home Mortgage Loans are fixed or variable interest rate loans for any purpose at the published [Provider] Home Mortgage rates.*
- *Both [Name of product attracting staff preferential rate] and Home Mortgage Loans are repayable to us by instalments over an agreed term, and are normally secured by a mortgage/charge over your property.”*

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The Provider subsequently issued two **Letters of Offer** dated **28 February 2008** to the Complainants.

The first **Letter of Offer** dated **28 February 2008** relates to mortgage loan account ending **7179**, which is the subject of this complaint. The second **Letter of Offer** dated **28 February 2008** relates to mortgage loan account ending **7096**, which is not the subject of this complaint.

The **Letter of Offer** dated **28 February 2008** in relation to mortgage loan account ending **7179** details as follows:

“ ...

*I am pleased to offer you a supplemental mortgage loan of the principal sum specified in Part 1 attached....*

**IMPORTANT INFORMATION AS AT 28 February 2008**

1. *Amount of Credit Advanced* €190,460.00
2. *Type of Loan* Annuity
3. *Period of Agreement* 35 years/ 420 months
4. *Number of Repayment Instalments* 420
5. *Amount of Each Instalment* (1) 420@ €732.39

...

**LEGAL ADVICE SHOULD BE TAKEN BEFORE THIS DOCUMENT IS SIGNED.”**

**Part 1 - Particulars of Offer of Mortgage Loan** details as follows:

	<i>Term</i>	<i>Loan Type</i>	<i>Interest Rate Description</i>	<i>Rate</i>	<i>Margin</i>	<i>Net Rate</i>	<i>Amount of Each Instalment</i>
1	35 Years	Variable Annuity	STAFF PREF HOME LOAN ANNUITY	3%	0%	3%	€732.39

The relevant sections of **Part 2 - Special Conditions** detail as follows:

*“In respect of a Staff Mortgage on a Preferential Rate the following conditions will apply:*

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*While the Customer (or, if the Offer is addressed to more than one person, all of them) remains in the service of the Bank, a Staff Preferential Fixed Home Loan interest rate of 3% will apply to the Mortgage Loan.*

*The fixed interest rate early breakage cost referred to in Clause 3.3 of the General Terms and Conditions will not apply if for any reason the interest rate applicable to the Mortgage Loan Ceases to be the Staff Preferential Fixed Home Loan interest rate.*

*Without prejudice to the Bank's right to demand repayment at any time, if the Customer (or, if the Offer is addressed to more than one person, all of them) resigns or is dismissed from the service of the Bank, the Bank may at its discretion:*

*Forthwith terminate the Mortgage Loan and demand repayment, or transfer the Mortgage Loan to [the Provider] absolutely, and Clause 14.2 of the General Terms and Conditions will not apply.*

*Interest from the date of resignation or dismissal will be charged on the Mortgage Loan at the Bank's advertised variable Home Mortgage loan rate applicable from time to time.*

...

*In respect of a Staff Mortgage Loan on the Bank's Standard Commercial Rates the following conditions will apply:*

*Without prejudice to the Bank's right to demand repayment at any time, if the Customer (or, if the Offer is addressed to more than one person, all of them) resigns or is dismissed from the service of the Bank, the Bank may at its discretion:*

*forthwith terminate the Mortgage Loan and demand repayment, or transfer the Mortgage Loan to [the Provider] Mortgage Bank absolutely, and Clause 14.2 of the General Terms and Conditions will not apply."*

**Part 4 – General Terms and Conditions of Offer of Mortgage Loan** of the Letter of Offer details as follows:

**"3 INTEREST RATES**

**3.1 RATE NOT GUARANTEED TO DRAWDOWN**

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*Due to fluctuations in interest rates, the Bank does not warrant or guarantee that the rate specified in the Particulars will apply on drawdown:*

- (a) In the case of an offer at a variable rate or tracker rate, the initial rate which will apply to the Mortgage Loan will be the rate prevailing at the date of drawdown.*
- (b) In the case of an offer at a fixed interest rate, the appropriate fixed rate which prevails at the date of drawdown will apply to the Mortgage loan if this is different from the rate specified in the Particulars. The Customer may accept this rate or within 21 days of drawdown, opt to switch to the variable or tracker rates prevailing at the time without incurring any early breakage cost under Clause 3.3.*

### **3.2 FURTHER FIXED INTEREST RATE OPTIONS/CHOICE**

*At the end of any fixed interest rate period, the Customer may choose between:*

- (a) a further fixed interest rate period, or*
- (b) conversion to a variable interest rate Mortgage Loan, or*
- (c) conversion to a tracker interest rate Mortgage loan.*

*at the Bank's then prevailing rates appropriate to the Mortgage Loan. If the Customer does not exercise this choice, then the Mortgage Loan will automatically convert to a variable interest rate Mortgage Loan.*

### **3.3 FIXED INTEREST RATE EARLY BREAKAGE COSTS PAYABLE BY CUSTOMER**

*The Customer will be entitled, subject to prior advice to the Bank, to withdraw from a fixed interest rate agreement either:*

- (a) By repayment in full of the Mortgage Loan and interest accrued to the date of repayment, or*
- (b) by conversion to a variable interest rate or another fixed interest rate, or*
- (c) by making a partial out-of-course payment.*

*In any of the foregoing events, subject to the provision of Section 121 (2) of the Consumer Credit Act, 1995, an early breakage cost is usually payable to the Bank. The early breakage cost shall be fairly and conclusively determined by the Bank on the basis of the formula contained in Part 5.*

### **3.4 FIXED INTEREST RATE MORTGAGE LOAN**

*In the case of a fixed interest rate Mortgage loan, the interest rate is the appropriate rate which prevails at the date of drawdown, and will be fixed for the period of time stated in the Particulars, subject to these conditions.*

### **3.5 VARIABLE INTEREST RATE MORTGAGE LOAN**

*In the case of a variable interest rate Mortgage Loan the interest rate applicable, at any time, will vary according to the prevailing rates set generally by the Bank from time to time, subject to these conditions.*

### **3.6 TRACKER INTEREST RATE MORTGAGE LOAN**

3.6.1 *The tracker interest rate is made up of two parts:*

- (a) the European Central Bank's main refinancing operations minimum bid rate (the "ECB Rate") which is variable, and*
- (b) the Tracker Margin as stated in Part 1 of the Particulars of Offer of Mortgage Loan, subject to 3.6.3 below.*

3.6.2 *The tracker interest rate applicable at any time will change within 5 working days of a change in the ECB Rate.*

3.6.3 *The [Provider] may adjust the Tracker Margin upwards if the Valuation Report values the property at less than the Property Price/Estimate Value shown in the Particulars of Offer of Mortgage Loan. The [Provider] will notify the Customer in writing of the new Tracker Margin.*

3.6.4 *The Customer may at any time convert a tracker interest rate Mortgage Loan to a fixed interest rate Mortgage Loan or a variable interest rate Mortgage Loan at the [Provider's] then prevailing rates appropriate to the Mortgage Loan. However, the Customer may not convert the tracker interest rate Mortgage Loan directly or indirectly from one tracker interest rate to another tracker interest rate in order to avail of a lower prevailing Tracker Margin.*

...

## **5 INTEREST CALCULATION AND CHARGING**

...

### **5.3 NOTICE OF VARIATION**

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*Save for any period of a fixed interest rate loan, the Bank shall give notice to the Customer of any variation in the interest rate applicable to the Mortgage Loan, either by specific notice in writing served on the Customer in accordance with the Lenders Mortgage, or generally by newspaper 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 apply.*

...

**18. TOTALITY OF THIS AGREEMENT/NON-MERGER**

*These General Terms and Conditions shall be read in conjunction with the Particulars of this Offer, the Special Conditions, the Pre-Draw-down Requirements and the Statutory Notices and Other Notices incorporated in this document, and this agreement (or any supplemental agreement concluded between the Bank and the Customer) shall not merge in the Lenders Mortgage over the property.*

..."

**Part 5 - Statutory Notices and Other Notices (A) All Mortgage Loans of the Letter of Offer** details as follows:

***"WARNING***

...

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

*(Note: The above notice in respect of adjustments to payment rates will not apply during any period when the Mortgage Loan is at a fixed interest rate.)*

The **Acceptance and Consent** section of the **Letter of Offer** dated **28 February 2008** was signed by the Complainants and witnessed by their solicitor on **13 March 2008**, on the following terms:

*"I/We accept the conditions of this Offer and agree to mortgage the property to the Lenders as Security for the Mortgage Loan.*

...

*I/We acknowledge and accept that the rate of interest which applies to the Mortgage loan may be different from the rate shown in the Offer, and in the case of*

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*fixed interest rates, the rate which prevails at the date of drawdown is the rate which will apply for the period of time stated in the Particulars.*

*I/We hereby confirm, that I/we have read the within Terms and Conditions attaching to this Offer, and acknowledge that I/we have received a copy thereof."*

It is clear to me that the **Letter of Offer** dated **28 February 2008** in relation to mortgage loan account ending **7179** envisaged a staff preferential interest rate of 3% to apply to the mortgage loan. The staff preferential interest rate in this case made no reference to varying in accordance with variations in the European Central Bank refinancing rate (the "ECB rate"). For staff preferential interest rate loans, the rate "*remained static*" at 3%. If the staff customer resigned or was dismissed from the Provider, the mortgage loan would move to the Provider's standard variable interest rate. The Complainants accepted the **Letter of Offer** having confirmed that they had read the terms and conditions applicable to the mortgage loan, to include the applicable interest rate.

The mortgage loan account statements in relation to mortgage loan account ending **7179** show that the mortgage loan was drawn down on a staff preferential interest rate of 3.00% on **20 March 2008**.

Prior to the drawdown of funds in respect of mortgage loan account ending **7179**, the Provider issued a second **Letter of Offer** dated **28 February 2008** in relation to mortgage loan account ending **7096**. This **Letter of Offer** dated **28 February 2008** provides for a loan in the sum of €240,540.00 repayable over a term of 35 years and specifically provides for a discounted tracker home loan interest rate comprising the ECB rate which was 4% at the time plus a margin of 0.6% for a period of one year, with a tracker interest rate comprising the ECB rate plus a margin of 1.1% to apply thereafter for the remainder of the term of the loan. The **Letter of Offer** dated **28 February 2008** in relation to mortgage loan account ending **7096** is governed by separate and distinct terms and conditions and is not the subject of this complaint.

While the staff preferential interest rate of 3% was to apply for the term of the loan (mortgage account ending **7179**) while the First Complainant remained in the employment of the Provider, the Provider submits that when the Provider's standard variable interest rate for private dwelling house mortgage loans became lower than the staff preferential interest rate and the Provider carried out a "*switch*" so that staff customers who were availing of the staff preferential rate benefitted from the lower standard variable interest rate. Having considered the evidence, it appears to me that this "*switch*" occurred on the Complainants' mortgage loan account ending **7179** in **January 2009**. This was following the Government's budgetary changes which had an impact on benefit-in-kind. In this

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regard, the Provider issued a letter to the Complainants dated **19 January 2009** which details as follows:

*“Dear Colleague,*

*With effect from 1<sup>st</sup> January 2009, the Benefit in Kind (BIK) reference rate reduced to 5%.*

*For staff with a Preferential Rate Mortgage Loan, this means that the net rate payable is:*

<i>Higher Rate of Income Tax (41%)</i>	<b>3.86%</b>
<i>Lower Rate of Income Tax (20%)</i>	<b>3.52%</b>

**Note:** *The above figures excludes PRSI and the new Income Levy.*

*This compares to the Bank’s Standard Variable Rate for Owner Occupiers of 3.25% (APR 3.3%) (effective close of business 27<sup>th</sup> January) and means that the Staff Preferential Mortgage Rate of 3% (APR 3.05%) with the addition of BIK is no longer a more favourable rate for staff.*

*Staff Business commits to ensure that Staff are not at a disadvantage by availing of the Staff Preferential Mortgage Rate and as a result Staff Business will carry out a switch of ALL Staff Preferential Rate Staff Mortgage Loans to the Bank’s Standard Variable Rate for Owner Occupiers on 30<sup>th</sup> January 2009.*

*You have the following options:*

<i>Option</i>	<i>Action Required</i>
<i>You wish to switch your Staff Preferential Home Loan to the Bank’s Staff Variable Rate*</i>	<b>NO ACTION IS REQUIRED</b>
<i>You wish to remain on the Staff Preferential Mortgage Rate (i.e. Opt out of the switch)</i>	<i>You will need to confirm in writing that you want to opt out of the Switch and send to Staff Business by 26th January 2009, co signed by any guarantor or co-owner</i>
<i>You wish to switch to a Fixed Rate (current rates detailed overleaf) Instead of the Bank’s Standard Variable Rate</i>	<i>You will need to confirm in writing that you want to opt out of the Switch and send to Staff Business by 26th January</i>

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	2009, co signed by any guarantor or co-owner
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*\*Your repayments may increase at the interest rate is changed from 3%.*

*Once your Staff Preferential Rate Mortgage is switched to any of the Bank's commercial rates, Benefit in Kind (BIK) will automatically cease to be applied. As BIK is posted monthly in arrears, the BIK due up to the date of conversion will be applied as normal in your February salary. After this time no BIK will be applied unless you have opted to remain on the Staff Preferential Mortgage Rate.*

*..."*

The letter dated **19 January 2009** also included a "Questions and Answers" information sheet which details as follows:

*"*

*..."*

<b>Questions &amp; Answers on Switch of Preferential Mortgage Accounts</b>		
No	Question	Answer
...	...	...
...	...	...
3.	<i>Can I switch funds to my existing Tracker Mortgage?</i>	<i>Tracker mortgages were withdrawn on [Redacted] 2008 and balances <b>cannot</b> be topped up.</i>
...	...	...
...	...	...
6.	<i>What happens when rates change?</i>	<i>Changes in the Bank's Standard Variable Rate will be passed onto Staff Mortgage Loans where you have opted to switch from the Staff Preferential Mortgage Rate. <b>Note:</b> Staff Business commits to switch eligible accounts back to the Staff Preferential Mortgage Rate if rates increase or BIK reference rates decrease making the Staff Rate more beneficial.</i>
...	...	...
...	...	...
...	...	...

<b>Questions &amp; Answers on Switch of Preferential Mortgage Accounts</b>		
10	Can I switch back to preferential rate at any time?	Yes – you will need to request this in writing, co signed by co-owner or guarantor
11.	If I opt out now, can I convert to commercial rates later.	Yes – you will need to request this in writing, co signed by any co-owner or guarantor. As you have not been included in the switch, the onus is on you to request to change back to preferential rates.
...	...	...
...	...	...

...”

The letter dated **19 January 2009** also listed the fixed interest rate options that were available from the Provider at that time as follows:

<b>Table of Owner Occupiers Mortgage Interest Rates (as at 15<sup>th</sup> January 2009)</b>		
Rate Category	Rate for Owner Occupier	APR over 20 years
...	...	...
<b>Fixed rates (as at 18<sup>th</sup> December 2008)</b>		
1 year existing customer	4.00%	3.84%
2 year	3.55%	3.77%
3 year	3.9%	3.86%
4 year	4.10%	3.95%
5 year	4.20%	4.03%
10 year	4.75%	4.62%

While the Complainants appear to be of the view that mortgage loan account ending **7179** was moved onto the Provider’s standard variable interest rate in **October 2010**, I note from the **mortgage account statements** that the Provider’s standard variable interest rate of 3.25% was applied to mortgage loan account ending **7179** on **29 January 2009** and not in **October 2010**. The Complainants’ mortgage loan account was therefore already operating on a standard variable interest rate in **October 2010**. There is no evidence to suggest that the Complainants instructed the Provider that they wished to opt out of the “switch” by choosing to remain on the staff preferential interest rate or by choosing to switch to one of the fixed interest rates on offer by the Provider at the time.

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It appears that mortgage loan account ending **7179** remained on the Provider's standard variable rate until **November 2012**, at which time the Complainants wrote to the Provider requesting to return to the staff preferential rate. The Provider wrote to the Complainants by way of letter dated **06 November 2012** confirming that the staff preferential rate of 3% had been applied with effect from **01 November 2012**. The letter dated **06 November 2012** details as follows:

“...

*We refer to your recent request to convert the above Home Mortgage Loan Account to the Bank's Staff Preferential rate of 3.00%. We confirm that we have applied the staff rate as requested with effect from the 1<sup>st</sup> November, 2012.*

*Your new repayment on the 25<sup>th</sup> November 2012 will be €893.06.*

*As you are now on a preferential rate product, Benefit in Kind (BIK) is chargeable and will be charged through payroll on a monthly basis. Please note BIK is charged one month in arrears. The first month a BIK charge will appear on your payslip for this mortgage loan account will be December 2012...”*

The Complainants submit that they had an entitlement to be offered a tracker interest rate in respect of their mortgage loan account ending **7179** when it was switched from the staff preferential rate of 3%. In this regard, the Complainants appear to be of the view that the staff preferential interest rate was “fixed” in nature, but they were not offered a tracker interest rate despite coming off a fixed rate of interest. The Complainants state that their request for a tracker interest rate was declined because tracker interest rates had been withdrawn by the Provider.

I note that **Letter of Offer** dated **28 February 2008** contains references to both the words “fixed” and “variable”. Part 1 refers to the “loan type” as a “variable annuity”. The interest rate section in part 1 describes the rate as “Staff Pref Home Loan annuity”. In the **Special Conditions** there is a reference to the “Staff Preferential Fixed Home Loan interest rate of 3%” and the special conditions also includes certain detail disapplying **General Condition 3.3**, which relates to fixed interest rate early break costs.

I accept that these varying references create a limited degree of ambiguity as to the nature of the staff preferential interest rate, when looked at in isolation and I am of the view that in this respect the Provider should have drafted the **Letter of Offer** dated **28 February 2008** with more precision to ensure there could be no ambiguity.

However, having considered the evidence before me, when the details in the **Letter of Offer** dated **28 February 2008** are considered in the round it appears that the mortgage

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loan was one that was variable in nature given that it was described as a variable annuity loan. The reference to the term “*fixed*” in this context refers to the fact that staff preferential interest rate would remain static or fixed at the rate of 3% for the term of the loan, while the First Complainant remained in the employment of the Provider.

It is understood that the design of the staff preferential rate was of such a nature that it would be more competitive than an ordinary rate offered to customers who were not staff, even when BIK was factored in. The Provider moved the Complainants’ mortgage loan to the standard variable interest rate offering when the staff preferential rate became less advantageous, so the Complainants were not disadvantaged at that time by the application of the staff rate. As detailed above, this is what occurred on the Complainants’ mortgage loan account in **January 2009** when the mortgage loan was switched to the Provider’s standard variable interest rate.

There was no obligation on the Provider to apply a tracker interest rate to the Complainants’ mortgage loan in **January 2009** as the Complainants were moving from a variable interest rate product to a more competitive variable interest rate product. The Complainants were not moving off a fixed interest rate therefore **General Condition 3.2** of the **Letter of Offer** dated **28 February 2008** did not apply. Rather, the nature of the variable interest in this instance is set out in **General Condition 3.5** and is one varied in accordance with the prevailing rates set by the Provider. In order for the Complainants to have a contractual right to be offered a tracker interest rate that right would need to have been specifically outlined in the mortgage loan documentation. However, no such right was contained in the mortgage loan agreement in relation to mortgage loan account ending **7179**.

The Complainants submit that they also had a contractual right to be offered a tracker interest rate if the First Complainant ceased employment with the Provider. While it is understood that the First Complainant was still employed by the Provider when the complaint was submitted to this Office, it is worth noting that for the Complainants to have a contractual right to a tracker interest rate if the First Complainant ceased employment with the Provider, that right would need to be specifically outlined in the mortgage loan documentation that was agreed by the parties. However, no such right was set out in writing in the **Letter of Offer** dated **28 February 2008**. Rather, the **Special Conditions** very clearly provided that “*Interest from the date of resignation or dismissal will be charged on the Mortgage Loan at the Bank’s advertised variable Home Mortgage loan rate applicable from time to time.*” There is no reference in the mortgage loan documentation to the variable interest rate in this instance being a tracker interest made up of the ECB rate and a margin set by the Provider, as described in **General Condition 3.6**, as outlined above in relation to tracker interest rate loans. As outlined above. The nature of the variable interest is clearly outlined in **General Condition 3.5**.

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I have not been provided with any evidence to suggest that the Complainants specifically applied to convert their staff mortgage loan to a tracker mortgage loan at any stage during the term of the loan.

It is understood that the Complainants were required to complete a **Staff Tracker Mortgage Conversion Request Form** if they wished to apply for a tracker interest rate after the drawdown of the loan as they were not contractually entitled to be offered one while a variable rate applied. However, I have been provided with no evidence to suggest that they did so. While the Complainants may have enquired about tracker interest rates in **January 2009** and/or **October 2010**, tracker rates were no longer available as part of the Provider's product offering at that stage as the Provider withdrew the tracker mortgage product from the market in **late 2008**. I note that the Provider issued a statement in **late 2008** notifying customers that it would be withdrawing tracker interest rate options from the market, and I accept that this was a commercial decision that the Provider as business entity was entitled to make. The Complainants mortgage loan account was never on a tracker interest rate and moreover the Complainants did not have an entitlement to be offered a tracker interest rate at any stage during the term of the mortgage loan. The Complainants were operating on a variable interest rate when tracker interest rates were withdrawn. Consequently, I do not consider there to have been any legal or regulatory obligation on the Provider to communicate its intention to withdraw its tracker interest rate offering from the market directly to the Complainants.

Having considered the Complainants' mortgage loan documentation in its entirety, I am satisfied that the Provider was under no obligation to apply a tracker interest rate to mortgage loan account ending **7179** in **January 2009** or in **October 2010**.

For the reasons set out 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.**

*Suzanne O'Malley*

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

05 May 2023

## **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.