



<u>Decision Ref:</u>	2023-0236
<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 two mortgage loan accounts held by the Complainants with the Provider.

- (i) Mortgage loan account ending **6419** was for a loan amount of €225,400.00 and the term of the loan was 30 years. The **Loan Offer Letter** dated **21 August 2004** detailed that the interest rate applicable to the loan was a variable base rate of 3.25%; and
- (ii) Mortgage loan account ending **6801** was for a loan amount of €15,000.00. The interest rate applicable to the loan was a variable interest rate.

Both mortgage loans are secured on the Complainants' private dwelling house.

The Complainants' Case

The Complainants submit that in **2004** they made enquiries with the Provider about obtaining a mortgage and arranged a meeting in one of the Provider's branches to "*discuss [their] options*" and what documentation would be required to obtain a mortgage. The Complainants detail that they "*were advised that the best option for [them] was the variable rate mortgage*".

The Complainants submit that they took this option *“in good faith and believed it was the only option available to [them]”*. The Complainants assert that *“at no stage was a tracker mortgage discussed or offered to [them]”*.

The Complainants state that when they reviewed their mortgage loan documentation in **January 2021**, they discovered that *“when [they] initially took out [their] original mortgage, [they] should have been offered a tracker mortgage which would have been the most beneficial mortgage option, if it had been offered to [them]”*.

The Complainants detail that they contacted the Provider by telephone in **March 2021** to enquire if the Provider *“could review [their] case”*. The Complainants explain that the letter they received from the Provider dated **22 March 2021** contains facts which are *“wrong and untrue”*. The Complainants question *“why would [they] not have taken the Tracker Option, and have signed up for the more expensive variable rate”* if the *“key features and benefits of a tracker mortgage”* had been explained to them during the application process.

The Complainants reject the Provider’s assertion that it offered the Complainants a tracker interest rate on **13 May 2008**. The Complainants state that they find this statement to be *“untrue, as at no stage were [they] ever offered a tracker mortgage”*. The Complainants outline that the Provider claims to have offered them a tracker interest rate in **May 2008** *“but because [they] didn’t reply within 14 days this offer was cancelled”*. The Complainants maintain that there are *“no letters, emails, telephone calls etc, to offer [them] the opportunity to avail”* of a tracker interest rate at that time. The Complainants detail that they feel *“so strongly that they were not properly advised and misled”*.

The Complainants submit that they applied for a top-up loan of €15,000.00 on mortgage account ending **6419** in **June 2008**. The Complainants detail that the top-up loan was for *“an extension on [their] Private Dwelling House”*. The Complainants state that they were advised by the Provider to take out another mortgage *“with a separate loan application”*. The Complainants state that they took out a new mortgage loan account ending **6801** for the sum of €15,000.00 at a variable interest rate which was 3.7% at the time. The Complainants assert that they were not advised that they *“could avail of a much lower tracker rate mortgage”* in relation to mortgage account ending **6801**. The Complainants question why they were offered a variable interest rate *“when 1 month before this offer according to the [Provider’s] own internal database [they] should have been offered a tracker interest rate”* on mortgage loan account ending **6419**. The Complainants assert that *“surely all the available options, which included the option of a tracker interest rate option, should have been offered and discussed with them prior to issuing the loan”*.

The Complainants contend that they paid their mortgage repayments in full “often struggling to do so”. The Complainants are of the view that what they were sold in **2004** and then in **2008** “were not the best options available to [them] at the time”. The Complainants submit that the Provider knows that it “should have offered [them] a tracker rate mortgage” in **2004**.

The Complainants are seeking compensation for the financial loss they have suffered.

The Provider’s Case

The Provider submits that “Variable, Fixed and Tracker interest rates, together with the Split Loan options” were available when the Complainants applied for the mortgage loan in **June 2004**. The Provider notes that tracker interest rates were available to new and existing customers including the Complainants from **early 2004**. The Provider states that “all of the [Provider’s] interest rates were publicly advertised through the [Provider’s] website and this information was also available in all of the [Provider’s] branches”.

The Provider submits that while there was no obligation on the Provider to furnish the Complainants with the information on the tracker interest rate offering at the time, it was standard practice to explain all the available interest rates to customers during the mortgage application process. The Provider notes that staff “do not advise customers on the suitability of interest rates or which rate option to choose, rather Staff provide information on all the interest rates available at application stage and separately at any time during the lifetime of the Mortgage Loan, on request”.

The Provider states that the Complainants completed a home loan application form on **17 June 2004** and opted to apply for a variable interest rate. The Provider explains that if the Complainants wished to apply for a tracker interest rate, a separate tracker application form was required to be completed in addition to the home loan application form. The Provider submits that it has no record of a request by the Complainants for a tracker interest rate in **2004** and nor is there any record of the Provider declining any request for a tracker interest rate.

The Provider details that it issued a **Loan Offer Letter** dated **21 August 2004** to the Complainants offering a loan amount of €225,400.00 repayable over 30 years on variable interest rate commencing at 3.25%. The Provider explains that when the Complainants applied for the mortgage loan in **2004**, both the tracker interest rate and the variable interest rate were at 3.25%. The Provider asserts however that the terms of the loan offer did not give the Complainants any contractual entitlement to a tracker interest rate at any stage during the term of the loan.

/Cont’d...

The Provider asserts that *“it was entirely the Complainants’ decision whether to accept the Letter of Loan Offer or decline the Letter of Loan Offer issued by the [Provider]”*.

The Provider submits that it issued an **Issue of Loan Cheque Letter** the Complainants on **24 August 2004** confirming draw down of the mortgage loan on the Provider’s variable base rate of 3.25%. The Provider states that the Complainants demonstrated their *“clear acceptance”* of the terms and conditions of the **Loan Offer Letter** by proceeding to drawdown the mortgage loan.

The Provider refers to the telephone call referenced in its **Final Response Letter** dated **22 March 2021** in relation to the offer of a tracker interest rate to the Complainants in **May 2008**. The Provider clarifies in its submissions that this was an internal call between a staff member in the Provider’s branch and a staff member on the Provider’s retention team and the Provider relies on its internal contemporaneous notes on foot of the call. The Provider notes that given this was an internal call, it was not audio recorded. The Provider submits that the branch would have contacted the Complainants to relay the tracker interest rate that could be offered to the Complainants as per the Provider’s policy at that time.

The Provider notes that any requests for tracker interest rates for existing customers were assessed by the Provider’s retention team in **May 2008** and any offer of a tracker interest rate was based on commercial discretion and subject to the completion and assessment of a tracker application form. The Provider details that it has no record of a tracker application form having been received or no formal complaint from the Complainants at that time in terms of dissatisfaction with not having a request for a tracker interest rate met.

The Provider states that the mortgage loan documentation in relation to mortgage loan account ending **6419** is *“sufficiently clear and transparent”* as to what interest rate would apply at drawdown and throughout the life of the loan. The Provider submits that it has *“acted in good faith throughout the term of the Mortgage Account and in compliance with its contractual obligations”*.

The Provider details that the Complainants applied for a top-up mortgage loan on **25 May 2008** *“which necessitated opening a separate loan account”* ending **6801**. The Provider explains that tracker interest rates were on offer by the Provider when the Complainants applied for the top-up mortgage loan in **2008**. The Provider maintains that it did not offer tracker interest rates in relation to mortgage loan account ending **6801** as it made a *“business decision to not offer Tracker interest in respect of Top Up mortgage loans”*.

The Provider asserts that it *“is entitled to set interest rate options for products at its commercial discretion”*. The Provider maintains that it was open to the Complainants to explore the option of a tracker interest rate for the top-up mortgage loan in **2008** but *“it would have been a matter of commercial discretion on the part of the [Provider] whether to accede to any such request”*. The Provider asserts that *“there is no evidence or documentation on file that the Complainants requested the option of a Tracker interest rate”* on mortgage loan account ending **6801**.

The Complaints for Adjudication

The complaints for adjudication are as follows:

- (i) that the Provider failed to offer the Complainants the option of a tracker interest rate when they applied for their mortgage loan in **June 2004**; and
- (ii) that the Provider failed to offer the Complainants the option of a tracker interest rate when they applied for a top-up mortgage loan in or around **May 2008**.

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 **29 August 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.

/Cont’d...

Following the issue of the Preliminary Decision, the Complainants made a further submission by way of email to this Office dated **18 September 2023**, a copy of which was exchanged with the Provider for its consideration.

The Provider has not made any further submission.

Following the consideration of the Complainants' additional submission and all of the submissions and evidence furnished to this Office, I set out below my final determination.

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 consider details of certain interactions between the Complainants and the Provider between **2004** and **2008**.

The Complainants completed and signed a **Home Loan Application Form** on **17 June 2004**. **Section E** of the **Home Loan Application** is titled "*Loan Details*" under which the Complainants detailed that the loan amount required was €250,000.00 and the term of the loan was 30 years. The "*Loan Type*" section of the application form details as follows:

"LOAN TYPE (please tick one) *Repayment/Annuity* ✓ *Endowment*
Pension

INTEREST RATE **Variable* ✓ *or* ***Fixed* *or Split*

** Variable interest rates increase and decrease with changes in market rates.*

*** If choosing a fixed rate, please complete the section below which outlines terms of conditions associated with fixed rate loans."*

The **Home Loan Application Form** shows that a variable interest rate, a fixed interest rate or a split mortgage option was set out in the application form and the Complainants chose a variable interest rate. The Complainants submit that tracker interest rates were not discussed with them or offered to them at the time they applied for their mortgage loan.

The Provider submits that tracker interest rates were available from **early 2004** and that such rates were available when the Complainants applied for their mortgage loan in **2004**. The Provider has given no explanation as to why a tracker interest rate option was not included on the **Home Loan Application Form**. However, while it is disappointing that the

/Cont'd...

Home Loan Application Form did not include a tracker interest rate as an option, I note that all of the available interest rates, to include tracker interest rates, were publicly advertised by the Provider in its branches.

The Provider has submitted the below table in evidence which details the range of tracker interest rates that were on offer to customers in **June 2004**, when the Complainants applied for their mortgage loan, subject to certain eligibility and lending criteria.

Effective Date		Loan Amount	Standard Tracker						
01/04/2004	ECB: 2.00%	Loan Amount	Standard Tracker						
		LTV %	<=100%						
		Margin	1.25%						
		Rate	3.25%						
01/07/2004	ECB: 2.00%	Loan Amount	Standard Tracker	>=€375k					
		LTV %	<=100%	<=75%					
		Margin	1.25%	0.99%					
		Rate	3.25%	2.99%					
01/04/2005	ECB: 2.00%	Loan Amount	Standard Tracker	>=€250k	>=€300k	>=€375k			
		LTV %	<=100%	<=75%	<=75%	<=75%			
		Margin	1.25%	1.10%	1.05%	0.99%			
		Rate	3.25%	3.10%	3.05%	2.99%			
01/06/2005	ECB: 2.00%	Loan Amount	Standard Tracker	>=€250k	>=€300k	>=300k	>=€375k	>=750k	
		LTV %	<=100%	<=75%	<=75%	>75%	<=75%	<=75%	
		Margin	1.25%	1.10%	1.05%	1.15%	0.99%	0.85%	
		Rate	3.25%	3.10%	3.05%	3.15%	2.99%	2.85%	
01/07/2005	ECB: 2.00%	Loan Amount	Standard Tracker	>=€250k	>=€300k	>=300k	>=€375k	>=750k	>=1.25m
		LTV %	<=100%	<=75%	>75%	<=75%	<=75%	<=75%	<=75%
		Margin	1.25%	1.10%	1.15%	1.05%	0.99%	0.85%	0.80%
		Rate	3.25%	3.10%	3.05%	3.15%	2.99%	2.80%	
01/09/2005	ECB: 2.00%	Loan Amount	Standard Tracker	>=250k <300k	>=300k <375k	>=300k	>=375k <750k	>=750k <1.25m	>=1.25m
		LTV %	<=100%	<=75%	<=75%	>75% <=92%	<=75%	<=75%	<=75%
		Margin	1.25%	1.10%	1.05%	1.15%	0.99%	0.85%	0.80%
		Rate	3.25%	3.10%	3.05%	3.15%	2.99%	2.80%	
01/10/2005	ECB: 2.00%	Loan Amount	Standard Tracker	>=250k <300k	>=300k <375k	>=250 no max	>=375k <750k	>=750k <1.25m	>=1.25m
		LTV %	<=100%	<=80%	<=80%	>80% <=92%	<=80%	<=80%	<=80%
		Margin	1.25%	1.10%	1.05%	1.15%	0.99%	0.85%	0.80%
		Rate	3.25%	3.10%	3.05%	3.15%	2.99%	2.80%	

The above table shows that tracker interest rates were introduced by the Provider in **2004** and were available for selection by customers subject to certain eligibility and lending criteria. This was information that was publicly available in the Provider’s branches and on its website. It was therefore open to the Complainants to explore the option of applying for a tracker interest rate when they applied for their mortgage loan in **June 2004** with the Provider. If the Complainants wished to apply for a tracker interest rate in **2004**, a separate **Application to Apply for a Tracker Mortgage Rate** form had to be completed along with the **Home Loan Application Form**. However, there is no documentary evidence to suggest that the Complainants completed an **Application to Apply for a Tracker Mortgage Rate**.

The Provider issued a **Loan Offer Letter** dated **21 August 2004** to the Complainants offering them a loan amount of €225,400.00 repayable over a term of 30 years on a variable base interest rate commencing at 3.25%. The **Loan Offer Letter** details as follows:

“

I am pleased to inform you that [the Provider] has approved a Repayment Home Loan of €225,400.00 towards the purchase of the above property at a cost of €205,00.00 subject to the following terms and the attached General Conditions.

...

Type of Loan:

Repayment

/Cont’d...

<i>Total Amount of Loan:</i>	€225,400.00
<i>Cheque Issue Amount:</i>	€225,400.00
<i>Monthly Repayment:</i>	€980.96
<i>Interest Rate (Variable)</i>	3.25%
<i>Interest Rate Basis:</i>	Variable Base Rate
<i>Repayment Period (Years):</i>	30 Approx.

...

To avoid delays, please read the conditions very carefully, discuss with your solicitor and ensure everything is done in good time."

General Condition 3 of the **General Conditions for [The Provider's] Home Loans** attached to the **Loan Offer Letter** details as follows:

*"3. **Acceptance of terms and conditions:** By Taking the loan from [the Provider], the borrower accepts all the terms and conditions set out in the application form, offer letter, these general conditions and the mortgage."*

The Provider's **Mortgage Conditions** document attached to the **Loan Offer Letter** details as follows under the heading '*How interest on the Loan is calculated and charged*':

"2.1 The basis on which the interest rate on the Loan is calculated is stated in the Offer Letter.

2.2 The interest rate on the Loan may be increased or reduced by [Provider] from time to time, however no change in the interest rate will be applied to the Loan during any period when the interest rate is a fixed rate."

I have not been provided with the Complainants' signed acceptance of the **Loan Offer Letter**. Nonetheless, it does not appear to be disputed between the parties that the Complainants accepted this loan offer on the terms and conditions set out in the **Loan Offer Letter**.

The Provider issued an **Issue of Loan Cheque Letter** dated **02 June 2005** to the Complainants which details as follows:

"Issue of Loan Cheque

...

I am pleased to inform you that your loan cheque has been forwarded to your solicitors [Redacted]. I understand that an appointment has been made with your solicitors to complete the transaction.

/Cont'd...

...

<i>Term of Loan:</i>	<i>30 years Approx.</i>
<i>Rate of Interest:</i>	<i>3.25% Base Rate (APR 43.3%)</i>
<i>Daily Interest:</i>	<i>€20.07</i>

...

THE PAYMENT RATES ON THIS HOUSING LOAN MAY BE ADJUSTED BY [PROVIDER] FROM TIME TO TIME (Does not apply while the loan is at a fixed rate)"

The **Annual Loan Statements** submitted in evidence show that the mortgage loan was drawn down on **13 June 2005** on a variable interest rate of 3.25% under mortgage loan account ending **6419**. By drawing down the mortgage loan, the Complainants accepted the terms and conditions of the loan offer in accordance with **General Condition 3** of the **General Conditions for [Provider's] Home Loans**, as detailed above.

It is clear that the **Loan Offer Letter** dated **21 August 2004** envisaged that a "variable base rate" would apply to the Complainants' mortgage loan. 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. Rather, the Provider could increase or decrease the applicable variable interest rate at any time.

The Complainants submit that the Provider incorrectly failed to offer them a tracker interest rate on mortgage loan account ending **6419** when they applied for their mortgage loan in **June 2004**. The Complainants, in their post Preliminary Decision submission dated **18 September 2023** continue to assert that that tracker interest rate options were "never discussed" with them in **2004**.

While tracker interest rates were on offer by the Provider and were publicly advertised at the time the Complainants applied for their mortgage loan in **June 2004**, the Provider was not under any contractual or regulatory obligation to offer the Complainants a tracker interest rate or to offer the Complainants advice with respect to tracker interest rate options. Having considered the mortgage loan documentation, it is clear to me that the Complainants applied for a variable interest rate during the mortgage loan application process in **2004** by completing the **Home Loan Application Form** and selecting the variable interest rate option. I have not been provided with any evidence to suggest that the Complainants made enquiries as to the available tracker interest rate options or completed an **Application to Apply for a Tracker Mortgage Rate** which was required if the Complainants wished to explore the option of applying for a tracker interest rate in **June 2004**.

/Cont'd...

It was a matter for the Complainants to decide what interest rate to apply for based on what best suited their needs. If the Complainants wanted independent advice about interest rates available in the market or the market generally, the Complainants could only get that advice from an independent third-party advisor as opposed to the Provider. The Provider was under no obligation to offer the Complainants advice with respect to interest rate options.

If the Complainants were not happy to proceed with the loan offer which provided for a variable interest rate mortgage loan, then the Complainants could have declined that offer. However, the Complainants did not do so and proceeded to draw down the mortgage loan on the terms and conditions set out in the **Loan Offer Letter** dated **21 August 2004**.

The Complainants submit that the tracker interest rate was the “*most beneficial mortgage option, if it had been offered to [them]*” and outline “*why would [they] not have taken the Tracker Option, and have signed up for the more expensive variable rate*”. The Complainants understanding that the tracker interest rate was more beneficial to them appears to be based on what the Complainants now know came to pass with respect to tracker interest rates, in that the ECB base rate reduced to zero for a number of years. This is not something that the Complainants could have known would later happen when they sought a mortgage loan in **2004**. It is important to also note that the ECB base rate is also susceptible to increases, which has happened in more recent times. The relevant tracker interest rate and the variable interest rate were the same (3.25%) when the Complainants sought their mortgage loan.

I understand that the Provider withdrew its tracker interest rate products from the market in **late 2008**. A press release issued by the Provider in **late 2008** states as follows:

“[The Provider] today announced that it will no longer offer Tracker Mortgages for new mortgage applicants. This change is effective from close of business today [date redacted].

...

Existing customers with Tracker Mortgages are not affected. Customers who already have an offer of a Tracker Mortgage, but which is not yet drawn down, will still be able to avail of the Tracker mortgage within the terms of their loan agreement.”

Prior to the withdrawal of tracker interest rates by the Provider, there appears to have been some internal discussions between a staff member of the Provider's branch and the Provider's retention team in relation to mortgage loan account ending **6419** in **May 2008**. These discussions appear to have taken place in or around the time that the Complainants approached the Provider seeking additional finance by way of a top-up mortgage loan.

The Provider has submitted an internal system note of a telephone call between the Provider's branch and the Provider's retention team on **13 May 2008** which details as follows:

"re call from branch- advised that we can offer a tracker mortgage with a margin of 1.15% on the account offered valid for 14 days"

The Complainants, in their post Preliminary Decision submission dated **18 September 2023** submit that they have "*continuously*" asked the Provider to provide evidence of how they were informed of this offer of a tracker interest rate in **2008**. The Complainants question how they were supposed to know that a tracker interest rate was available in **2008** when they were never informed of this by the Provider and further question how were they supposed to respond in 14 days when they were never informed of this offer.

While it appears that the Provider was in a position to offer the Complainants a tracker interest rate of ECB + 1.15% in **May 2008** in respect of mortgage loan account ending **6419**, it is unclear as to whether it was formally offered to the Complainants. The above reference to a tracker interest rate forms part of internal communications between the Provider's branch and the Provider's retention team. I have been provided with no documentary evidence to suggest that a formal offer of a tracker interest rate was ultimately issued to the Complainants in **2008**.

It is important to note however that even if tracker interest rates were discussed internally, it was entirely within the Provider's commercial discretion as to whether it wished to accede to any request by the Complainants to move from a variable interest and apply a tracker interest rate in **2008**, given the mortgage loan agreement only contained a contractual entitlement to a variable interest rate. The Provider explains that, in **May 2008**, any request for a tracker interest rate from existing customers was assessed by its retention team and "*subject to completion and assessment of a Tracker application form*". Therefore, it was a matter for the Complainants to decide whether they wished to apply an alternative interest rate to their mortgage loan account subject to the Provider's lending and eligibility criteria. However, I have been provided with no evidence to suggest that the Complainants proactively sought to move to a tracker interest rate before tracker interest rates were withdrawn from the market.

/Cont'd...

Even if the Complainants did specifically apply for a tracker interest rate in **May 2008**, it was entirely within the Provider's commercial discretion as to whether it wished to offer the Complainants a tracker interest rate.

As previously mentioned, the Complainants were also seeking additional lending from the Provider in or around **May 2008**. The Complainants submit that they approached the Provider looking for a "top up on [their] existing mortgage ending 6419" but were denied this and only offered a new mortgage loan under mortgage loan account ending **6801**. The Complainants further submit that they should have been offered a tracker interest rate on mortgage loan account ending **6801** when they applied for top-up finance in or around **June 2008**.

The Provider explains that in **May 2008**, it no longer offered the facility whereby mortgage loan accounts were amalgamated into one mortgage loan account. The Provider states that this facility was withdrawn in **November 2004**. The Provider has submitted in evidence an internal mail dated **21 October 2004** in this regard which details as follows:

"[The Provider] provides a comprehensive offering [to] its members who wish to top up their mortgage. We lend up a maximum LTV of 90% and for most home improvements loans offer our standard variable rate, which as you know is the lowest in the market. We also provide top ups for other reasons to include car purchase, holiday homes etc.

Over the past few years, we have facilitated consolidation of new top up loans with an existing mortgage. This process is manual and is a source of dissatisfaction both to our members and our front line staff. Against this background, we have decided to withdraw this facility with effect from 1st November for new top ups / loan consolidation requests.

...

We will continue to offer top up mortgages on a stand alone basis i.e. without consolidating."

It is important to note that when the Complainants sought additional lending from the Provider in **May 2008**, it was a matter for the Provider to decide firstly whether it was willing to offer the Complainants the finance sought and secondly, the manner in which any new loan facility would be structured. There was no obligation on the Provider to offer the Complainants the amount that they sought to borrow, or to structure the lending arrangement as an addition to their existing home loan under mortgage loan account ending **6419** or to offer a tracker interest rate in respect of any additional borrowings.

/Cont'd...

I have not been provided with the underlying mortgage loan documentation in relation to mortgage loan account ending **6801**, however, the parties agree that the Provider offered the Complainants a mortgage loan in the amount of €15,000.00 on a variable interest rate in **June 2008**, which the Complainants subsequently accepted.

While tracker interest rates were on offer by the Provider at the time the Complainants applied for their top-up loan in or around **May/June 2008**, the Provider was not under any contractual or regulatory obligation to offer the Complainants a tracker interest rate in respect of the top-up facility. Furthermore, I am of the view that whether or not a tracker interest rate was available in respect of the Complainants' original mortgage loan account ending **6419** was irrelevant to the interest rate applicable to the top-up mortgage loan account ending **6801** as the top-up loan facility was an entirely separate loan to the Complainants' original mortgage loan.

If the Complainants did not want to pursue the offer of the top-up mortgage loan because they were unhappy with the interest rate applicable to the loan or how the loan was structured, they could have decided not to accept the Provider's offer. However, the Complainants proceeded to accept the Provider's offer of a separate top-up mortgage loan on a variable interest rate and drew down mortgage loan account ending **6801**.

In light of the foregoing, I am satisfied that there was no obligation on the Provider to offer the Complainants a tracker interest rate in **June 2004** when they applied for their mortgage loan or in **June 2008** when they applied for a top-up mortgage loan.

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

Conclusion

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

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



JACQUELINE O'MALLEY
HEAD OF LEGAL SERVICES

02 November 2023

/Cont'd...

PUBLICATION

Complaints about the conduct of financial service providers

Pursuant to *Section 62* of the *Financial Services and Pensions Ombudsman Act 2017*, the Financial Services and Pensions Ombudsman will **publish legally binding decisions** in relation to complaints concerning financial service providers in such a manner that—

(a) ensures that—

(i) a complainant shall not be identified by name, address or otherwise,

(ii) a provider shall not be identified by name or address,

and

(b) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.

Complaints about the conduct of pension providers

Pursuant to *Section 62* of the *Financial Services and Pensions Ombudsman Act 2017*, the Financial Services and Pensions Ombudsman will **publish case studies** in relation to complaints concerning pension providers in such a manner that—

(a) ensures that—

(i) a complainant shall not be identified by name, address or otherwise,

(ii) a provider shall not be identified by name or address,

and

(b) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.