



<b><u>Decision Ref:</u></b>	2020-0446
<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 at point of sale 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 a mortgage loan account held by the Complainants with the Provider. The mortgage loan that is the subject of this complaint was secured on the Complainants' principal private residence.

The loan amount is €432,400 and the term of the loan is 30 years. The Loan Offer dated **1 August 2008** detailed that a discounted variable interest rate of 5.290% applied to the mortgage loan for a period of 24 months and thereafter the mortgage loan would revert to the Provider's "then prevailing Home Loan variable rate".

##### **The Complainants' Case**

The Complainants state that they applied for a mortgage loan with the Provider in **2008** during which time several loan offers were issued to them by the Provider. The Complainants state that the below is a summary of the loan offers that issued to them in **2008**;

- a) 28 May 2008 Variable 4.85. Part 4 Clause Viii Tracker 1.35
- b) 11 July 2008 Variable 5.65, Part 4 Clause Viii Tracker 1.4
- c) 23 July 2008 Variable 5.29, Part 4 Clause Viii Tracker 1.4
- d) 25 July 2008 Variable 5.65, Part 4 Tracker Clause removed

- e) *Deposit paid on house on the 30 July 2008*
- f) *01 August 2008 Variable 5.29, Part 4 tracker Clause Removed."*

The Complainants explain that in circumstances where they were trying to budget for the purchase of the mortgaged property, this *"necessitated revisiting the amount of loan etc a number of times"* which resulted in a number of loan offer letters being issued to them. The Complainants note that the above timeline shows that the *"tracker option was removed while the sale of the house was just about to go through"*.

The final Mortgage Loan Offer Letter dated **1 August 2008** that issued to the Complainants' provided for a two year discounted variable interest rate. The Complainants signed their acceptance of this loan offer. The Complainants note that tracker interest rates were explained to them at different meetings with the *"bank advisor"* and they had decided that *"a tracker rate was a fairer and more transparent rate"*. The Complainants state that the tracker interest rate was therefore the desired interest rate that they wanted to apply to their mortgage loan account after the discounted period had elapsed. The Complainants assert that when they subsequently *"took out the loan in 2008 [they] were of the understanding that the variable rate forming the basis of the loan was a tracker rate"*. The Complainants contend that because the previous three loan offer letters that they had received from the Provider contained a reference to a tracker interest rate, they understood that the *"introductory discounted rate was tracker based"*.

The Complainants reject the Provider's statement that the Mortgage Loan Offer dated **1 August 2008** provided for a two year discounted variable interest rate period because the Complainants requested it. The Complainants submit that they do not have any correspondence or recollection of the Provider giving them a choice between a discounted rate and a tracker rate. The Complainants state that they do recall asking for a reduction on the interest rate *"but not at the expense of the tracker element"*.

In later submissions, the Complainants submit that they are not disputing the initial two year discounted interest rate that applied to their mortgage loan account but rather that the interest rate *"should have rolled to a tracker rate as [they] had discussed and agreed as per the previous three loan offer letters that [they] received"*. The Complainants state that the Mortgage Loan Offer Letter dated **1 August 2008** did not highlight that a tracker interest rate was not being offered *"so therefore [they] did not query it"*. The Complainants maintain that the Provider removed the tracker element of the loan offer *"not at [their] request but for [the Provider's] own benefit"*. The Complainants state that this was *"unfair"* as they were about to sign a contract to purchase the mortgaged property. The Complainants further submit that in the summer of **2008** they experienced a family tragedy which meant they *"were not in the best position to be negotiating loan offers."*

The Complainants are seeking the application of a tracker interest rate to their mortgage loan account and a reimbursement of the interest that they have overpaid on the mortgage loan account as a result of the Provider's failure to apply a tracker interest rate.

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

The Provider submits that prior to the issuing of and signing of the Mortgage Loan Offer dated **1 August 2008** by the Complainants, it issued a number of loan offers to the Complainants which the Complainants did not accept and which are listed below;

- a) Mortgage Loan Offer dated **28 May 2008**: The Provider notes that this loan offer provided for a fixed interest rate of 4.85% for a period of 23 months and thereafter the interest rate would revert to a tracker rate of interest.
- b) Mortgage Loan Offer dated **23 June 2008**: The Provider notes that this loan offer provided for a tracker interest rate of 5.5% (ECB + 1.40%).
- c) Mortgage Loan Offer dated **11 July 2008**: The Provider notes that this loan offer provided for a tracker interest rate of 5.65% (ECB + 1.40%).
- d) Mortgage Loan Offer dated **18 July 2008**: The Provider notes that this loan offer provided for a tracker interest rate of 5.65% (ECB + 1.40%)
- e) Mortgage Loan Offer dated **25 July 2008**: The Provider notes that this loan offer provided for a discounted variable interest rate of 5.29% for a period of 24 months and thereafter the interest rate would revert to a variable interest rate of 5.79% for the remainder of the term of the loan.

The Provider states that when the Complainants applied for a mortgage loan, they had the option of a fixed interest rate, a tracker interest rate and a discounted variable interest rate and were provided with the above loan offers which they could accept or reject.

The Provider states that it issued a further Mortgage Loan Offer dated **1 August 2008** to the Complainants whereby the Provider agreed to advance €432,000 for a term of 30 years to the Complainants. The Provider asserts that the Mortgage Loan Offer dated **1 August 2008** clearly provided for a discounted variable interest rate of 5.290% for a period of 24 months and thereafter the mortgage loan would revert to the Provider's home loan variable rate as set out in **Part 4- Special Condition a (i)** of the Mortgage Loan Offer. The Provider explains that the variable rate of interest was discounted by 0.50% per annum on the loan amount for 24 months. The Provider refers to a **Part 4- Special Condition (a) (vii)** which confirms that the Mortgage Loan Offer dated **1 August 2008** replaces the Mortgage Loan Offer dated **25 July 2008**.

The Provider asserts that there is no provision or contractual entitlement within the Mortgage Loan Offer dated **1 August 2008** to a tracker rate of interest. The Provider notes that a further document issued to the Complainants known as the European Standardised

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Information Sheet setting out the *“exact nominal interest rate applicable to the Complainants’ mortgage loan; namely 5.290% variable over the term of the mortgage (30 years) which shows the balance of the Loan over the term, based on various assumptions”*. The Provider also notes that it sent a letter dated **6 August 2008** to the Complainants’ solicitor regarding the Mortgage Loan Offer Letter dated **1 August 2008** seeking compliance with the conditions precedent prior to drawdown and referring the solicitor’s attention to the special conditions contained in **Part 4** of the loan offer letter *“which relates specifically to the variable rate of interest applicable after the initial 24 month discounted variable rate period”*. The Provider notes that the Complainants signed and accepted the Mortgage Loan Offer dated **1 August 2008** on **11 August 2008** with the benefit of legal advice and the mortgage loan account was subsequently drawn down on **2 October 2008**.

The Provider submits that, in accordance with the terms of the Mortgage Loan Offer dated **1 August 2008**, the Complainants’ mortgage loan account reverted to a standard variable rate of 3.64% upon expiry of the 24 month/two year discounted period on **4 October 2010**.

In response to the Complainants submissions that they specifically requested a tracker interest rate, the Provider acknowledges that the Complainants requested a tracker interest rate on or about **20 June 2008** however they specifically requested a discounted variable interest rate on **25 July 2008** as per the Provider’s internal mails. The Provider notes that the discounted variable rate of interest at that time was a *“lower rate of interest than a tracker rate”*.

The Provider states that it is satisfied that the information that issued to the Complainants and their solicitor at the time, was *“sufficiently clear and transparent”*. The Provider reiterates that the Mortgage Loan Offer dated **1 August 2008** does not contain a contractual entitlement or otherwise to a tracker interest rate. Furthermore, the Provider submits that there was *“no misrepresentation”* made to the Complainants regarding a tracker interest rate and the Complainants *“have failed to provide any evidence reflecting same”*. The Provider states that it is *“ultimately the Complainants choice to choose the rate of interest at that time”*. The Provider asserts that if the Complainants had any doubts about the terms of the Mortgage Loan Offer dated **1 August 2008**, this should have been raised with their solicitor at the time. The Provider notes however that the Complainants did not raise any issue with the Provider and/or via their solicitor and signed and accepted the Mortgage Loan Offer dated **1 August 2008**. The Provider highlights that the executed Mortgage Loan Offer dated **1 August 2008** *“forms the contractual basis of the relationship”* between the Provider and the Complainants and *“imposes mutual obligations on each of the parties”*. The Provider maintains that the documentary evidence demonstrates that the Provider has *“acted appropriately in dealing with the Complainants, despite the Complainants insistence to the contrary”*.

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### **The Complaints for Adjudication**

The complaints for adjudication are;

- (a) The Provider incorrectly removed the tracker variable interest rate from the Mortgage Loan Offer dated **1 August 2008**; and
- (b) The Provider incorrectly failed to offer the Complainants a tracker interest rate on their mortgage loan account on the expiry of the 24 month discounted interest rate period 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 17 November 2020 outlining my preliminary determination in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

In the absence of additional submissions from the parties, within the period permitted, 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.

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It is also necessary to consider the details of certain interactions between the Complainants and the Provider in **2008** prior to the Complainants' acceptance of the Mortgage Loan Offer dated **1 August 2008**.

On foot of the Complainants' mortgage loan application, the Provider issued a number of loan offers to the Complainants before the Complainants finally signed and accepted a Mortgage Loan Offer dated **1 August 2008**.

By way of background, I will outline the details of the loan offers that issued to the Complainants, all of which have been furnished in evidence, but were not ultimately accepted by the Complainants. The evidence indicates that the following loan offers issued to the Complainants;

- Mortgage Loan Offer dated **28 May 2008** which provided for a loan in the amount of €450,000 for a term of 30 years on a fixed interest rate of 4.85% for a period of 23 months followed by a tracker interest rate of ECB + 1.35%.
- Mortgage Loan Offer dated **23 June 2008** which provided for a loan in the amount of €450,000 for a term of 30 years on a tracker interest rate of ECB + 1.40%. **Part 4 – The Special Conditions (a) (vi)** provides that this loan offer replaces the Mortgage Loan Offer dated **28 May 2008**.
- Mortgage Loan Offer dated **11 July 2008** which provided for a loan in the amount of €450,000 for a term of 30 years on a tracker interest rate of ECB + 1.40%. **Part 4 – The Special Conditions (a) (vi)** provides that this loan offer replaces the Mortgage Loan Offer dated **11 July 2008**. I understand that this is an error on the part of the Provider and this loan offer should perhaps replace the Mortgage Loan Offer dated **23 June 2008**. I note however that **General Condition 1 (d) of Part 5- The General Conditions** attaching to the Mortgage Loan Offer dated **11 July 2008** provides that *"[t]his Offer Letter replaces and supersedes all previous versions of this Offer Letter"*. Further, the cover letter dated **11 July 2008** accompanying the Mortgage Loan Offer dated **11 July 2008** states that *"[t]his Offer Letter supersedes and replaces all previous versions of this Offer Letter issued to you in respect of this loan"*.
- Mortgage Loan Offer dated **18 July 2008** which provided for a loan in the amount of €432,400 for a term of 30 years on a tracker interest rate of ECB + 1.40%. **Part 4 – The Special Conditions (a) (vi)** provides that this loan offer replaces the Mortgage Loan Offer dated **11 July 2008**.

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- Mortgage Loan Offer dated **23 July 2008** which provided for a loan in the amount of €432,400 for a term of 30 years on a tracker interest rate of ECB + 1.40%. **Part 4 – The Special Conditions (a) (vi)** provides that this loan offer replaces the Mortgage Loan Offer dated **11 July 2008**.
- Mortgage Loan Offer dated **25 July 2008** which provided for a loan in the amount of €432,400 for a term of 30 years on a discounted variable interest rate of 5.29% for the first 24 months and thereafter the mortgage loan account would revert to the Provider's home loan variable rate. **Part 4 – The Special Conditions (a) (vi)** provides that this loan offer replaces the Mortgage Loan Offer dated **18 July 2008**.

In circumstances where none of the above mortgage loan offers were signed and accepted by the Complainants, I accept that that these mortgage loan offers did not form the contractual basis of any loan agreement between the Provider and the Complainants and have no application or relevance to the Complainants' mortgage.

The Provider has submitted a number of screenshots of internal mails from its internal system from **22 May 2008** to **30 September 2008** between a representative of the Provider's branch and the Provider's mortgage unit. The internal mails show the requests made by the Complainants through the Provider's branch to amend certain aspects of the various loan offers to include the address of the mortgaged property and the applicable interest rate.

I note that the internal mail dated **20 June 2008** between the Provider's branch and the Provider's mortgage unit, after the issuing of the Mortgage Loan Offer dated **28 May 2008**, reads as follows;

*"Please change rate here to tracker rate ECB + 1.4 and issue new loan offer"*

The response from the Provider's mortgage unit dated **23 June 2008** reads as follows;

*"Rate amended – new offer issued"*

This request for a tracker interest rate resulted in the issuing of Mortgage Loan Offer dated **23 June 2008** which provided for a tracker interest rate of ECB + 1.40%.

A further internal mail from the Provider's branch to the Provider's mortgage unit dated **17 July 2008** details as follows;

*"Can we change two things on loan offer please?"*

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1. Amount needs to be 432,400 (92 % of agreed pp 470 k) original loan offer was 92%
2. The address needs to be [updated address of mortgage property]

*Can we re issue new loan offer to client and solicitor today please?"*

Mortgage Loan Offer dated **18 July 2008** subsequently issued to the Complainants on foot of this request with the amended loan amount and updated address of the mortgaged property.

I note that the next significant exchange was by way of internal mail from the Provider's branch to the Provider's mortgage unit on **25 July 2008** which details as follows;

*"Clients are looking to change rate to 2 yr discounted variable rate 5.29 %, please amend loan offer to reflect same and send also to client's solicitor."*

I note that the Complainants state that they did not request the Provider to "remove the tracker element of the offer" however the above exchange demonstrates that the Complainants specifically requested a two year discounted variable interest rate. The Provider, acting on the Complainants' request, subsequently issued Mortgage Loan Offer dated **25 July 2008** to the Complainants which provided for a loan in the amount of €432,400 on a discounted variable interest rate of 5.29% for the first 2 years. By way of internal mail exchange on **31 July 2008**, a representative of the Provider's branch informed the Provider's mortgage unit of the full address of the mortgaged property. The Provider's mortgage unit informed the Provider's branch that it would be necessary to issue a new loan offer with the updated address of the mortgaged property.

Mortgage Loan Offer dated **1 August 2008** subsequently issued to the Complainants under cover of letter dated **1 August 2008** which details as follows;

*"Dear [Complainants],*

*I am delighted to let you know that the [Provider] has approved your mortgage application. This approval is subject to the revised terms and conditions contained in the enclosed Mortgage Loan Offer ("Offer Letter").*

*Based on the information you provided to us, we believe that the enclosed loan offer will meet your requirements and is suited to your needs as a customer who is moving house.*

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***While details of the fixed, variable and tracker rate options were discussed with you, we note that you have chosen the variable rate option as you are satisfied to accept that your repayments may change in line with the market interest rate movement.***

*A number of repayment options were also discussed with you and you have chosen a repayment mortgage where both interest and capital are paid over the term of the loan, thus reducing the capital balance outstanding. You have selected to pay your mortgage over 30 years, as this is the term that suits your requirements. [My emphasis]*

*Could I ask you to refer to the information in Part 1 (Statutory Loan Details) Section 1, 3 & 4 and Part 2 (Additional Loan Details) Section 11 and 12 of the enclosed Letter of Offer which detail your chosen options.*

***This Offer Letter supersedes and replaces all previous versions of this Offer Letter issued to you in respect of this loan.***

#### *Step 1 – WHAT SHOULD BE DONE NOW*

- (a) Please make sure that all Applicants sign and date one copy of the Offer Letter and return it to your Mortgage Consultant. You should retain the other copy for your records. This is an important legal document, which forms the legal basis for the loan. It also sets out the security required by the [Provider]. You are strongly recommended to seek legal advice prior to accepting the Offer Letter.*
- (b) Make sure that all documents attached are fully completed and returned to your Mortgage Consultant. Additional documents were attached to your previous Offer(s) and these need to be completed also.*

*[...]*

*If you have any questions, please do not hesitate to contact us. Please have your application number handy to help us identify your specific application. You can find this number at the top of this letter.”*

**Part 1 – The Statutory Loan Details** of the Mortgage Loan Offer dated **1 August 2008** sets out the following;

- |     |                           |          |
|-----|---------------------------|----------|
| “1. | Amount of Credit Advanced | €432,400 |
| 2.  | Period of Agreement       | 30 years |

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3.	<i>Number of Repayment <u>Instalments</u></i>	<i>Instalment <u>Type</u></i>	4.	<i>Amount of each <u>Instalment</u></i>
	24	Variable at 5.290%		€2,398.45
	336	Variable at 5.790%		€2,527.97"

**Part 2 –The Additional Details** of the Mortgage Loan Offer describes the loan type as "Repayment" and outlines that the interest rate is "5.290% Variable".

**Part 4 – The Special Conditions** of the Mortgage Loan Offer details as follows;  
"[...]"

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

- (i) The interest rate applicable to the loan has been discounted by 0.50% per annum on the amount of the Loan for a period of 24 months from the date of drawdown of the Loan. At the end of the said discount period the reduction shall cease and the interest rate applicable to the Loan shall revert to the then prevailing Home Loan variable rate. The discount set out in this special condition is the discount which would apply if the Loan were drawn down today. There is no guarantee that this discount will be available when the loan is in fact drawn down. The actual discount that will apply shall be the discount then offered by the Lender at the date of drawdown.*

...

- (vii) This offer replaces our offer of 25/07/2008."*

The notice at the end of the page containing **Part 4 –The Special Conditions** details as follows;

***"This is an important legal document. You are strongly recommended to seek independent legal advice before signing it. This Offer Letter is regulated by the Consumer Credit Act, 1995 and your attention is drawn to the Notices set out on the last page of this Offer Letter."***

**General Condition 1(d)** of **Part 5 – The General Conditions** details as follows;

***" 1. Interpretation and General***

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- (d) *This Offer Letter replaces and supersedes all earlier versions of this Offer Letter”*

**General Condition 6 of Part 5 – The General Conditions** details as follows;

**“6. Variable Interest Rates**

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

I note that the Provider also sent a copy of the Mortgage Loan Offer to the Complainants’ solicitor under cover of letter dated **6 August 2008** which detailed as follows;

*“We understand that you act for the above named Borrower to whom a Mortgage Loan Offer (“Offer Letter”) has been issued by [the Provider] (copy enclosed).*

*Your attention is specifically drawn to the fact that there are Conditions Precedent contained in Part 3 of the Borrower’s Offer Letter which have yet to be complied with. These conditions (which do not relate to title and in general deal with specific lending requirement for the Borrower and often address sensitive or personal details) have been omitted in the copy Offer Letter provided to you..... Once these conditions have been complied with by the Borrower, confirmation will issue to you.*

*Your attention is however, drawn in particular to the Special Conditions contained in Part 4 of the Offer Letter.....”*

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I note that the Complainants signed the **Borrower's Acceptance and Consents** section of the **Mortgage Loan Offer** dated **1 August 2008** on **11 August 2008** on the following terms;

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

The Complainants accepted the Mortgage Loan Offer, having confirmed that they had read and fully understood the terms and conditions attaching to the **Mortgage Loan Offer** dated **1 August 2008**.

A further letter dated **20 August 2008** was sent by the Provider to the Complainants' solicitor noting that the Conditions Precedent contained in **Part 3** of the Mortgage loan Offer dated **1 August 2008** had been fully complied with. The letter also noted the following;

*"Your attention is drawn in particular to the Special Conditions contained in Part 4 of the Offer Letter".*

Mortgage loan account ending **9953** was subsequently drawn down on **2 October 2008**. I note from the mortgage loan statements that the Complainants' mortgage loan account reverted to the Provider's standard variable rate on **4 October 2010**, upon expiry of the 24 month discounted period. The standard variable rate at this time was 3.640%. I am of the view that this switch to the Provider's standard variable rate was in line with **Part 4- The Special Conditions (a) (i)** attaching to the **Mortgage Loan Offer dated 1 August 2008** which states that the mortgage loan would revert to the Provider's home loan variable rate at the end of the discount period.

Having considered the Complainants' mortgage loan documentation, it is my view that the **Mortgage Loan Offer** dated **1 August 2008**, which was ultimately signed and accepted by the Complainants with the benefit of legal advice, clearly provided for a discounted variable rate of interest for a period of 24 months at 5.290%, thereafter reverting to the *"then prevailing Home Loan variable rate"*. The request for a discounted variable rate for 24 months appears to have come directly from the Complainants during the mortgage loan application process. I am satisfied that the nature of the variable interest rate offered to and accepted by the Complainants was a variable interest rate that would *"vary at the Lender's discretion upwards or downwards"* as detailed in **General Condition 6 (a) of Part 5- The General Conditions** attaching to the Mortgage Loan Offer dated **1 August 2008**.

While I acknowledge that tracker interest rates, where the interest rate varies in line with the rate set by the European Central Bank, were on offer by the Provider at the time the Complainants applied for their mortgage loan with the Provider, I accept that the **Mortgage Loan Offer** dated **1 August 2008** did not contain a contractual entitlement to a tracker interest rate or an expectation that a tracker interest rate would apply either at the time of drawdown or at any time during the term of the mortgage loan. I am of the view that in order for the Complainants to have a contractual right to a tracker interest rate on expiry of the discounted variable interest rate period, that right would need to be specifically provided for in the Complainants' mortgage loan documentation. However, no such right was set out in writing in the **Mortgage Loan Offer** dated **1 August 2008**, which was signed by the Complainants on **11 August 2008**.

I note that the Complainants contend that the discounted variable interest rate "*should have rolled to a tracker rate as [they] had discussed and agreed as per the previous three loan offer letters that [they] received*". In this regard, it is important for the Complainants to be aware that despite the Provider having previously issued loan offers offering a fixed interest rate period for 23 months revering to a tracker interest rate thereafter (**Mortgage Loan Offer** dated **28 May 2008**) and tracker interest rate options (**Mortgage Loan Offers** dated **23 June 2008**, **11 July 2008**, **18 July 2008** and **23 July 2008**), the **Mortgage Loan Offer** dated **1 August 2008**, offering a discounted variable interest rate, was the loan offer that the Complainants signed and accepted. For the avoidance of doubt, it is this signed Mortgage Loan Offer together with the terms and conditions attaching to that Mortgage Loan Offer that forms the contract between the Provider and the Complainants. The Complainants did not accept any of the previous loan offers dated **28 May 2008**, **23 June 2008**, **11 July 2008**, **18 July 2008** and **25 July 2008** therefore these loan offers are not legally binding contracts. Furthermore, the **General Conditions** of the **Mortgage Loan Offer** dated **1 August 2008** specifically provided that the **Mortgage Loan Offer** dated **1 August 2008** replaced and superseded all previous loan offers. That means the other loan offers have no application or relevance to the Complainants' mortgage.

It is clear that the Complainants spent considerable time considering and deciding which mortgage type and rate to accept from the number of mortgage loan offers they received.

If the Complainants were of the view that the **Mortgage Loan Offer** dated **1 August 2008** was unclear as to the type of interest rate that would apply to the mortgage loan at the end of the discounted variable interest rate period, the Complainants could have discussed this with the solicitor who they had engaged at the time. Moreover, they could have decided not to accept the offer made by the Provider and sought to have the terms of the loan offer amended, as they had done so previously.

Instead the Complainants, having the benefit of legal advice, signed and accepted the **Mortgage Loan Offer** dated **1 August 2008** on **11 August 2008** confirming that they understood the terms and conditions of the **Mortgage Loan Offer** dated **1 August 2008**.

For the reasons outlined in this Decision, I do not uphold this complaint.

### **Conclusion**

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

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



**GER DEERING**  
**FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

8 December 2020

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.