An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2024-0131
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 which is secured on the Complainants' principal private residence.

The **Letter of Sanction** dated **15 November 2005** details as follows in relation to the two mortgage loan facilities:

- Mortgage loan account ending ***6166*** was for a loan amount of €190,460.00 and the term of the loan was 25 years. The **Letter of Sanction** dated **15 November 2005** provided for a staff preferential interest rate of 3%.
- Mortgage loan account ending ***6240*** was for a loan amount of €249,540.00 and the term of the loan was 25 years. The **Letter of Sanction** dated **15 November 2005** provided for a "*commercial variable home Loan Rate*".

Mortgage loan account ending ***6166*** is the subject of this complaint.

The Complainants' Case

The Complainants submit that their original mortgage loans were "*sanctioned on the 17th October 2005 and [they] received a fresh Loan offer Letter on the 15th November 2005*".

The Complainants explain that on **14 November 2005**, prior to the draw down of the loans, they "*received a letter from [the Provider] Staff Business offering [them] the new "Tracker Home Mortgage*". The Complainants outline that on the same day, **14 November 2005**, they "*sent an email to [redacted] (Head of [Provider] Staff Business at that time) confirming that [they] would like to avail of the new Tracker Mortgage rate*". The Complainants assert that both loan accounts drew down on **07 December 2005** and they availed of a *"special rate" of 2.75% fixed for 1 year on both facilities following an offer of this rate from [the Provider] Staff Business the day the loan was due to draw down*".

The Complainants detail that upon expiry of the "*special rate*" of 2.75%, mortgage loan account ending ***6166*** was placed on a variable interest rate and "*the other facility was placed on a Tracker rate of ECB & 0.60% margin*". The Complainants are of the view that "*both Mortgage facilities should have been placed on a Tracker rate following the expiry of the fixed rate period*".

The Complainants submit that they were offered the tracker interest rate by the Provider and accepted its offer on **14 November 2006** "*by way of clean instruction*". The Complainants assert that they "*had a reasonable expectation of both accounts reverting back to the Tracker rate following the expiry of the fixed rate periods*". The Complainants state that the onus was on the Provider to "*ensure that [their] 2005 instruction to place our Mortgages on Tracker rates was carried out*".

The Complainants are of the view that the fact that the Provider did not offer them a tracker rate in **December 2006** "*was unfair, unjust and quite frankly their fault as they should have been in a position to send [them] Loan Offer letters incorporating the new Tracker rates as they stated they would".* The Complainants maintain that if the Provider done what it said it would do it *"would have been obliged and have had a "**duty of care**" to once again make [them] aware of the Tracker rates (that [they] had already requested) after the expiry of the 1 year fixed rate".*

The Complainants are seeking:

(a) Mortgage loan account ending ***6166*** to be placed on a tracker interest rate; and
(b) A refund of overpaid interest on mortgage loan account ending ***6166*** from **2006** to present.

<u>The Provider's Case</u>

The Provider states that the Complainants applied to the Provider on **17 June 2004** seeking "*mortgage loan finance to assist with the self-build of their new main residence*". The Provider outlines that the *"[name of product] application form"* used by the Complainants

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"was completed when applying for a Home Loan through the Staff Business Unit". The Provider submits that the product which the Complainants applied for *"was a variable rate product which attracted the Staff Preferential Rate (SPR), which remained static for the life of the loan contingent on certain conditions".* The Provider explains that staff customers could borrow up to a maximum amount of €190,460.00 on the staff preferential rate of interest, with a fixed, variable or tracker interest rate to apply to the balance of the loan. The Provider submits that *"[w]here a staff member resigned from the Bank, or was dismissed, the loan would move to the Bank's Variable interest rate"* and where customers *"opted to switch from the SPR, they retained the option of reverting back to the SPR at any time without penalty, while in the employment of the Bank*".

The Provider states that at the time the Complainants applied for their mortgage loan, the practice was to "*provide details to staff of the interest rates available when requested to enable them to make an informed decision*". The Provider submits that it does not offer advice in relation to interest rates but provides information on interest rate options.

The Provider submits that it provided loan approval for a bridging loan facility for the sum of €330,000.00 and a **Letter of Sanction** issued on **24 June 2004**.

The Provider states that the First Complainant contacted the Provider on **04 August 2004** by internal email providing further information and enquiring about increasing the mortgage loan amount to €350,000.00. The Provider details that it issued a **Superseding Letter of Sanction** on **18 August 2004** for the sum of €350,000.00.

The Provider submits that the First Complainant contacted the Provider on **23 September 2004** to request the draw down of €40,700.00 on the bridging loan facility and mortgage loan account ending ***6323*** drew down on **24 September 2004** on a variable interest rate of 3.3% in line with the **Superseding Letter of Sanction**. The Provider states that mortgage loan account ending ***6323*** drew down in stages, as follows:

1.	**9 December 2004**	€33,096.72
		€12,744.66
		€166,658.62
2.	**14 December 2004**	€7,221.20
3.	**11 February 2005**	€113,036.44
4.	**15 March 2005**	€16,500

The Provider outlines that the First Complainant contacted the Provider on **19 September 2005** "*requesting to extend the Bridging Loan facility by one month*". The Provider submits that it responded on the same day confirming that the expiry date for the bridging loan facility had been amended to **25 November 2005**.

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The Provider explains that on **17 October 2005** it issued a **Letter of Sanction** to the Complainants, which "*provided the maximum €190,460 on the SPR and the remaining €249,540 on the Bank's variable Home Loan interest rate*".

The Provider details that on **08 November 2005** it "*sent an internal information mail to all Bank staff (including the first named Complainant) announcing that Tracker interest rates had become available from the Staff Business Unit*". On **14 November 2005**, the Provider states that a further letter issued "*to all existing Staff Business Unit mortgage customers, including the first named Complainant*" notifying them that tracker interest rates had become available. The Provider notes that the letter included a **Request for Tracker Mortgage Conversion Request Form**. The Provider outlines that the First Complainant contacted the Provider on **14 November 2005** enquiring about the tracker interest rate and it responded on the same day confirming "*that a new Letter of Sanction would be issued*".

The Provider states that on **15 November 2005** it issued a **Superseding Letter of Sanction** "*to facilitate a 3 month moratorium and 2 years interest only*" and provided "*the maximum €190,460 on the SPR* [staff preferential interest rate] *and the remaining €249,540 on the Bank's variable Home Loan interest rate*".

The Provider submits that on **07 December 2005** it contacted the First Complainant by internal email "*confirming that everything had been received in order to release the funds*" and also asking whether he "*wished to avail of the 1 year New Business Fixed interest rate of 2.75%*" on both mortgage loans. The Provider states that its "*practice was to inform customers that a 1 year New Business Fixed rate of 2.75% was available*" and this was the lowest rate that could be applied to the mortgage loan accounts at the time. The Provider notes that the First Complainant responded confirming that the Complainants would like to avail of the one-year new business fixed rate.

The Provider details that the two mortgage loan accounts drew down on **07 December 2005** on the 1-year new business fixed interest rate of 2.75% as follows:

1. Mortgage loan account ending ***6166*** in the amount of €190,460.00; and
2. Mortgage loan account ending ***6240*** in the amount of €249,540.00.

The Provider notes that the bridging loan facility under mortgage loan account ending ***6323*** was cleared and closed on **07 December 2005** following drawdown of mortgage loan accounts ending ***6166*** and ***6240***.

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The Provider states that on the expiry of the 1-year fixed interest rate period, *"Mortgage Loan Account ending 6166 was converted to the SPR* [staff preferential rate] *of 3% and Mortgage Loan Account ending 6240 was converted to the Bank's variable Home Loan interest rate of 4.35%, in line with the Letter of Sanction dated 15 November 2005*".

The Provider submits that it was "*not obliged to offer the Complainants a Tracker interest rate, however Tracker interest rates were an available interest rate for the Complainants to choose from following the expiry of the 1 year Fixed interest rate period on 19 December 2006*". The Provider submits that the option to convert mortgage loan account ending ***6166*** to a tracker interest rate was available to the Complainants up to late **2008** when the tracker interest rate product was withdrawn from the market. The Provider notes that it "*has no record of such a request from the Complainants following drawdown on 7 December 2005*". The Provider is of the view that, based on the **Superseding Letter of Sanction** for mortgage loan account ending ***6166***, "*the Complainants did not have a contractual entitlement for a Tracker interest rate to be applied to Mortgage Loan Account ending 6166 on expiry of the 1 year Fixed interest rate of 2.75% on 19 December 2006*".

The Provider details that on **13 March 2007**, the Complainants wrote to the Provider "*requesting for the interest rate on Mortgage Loan Account ending 6240 to be reduced from 4.6% to 4.1%*". The Provider states that the interest rate to which the Complainants were referring to, was the tracker interest rate of 4.1% (ECB 3.5% + 0.6% margin). The Provider asserts that it complied with this request and applied a tracker interest rate of 4.1% to mortgage loan account ending ***6240*** on **20 March 2007**. The Provider outlines that it issued a letter to the Complainants on **09 May 2007** confirming "*that the Tracker interest rate was applied to this Account*". The Provider explains that there is a "*typo*" in the confirmation letter "*as the letter notes that the Tracker interest rate of 4.35% was applied to the account on 20 March 2007*". The Provider states that the tracker interest rate changed from ECB 3.5% + 0.6% margin to ECB 3.75% + 0.6% margin. The Provider notes that the correct tracker interest rate of 4.1% (ECB 3.5% + 0.6%) was applied to the mortgage loan account ending ***6240*** on **20 March 2007** "*as this was the correct applicable rate at the time*".

The Provider states that "*No such instruction was made in respect of Mortgage Loan Account ending 6166 and in this regard the Bank is satisfied that the Complainants were aware of the interest rate attaching, that being the SPR* [staff preferential rate]". The Provider outlines that if the Complainants wished to avail of the same tracker rate on mortgage loan account ending ***6166***, they could have included this account in their request. The Provider explains that the Complainants "*could have requested that a Tracker interest rate be applied to Mortgage Loan Account ending 6166*" up until late **2008**, however they did not do so.

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The Provider states that it is satisfied that the mortgage loan documentation pertaining to mortgage loan accounts ending ***6240*** and ***6166*** 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 on mortgage loan account ending ***6166*** on the expiry of the fixed interest rate period in **2006**.

<u>Decision</u>

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 **20 May 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, my final determination is set out below.

In order to determine this complaint, it is necessary to review and set out the relevant provisions of the Complainants' mortgage loan documentation. It is also necessary to

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consider the details of certain interactions between the Provider and the Complainants between **2004** and **2006**.

The complaint relates to mortgage loan account ending ***6166*** however I consider it beneficial, in the context of this complaint, to also refer to mortgage loan accounts ending ***6240*** and ***6323*** to provide background to the overall mortgage journey.

The evidence shows that the Complainants completed a **mortgage loan application form** through the Provider's staff business unit on **17 June 2004** seeking a mortgage loan of €390,000.00 to fund construction of a self-build property.

The Complainants' application for the mortgage loan was approved, and a **Letter of Sanction** approving a bridging loan facility was issued on **24 June 2004** for the sum of €330,000.00 at a variable interest rate of 3.3%. On **04 August 2004**, the evidence shows that the First Complainant sent an internal email to the Provider enquiring about increasing the approved mortgage loan amount to €350,000.00 and including the outstanding mortgage on their existing private dwelling house of €180,000.00 in the bridging loan facility.

The Provider issued a **Superseding Letter of Sanction** dated **18 August 2004** for a bridging loan facility under mortgage loan account ending ***6323*** for the sum of €530,000.00 at the variable interest rate of 3.3%.

The First Complainant sent an internal email to the Provider dated **23 September 2004** for the purposes of confirming the amount to be drawn down as follows:

> *"…*
> *The amount of our bridging facility that we need to draw is * 40,700 which represents a deposit of * 38,000 to the builder and Architects fees already paid by ourselves of * 2,700.*
> *…"*

The **mortgage loan account statements** submitted in evidence detail that mortgage loan account ending ***6323*** drew down in the sum of €40,700.00 on **24 September 2004**. The remaining balance of the bridging loan under mortgage loan account ending ***6323*** drew down in stages between **9 December 2004** and **15 March 2005**.

The First Complainant contacted the Provider by internal email dated **19 September 2005** requesting an extension of the bridging loan facility as follows:

> *"…*

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If it's OK with you [redacted] – we would like to extend the Bridging facility for 1 month until we get a final and exact figure from the builder.
…"

The Provider responded on the same day confirming that it put "*limit on to 25/11/05*" for the bridging loan facility.

The evidence shows that the Complainants subsequently sought to restructure their finances through the staff business unit and the Provider issued a **Letter of Sanction** dated **17 October 2005** which details the following:

"…
Preferential Rate Loan Account no: [6166]
Commercial Rate Loan Account no: [6240]

***Facility**:* *Staff House Loan*

***Amount**:* *1. €190,460 (One hundred and ninety thousand, four hundred and sixty Euro) on Preferential Rate.*
2. €249,540 (Two hundred and forty nine thousand, five hundred and forty Euro) on Commercial Rate.

***Purpose**:* *1&2. To purchase a site and build main residence at the rear of [redacted address]*

***Interest**:* *1. 3% per annum fixed compound interest provided that if you resign or are dismissed from the service of the Bank, then the Bank's then applicable variable Commercial Home Loan rate of interest will apply from the date of your resignation or dismissal.*
2. Interest will be charged at the Bank's variable Home Loan Rate. The rate is currently at 3.3%, which mirrors the Bank's Commercial variable home Loan Rate.

Repayment: *1. The preferential facility is repayable on demand. Without prejudice to the Bank's right to demand repayment at any time, the preferential facility is to be repaid by consecutive monthly instalments of €859.00 by direct debit, for 27 years.*
2. The commercial facility is repayable on demand. Without prejudice to the Bank's right to demand repayment at any time, the commercial facility is to be repaid by consecutive monthly instalments of €1165.00 by direct debit, for 27 years.
…"

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The Provider has supplied in evidence an internal staff mail issued by the Provider's staff business unit to staff customers dated **08 November 2005** announcing the introduction of tracker interest rates for staff customers. The internal mail states as follows:

> *"Dear Colleagues,*
>
> *I am pleased to announce an enhancement to our range of [name of Provider's home loan product] [p]roducts with the introduction of a Tracker Home Mortgage in Staff Business.*
>
> *A Tracker Mortgage is a Variable Interest Rate Mortgage. It is called a Tracker because the interest rate 'tracks' the European Central Bank (ECB) rate. A Tracker type mortgage meets the needs of those customers who wish to avail of a variable rate of interest, but want a guarantee on the margin that will be charged for the life of the mortgage.*
>
> *Next week we will be writing to all staff giving full details of the Tracker Product and on how to apply. Information on the Tracker Mortgage Product will also be available on our "Staff Business Web site" under the "HR Link" on the Intranet…"*

The Provider subsequently issued the following internal staff mail on **14 November 2005** in relation to the introduction of tracker interest rates for staff customers:

> *"Dear Colleague,*
>
> *Staff Business is pleased to announce an enhancement to our range of [name of Provider's home loan product] loan products with the introduction of the new Tracker Home Mortgage. Given the current interest rate environment, this product may offer Staff the opportunity to operate their mortgage on a lower variable interest rate.*
>
> *We are enclosing an Information sheet in the form of Frequently Asked Questions to enable you review the features of the Tracker Home Mortgage.*
>
> *If you decide having read the enclosed document that this new Tracker Mortgage Product is of interest to you, please complete the Form below, detach and return it to us in Staff Business. On receipt of same we will send you a Request Form for a Tracker Home Mortgage."*

The form at the bottom of the letter dated **14 November 2005** details as follows:

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*"**Request for Tracker Mortgage Conversion Request Form***

Name ________________ Staff No________________ [Mail]ID______________

Work Address ____

Home Address____

Work Phone No _______________________ Mobile No ____________________

Email ____

Is your present [Name of Provider's home loan product] loan with Staff Business?
Yes/No
Please send to Staff Business [Redacted] and mark Envelope "Tracker Team" "

The **Frequently Asked Questions** document appended to the staff mail of **14 November 2005** details how a tracker mortgage operates as follows:

"…

Q1 What is a tracker Mortgage?

A "Tracker" mortgage is a variable interest rate mortgage. The interest rate is based on the European Central Bank (ECB) rate (2% as at Oct 05) plus a fixed percentage margin. The fixed percentage margin is guaranteed for the life of the mortgage.

The interest rate applicable is subject to qualifying criteria.

A valuation report will be required to support your switch to a Tracker Rtae…

Q2 What difference is there between the New Tracker Home Mortgage and the existing [name of product]?

A Tracker Home Mortgage is different to a Preferential Rate loan (rate of 3% to a maximum amount of €190,460) as it –

- *Does not attract Benefit In Kind liability.*
- *Repayments may vary. The Tracker Home Mortgage product tracks the European Central Bank rate, if the 'ECB' rate is increased your repayment will also increase, and if the ECB rate decreases so will your repayments.*
- *Staff Business is not in a position to contact you personally in the event of a rate change. The repayment amount will be automatically calculated and applied to your account thereafter.*

…

A Tracker Home Mortgage is different to a Staff Business Variable rate Home Loan:

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• *Repayments may vary. The Tracker Home Mortgage product tracks the European Central Bank rate, if the ECB rate is increased your repayment will also increase, and if the ECB rate decreases so will your repayments.*

• *Staff Business is not in a position to contact you personally in the event of a rate change. The repayment amount will be automatically calculated and applied to your account thereafter.*

Q4 What interest rate can I avail of?

This depends on what we call the Loan to Value (LTV) of your home.

The 'LTV' is the percentage of the total outstanding loans against the current market value of your home (as stated on the valuation report which we need for each new application or request to switch to a Tracker).
….

For loans on your main residence the following rates will apply subject to the standard terms and conditions.

Interest Rate	*Criteria*
2.95%	*Loan to Value equal or less than 60%*
3.10%	*Loan to Value > 60%, loan equal or greater than €250,000*
3.25%	*Loan to Value > 60% , loan less than €250,000*

Q5 Can I convert my existing Preferential Rate Mortgage?

Yes, we are now accepting applications to convert existing [Product attracting the staff preferential interest rate] Mortgage secured by a main residence, to a Tracker Home Mortgage Loan.
…

Q6 Can I convert my fixed rate [name of product] loan to a tracker rate?

Yes, but if you request to switch out of a Fixed Rate Loan early you may then incur a breakage cost. You should contact Staff Business for further information.

Where you are now currently on Fixed Rate Loan, Staff Business will not be in a position to take instruction to change the Fixed Rate to a Tracker Rate at a future date. We would ask that you contact us close to the expiry date of the Fixed Interest Rate Term.

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For customers who are at this time on the new business one year fixed rate of 2.75%, this is the currently the best rate available.

…

Q11 How do I apply to switch my existing [name of Provider's home loan product] loan to a Tracker?

There are a number of ways to apply:

- *An Applications form can be downloaded from the Intranet which can be found under the HR Link, Staff Business OR*
- *You can also request a Tracker Mortgage Conversion Request Form by [internal mail] to Staff Business..."*

The First Complainant contacted the Provider by internal mail on **14 November 2005** outlining that the Complainants wished to avail of the tracker interest rate product as follows:

"…
If the new tracker rate is now available, we would like to go for it. I sent you the valuation already – our L.T.V. will be less than 60%.
…"

The Provider responded on **14 November 2005** confirming that "*a fresh sanction letter incorporating both the moratoriums and the tracker rate*" will issue. The **Letter of Sanction** dated **17 October 2005** that previously issued to the Complainants was ultimately not accepted by them.

The communications in relation to the introduction of the tracker interest rate offering to the staff business unit occurred before the issuing of the **Superseding Letter of Sanction** and before the draw down of the mortgage loans.

The **Superseding Letter of Sanction** dated **15 November 2005** details as follows:

"…
Preferential Rate Loan Account no: [6166]
Commercial Rate Loan Account no: [6240]
…
The Bank is pleased to offer you the facility below subject to the terms and conditions outlined and subject also to the Bank's General Terms and Conditions

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Governing Lending. These are legal documents and you must take them to your Solicitor for advice. ***This letter superseds*** [sic] ***the letter sent to you on the 17th October 2005.***

Facility*: Staff House Loan*

Amount*:*	*1. €190,460 (One hundred and ninety thousand, four hundred and sixty Euro) on Preferential Rate.* *2. €249,540 (Two hundred and forty nine thousand, five hundred and forty Euro) on Commercial Rate.*
Purpose*:*	*1&2. To purchase a site and build main residence at the rear of [redacted address]*
Interest*:*	*1. 3% per annum fixed compound interest provided that if you resign or are dismissed from the service of the Bank, then the Bank's then applicable variable Commercial Home Loan rate of interest will apply from the date of your resignation or dismissal.* *2. Interest will be charged at the Bank's variable Home Loan Rate. The rate is currently at 3.3%, which mirrors the Bank's Commercial variable home Loan Rate.*
Repayment:	*1. The preferential facility is repayable on demand. Without prejudice to the Bank's right to demand repayment at any time, the preferential facility is to enjoy a three month moratorium followed by consecutive monthly instalments of €477.00 to cover interest only for 2 years followed by consecutive monthly instalments of €904.00 for 25 years.* *2. The commercial facility is repayable on demand. Without prejudice to the Bank's right to demand repayment at any time, the commercial facility is to enjoy a three month moratorium followed by consecutive monthly instalments of €687.00 to cover interest only for 2 years followed by consecutive monthly instalments of €1193.00 for 25 years...."*

The **Special Conditions** contained in the **Superseding Letter of Sanction** detail as follows:

"...
Without prejudice to the Bank's right to demand repayment at any time, if you resign or are dismissed from the service of the Bank, the Bank may forthwith terminate the facility and demand repayment.

- ***Bridging loan [ending 6323] to be cleared from drawdown funds.***

..."

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The **General Terms and Conditions Governing Personal Term Loans and Loans** of the **Superseding Letter of Sanction** detail as follows:

"1. Repayment

1.1 General

The agreed repayments have been established in light of the interest rate in the credit agreement ("the specified rate"). Subsequent variations in the specified rate, where variable, are accommodated at the discretion of the Bank by:

- *An adjustment in the amount of the final repayment, or*
- *An adjustment in the number of repayments, or*
- *A revision of the amount of the regular repayments during the period of the borrowing- this will be done with the Borrower's agreement.*
-

Such variations may have the effect of increasing or reducing the total amount payable.

2. Interest

2.1 General

A schedule of variable interest rates current from time to time is available on request to the Bank or on the interest rate notice displayed at all branches of the Bank. Changes in variable interest rates apply to variable interest rate facilities from time of change. The new interest rate on a borrowing is printed on the account statement next issued after the effective date of change. New variable interest rate schedules are published in the National newspapers at time of change.

Interest is charged to accounts quarterly in arrears, in March, June, September and December, and up to date on closure of an account. The Bank reserves the right to charge interest at intervals other than quarterly upon giving three month's since notice in the National newspapers.

All interest charged by the Bank is compound interest. Interest debited to accounts therefore bears interest until paid…"

The First Complainant sent an internal mail to the Provider on **21 November 2005** to state that he had not received the new sanction letter. The Provider responded on **23 November 2005** stating that it was "*awaiting Legal & Securities to sign off on the new*

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sanction letter for the tracker mortgage. I will switch you today if thats ok and follow up with the sanction letter in due course".

Prior to drawing down the mortgage funds, the Provider emailed the First Complainant on **07 December 2005** confirming that it "*received everything in order to release the funds*" and sought confirmation as to whether the Complainants wished to avail of a one-year fixed new business rate at drawdown as follows:

> *"…*
> *Can you also confirm to me by [internal mail], that you wish to avail of the special rate for new business, of 2.75% fixed for 1 year.*
> *…"*

The First Complainant responded on **07 December 2005** confirming that the Complainants "*would like to avail of the 2.75% 1 year fixed offer*".

I have been provided with no evidence to suggest that the Complainants sought to apply a tracker interest rate at drawdown of the mortgage loans despite their previous enquiries in relation to the Provider's tracker interest rate offering.

The **Superseding Letter of Sanction** dated **15 November 2005** offered the Complainants two mortgage loan accounts, (1) a preferential rate mortgage loan under mortgage loan account ending ***6166*** on the Provider's staff preferential rate of 3% and (2) a commercial rate variable home loan under mortgage loan account ending ***6240*** on the Provider's variable home loan rate of 3.3%. The Provider has submitted that, separate to the terms and conditions outlined in the **Superseding Letter of Sanction** dated **15 November 2005**, the Complainants chose to avail of a one-year new business fixed interest rate of 2.75% at drawdown of mortgage loan accounts ending ***6166*** and ***6240***. The evidence shows that the one-year new business fixed interest rate of 2.75% was the lowest interest rate available to the Complainants at the time. The one-year new business fixed interest was lower than the tracker interest rate of 2.95% that was available from the Provider's staff business unit for mortgage loans with a *"Loan to Value equal or less than 60%".*

The **mortgage loan account statements** submitted in evidence show that mortgage loan account ending ***6166*** drew down on **07 December 2005** in the sum of €190,460.00 on a fixed interest rate of 2.75%. The **mortgage loan account statements** for mortgage loan account ending ***6166*** refer to the account name as "*1YR FXD EXP 25/12/06 CAN GO 3%".* The **mortgage loan account statements** also show that mortgage loan account ending ***6240*** drew down on **07 December 2005** in the sum of €249,540.00 on a fixed interest rate of 2.75%.

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The bridging loan facility was cleared and closed on **07 December 2005** following draw down of mortgage loan accounts ending ***6166*** and ***6240*** and in line with the **Special Conditions** of the **Superseding Letter of Sanction** dated **15 November 2005**.

The Complainants submit that the Provider incorrectly failed to offer them a tracker interest rate on mortgage loan account ending ***6166*** on the expiry of the one-year fixed interest rate period in **December 2006**. In this regard, the Complainants assert that they "*had a reasonable expectation of both accounts reverting back to the Tracker rate following the expiry of the fixed rate periods*".

It is the **Superseding Letter of Sanction** dated **15 November 2005** which forms the basis of the mortgage loan agreement between the parties. The particulars of the **Superseding Letter of Sanction** dated **15 November 2005** in relation to mortgage loan account ending ***6166*** envisaged that a staff preferential interest rate of 3% would apply to the mortgage loan. The **Superseding Letter of Sanction** dated **15 November 2005** in relation to mortgage loan account ending ***6240*** envisaged that the Provider's *"variable Home Loan rate"* would apply to the mortgage loan. The staff preferential interest rate and the Provider's *"variable Home Loan rate"* made no reference to varying in accordance with variations in the European Central Bank main refinancing rate. The terms and conditions of the **Superseding Letter of Sanction** dated **15 November 2005** that was ultimately accepted by the Complainants contained no contractual entitlement to a tracker interest rate at any stage during the mortgage journey. It was always open to the Complainants to decline the Provider's loan offer if they were not happy with the interest rates that were offered.

The **mortgage loan account statements** submitted in evidence show that the fixed interest rate period on mortgage loan account ending ***6166*** expired on **21 December 2006** at which point it converted to a staff preferential interest rate of 3%, as provided for in the **Superseding Letter of Sanction** dated **15 November 2005**. The **mortgage loan account statements** submitted in evidence show that the fixed rate interest period on mortgage loan account ending ***6240*** expired on **21 December 2006** at which point it converted to the Provider's variable home loan interest as set out in the **Superseding Letter of Sanction** dated **15 November 2005**. The Provider's variable home loan interest rate was 3.3% when the **Superseding Letter of Sanction** issued in **November 2005** however it had increased to 4.60% in **December 2006** when the new business one-year fixed rate ended.

When the new business one-year fixed rate ended in respect of both mortgage loan accounts, the evidence shows that the Provider had already introduced tracker interest rates as part of its product offering to staff customers. This was information that was available from the staff business unit and staff customers were free to seek information from the Provider in this regard. The evidence shows that the Complainants had previously made enquiries as to the Provider's tracker interest rate offering before drawing down

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their mortgage loans, but they ultimately chose to avail of the lower new business one-year fixed interest rate at drawdown.

Consequently, it was open to the Complainants to approach the Provider's staff business unit upon expiry of the new business one-year fixed interest rate period and explore the option of applying a tracker interest rate to mortgage loan accounts ending ***6166*** and ***6240*** in **December 2006**. However, I have been provided with no evidence to suggest that the Complainants applied to convert their mortgage loan accounts to a tracker interest rate when the fixed interest rate period expired in **December 2006**.

In order for the Complainants to have a contractual right to be offered a tracker interest rate on their mortgage loan accounts, 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 **Superseding Letter of Sanction** dated **15 November 2005**. Rather, the **Superseding Letter of Sanction** dated **15 November 2005** provided for a staff preferential interest rate of 3% in respect of mortgage loan account ending ***6166*** and the Provider's variable home loan interest rate in respect of mortgage loan account ending ***6240***. There is no reference to a tracker interest rate applying to the mortgage loan accounts in the mortgage loan agreement.

Even if the Complainants did specifically request a tracker interest rate to be applied to the mortgage loan accounts in **2006**, it was entirely within the Provider's commercial discretion as to whether it wished to accede to the Complainants' request and offer the Complainants tracker interest rate options.

The evidence shows that the Complainants subsequently requested a tracker interest rate in relation to mortgage loan account ending ***6240*** on **13 March 2007** as follows:

> *"…Re: [Complainants' names] Account No: ending [6240] Property [address of property]*
>
> *Dear Sirs,*
>
> *With regard to the above account, you already hold a valuation on file confirming the value of this property at €1.0 million.*
>
> *Accordingly, please reduce the Interest rate from 4.60% to 4.10% as per your recent offer…"*

The Provider wrote to the Complainants on **09 May 2007** as follows:

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"…Staff Tracker Home Mortgage Account Number: [ending 6240]

We are pleased to confirm that as requested we have now applied a Tracker rate to your accounts. The Tracker rate ["4.35"] is the European Central Bank's main refinancing operations minimum bid rate ["3.75"] plus an agreed margin ["0.60"] over that rate. Tracker "tracks" changes in the ECB and will change within 5 working days of an ECB rate change.

The rate applying to your accounts from the 20th March is 4.35% (including the agreed margin of 0.60%). Your revised monthly repayments are €860.07 and has taken effect from your last scheduled repayment on the 26th March 2007.

There is no relationship between the Standard Variable Rate and the Tracker Rate. a Tracker Rate may be higher or lower than the Bank's Standard Variable Rate.

Your agreed margin as set out above will not change, even if the Bank subsequently introduces a different Tracker Mortgage offering, at a margin which may be either higher or lower than your agreed margin. Your margin is guaranteed for the full term of the loan unless there is a material change in the particulars of the loan.

You may switch from a Tracker Rate to a Fixed Rate or to the Standard Home Loan Variable Rate at any time and subject to the qualifying criteria, you may also switch to the Staff Preferential Rate. Any switching in or out of a Tracker Mortgage Rate will be at the prevailing Mortgage Rates at the time of switching.

If you do subsequently switch to a Fixed Rate, on the expiry of the Fixed Rate, the Home Loan will be converted to either the Staff Preferential Rate or Standard Variable rate as appropriate. You can, of course, opt at that stage to switch to any of the other prevailing Bank's Home Mortgage rates at that time.
…"

The Provider acknowledges in its submissions that there was a typographical error in the above letter **09 May 2007**, as the letter notes that the tracker interest rate of 4.35% was applied to mortgage loan account ending ***6240*** on **20 March 2007**. The Provider submits that the tracker interest rate changed from 4.1% (ECB 3.5% plus a margin of 0.6%) to 4.35% (3.75% plus a margin of 0.6%) on **21 March 2007** due to a change in the ECB rate. The correct tracker interest rate of 4.1% (ECB 3.5% plus a margin of 0.6%) was applied to mortgage loan account ending ***6240*** on **20 March 2007** as this was the correct applicable rate at the time.

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I have been provided with no evidence to show that the Complainants applied to convert mortgage loan account ending ***6166*** to a tracker interest rate in **2007**. The Complainants could have explored the option of applying a tracker interest rate to mortgage loan account ending ***6166*** up until the tracker rate offering was withdrawn from the market by the Provider in **late 2008**, however they did not do so in respect of mortgage loan account ending ***6166***.

The evidence shows that the Complainants only opted to apply the tracker interest rate to the larger portion of their borrowings and keep the smaller portion of their borrowings on the staff preferential rate of 3%.

In circumstances where the **Superseding Letter of Sanction** dated **15 November 2005** provided for a staff preferential interest rate of 3% on mortgage loan account ending ***6166*** and a variable home loan rate on mortgage loan account ending ***6240***, these were the interest rates that were correctly applied by the Provider to the mortgage loan accounts when the new business one-year fixed interest rate came to an end. Mortgage loan account ending ***6166*** never operated on a tracker interest rate and the **Superseding Letter of Sanction** dated **15 November 2005** contained no entitlement to a tracker interest rate.

The evidence supports that the Provider acted in line with the terms and conditions of the **Superseding Letter of Sanction** dated **15 November 2005** by applying the staff preferential rate of 3% to the Complainants' mortgage loan account ending ***6166*** on the expiry of 1-year new business fixed interest rate in **2006**.

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

<u>Conclusion</u>

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

18 June 2024

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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.