An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2025-0217
Sector:	Banking
Product / Service:	Tracker Mortgage
Conduct(s) complained of:	Failure to offer a tracker rate throughout the life of the mortgage Failure to offer a tracker rate at point of sale
Outcome:	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

This complaint relates to four mortgage loan accounts held by the Complainant with the Provider. The mortgage loan accounts which are subject of this complaint were secured on the Complainant's former private dwelling house.

The **Letter of Sanction** dated **18 October 2002** for mortgage loan accounts ending ***1364*** and ***1281*** provided for loan amount of €190,460.00 over a term of 25 years in relation to mortgage loan account ending ***1364*** and a loan amount of €69,540.00 over a term of 25 years in relation to mortgage loan account ending ***1281***.

The **Letter of Sanction** dated **08 September 2004** in relation to mortgage loan account ending ***1521*** provided for a loan amount of €34,000.00 and the term of the loan was 24 years.

The **Letter of Sanction** dated **21 April 2005** in relation mortgage loan account ending ***1794*** provided for a loan amount of €33,500.00 and the term of the loan was 23 years.

The Complainant's Case

The Complainant submits that he took out a mortgage loan with the Provider in **May 2003** which was split into two mortgage loan accounts ending ***1364*** and ***1281***. The Complainant submits that the initial applicable interest rate for mortgage loan account ending ***1281*** was one-year new business fixed interest rate of 2.95%.

The Complainant submits that in or around **June 2004**, prior to the expiry of the new business fixed interest rate period, he received a letter from the Provider advising that as he had not requested the mortgage to switch to a staff preferential rate, it would be converted to the normal commercial variable rate. The Complainant states that he was not given the option to switch to a tracker interest rate at this time, which he *"should have been offered".* The Complainant maintains that he should have been offered a tracker mortgage from **2004**.

The Complainant submits that in **2004** and **2005** he drew down additional funds under mortgage loan accounts ending ***1521*** and ***1794.***

The Complainant outlines that he moved part of the mortgage (account ending ***1364***) to the staff preferential rate of 3% with the remaining accounts ending ***1281, 1521*** and ***1794*** to the Provider's variable home loan rate. The Complainant submits that mortgage loan accounts ending ***1281, 1521*** and ***1794*** were switched to a staff tracker home mortgage on **10 May 2007.**

The Complainant details that the Provider informed him in **January 2009** that mortgage loan account ending ***1364*** would switch to a standard variable rate, as *"the Staff Preferential rate was no longer beneficial."* The Complainant submits that there was no option to switch from the staff preferential rate to a tracker interest rate. The Complainant maintains that he should have been given the option to switch from the staff preferential rate to a tracker interest rate in **January 2009.**

The Complainant states that he moved house in **2013** and queried if he could keep his existing tracker mortgages and was advised that he could not even though he intended to keep his mortgage business with the Provider. The Complainant submits that he should have been allowed to keep his tracker mortgage when he moved house, in line with the letter from staff business dated **10 May 2007.**

The Complainant submits that as the Provider ceased to offer tracker mortgage rates in **2008**, he no longer had the option to select a tracker mortgage rate for his mortgage loan accounts. The Complainant is of the view that he was being *"penalised as a staff member"* and that if he was not an employee of the Provider, he would not have had his mortgage with the Provider's staff business in **2003** and **2004**.

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The Complainant is seeking as follows:

1. A tracker interest rate to be applied to the loan accounts ending ***1364, 1281, 1521*** and ***1794***;
2. A refund of the overpaid interest from **2004** to present.

The Provider's Case

The Provider submits that on **08 October 2002**, the Complainant submitted a mortgage loan application form signed jointly with a third party, to the Provider's staff business unit seeking mortgage finance to assist with the purchase of a new main residence.

The Provider states that it was the practice of the staff business unit to provide details to staff of the interest rates available when requested to enable them to make an informed decision. The Provider states that it does not offer advice in relation to interest rates, but only provides information on interest rate options to a customer when a customer requests such information.

The Provider states that the mortgage loan application form completed by the Complainant was only available from the staff business unit exclusively for its staff customers. The Provider submits that the application form is completed by employees of the Provider when applying for a home loan through the staff business unit. The Provider submits that the mortgage loan application form was specifically for the Provider's preferential home loan product.

The Provider submits that the type of home loan that was applied for was a variable interest rate product which attracted a staff preferential rate which remained static for the life of the loan contingent on certain conditions. The Provider states that staff customers could borrow up to the maximum amount of €190,460.00 on a staff preferential rate with the remainder, if any, on either the Provider's variable interest rate, fixed interest rates, or while available, tracker interest rates.

The Provider submits that where a staff member resigned from the Provider, or was dismissed, the loan would move to the Provider's variable interest rate. Additionally, the Provider states that where customers opted to switch from the staff preferential rate, they retained the option of switching back to the staff preferential rate at any time, while in the employment of the Provider.

The Provider submits that at the time the application was being processed, when mortgage customers of the staff business unit requested a joint account, the mortgage was set up in the staff member's sole name with a spouse/joint owner of the property

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providing a guarantee. The Provider states that the rationale for this at the time was to facilitate the offer of the staff preferential rate of 3% to the staff borrower.

The Provider states that it issued a **Letter of Sanction** dated **18 October 2002** which provided for a mortgage loan in the sum of €260,000.00. The Provider submits that the **Letter of Sanction** provided for a loan in the sum of €190,460.00 on a staff preferential interest rate of 3% which would operate under mortgage loan account ending ***1364*** and the remaining balance of €69,540.00 would operate on the Provider's variable loan interest rate of 4.25% under mortgage loan account ending ***1281.***

The Provider submits that prior to drawdown of the mortgage loan, the practice in the staff business unit was to inform customers that a one-year new business fixed interest rate of 2.95% was available. The Provider states that the Complainant availed of this fixed interest rate for both mortgage loan accounts ending ***1364*** and ***1281***. The Provider states that the one-year new business fixed interest rate of 2.75% was separate to the terms outlined in the **Letter of Sanction** dated **18 October 2002**.

The Provider submits that mortgage loan account ending ***1364*** and mortgage loan account ending ***1281*** were both drawn down on a one-year new business fixed interest rate of 2.95% on **29 May 2003.**

The Provider submits that on the expiry of the one-year fixed interest rate of 2.95%, the staff business unit issued a letter to the Complainant advising that the one-year fixed interest rate had expired and as it had not received an instruction to apply the staff preferential rate, the Provider's variable interest rate of 3.3% would be applied. The Provider submits that mortgage loan accounts ending ***1364*** and ***1281*** were converted to the Provider's variable interest rate of 3.3% on **22 June 2004.** The Provider submits that the staff preferential rate of 3% was applied to mortgage loan account ending ***1364*** on **25 June 2004.**

The Provider submits that on **25 August 2004**, the Complainant submitted a mortgage loan application form to the Provider's staff business unit seeking an equity release of €34,000.00 over the existing private dwelling house towards purchasing a share in an investment property.

The Provider states that it issued a **Letter of Sanction** dated **08 September 2004** which provided for a loan in the sum of €182,766.00 on a staff preferential rate of 3% in relation to mortgage loan account ending ***1364***, a sum of €66,699.00 on the Provider's variable interest rate of 3.3% in relation to mortgage loan account ending ***1281***, along with an equity release in the amount of €34,000.00 on the Provider's variable interest rate of 3.3% on a new mortgage loan account ending ***1521.***

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The Provider submits that it sent an internal mail to the Complainant on **21 September 2004** advising that funds would be lodged to his account the same day and it asked the Complainant if he would like to avail of the one-year new business fixed interest rate of 2.75%. The Provider states that the Complainant responded on **21 September 2004** confirming that he wished to avail of this interest rate option.

The Provider submits that mortgage loan account ending ***1521*** was drawn down on **21 September 2004.**

The Provider submits that on **13 April 2005**, the Complainant submitted a mortgage loan application form to the Provider's staff business unit seeking an equity release of €33,500.00 for an investment property abroad, furniture for the investment property and to restructure debt.

The Provider submits that it issued a **Letter of Sanction** dated **21 April 2005** to the Complainant which provided for a loan in the sum of €180,500.00 on a staff preferential rate of 3% in respect of mortgage loan account ending ***1364,*** a sum of €66,000.00 on the Provider's variable home loan interest rate of 3.3% in relation to mortgage loan account ending ***1281***, a sum of €30,500.00 on the Provider's variable interest rate of 3.3% in relation to mortgage loan account ending ***1521*** and an additional equity release in the amount of €33,500.00 on the Provider's variable home loan interest rate of 3.3% in relation to a new mortgage loan account ending ***1794.***

The Provider submits that the Complainant chose to avail of the one-year new business fixed rate for mortgage loan account ending ***1794***. Mortgage loan account ending ***1794*** drew down on a one-year new business fixed interest rate of 2.75% on **28 April 2005.** The Provider states that this was separate to the terms outlined in the **Letter of Sanction** dated **21 April 2005.**

The Provider submits that on **28 October 2005**, on the expiry of the one-year fixed interest rate of 2.75%, the mortgage loan account ending ***1521*** was converted to the Provider's variable home loan interest rate in line with the **Letter of Sanction** dated **21 April 2005.**

The Provider submits that on **04 May 2006**, the Provider issued a press release introducing a new one-year discounted tracker interest rate for new mortgages to their mortgage offering and also sent an internal information mail to all staff members (including the Complainant) on the same day. The Provider states that on **22 May 2006**, an internal information mail was sent to all staff members (including the Complainant) from the staff business unit notifying them that the recently announced new business discounted tracker interest rates were also available through the staff business unit.

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The Provider submits that on expiry of the one-year fixed interest rate of 2.75% on **13 June 2006**, mortgage loan account ending ***1794*** was converted to the Provider's variable interest rate in line with the **Letter of Sanction** dated **21 April 2005.**

The Provider outlines that the Complainant submitted a Staff Tracker Mortgage Conversion Request Form to the staff business unit on **15 March 2007**, specifically requesting a tracker interest rate to be applied to mortgage loan accounts ending ***1281, 1521*** and ***1794.*** The Provider submits that a tracker interest rate of 4.25% (ECB rate of 3.75% plus a margin of 0.75%) was applied to mortgage loan accounts ending ***1281, 1521*** and ***1794*** on **20 March 2007**, while mortgage loan account ending ***1364*** remained on the staff preferential rate of 3%. The Provider further submits that it issued a letter to the Complainant confirming that a tracker interest rate had been applied to mortgage loan accounts ending ***1281, 1521*** and ***1794,*** in line with the Complainant's request. The Provider notes that there was a typographical error in this letter as it stated that the tracker interest rate that was applied to mortgage loan accounts ending ***1281***, ***1521*** and ***1794*** was 4.5% (ECB rate of 3.75% plus a margin of 0.75%). However, the Provider states that a tracker interest rate of 4.25% (ECB of 3.5% plus a margin of 0.75%) was applied to mortgage loan accounts ending ***1281, 1521*** and ***1794*** on **20 March 2007**. The Provider submits that it apologises for any confusion and states that the Complainant suffered no financial detriment on foot of this typographical error.

The Provider submits that it withdrew tracker interest rates in **late 2008** for new mortgage customers, and existing mortgage customers who wished to change from their current contractual interest rate to a tracker interest rate, including staff customers.

The Provider states that it is satisfied that the various **Letters of Sanction** that issued to the Complainant in relation to mortgage loan accounts ending ***1364, 1281, 1521*** and ***1794,*** and the applicable terms and conditions are sufficiently clear and transparent as to the Complainant's interest rate entitlements across all four loan accounts.

The Provider states that mortgage loan accounts ending ***1364***, ***1281***, ***1521*** and ***1794*** are no longer active with the Provider. The Provider outlines that the Complainant sold his private dwelling house in **2013.** The Provider submits that mortgage loan accounts ending ***1281***, ***1521*** and ***1794*** remained on a tracker interest rate of ECB + 0.75% until the accounts were cleared and closed in **July 2013.** In response to the Complainant's assertion that he should have been allowed to retain the tracker interest rate when he moved house, the Provider states that changing residence "*was considered a material change in the particulars of the loan"* and there was no entitlement, in **July 2013**, for a tracker interest rate to be applied to the new mortgage facility for the Complainant's new residence.

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The Complaint for Adjudication

The complaint for adjudication is as follows:

1. The Provider incorrectly failed to offer a tracker interest rate to the Complainant when the one-one fixed interest rate period expired in **June 2004** on mortgage loan accounts ending ***1364*** and ***1281***;
2. The Provider incorrectly failed to offer a tracker interest rate to the Complainant when he applied for and drew down mortgage loan account ending ***1521*** in or around **September 2004** and mortgage loan account ending ***1794*** in or around **April 2005**; and
3. The Provider incorrectly failed to allow the Complainant to retain the tracker interest rate that had applied to mortgage loan accounts ending ***1281***, ***1521*** and ***1794*** when he moved house in **2013.**

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 Complainant was 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 **27 November 2025**, 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.

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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 the complaint, it is necessary to review and set out the relevant provisions of the Complainant's mortgage loan documentation in relation to mortgage loan accounts ending ***1364***, ***1281***, ***1521*** and ***1794***. It is also necessary to set out the details of certain interactions between the Provider and the Complainant between **2004** and **2013.**

The evidence shows that the Complainant completed a **staff mortgage application form** through the Provider's staff business unit on **08 October 2002** seeking a loan of €260,000.00 for a term of 25 years. The **staff mortgage application form** was also signed by a third party however the Provider submits that it was practice at the time that the loan offer would issue in the sole name of the employee of the Provider so that a staff member could avail of a staff preferential rate of 3%.

The Provider issued a **Letter of Sanction** dated **18 October 2002** in the sole name of the Complainant which details as follows:

> ***"1) Preferential Rate Loan Account no: [1018]***
> ***2) Commercial Rate Loan Account no: [1281]***
>
> *Dear [Complainant]*
>
> *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 Governing Lending as set out in the leaflet dated 6th July, 1998, a copy of which is enclosed. These are legal documents and you must take them to your Solicitor for advice.*
>
> ***Facility:*** *Staff House Loan.*
>
> ***Amount:*** *1. €190,460 (One hundred ninety thousand four hundred and sixty Euro) on Preferential Rate.*
> *2. €69,450 (Sixty nine thousand five hundred and forty Euro) on Commercial Rate.*
>
> ***Purpose:*** *1. To assist in the purchase of the above property.*

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1 year fixed new business [handwritten note in the loan documentation]

Interest: *1.* ~~*3%*~~ [handwritten strikethrough] ['1 year fixed new business' in handwriting] *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 4.25% 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 over 25 years from date of drawdown by consecutive monthly instalments of €903.18 by direct debit.*

2. *The commercial facility is repayable on demand. Without prejudice to the Bank's right to demand payment at any time, the commercial facility is to be repaid over 25 years from date of drawdown by consecutive monthly instalments of €376.72 by direct debit.*

Special Conditions: *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."*

The Provider submits that mortgage loan account ending ***1364*** was incorrectly quoted as mortgage loan account ending ***1018*** in the above **Letter of Sanction**.

General Condition 2 of the **General Terms and Conditions Governing Personal Term Loans and Loans** attached to the **Letter of Sanction** dated **18 October 2022** details as follows:

"2. Interest

2.1 General

A schedule of variable interest rates current from time to time is available on requests to the Bank or on the interest rate notice displayed at all branches of the

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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.

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 notice in the National newspapers at time of change.

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

The **Letter of Sanction** dated **18 October 2002** offered the Complainant two mortgage loan accounts, (1) a preferential rate mortgage loan under mortgage loan account ending ***1364*** on the Provider's staff preferential rate of 3% and (2) a variable home loan rate mortgage loan under mortgage loan account ending ***1281*** on the Provider's variable home loan rate of 4.25%. The Provider has submitted that, separate to the terms and conditions outlined in the **Letter of Sanction** dated **18 October 2002**, the Complainant chose to avail of a one-year new business fixed interest rate of 2.75% in respect of mortgage loan accounts ending ***1364*** and ***1281*** for the first year of the term of the loan. Mortgage loan accounts ending ***1364*** and ***1281*** both drew down on **29 May 2003** on a one-year fixed interest rate of 2.95%.

On expiry of the one-year fixed interest rate period, the Provider issued a letter dated **22 June 2004** to the Complainant which details as follows:

"Dear [Complainant]

I am writing to you in relation to the above Home Loan account. Last year you availed of the new business one-year fixed rate of 2.95% and were given the option to contact Staff Business if you wished your loan to switch over to the staff preferential rate, when the fixed rate expired. We wish to advise that this one-year fixed rate has now expired and as we have not received any request from you to switch to the Staff Preferential Rate the loan will now be converted to the Banks normal commercial variable rate, which is currently 3.3.%."

The above letter dated **22 June 2004** does not contain any reference to mortgage loan accounts ending ***1364*** and ***1281*** however the fixed interest rate was due to expire on both mortgage loan accounts at this time. The Provider submits that mortgage loan accounts ending ***1364*** and ***1281*** were converted to the Provider's variable home loan rate of 3.3%

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on **22 June 2004** and that the staff preferential rate of 3% was applied to mortgage loan account ending ***1364*** on **25 June 2004.**

The Complainant submits that the Provider incorrectly failed to offer him a tracker interest rate when the one-year fixed interest rate period expired in **June 2004** on mortgage loan accounts ending ***1364*** and ***1281***. In this regard, the Complainant is of the view that he would have been offered a tracker mortgage when he applied for finance in **2004** if he was not an employee of the Provider, as tracker interest rates were available to non-staff customers at the time.

Tracker interest rates were introduced by the Provider in **2002** and were available for selection by customers subject to certain eligibility and lending criteria until they were withdrawn by the Provider in **late 2008**. This was information that was publicly available in the Provider's branches and on its website. While tracker interest rate options were available generally as part of the Provider's larger suite of products when the Complainant applied for finance through the Provider's staff business unit, the Provider made the decision not to include a tracker interest rate offering in its staff business unit product offering until **September 2005**. This was a commercial decision that the Provider as a business was entitled to make.

The choice as to which interest rate option to apply for rested with the Complainant. If the Complainant wanted independent advice about the best interest rate option to suit his needs, it was a matter for the Complainant to get that advice from an independent third-party advisor. If the Complainant, as a staff member, did not wish to apply for a staff mortgage product through the Provider's staff business unit or did not wish to avail of the one-year new business fixed interest of 2.75% that was available to staff customers at the time, it was open to the Complainant to apply for a tracker interest rate outside of the staff business unit channel as a non-staff customer.

The evidence shows that the Complainant proceeded with his application through the staff business unit to avail of the staff rates on offer at the time. By doing so, and in addition to being offered the staff preferential rate on a portion of his borrowings and the Provider's variable home loan rate on another portion of his borrowings as detailed in the **Letter of Sanction** dated **18 October 2002**, the Complainant was able to avail of, and chose to avail of, the one-year new business fixed interest of 2.75% upon the inception of both mortgage loan accounts. This new business fixed interest rate was lower than any of the tracker interest rates that the Complainant could have applied for as a non-staff customer at the time.

Even if the Complainant had decided to apply for a mortgage loan outside of the staff business unit channel as a non-staff customer, there was no contractual or regulatory

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obligation on the Provider to offer the Complainant a tracker interest rate on his borrowings. It was entirely within the Provider's commercial discretion as to whether it wished to accede to the Complainant's request and offer the Complainant a mortgage loan on a tracker interest rate.

It is the **Letter of Sanction** dated **18 October 2002** which forms the basis of the mortgage loan agreement between the parties. The particulars of the mortgage **Letter of Sanction** dated **18 October 2002** in relation to mortgage loan account ending ***1364*** envisaged that a staff preferential interest rate of 3% would apply to the mortgage loan. The **Letter of Sanction** dated **18 October 2002** in relation to mortgage loan account ending ***1281*** 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"* were both variable in nature however they made no reference to varying in accordance with variations in the ECB rate.

In circumstances where the Complainant chose to avail of the one-year new business fixed interest of 2.75% at drawdown of the mortgage loans in **2004** before applying the interest rates set out in the **Letter of Sanction** dated **18 October 2002**, the staff preferential interest rate and the Provider's *"variable Home Loan rate"* would not take effect until the one-year fixed interest rate period ended in **2005**.

The evidence supports that the fixed interest rate period on mortgage loan account ending ***1364*** expired in **June 2004** at which point it converted to a staff preferential interest rate of 3%, as provided for in the **Letter of Sanction** dated **18 October 2002**. When the fixed rate interest period on mortgage loan account ending ***1281*** expired in **June 2004**, the mortgage loan account converted to the Provider's variable home loan interest as set out in the **Letter of Sanction** dated **18 October 2002**. The Provider's variable home loan interest rate had decreased to 3.3% when the new business one-year fixed rate ended.

The **Letter of Sanction** dated **18 October 2002** contained no contractual entitlement to a tracker interest rate and did not create any reasonable expectation that a tracker interest rate would be offered at any stage during the term of the loans. In circumstances where the **Letter of Sanction** dated **18 October 2002** provided for a staff preferential interest rate of 3% on mortgage loan account ending ***1364*** and a variable home loan rate on mortgage loan account ending ***1281***, these were the interest rates that were correctly applied by the Provider to the mortgage loan accounts after the new business one-year fixed interest rate came to an end. Having considered the mortgage loan documentation in particular the **Letter of Sanction** dated **18 October 2002** in relation to mortgage loan accounts ending ***1364*** and ***1281***, it is clear that there was no contractual obligation on the Provider to offer a tracker interest rate to the Complainant on expiry of the one-year fixed interest rate period in **June 2004.**

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In light of the foregoing, the evidence does not support the first aspect of the Complainant's complaint that the Provider incorrectly failed offer a tracker interest rate to the Complainant in **June 2004**, when the fixed interest rate expired on the mortgage loan accounts ending ***1364*** and ***1281.***

While mortgage loan account ending ***1364*** was operating on a staff preferential rate of 3% and mortgage loan account ending ***1281*** was operating a variable home loan rate, the evidence shows that the Complainant approached the Provider seeking additional finance. The Complainant completed a further **staff mortgage loan application form** on **25 August 2004** seeking an equity release of €34,000.00 over his existing private dwelling house towards purchasing a share in an investment property. The Provider issued a **Letter of Sanction** dated **08 September 2004** to the Complainant which details as follows:

> ***"1) Preferential Rate Loan Account no: [1364]***
> ***2) Commercial Rate Loan Account no: [1281]***
> ***3) Commercial Rate Loan Account no: [1521]***
>
> *Dear [Complainant],*
>
> *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 Governing Lending. These are legal documents, and you must take them to your Solicitor for advice.*
>
> ***Facility:*** *Staff House Loan.*
> ***Amount:*** *1. €182,766 (One hundred and eighty two thousand seven hundred and sixty six Euro) on Preferential Rate.*
> *2. €66,699 (Sixty six thousand six hundred and ninety nine Euro) on Commercial Rate.*
> *3. €34,000 (Thirty four thousand Euro) on Commercial Rate*
>
> ***Purpose:*** *1&2. Existing loan to purchase main residence [redacted address].*
>
> *3. Equity release on main residence towards purchasing a share in an investment property in [redacted location].*

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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&3. 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.*

…

Special Conditions*:*	*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."*

General Condition 2.1 of the **General Terms and Conditions Governing Personal Term Loans and Loans** provides as follows:

> *2.1 General*
> *A schedule of variable interest rates current from time to time is available on requests 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 notice in the National newspapers.*
>
> *All interest charged by the Bank is compound interest. Interest debited to accounts therefore bears interest until paid."*

The Provider sent an e-mail to the Complainant dated **21 September 2004** which details as follows:

> *"…*
> *I will be lodging funds to your account this morning, would you like to avail of the one year fixed new business rate of 2.75%?"*

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The Complainant responded to the Provider by e-mail dated **21 September 2004** as follows:

> *"…*
> *I certainly would. Just to confirm that the amount being credited today is *31,000. I will be drawing down the remainder in January.*
> *…"*

The terms of the **Letter of Sanction** dated **08 September 2004** pertaining to the €34,000.00 portion of the mortgage loan under mortgage loan account ending ***1521*** envisaged that the Provider's variable home loan rate of 3.3% would apply. The evidence shows that the Provider offered the Complainant the option to avail of a one-year fixed new business rate of 2.75% in respect of these new borrowings, which the Complainant accepted. The Provider submits that mortgage loan account ending ***1521*** drew down on **21 September 2004** on a one-year fixed interest rate of 2.75%.

The particulars of the **Letter of Sanction** dated **08 September 2004** show that mortgage loan account ending ***1364*** would remain on a staff preferential rate and mortgage loan account ending ***1281*** would remain on the Provider's variable home loan rate.

The Complainant sent an internal mail to the Provider dated **07 March 2005** seeking a further equity release loan for the purpose of purchasing a site in another jurisdiction. The Complainant completed a **staff mortgage loan application form** on **14 March 2005** seeking a mortgage loan in the amount of €33,500.00 for a term of 23 years.

The evidence shows that the Provider issued a **Letter of Sanction** dated **21 April 2005** to the Complainant which details as follows:

"Preferential Rate Loan Account no:	***[1364]***
Commercial Rate Loan Account no:	***[1281]***
Commercial Rate Loan Account no:	***[1521]***
Commercial Rate Loan Account no:	***[1794]***

> *Dear [Complainant]*
>
> *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 Governing Lending. These are legal documents, and you must take them to your Solicitor for advice.*

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Facility: *Staff House Loan*

Amount: *1. €180,500 (One hundred and eighty thousand five hundred Euro) on Preferential Rate.*
2. €66,000 (Sixty six thousand Euro) on Commercial Rate
3. €30,500 (Thirty thousand five hundred Euro) on Commercial Rate.
4. €33,500 (Thirty three thousand five hundred Euro) on Commercial Rate.

Purpose: *1.+2. Existing loan on main residence at [redacted address]*
3. Existing equity release over main residence towards purchasing of a share in an investment property in [redacted location]
4. Equity release over main residence for investment in the [redacted location] and restructure od debts.

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.*
2,3+4. 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."

General Condition 2.1 of the **General Terms and Conditions Governing Personal Term Loans and Loans** details as follows:

"2.1 General
A schedule of variable interest rates current from time to time is available on requests 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 notice in the National newspapers.

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

The terms of the **Letter of Sanction** dated **21 April 2005** pertaining to the €33,500.00 portion of the mortgage loan under mortgage loan account ending ***1794*** provided that the interest rate applicable was the Provider's variable home loan rate of 3.3%. The evidence shows that the Provider offered the Complainant the option to avail of a one-year fixed new business rate of 2.75% in respect of these new borrowings, which the Complainant accepted. The evidence shows that mortgage loan account ending ***1794*** drew down on **28 April 2005** on a one-year new business fixed interest rate of 2.75%.

The particulars of the **Letter of Sanction** dated **21 April 2005** show that mortgage loan account ending ***1364*** would remain on a staff preferential rate and mortgage loan account ending ***1281*** would remain on the Provider's variable home loan rate. At this time, mortgage loan account ending ***1521*** was still operating on the one-year fixed new business rate of 2.75%.

On expiry of the one-year fixed interest rate of 2.75% in relation to mortgage loan account ending ***1521*** on **28 October 2005**, the interest rate converted to the Provider's variable home loan interest rate of 3.3%.

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. This communication issued when the Complainant's mortgage loan account ***1281*** was still operating on the new business fixed interest rate and details 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 Busines[s].*
>
> *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.*

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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" ...."

On expiry of the one-year fixed interest rate of 2.75% in relation to mortgage loan account ending ***1794*** on **13 June 2006**, the interest rate converted to the Provider's variable home loan interest rate of 3.3%.

The evidence supports that after the Provider introduced tracker home mortgages to its staff business unit, the Complainant requested a tracker interest rate to be applied to three of his four mortgage loan accounts. The Complainant completed and signed a **Staff Tracker Mortgage Conversion Request Form** on **15 March 2007**, which details as follows:

"Please list all loans secured by this property

1. *[ending] 1281*
2. *[ending] 1364*
3. *[ending] 1521*
4. *[ending] 1794*

...
Tracker rates to apply to all loans: Yes No ✓

If No, list account numbers to which tracker rates to be applied.

[ending] 1281 + [ending] 1521 + [ending] 1794

Please Tick Appropriate Tracker Mortgage

Criteria	***Interest Rates***
Loan to Value less than or equal to 50%	*4.10% (APR 4.17%)*
Loan to Value greater than 50% - equal or less than 80%	*4.25% (APR 4.33%)* ✓
Loan to Value greater than 80%, loan less than €500,000	*4.60%(APR 4.69%)*
Loan to Value greater than 80%, loan equal or greater than €500,000"	*4.40%(APR 4.48%)*

The Provider sent a letter to the Complainant dated **10 May 2007** which details as follows:

*"...**Staff Tracker Home Mortgage Account Number:** [ending 1281] [ending 1521] and [ending 1794]*

/Cont'd...

We are pleased to confirm that as requested we have now applied a Tracker rate to your account. The Tracker rate ["4.50"] is the European Central Bank's main refinancing operations minimum bid rate ["3.75%"] plus an agreed margin ["0.75"] 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 account from the 20th March 2007 is 4.50% (including an agreed margin of 0.75%]…

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 submits that there is a typographical error in the above letter as it states that the tracker interest rate that was applied to mortgage loan accounts ending ***1281***, ***1521*** and ***1794*** was 4.5% (ECB rate of 3.75% plus a margin of 0.75%) but in fact a tracker interest rate of 4.25% (ECB rate of 3.5% plus a margin of 0.75%) was applied. The evidence supports that a tracker interest rate of 4.25% (ECB of 3.5% plus a margin of 0.75%) was applied to mortgage loan accounts ending ***1281***, ***1521*** and ***1794***, in accordance with the Complainant's instructions on **10 May 2007.**

The Complainant submits that the Provider incorrectly failed to offer him a tracker interest rate when he applied for and drew down mortgage loan account ending ***1521*** in **September 2004** and mortgage loan account ending ***1794*** in **April 2005.** In this regard, the Complainant is of the view that a tracker interest rate should have been made available to him as a staff customer when he applied for additional finance in **2004** and **2005**, as tracker interest rates were available to non-staff customers at the time.

As previously detailed, while tracker interest rate options were available generally as part of the Provider's larger suite of products when the Complainant applied for finance

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through the Provider's staff business unit in **September 2004** and **April 2005**, the Provider made the decision not to include a tracker interest rate offering in its staff business unit product offering until **September 2005**. This was a commercial decision that the Provider as a business was entitled to make.

The evidence shows that the Complainant proceeded with his application for additional finance through the staff business unit to avail of the staff rates on offer at the time. By doing so, and in addition to being offered the Provider's variable home loan rate as detailed in the **Letter of Sanction** dated **08 September 2004** as it relates to mortgage loan account ending ***1521*** and as detailed in the **Letter of Sanction** dated **21 April 2005** as it relates to mortgage loan account ending ***1794***, the Complainant was able to avail of, and chose to avail of, the one-year new business fixed interest of 2.75% upon the inception of both mortgage loan accounts. This new business fixed interest rate was lower than any of the tracker interest rates that the Complainant could have applied for as a non-staff customer at the time.

Even if the Complainant had decided to apply for additional finance outside of the staff business unit channel as a non-staff customer, there was no contractual or regulatory obligation on the Provider to offer the Complainant a tracker interest rate on his additional borrowings. It was entirely within the Provider's commercial discretion as to whether it wished to accede to the Complainant's request and offer the Complainant a mortgage loan on a tracker interest rate.

The **Letter of Sanction** dated **08 September 2004,** and the **Letter of Sanction** dated **21 April 2005** contained no contractual entitlement to a tracker interest rate and did not create any reasonable expectation that a tracker interest rate would be offered at any stage during the term of the loans. In circumstances where both **Letters of Sanction** provided for a variable home loan rate on mortgage loan accounts ending ***1521*** and ***1794,*** these were the interest rates that were correctly applied by the Provider to the mortgage loan accounts after the new business one-year fixed interest rate came to an end. Having considered the mortgage loan documentation in particular the **Letter of Sanction** dated **08 September 2004,** and the **Letter of Sanction** dated **21 April 2005**, it is clear that there was no contractual obligation on the Provider to offer a tracker interest rate to the Complainant when h drew down mortgage loan account ending ***1521*** and ***1794.***

In light of the foregoing, the evidence does not support the second aspect of the Complainant's complaint that the Provider incorrectly failed to offer him a tracker interest rate in relation to mortgage loan accounts ending ***1521*** and ***1794*** in **September 2004** and **April 2005** respectively.

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As detailed above, the evidence supports that a tracker interest rate of 4.25% (ECB of 3.5% plus a margin of 0.75%) was applied to mortgage loan accounts ending ***1281***, ***1521*** and ***1794***, in accordance with the Complainant's instructions on **10 May 2007.**

The Provider announced the withdrawal of tracker interest rates for new business by way of a press release issued in late **2008,** which details as follows:

> *"[the Provider] today announces that it will no longer offer Tracker Mortgages to new mortgage applicants effective from close of business today, [late 2008]*
> *…*
> *Existing customers with Tracker Mortgages are not affected…"*

Mortgage loan accounts ending ***1281***, ***1521*** and ***1794*** remained on a tracker interest rate at this time.

The evidence shows that the Complainant approached the Provider in **2012** as he was looking to sell the secured property. The Complainant was looking to retain the tracker interest rate that had applied to three of his existing loans on new finance for his new property. E-mail correspondence exchanged between the Complainant and the Provider in **September 2012** has been submitted in evidence and the relevant extracts are set out below.

An e-mail dated **17 September 2012** from the Complainant to the Provider details as follows:

> *"…*
> *You had given me approx mortgage figures in May based on my salary etc. Would these have changed since then, could I get updated figures?*
>
> *The other question I have are:*
> *(1) If I sell my house but somewhere else, can I keep the part of my mortgage that's on Tracker?*
> *…"*

An e-mail dated **19 September 2012** from the Provider to the Complainant details as follows:

> *"…*
> *Please call through to [phone number] to receive a mortgage quick quote based on your Basic Gross Annual Income…*

/Cont'd…

> *Re: Selling your property. The approval of sale of a property where there is a residual debt involved would require credit approval. Staff Business would need to consider the proposed agreed selling price of the property, the market value of the property and the repayment capacity to service the residual debt taking into account that you would require a place to live following the sale…"*

An e-mail dated **19 September 2012** from the Complainant to the Provider details as follows:

> *"…*
> *Thanks for the reply*
>
> *Just to clarify, if we sell our current house, there would be no residual mortgage left, there would be a surplus. My question concerned the tracker part of the existing mortgage, if I sold could I keep the tracker part of my existing mortgage, against a new house?"*

An e-mail dated **20 September 2012** from the Provider to the Complainant details as follows:

> *"…*
> *The tracker rate is no longer a product that [the Provider] can offer in relation to new mortgage finance. Current pertaining rates would apply to any new finance.*
>
> *If you wish to submit an application please let me know…"*

The evidence supports that the Provider was not offering tracker interest rates for new mortgage finance in **2012**, and the Complainant subsequently moved house in **2013** and redeemed mortgage loan accounts ending ***1364, 1281, 1521*** and ***1794.***

The Complainant submits that the Provider incorrectly failed to allow him to retain his tracker interest rate when moving house in **2013.** In this regard, the Complainant is of the view that he was entitled to retain his tracker interest rate when moving house in accordance with the letter from the Provider dated **10 May 2007**, which is outlined above.

The letter from the Provider dated **10 May 2007** was sent to the Complainant to confirm that a tracker interest rate had been applied to mortgage loan accounts ending ***1281, 1521*** and ***1794*** in accordance with his request. The letter states that *"your margin is guaranteed for the full term of the loan unless there is a material change in the particulars of the loan".* The evidence supports that if there was a material change to the mortgage loan, the Complainant would not be guaranteed the right to retain the tracker interest rate.

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The evidence supports that the Complainant was looking to change the underlying security to his loan facilities by moving house. It appears that the Complainant was seeking to transfer the tracker interest rate that had applied to mortgage loan accounts ending ***1281, 1521*** and ***1794*** to a new mortgage loan account when he purchased a new property.

Having considered the documentation provided in evidence, it is clear to me that the **Letter of Sanction** dated **21 April 2005** provided for an equitable mortgage over the specific property named in the **Letter of Sanction**. There was no provision under the terms of the Complainant's facility which entitled the Complainant or the Provider to substitute this property or amend the details of the property which secured the mortgage facility.

The evidence shows that the Complainant proceeded to sell the secured property but did not take out any new finance with the Provider at the time. It appears to me that the Complainant voluntarily chose to redeem mortgage loan account ending account ending ***1364*** which was on the staff preferential rate and mortgage loan accounts ending ***1281, 1521***, ***1794*** and ***1724*** which were operating on a tracker rate in order to sell the property that was held as security for the loan facility. By doing so, the Complainant opted to terminate his original mortgage contract with the Provider.

The Provider was under no obligation to offer the Complainant a tracker interest rate on any new mortgage loan because three of his existing mortgage loan accounts at the time were on a tracker interest rate. Further, tracker interest rates were no longer an option available on new mortgages from the Provider when the Complainant was looking to move house in **2013**.

In light of the foregoing, the evidence does not support the third aspect of the Complainant's complaint that the Provider incorrectly failed to allow him to retain his tracker interest rate when moving house in **2013.**

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.

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TARA MCDERMOTT
DEPUTY FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

22 December 2025

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 General Data Protection Regulations 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 General Data Protection Regulations and the Data Protection Act 2018.