



<u>Decision Ref:</u>	2019-0384
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Tracker Mortgage
<u>Conduct(s) complained of:</u>	Failure to offer a tracker rate throughout the life of the mortgage Failure to offer a tracker rate at point of sale
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

This complaint relates to a mortgage loan account held by the Complainants with the Provider. The mortgage loan that is the subject of this complaint was secured on the Complainants' private dwelling house.

The Complainants' Case

The Complainants hold two mortgage loan accounts with the Provider, namely:

1. Mortgage loan account ending **241** which is the primary account; and
2. Mortgage loan account ending **126** which is the "top up" account.

The Complainants submit that they discussed the option of taking out a mortgage with the Provider's branch in **2005**, but due to the fact that they had only recently returned to Ireland the Provider "*could not give us one*". The Complainants submit that they were told by two named representatives of the Provider that they could "*come back to [the Provider] during 2006 and they would arrange the mortgage at that stage as [the Complainants] would have more history built up*". The Complainants submit that they took out a mortgage loan with another provider at the time in November 2005.

The Complainants submit that they were approached by the Provider's branch representative who had "*always been*" their "*contact point*" in **August/September 2006** about re-mortgaging with the Provider. The Complainants submit that they advised the Provider that the rate they were on with the other provider was a variable rate.

The Complainants submit that during discussions, variable and tracker interest rates were discussed. The Complainants submit that they had advised the Provider's representative that there was no point in moving from one variable interest rate to another variable interest rate at the time. The Complainants submit that the Provider agreed as part of the move to pay the solicitors fees in relation to the re-mortgage.

The Complainants submit that during the mortgage application process in 2006, it was "*agreed*" during discussions between representatives of the Provider and the Complainants that the mortgage would be "*a tracker loan*". They submit that following this, towards the end of the application process, they informed the Provider that they planned to carry out some building works on their home. They submit "*[a]t this stage it was suggested that we should fix the rate for 5 years which would allow us a freedom of knowing exactly how much the repayments would be for the next 5 years. We agreed*". The Complainants submit that their mortgage loan application was approved and they proceeded to sign the mortgage loan documentation at their solicitor's office. The Complainants submit that the Provider has not kept a record of the meetings which took place between themselves and the Provider's representatives in **2006** in relation to their application for the mortgage loan account ending **241**.

The Complainants entered into a loan agreement with the Provider in **November 2006** for mortgage loan account ending **241**. The terms of the loan agreement provided for a fixed interest rate with a roll over date of **1 August 2011**. They submit "*[w]e understood from the discussions that the paperwork we were signing was the fixed rate loan with a reversion to tracker.*" The Complainants submit that "*it needs to be borne in mind that what we signed, in good faith, was what we believed to be a document based on the discussions held*" with the Provider's representatives.

The Complainants submit that in **June 2007**, they sought and secured a top-up loan from the Provider. They submit that at a meeting with a representative of the Provider, they were advised that the top-up loan would be issued "*on broadly the same terms*" as mortgage loan account ending **241**, with the exception that the top-up loan would be interest only for the term of the loan. The Complainants entered into a loan agreement with the Provider in **June 2007** for mortgage loan account ending **126**. The terms of the loan agreement provided for an ECB tracker rate.

The Complainants acknowledge that they contacted the Provider in **March 2009** to seek information in relation to breaking from the fixed interest rate on mortgage loan account ending **241**. They submit that the Provider initially quoted them an erroneous breakage fee of €11,500. They submit that even when the breakage fee quote was corrected at €6,370, they were not in a position to pay the required breakage fee and therefore the rate options they were issued at that time were irrelevant. The Complainants further note that when the Provider listed the rate options that were available to the Complainants in email correspondence on **16 March 2009**, it did not expressly state therein that the Complainants were not entitled to a tracker interest rate. The Complainants submit: *“based on [the Provider’s] original error regarding the calculation [of the breakage fee] we believed that not outlining the ECB rate was simply another error.”*

The Complainants submit *“[i]t wasn’t until August of 2011 when we were due to revert [to] tracker that this matter finally came [to] light.”* They submit that the interest rate options letter issued to them by the Provider prior to the expiry of the fixed rate period on mortgage loan account ending **241** in **June 2011**, specifically mentioned an ECB tracker rate option, albeit subject to conditions. The Complainants submit that it was not until they met with a representative of the Provider in **July 2011** that they became aware that they may not be entitled to the tracker rate. They submit that at this meeting, the Provider’s representative advised them that he believed that they may be entitled to the tracker rate and they asked him to check this. They submit that *“[o]ther than to be contacted by him for ID in the days post the meeting we never heard from him in relation to the matter again.”* The Complainants submit that following this, they contacted the Provider’s branch *“on a few occasions”* to check if there was any update. They submit that they met with another representative of the Provider in **October 2011**, and at this stage, they felt that they had no choice but to upgrade their current account package in order to try to reduce the interest rate that applied to the mortgage loan account ending **241**.

The Complainants are seeking that the mortgage loan account ending **241** be *“reverted”* to a tracker interest rate with effect from November 2011.

The Provider’s Case

The Provider submits that the branch where the loan application was processed closed in 2012 and that the staff members who previously liaised with the Complainants are no longer employed by the Provider. The Provider states that it has checked all hard copy files and computerised records that it holds and it does not have any records of any meetings that took place between the staff members in the branch and the Complainants in 2006.

The Provider submits that the Complainants drew down mortgage loan account ending **241** in the sum of €285,000 on **7 November 2006**, pursuant to the terms and conditions of

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a facility letter dated **28 September 2006**. The Provider submits that the facility letter confirmed that this loan is for a period of 30 years from drawdown and the fixed interest rate was for a period of five years.

The Provider submits that the facility letter also confirmed that following the expiry of the fixed interest rate period, the interest rate would “*revert to the Provider’s standard variable interest rate*”. The Provider submits that the Schedule to the facility letter confirms that the Roll-over date was “*1 August 2011*” and that the “[r]oll-over Date is the start date of the standard variable interest rate at that time. The fixed rate period expires on the date preceding this day”. It submits that **Clause 11.4 of the terms and conditions** in the facility letter also states “[u]nless a further Fixed Period is agreed in accordance with clause 11.3, at the end of a Fixed period the rate of interest applicable to the Loan will revert to our then applicable variable home loan rate”. The Provider states that **Clause 12.1** of the facility letter confirms that “[i]f the Loan is a variable rate loan which is not linked to the ECB Refinance rate, the rate of interest applicable to the Loan will be our applicable variable home loan rate”. The Provider submits that **Clause 12.1** makes it clear that the Provider’s “*variable home loan rate*” is subject to change in response to market conditions, contrary to a loan linked to the ECB Refinance Rate as specified in **Clause 12.2** of the facility letter. The Provider submits that its “*variable home loan rate*” clearly does not track the ECB Refinance Rate and there is nothing else in the facility documentation that makes that link.

The Provider submits that it is satisfied that the term “*standard variable interest rate*” contained in the facility letter dated **28 September 2006**, is “*clear, transparent, comprehensible and unambiguous*”. The Provider further submits that it believes that customers would generally understand the term standard variable rate and customers would not understand that this term would refer to an ECB tracker rate. The Provider submits that the general terms and conditions apply to facilities made available to customers who were never on an ECB tracker rate and there is no suggestion that those customers would be entitled to an ECB tracker rate at the end of the relevant fixed period.

The Provider submits that the Complainants signed and accepted the facility letter in the presence of their solicitor on **6 October 2006**. The Provider submits that the mortgage loan account ending **241** was never on a tracker interest rate and there was no contractual or regulatory obligation on the Provider to apply a tracker interest rate on the mortgage loan account on expiry of the fixed interest rate.

The Provider submits that the Complainants drew down mortgage loan account ending **126** on **26 July 2007**, pursuant to the terms and conditions contained in a facility letter dated **18 June 2007**. The Provider submits that the facility letter confirmed that the mortgage loan account ending **126** is for the sum of €50,000 and is for a period of 29 years

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and 7 months and the interest rate is the ECB tracker rate. The Provider submits that mortgage loan account ending **126** is a separate and distinct loan to mortgage loan account ending **241** and each loan was drawn down on different terms and conditions. The Provider submits that the loans were drawn down at different times, for different amounts, for different interest rates under different facility letters and the two loans were not drawn down on the same terms and conditions.

The Provider submits that the Complainants emailed it on **16 March 2009** querying the cost of opting to break the fixed interest period and *“what interest rate would we go to IF we decide to come off the fixed”* on mortgage loan account ending **241**. The Provider submits that by email response on the same date, the Provider listed the interest options available to the Complainants if they wished to break their fixed interest rate period, as a home loan variable rate, a standard fixed rate and LTV fixed rate. The Provider states that the Complainants were not offered the option of an ECB tracker interest rate as the Provider had withdrawn its tracker interest rate loan product from the market in **late 2008**. The Provider submits that it was therefore not possible for the Complainants to draw down a new tracker interest rate loan to repay mortgage loan account ending **241** and that the Complainants were therefore aware from **March 2009** that their fixed interest rate loan would not *“revert”* to a tracker interest rate.

The Provider states that it sent the Complainants a rollover notification letter on **20 June 2011**, prior to the fixed interest rate period expiring advising the Complainants that the fixed interest rate period was due to expire on **2 August 2011**. The Provider submits that *“the letter stated that the Complainants had the option to choose between a variable rate, a new fixed rate or to revert to an ECB tracker rate with the margin which had applied before the fixed rate period.”* The Provider submits that because mortgage loan account ending **241** was not previously on an ECB tracker rate the option to *“revert”* to a tracker rate was not available to the Complainants.

The Provider submits that in addition, its meeting notes state that the Provider’s staff member met with the Complainants on **7 July 2011** to *“run through interest rate options with client – his fixed rate is maturing, may be entitled to tracker rates. As far as I can see the client is not entitled to return to Tracker Rates. Although I don’t have the file I can see from the letter of offer that he is not on an LTV fixed product no[r] did he have a tracker before the current Fixed rate loan.”*

The Provider submits that as the Complainants did not opt to fix their interest rate again, on the expiry of their five year fixed interest rate period their interest rate rolled on to the Provider’s home loan variable interest rate as per the agreed contractual terms of the facility letter dated 28 September 2006 on **02 August 2011**.

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The Provider submits that a further meeting took place on **27 October 2011** between the Complainants and the Provider to discuss the interest rate options following the expiry of the fixed interest rate period and the option to avail of a discounted variable rate was explained to the Complainants at this meeting. The Provider submits that it was explained to the Complainants that if they upgraded their current accounts to a named current account product, that the Complainants could avail of a discount on their variable interest rate. The Provider submits that as the Complainants opted to avail of the named current account product, a discount was applied to their variable interest rate with effect from **11 November 2011**.

The Provider submits that it has fully complied with its obligations in relation to the Complainants' previous data access request in **January 2017** and the Provider has furnished the Complainants with copies of all documents, notes, memoranda etc. that are in its possession.

The Complaint for Adjudication

The complaint for adjudication is that the Provider failed to "*revert*" the Complainants' mortgage loan account ending **241** to a tracker interest rate on the expiry of the fixed interest rate period in **August 2011**.

Decision

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainants were given the opportunity to see the Provider's response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

In arriving at my Legally Binding Decision I have carefully considered the evidence and submissions put forward by the parties to the complaint.

Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties 25 October 2019, outlining the preliminary determination of this office in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

In the absence of additional submissions from the parties, within the period permitted, the final determination of this office is set out below.

In order to ascertain if the Complainants had an entitlement to a tracker interest rate on the mortgage loan account ending **241** at the end of the fixed rate period in **August 2011**, it is necessary to review and set out the relevant provisions of the Complainants' loan documentation. It is also relevant to set out the interactions with the Complainants in 2006 when the Complainants applied for and drew down mortgage loan account ending **241**. I will also set out certain details with respect to the Complainants' mortgage loan account ending **126**, which is not the subject of this complaint.

Mortgage loan account ending 241

It is understood that there were discussions between the Complainants and the Provider with respect to the Complainants taking out a mortgage loan with the Provider in **August/September 2006**. It is understood that at the time the Complainants' mortgage loan was with another Provider on a standard variable rate. I note that the Provider has indicated that it has "*checked all hard copy files and computerised records that it holds and the Provider does not have any records of any meetings that took place between the staff members in the [named] branch and the Complainants in 2006*". It is disappointing that the Provider does not hold detailed records of the discussions or meetings with the Complainants, however it is nevertheless accepted between the parties that these meetings took place.

It is understood from the Complainants' submissions that the "*discussions*" with the Provider were in relation to a tracker interest rate product that the Provider had available at the time. There is no documentary evidence on the file to support this, however I have no reason to doubt the Complainants' recollection and on balance I accept that this was the nature of the initial discussions that took place between the parties.

A letter issued by the Provider to the Complainant on **22 September 2006**, which was **11 pages** in total and was headed "***Final Financial Summary***". This letter was signed by the Complainants on **25 September 2006** and outlines that the loan is made up of "*275,000 to take over [the other provider] mortgage and an additional 10,000 to install renewable*

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energy sources for the house". The Final Financial Summary does not contain any details of rate options discussed.

The **Credit Application** was submitted to the Provider for a "*Fixed Rate Home Loan*" on **22 September 2006**. The "*Comments*" section of the Credit Application outlines as follows;

"275,000 plus 10,000 to install renewable energy source for the house. He doesn't believe Planning Permission is required for this installation, but is investigating if it may be required for the Solar Panels and he will confirm the position.

LTV on the loan is 78% which for a main residence is satisfactory.

Application is outside income multipliers at 4 times joint salary, but repayment capacity is demonstrated. Loan is requested on a 5 year fixed rate so sensitivity is not an immediate issue – however an additional 2% increase in interest rates would equate to an additional 469 per month, which would reduce disposable income to 1058 per month which is still satisfactory."

The Complainants' mortgage loan documentation comprises of a **Housing Loan Agreement** headed **Fixed Rate Home Loan** and the General Conditions for Annuity Home Loans. The following are extracts from the mortgage loan documentation relevant to the Complainants' complaint.

- **The Fixed Rate Home Loan**

The **Fixed Rate Home Loan** issued by the Provider to the Complainants dated **28 September 2006**. The "*important information*" section on **page 1** included the following;

<i>"Amount of credit advanced:</i>	<i>EUR 285,000</i>
<i>Period of Agreement: 30 years 1 month(s) from drawdown</i>	
<i>Number of Repayment Instalments: 58 payment(s) of</i>	<i>EUR 1,470.61</i>
<i>301 payment(s) of</i>	<i>EUR 1,446.72</i>
<i>1 payment(s) of</i>	<i>EUR 1,445.24</i>
<i>...</i>	
<i>APR*: 4.65% fixed</i>	
<i>...</i>	
<i>*Annual Percentage Rate of Charge"</i>	

The "**Schedule**" section on **page 2** of the **Fixed Rate Home Loan** detailed as follows;

"Rate of Interest: 4.65% per annum, fixed

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4.49% per annum, variable

“Fixed rate: Roll-over date: 1 August 2011. The Roll-over Date is the start date of the standard variable interest rate at that time. The fixed rate period expires on the date preceding this day.”

The **“Acceptance and Authority”** section on **page 4** of the **Fixed Rate Home Loan** detailed as follows;

“WARNING – THIS IS AN IMPORTANT LEGAL DOCUMENT AND YOU ARE STRONGLY ADVISED TO SEEK INDEPENDENT LEGAL ADVICE BEFORE YOU SIGN YOUR ACCEPTANCE

*I/We have read and understand the nature and contents of this Loan Agreement
I/We agree to be bound by this Loan Agreement
Where applicable I/We irrevocably authorise my/our solicitor to give the undertaking(s) referred to in clause 3 of the General Conditions and I/We irrevocably authorise you to pay the Loan through my/our Solicitor (unless another mode of payment is agreed by my/our Solicitor).”*

The **“Acceptance and Authority”** was signed by the Complainants on **06 October 2006**, and was witnessed by a solicitor.

- **General Conditions for Annuity Home Loans**

Condition 11 of the **General Conditions for Annuity Home Loans** details as follows;

“11 Interest – Fixed Rate Loans

11.1 *If the Loan is a fixed rate loan the rate of interest applicable to the Loan for the Fixed Period specified in the Schedule will be our applicable fixed home loan rate on the date of drawdown of the Loan or, if a margin over or under the rate is specified in the Schedule, the aggregate from time to time of that margin and the applicable fixed home loan rate. The applicable fixed home loan rate at the date specified in the Important Information Notice is the rate specified in the Schedule.*

...

11.3 *You may, prior to the expiration of a Fixed Period, request us to fix the rate of interest on the Loan for such further period as you may specify (so long as it is a period for which we offer fixed rates on home loans). If we agree to such request (and we have no obligation to do so) the rate of interest*

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applicable to the Loan for the requested Fixed Period shall be our applicable fixed home loan on the first date of the requested Fixed Period or, if a margin is specified in the Schedule, the aggregate from time to time of that margin and such fixed home loan rate.

11.4 *Unless a further Fixed Period is agreed in accordance with clause 11.3, at the end of a Fixed Period the rate of interest applicable to the Loan will revert to our then applicable variable home loan rate.*

Condition 12 of the **General Conditions for Annuity Home Loans** detail as follows;

12 Interest – Variable Rate Loans

12.1 ***If the Loan is a variable rate loan** which is not linked to the ECB Refinance rate, the rate of interest applicable to the Loan will be our applicable variable home loan rate or if a margin over or under that rate is specified in the Schedule the aggregate from time to time of that margin and the applicable variable home loan rate. Our variable home loan rate is subject to variation from time to time in response to market conditions and such rate at the date specified in the Important Information Notice is the rate quoted in the Schedule.*

12.2 ***If the Loan is an ECB Tracker Variable Rate Home Loan**, then the interest rate is linked to the ECB Refinance Rate. The rate of interest specified in the Schedule is the rate applicable to the Loan at the date of the facility letter, and it represents the sum of the ECB Refinance Rate on that date and an agreed margin (“the ECB rate margin”). The ECB Refinance Rate is subject to variation, and the rate of interest applicable to the Loan shall be the ECB rate margin added to the ECB Refinance Rate from time to time, and shall vary accordingly.” [Emphasis added]*

The terms and conditions of the Complainants’ mortgage loan documentation outlined that a fixed interest rate would apply to the mortgage loan until **31 July 2011** and then the loan would roll onto a standard variable interest rate on **01 August 2011**. This was clearly set out in the Schedule and condition 11.4 of the General Conditions for Annuity Home Loans. In accordance with condition 12.1 of the General Conditions for Annuity Home Loans the standard variable rate was one that was “*not linked*” to the ECB Rate and was rather “*subject to variation from time to time in response to market conditions*”. The Schedule to the Fixed Rate Home Loan did not contain any reference to an ECB rate, such as was required for the application of a tracker interest rate to the Complainants’ mortgage loan under condition 12.2. The Complainants signed the mortgage loan on **06 October 2006**, with a clear written warning to seek independent legal advice and

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confirming that they had read and understood the nature and content of the loan agreement.

The Complainants have submitted that *“at all times during the discussions we spoke about the loan reverting to a tracker mortgage at the end of the fixed term period. At no stage during the discussions was a variable rate mentioned”*. Again I note that there is no documentary evidence of the meetings that took place in 2006 where it is purported that the *“understanding”* on the part of the Complainants was formed that the *“rate would revert to a tracker rate.”* For the Complainants to have a contractual right to apply a tracker interest rate to the mortgage loan at the end of the fixed interest rate period, that right would have to have been specifically outlined in the mortgage loan documentation, that was signed by the parties. However, no such right was set out in writing in the **Fixed Rate Home Loan** dated **28 September 2006**, which was signed by the Complainants on **06 October 2006**.

With respect to the **General Conditions for Annuity Home Loans**, the Complainants have submitted that the references to the ECB should have been *“removed if the [Provider] did not wish for someone to believe they may have an ECB tracker loan.”* I cannot accept this argument, because condition 11.1, 12.1 and 12.2 all commence with *“If the loan is”* and then the applicable loan type, which clearly denote that the provision is applicable to the particular loan type specified. The Complainants’ loan is clearly stated to be a *“Fixed Rate Home Loan”* and condition 12.2 clearly did not apply to it.

The Complainants have submitted that they are not *“legal people”* and *“would have trusted the staff”* of the Provider. It remains the case that if the Complainants were not happy or did not fully understand the terms of the Letter of Offer, including the type of interest rate that the loan would *“roll-over”* on to at the end of the fixed interest rate period, the Complainants could have decided not to accept the offer made by the Provider, or they could have sought clarification as to the type of interest rate that would apply before accepting the offer. Instead the Complainants signed the **Loan Agreement** on **06 October 2006** in the presence of their solicitor and confirmed *“I/We have read and understand the nature and contents of this Loan Agreement”*.

The Complainants contacted the Provider by email in or around **March 2009** to discuss the possibility of breaking the five year fixed interest rate on the mortgage loan account ending **241**, as follows;

“I was just looking at our mortgage papers yesterday and I noted that the fixed interest break clause is the lower of 6 months interest or some other cost to the bank. Based on that the break fee should only max the 285k @ 4.65% for 6 months = €6,626. And that is on the full mortgage taken not the remaining balance so it

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should actually be less again. No where near the 11.5k the [Provider] told us. Could you recheck this again please and let me know.

Also what interest rate would we go to IF we did decide to come off the fixed.”

Following this the Provider responded to the Complainants by email on **16 March 2009**, as follows;

1. *“You are correct in that it is the lesser of the two costs – 6 months interest or the funding cost – that apply when breaking a fixed rate agreement. There is no cost if the Fixed Rate has less than one year to run. The cost as of today would be €6,370.50 (being the 6 months interest figure).*
2. *Options*
 - You could avail of our Home Loan Variable Rate of 3.65% (with a further 0.25% discount to apply if the overall loan to value is less than 60%)*
 - Our Standard Fixed Rates: 2yr- 3.9%, 3 yr – 4.1%, 5 yr – 4.4%*
 - We also have Loan to Value (LTV) Fixed Rates where the Rate is dependent on the overall LTV – based on the valuation figures we hold on file the rates available to you would be: 2 yr – 3.13%, 3yr – 3.43%, 5yr – 3.9%. (This would be subject to an up to date valuation report)”*

With respect to this exchange the Provider submits that the Complainants were *“aware from March 2009 that their fixed interest rate would not revert to a tracker interest rate.”* I note that in the circumstances, the Complainants did not elect to proceed with the break from the fixed interest rate in **March 2009**. This exchange between the parties in **March 2009**, does not have any relevance on any purported entitlement to the application of a tracker interest rate to the Complainants’ mortgage loan at the roll over date in **August 2011**.

The Provider issued a letter to the Complainants dated **20 June 2011**, advising them that the fixed rate period was coming to an end and *“you now have the opportunity to review and agree the interest terms for the remaining term of your loan”*. This letter detailed that if no response was received the interest rate would *“revert”* to the Provider’s applicable variable rate. I accept that this was in accordance with the terms and conditions of the mortgage loan, as I have detailed above.

I note that the letter of **20 June 2011** also detailed other rate options, as follows, and the Complainants could contact the Provider to discuss them;

- *“To move to a variable rate*

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- To agree a new fixed rate period
- To revert to an ECB tracker rate (with the margin which had applied before your fixed rate period)*

...

**if you were on an ECB tracker rate immediately before the fixed rate period."*

The Complainants met with the Provider on **11 July 2011**. A note of this meeting has been submitted in evidence, which details, "[r]un through interest rate options with client – his fixed rate is maturing, may be entitled to tracker rates. As far as I can see the client is not entitled to return to Tracker Rates. Although I don't have the file I can see from the letter of offer that he is not on an LTV Fixed product nor did he have a tracker before the current Fixed rate loan. Would need file to confirm."

I note from the evidence that the mortgage loan account ending **241** defaulted to the standard variable interest rate when the fixed rate period expired in **August 2011**. For the avoidance of doubt, I am of the view that there was no contractual obligation on the Provider to offer the Complainants a tracker interest rate on their mortgage loan account on the expiry of the fixed rate period in **August 2011**. The Loan Agreement provided that the roll-over rate was the standard variable rate.

The Complainants then met with the Provider again on **27 October 2011**. A note of this meeting has been submitted in evidence, which details as follows;

"Background: [The Complainants] called to the branch to enquire about the recent mortgage increase...

Managing funds: I explained how this would affect their repayments and the options available to them. They already have two joint [Named Provider Product] current accounts and would like to upgrade both of them to a [Named Provider Product].

...

Future actions: reverting back to [the Complainants] with home insurance quote and to confirm upgraded to [Named Provider Product]."

The fact that the Complainants engaged with the Provider in **July and October 2011**, with respect to the interest rate on their mortgage loan did not obligate the Provider to offer the Complainants a tracker interest rate on their mortgage loan at the time. The Complainants ultimately accepted another product offering from the Provider to apply a discounted variable rate to mortgage loan account ending **241** with effect from **11 November 2011**, albeit, that they "*felt that the [Provider] had left [them] with no choice but to upgrade our bank account package in order to reduce our loan rate.*" The decision to

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apply the discounted variable rate to the mortgage loan was the Complainants' decision to make. Alternatively, the mortgage loan could have remained on the standard variable rate.

Mortgage loan account ending 126

With respect to mortgage loan account ending **126**, the **Credit Application** was submitted to the Provider for "EUR 50,000 Base Rate Tracker var. Home Loan" on **18 June 2007**. The "Comments" section of the Credit Application outlines as follows;

"[The first complainant] now wishes to release 50k to invest in [Location] Property fund. This is a 5 – 10 year investment....."

"Main loan is on a 5 year fixed rate and new proposed loan is requested ECB + 0.58%"

The Complainants' mortgage loan documentation with respect to this mortgage loan comprises of a **Housing Loan Agreement** headed **ECB Tracker Variable Rate Home Loan** and the **General Conditions for Annuity Home Loans**.

The "**Schedule**" section on **page 2** of the **ECB Tracker Variable Rate Home Loan** detailed as follows;

"Rate of Interest: 4.58% per annum, variable. Linked to the ECB Refinance Rate."

The **Acceptance and Authority** was signed by the Complainants on **22 June 2007**.

Condition 11 and 12 in the **General Conditions for Annuity Home Loans** to mortgage loan account ending **126**, are the same as quoted above for mortgage loan account ending **241**.

However as mortgage loan account ending **126** was stated to be an **ECB Tracker Variable Rate Home Loan**, **condition 12.2** applies to mortgage loan account ending **126**. This condition did not apply to mortgage loan account ending **241**.

The Complainants submit that the Provider advised them in **June 2007** that the terms and conditions of mortgage loan account ending **126** would be "*broadly*" similar to the terms and conditions governing their primary mortgage loan account ending **241**, with the exception of the condition that mortgage loan account ending **126** would be interest only for the term of the loan. In this regard the Complainants submit "*why was this element of the loan given a tracker rate when the main mortgage was not even though it was supposed to have the same terms*".

The Complainants' two mortgage loan accounts were drawn down at two different points in time (2006 and 2007), they commenced on different interest rates (fixed rate and

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tracker rate) and were subject to different terms and conditions. The fact that the Provider offered the Complainants a tracker rate for mortgage loan account ending **126** and the Complainants accepted that offer on that mortgage loan account, did not create any obligation on the Provider to offer the same rate on the Complainants' separate mortgage loan account ending **241**, when the fixed interest rate period expired in **August 2011**.

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

Conclusion

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

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

**GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

19 November 2019

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.