An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2024-0023
Sector:	Banking
Product / Service:	Tracker Mortgage
Conduct(s) complained of:	Failure to offer a tracker rate throughout the life of the mortgage
Outcome:	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 **Letter of Offer** dated **17 September 2007** in relation to mortgage loan account ending ***9032*** 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 30 years, and the total loan amount was €190,460.00. The Complainants drew down mortgage loan account ending ***9032*** on **20 November 2007**.

The **Letter of Offer** dated **17 September 2007** in relation to mortgage loan account ending ***9115*** provided for a loan in the sum of €75,540.00 repayable over a term of 30 years. This mortgage loan is a tracker interest rate mortgage loan.

The complaint is in relation to mortgage loan account ending ***9032*** only.

The Complainants' Case

The Complainants state that they submitted a mortgage loan application to the Provider in **September 2007**. The Complainants submit that they selected a tracker interest rate option. The Complainants outline that they were advised by the Provider that as their application was processed through staff business, the mortgage loan was split into two parts, with mortgage loan account ending ***9032*** in the sum of €190,460.00 on a staff preferential rate of 3% and mortgage loan account ending ***9115*** in the sum of €75,540.00 on a tracker interest rate.

The Complainants state that they signed and accepted the mortgage loan agreements in respect of both mortgage loan accounts *"with no advice given from a mortgage advisor."*

The Complainants submit that they received a letter from the Provider on **16 January 2009** to inform them that the *"staff fixed home loan rate"* that mortgage loan account ending ***9032*** was operating on, *"was no longer beneficial".* The Complainants detail that they were given three options as to what interest rate to apply, however there was no option of a tracker interest rate. The Complainants submit that they did not respond to the letter at the time because *"the variable rate was going to be cheaper than the staff rate."*

The Complainants assert that they should have been given the option of a tracker interest rate at the time as part of the mortgage loan was operating on a tracker interest rate. In addition, the Complainants maintain that **General Condition 3.2** of the **Mortgage Loan Offer** dated **17 September 2007** should apply as the staff preferential home loan interest rate was a *"fixed"* interest rate.

The Complainants believe that the tracker interest rate was *"denied to staff customers who were on fixed rates"* at the time.

The Complainants submit that other customers of the Provider were entitled to avail of **General Condition 3.2**, as they *"broke out of a fixed rate early"* between **October 2008** and **early January 2009.**

The Complainants are seeking the following:

(a) A tracker interest rate to be applied to their mortgage loan; and
(b) Compensation.

/Cont'd…

The Provider's Case

The Provider submits that the Complainants submitted a mortgage application form on **04 September 2007**. The Provider notes that the Complainants selected a tracker interest rate option.

The Provider submits that it does not offer advice in relation to interest rates but provides information on interest rate options when a customer requests such information.

The Provider submits that it issued two **Letters of Offer** to the Complainants on **17 September 2007**, one for a loan amount of €190,460.00 on the staff preferential variable interest rate and the other for a loan amount of €75,540.00 on a tracker interest rate of 4.35% (comprising the ECB base rate of 3.25% and a margin of 1.10% with a discounted margin of 0.6% for the first year).

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 mortgage loan account ending ***9032*** was drawn down on **20 November 2007** on a staff preferential rate of 3% and mortgage loan account ending ***9115*** was drawn down on a discounted tracker interest rate of ECB base rate of 4% plus a margin of 0.6%.

The Provider states that it has no record of receiving a request from the Complainants, to apply a tracker interest rate to mortgage loan account ending ***9032*** 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 interest rate would occur at the end of **January 2009**. 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 ***9032*** was converted to a standard variable rate of interest on **29 January 2009.**

The Provider explains that mortgage loan account ending ***9032*** never operated on a fixed interest rate and therefore General Condition 3.2 does not apply. The Provider submits that the mortgage loan did not have the characteristics of a fixed interest rate loan. In this

/Cont'd…

regard, the Provider states that a fixed interest rate is for a defined period, while the staff preferential rate was offered *"so long as the first named Complainant remains in the employment of the Bank".* The Provider relies on the **Special Conditions** of the **Letter of Offer** in relation to mortgage loan account ending ***9032*** which provide 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 ***9032*** at any time during the term of the loan.

The Provider notes that the staff preferential interest 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 rejects the Complainants' assertion that because they were existing tracker interest rate holders, they *"should have been given the option to move [their] full mortgage to this rate as it was already existing"* as per **General Condition 3.2** of the **Letter of Offer** in respect of mortgage loan account ending ***9032***. The Provider submits that the fact the Complainants' other mortgage loan account operated on a tracker interest rate, did not give them an entitlement to apply a tracker interest rate to mortgage loan account ending ***9032.*** The Provider submits that the **Letter of Offer** does not suggest *"that a tracker interest rate would be available as an interest rate option for Mortgage Loan Account ending 9032 in the event that the SPR was no longer beneficial for the Complainants."*

The Provider maintains that it is satisfied that the mortgage loan documentation pertaining to the Complainants' mortgage loan account ending ***9032*** is clear in terms of the Complainants' interest rate entitlements.

<u>The Complaint for Adjudication</u>

The complaint for adjudication is that the Provider incorrectly failed to offer the Complainants the option to apply a tracker interest rate when its standard variable interest rate became more beneficial than the staff preferential interest rate in **January 2009**.

/Cont'd…

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 **12 January 2024**, 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 in relation to mortgage loan account ending ***9032***. It is also necessary to consider details of certain interactions between the Complainants and the Provider from **2007** to **2009**.

The evidence shows that the Complainants submitted a **mortgage loan application form** dated **04 September 2007** to the Provider seeking mortgage loan finance to purchase a new private dwelling house. **Section 5** of the **mortgage loan application form** is titled *"Mortgage Loan Details"* and lists the following interest rates available for selection:

> *"…*
> *Please tick your choice of interest rate:*

/Cont'd…

Variable ☐ *Tracker* ☑ *Fixed* ☐ *&, if fixed, for how many years? ____"*

The evidence shows that the Complainants chose a tracker 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 mortgage loan application form. The "**Completing the forms**" section of the mortgage loan application form 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.*

/Cont'd…

- *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."*

The Provider subsequently issued two **Letters of Offer** dated **17 September 2007** to the Complainants.

The first **Letter of Offer** dated **17 September 2007** relates to mortgage loan account ending ***9032*** and the second **Letter of Offer** dated **17 September 2007** relates to mortgage loan account ending ***9115***.

The **Letter of Offer** dated **17 September 2007** in relation to mortgage loan account ending ***9032*** details as follows:

> *"…*
>
> *I am pleased to offer you a supplemental mortgage loan of the principal sum specified in Part 1 attached….*
>
> ***<u>IMPORTANT INFORMATION AS AT 17 September 2007</u>***
>
> 1. *Amount of Credit Advanced* *€190,460.00*
> 2. *Type of Loan* *Annuity*
> 3. *Period of Agreement* *30 years/ 360 months*
> 4. *Number of Repayment Instalments* *360*
> 5. *Amount of Each Instalment* *(1) 360@ €802.46*
>
> *…*
>
> ***LEGAL ADVICE SHOULD BE TAKEN BEFORE THIS DOCUMENT IS SIGNED****."*

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

	Term	*Loan Type*	*Interest Rate Description*	*Rate*	*Margin*	*Net Rate*	*Amount of Each Instalment*
1	*30 Years*	*Variable Annuity*	*STAFF PREF HOME LOAN ANNUITY*	*3%*	*0%*	*3%*	*€802.46*

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

> *"…*

/Cont'd…

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

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 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 condition 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 details as follows:

"3 INTEREST RATES
3.1 RATE NOT GUARANTEED TO DRAWDOWN

/Cont'd…

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

/Cont'd…

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

/Cont'd…

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 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 **17 September 2007** was signed by the Complainants and witnessed by their solicitor on **27 September 2007**, 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

/Cont'd…

> *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."*

The **mortgage loan account statements** for mortgage loan account ending ***9032*** show that the mortgage loan was drawn down on **20 November 2007** and the lending rate at the time of drawdown was 3%.

The second **Letter of Offer** dated **17 September 2007** issued by the Provider to the Complainants in relation to mortgage loan account ending ***9115*** provided for a loan in the sum of €75,540.00 repayable over a term of 30 years. The "*loan type*" was also described as "*Variable Annuity*". The **Letter of Offer** dated **17 September 2007** specifically provides for a discounted tracker home loan interest rate comprising the ECB base rate of 4% plus a margin of 0.6% for a period of one year, with a tracker interest rate comprising the ECB base rate and a margin of 1.1% to apply thereafter for the remainder of the term of the loan. This **Letter of Offer** in relation to mortgage loan account ending ***9115*** was signed by the Complainants on **27 September 2007**. This mortgage loan is governed by separate and distinct terms and conditions. In circumstances where this mortgage loan account is not the subject of this complaint, I do not consider it necessary to consider the terms and conditions of this mortgage loan in any further detail in my determination of this complaint.

While the staff preferential interest rate of 3% was to apply for the term of the loan 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, 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 before me, it appears to me that this "*switch*" occurred on the Complainants' mortgage loan account ending ***9032*** in **January 2009**. This was following the Government's budgetary changes which had an impact on benefit-in-kind***.*** In this regard, the Provider issued a letter to the Complainants dated **16 January 2009** which details as follows:

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

/Cont'd…

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

Higher Rate of Income Tax (41%)	***3.86%***
Lower Rate of Income Tax (20%)	***3.52%***

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 27th 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 30th January 2009.

You have the following options:

Option	*Action Required*
*You wish to switch your Staff Preferential Home Loan to the Bank's Staff Variable Rate**	*NO ACTION IS REQUIRED*
You wish to remain on the Staff Preferential Mortgage Rate (i.e. Opt out of the switch)	*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*
You wish to switch to a Fixed Rate (current rates detailed overleaf) Instead of the Bank's Standard Variable Rate	*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*

**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.

/Cont'd…

…"

The letter dated **16 January 2009** also included a **"Questions and Answers"** information sheet which details as follows:

"

…

Questions & Answers on Switch of Preferential Mortgage Accounts		
No	*Question*	*Answer*
…	…	…
…	…	…
3.	*Can I switch funds to my existing Tracker Mortgage?*	*Tracker mortgages were withdrawn on [Redacted] 2008 and balances* ***cannot*** *be topped up.*
…	…	…
…	…	…
6.	*What happens when rates change?*	*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.* ***Note****: 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.*
…	…	…
…	…	…
…	…	…
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.*
…	…	…
…	…	…

/Cont'd…

…"

The letter dated **16 January 2009** also listed the fixed interest rate options that were available from the Provider at that time as follows:

Table of Owner Occupiers Mortgage Interest Rates (as at 15th January 2009)		
Rate Category	*Rate for Owner Occupier*	*APR over 20 years*
…	*…*	*…*
Fixed rates (as at 18th December 2008)		
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%*

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 ***9032*** on **29 January 2009**. 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. The Complainants were informed by the Provider in the letter dated **16 January 2009** that the monthly repayments may increase as the interest rate was changed from the Provider's staff preferential interest rate of 3% to the Provider's standard variable interest rate on foot of the "*switch*".

The Complainants submit that the Provider incorrectly failed to offer them the option to apply a tracker interest rate to mortgage loan account ending ***9032*** when the standard variable interest rate became more beneficial than the staff preferential interest rate in **January 2009**. 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 given mortgage loan account ending ***9032*** was operating on a fixed interest rate of 3% at the time, the Provider should have given them the opportunity to convert mortgage loan account ending ***9032*** to a tracker interest rate in accordance with **General Condition 3.2** of the **Letter of Offer** dated **17 September 2007.** In addition, the Complainants are of the view that given the second portion of their mortgage loan was operating on a tracker interest rate under mortgage loan account ending ***9115***, they should have been allowed to switch their entire borrowings to a tracker interest rate.

/Cont'd…

I note that the **Letter of Offer** dated **17 September 2007** in relation to mortgage loan account ending ***9032*** 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 include certain details 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 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** 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 **17 September 2007** in relation to mortgage loan account ending ***9032*** are considered in the round it appears that the mortgage 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 the 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 **17 September 2007** did not apply. In order for the Complainants to have a contractual right to be offered a tracker interest rate at any stage during the term of the mortgage loan, 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 ***9032.***

/Cont'd…

Moreover, tracker rates were no longer available as part of the Provider's product offering in **January 2009** 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 a business entity was entitled to make.

Furthermore, the fact that the Complainants' second mortgage loan account ending ***9115*** was operating on a tracker interest rate in **January 2009** created no obligation on the Provider to offer the Complainants a tracker interest rate on mortgage loan account ending ***9032.*** It is important to note that the mortgage loan agreement between the Complainants and the Provider in respect of mortgage loan account ending ***9032*** was completely separate and distinct from the mortgage loan agreement in respect of mortgage loan account ending ***9115.***

Having considered the Complainants' mortgage loan documentation in its entirety, the evidence shows that the Provider was under no obligation to offer a tracker interest rate to the Complainants in respect of mortgage loan account ending ***9032*** in **January 2009**, or at any other time.

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.

Liam Sloyan

LIAM SLOYAN
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

19 February 2024

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.