



<u>Decision Ref:</u>	2019-0413
<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
<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 Complainant with the Provider. The mortgage loan that is the subject of this complaint is secured on a residential investment property.

The Loan Amount was €202,000 and the term was 25 years. The Letter of Approval which was signed on **04 January 2006** outlined the Loan Type as *“Further Advance One Year Fixed Residential Investment Loan (Interest Only)”*.

The Complainant’s Case

The Complainant submits that he was not offered a tracker mortgage by the Provider when he *“should have been”*.

The Complainant outlines that on the expiry of the one year fixed interest rate period in **January 2007**, he requested interest rate options from the Provider and he was *“only offered high 1, 2 & 3 fixed rate options with no option of a tracker rate.”*

The Complainant also outlines that with respect to the interest rate options letter that he signed applying a one year fixed interest rate on **08 January 2007** that the *“consequences*

of not opting for a tracker interest rate were not outlined to him or the *“benefits of choosing”* a tracker interest rate were not outlined to him *“as per the Central Bank rules”*.

The Complainant submits that he wrote to the Provider, by letter dated **24 December 2008** requesting to break out of the fixed interest rate period that was applied to the mortgage loan at the time and it was not outlined to him by the Provider, prior to sending this letter, that he had the option of a tracker interest rate.

The Complainant states that in **June 2009** and **September/October 2009**, when he requested the Provider to send out interest rate options he was only offered *“high fixed interest rate options”* and was not offered a tracker interest rate. The Complainant states that he wrote to the Provider in on **31 August 2009** complaining about paying a high variable interest rate and the Provider never mentioned to him that he would be entitled to a tracker interest rate at the time.

The Complainant outlines that he always requested all interest rate options, not just fixed interest rate options.

The Complainant submits that as a *“consequence of applying high interest rates I have gone into arrears over the years and I have been under financial stress [and] pressure”*

The Provider’s Case

The Provider submits that the Complainant’s mortgage loan was drawn down on **20 January 2006** with an initial one year fixed interest rate period.

The Provider outlines that the mortgage loan agreement did not contain a contractual entitlement to a tracker interest rate and it was only a condition of the Complainant’s mortgage, that he be offered a variable interest rate at the end of a fixed interest rate period. In this regard, the Provider relies on **Special Condition F** and **General Mortgage Loan Approval Condition 5**. The Provider submits that by signing the **Acceptance of Offer** on **4 January 2006**, the Complainant confirmed that he understood and accepted the terms and conditions and that his solicitor had fully explained the terms and conditions to him.

The Provider submits that prior to the expiry of the fixed interest rate period in **January 2007**, the Provider wrote to the Complainant and outlined the *“then available”* interest rates. This included the option of the tracker interest rate of 4.75% (ECB + 1.25%) *“which was offered on the basis of the policy”* which the Provider had in place at that time. The Provider outlines that *“no commitment or indication was given that any rate available then*

would be available in the future". The options form clearly stated that *"if you choose a fixed rate, the standard fixed-rate conditions will apply"*.

The Provider states that the Complainant returned the signed options form dated **08 January 2007** confirming his preference for a one year fixed rate of 4.75%. The Provider states that after the Complainant signed and returned the options form dated 08 January 2007, the Complainant contacted the Bank to amend the interest rate option selected. The Provider then issued a further options letter containing 1, 2 and 3 year fixed interest rate options to the Complainant on 17 January 2007. The Provider submits that the Complainant elected for a 3 year fixed interest rate of 4.85% and signed and dated the options form on **19 January 2007**.

The Provider outlines that the Complainant sought to break out of the 3 year fixed interest rate period, by way of letter dated **24 December 2008**, in favour of a variable interest rate of 4.65%. The Provider acceded to that request and a variable interest rate was applied from **02 January 2009**. The Complainant contacted the Provider regarding interest rates in **June/July 2009** and the option of a 2 year fixed interest rate of 5.35% was given to the Complainant.

The Provider then wrote to the Complainant on **07 August 2009** and outlined that the interest rate had increased from 4.15% to 4.45%. The Complainant wrote to the Provider to express dissatisfaction with this. The Provider explained to the Complainant by letter dated **31 August 2009** that the interest rate applicable to the loan was not a tracker interest rate and that the mortgage loan did not provide that the interest rate applicable to his loan had to move in line with ECB changes.

The Provider submits that the Complainant contacted the Provider to request fixed interest rate options in **early October 2009, March 2010, June 2010 and July 2010**. The Complainant selected a 2 year fixed interest rate of 5.35% on 30 July 2010. With respect to the Provider's policy of offering tracker interest rates to existing customers on the expiry of fixed interest rate periods between **June 2006 and August 2009**, the Provider outlines that the Complainant was not offered a tracker interest rate in **June/July 2009 and August 2009** because the mortgage loan was not due to expire from a fixed rate period at any of those points in time. The Provider states that the letter which issued to the Complainant was not a fixed rate maturity options letter, but an options letter which issued to a customer who was enquiring about changing the rate of interest applicable to an account.

The Provider outlines that the Complainant does not have a contractual entitlement to a tracker interest rate in respect of the mortgage loan which is the subject of this complaint and *"this factor of itself makes the Complainant's situation entirely different from*

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situations of those persons to whom the [Provider] has offered redress on foot of its recent interactions with the Central Bank". The Provider submits that the Complainant is "well aware of this difference" as he has three other mortgage accounts with the Provider which contain a contractual entitlement to a tracker interest rate and the Complainant has received redress and compensation in relation to those accounts and issued legal proceedings against the Provider in relation to those accounts.

The Complaint for Adjudication

The complaint for adjudication is that the Provider failed to offer the Complainant the option of a tracker interest rate on his mortgage loan account in **January 2007, December 2008** and between **June and October 2009** and the Provider failed to inform the Complainant of the "consequences" and "cost implications" of not opting for a tracker interest rate in **January 2007**.

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 25 November 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.

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Before dealing with the substance of the complaint, it is necessary to set out the jurisdiction of this office to investigate and adjudicate on the complaint raised. The Complainant had initially raised this complaint with respect to four mortgage loan accounts. Three of those accounts were subsequently found to be impacted as part of the Provider's mortgage redress programme and the Complainant was offered redress and compensation by the Provider in August 2015. The Complainant has since instituted legal proceedings against the Provider with respect to those three accounts. In these circumstances the Complainant was informed that this office did not have jurisdiction to investigate and adjudicate on the Complainant's complaint with respect to those three mortgage loan accounts. As such the investigation of this complaint proceeded with respect to Complainant's mortgage loan account ending **7869** and this decision will only deal with mortgage loan account ending **7869**.

In order to adjudicate on this complaint it is necessary to review and set out the relevant provisions of the Complainant's loan documentation. It is also relevant to set out the interactions with the Complainant since January 2007.

The **Letter of Approval** dated **20 December 2005** details as follows;

<i>"Loan Type:</i>	<i>"Further Advance One Year Fixed Residential Investment Loan (Interest Only)"</i>
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<i>Purchase Price / Estimated Value:</i>	<i>EUR 215,000.00</i>
<i>Loan Amount:</i>	<i>EUR 202,000.00</i>
<i>Interest Rate:</i>	<i>3.08%</i>
<i>Term:</i>	<i>25 Years"</i>

The **Special Condition "F"** to the Letter of Approval details as follows;

"GENERAL MORTGAGE LOAN APPROVAL CONDITION 5 "CONDITIONS RELATING TO FIXED RATE LOANS" APPLIES IN THIS CASE. THE INTEREST RATE SPECIFIED ABOVE MAY VARY BEFORE THE DATE OF COMPLETION OF THE MORTGAGE."

General Condition 5 of the **General Mortgage Loan Approval Conditions** outline;

"CONDITIONS RELATING TO FIXED RATE LOANS

5.1 The interest rate applicable to this advance shall be fixed from the date of the advance for the period as specified on the Letter of Approval, and thereafter will not be changed at intervals of less than one year.

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5.2 *The interest rate specified in the Letter of Approval may vary before the date of completion of the Mortgage.*

5.3 *Whenever repayment of a loan in full or in part is made before the expiration of the Fixed Rate Period the applicant shall, in addition to all other sums payable, as a condition of, and at the time of such repayment, pay whichever is the lesser of the following two sums:*

- (a) A sum equal to one half of the amount of interest (calculated on a reducing balance basis) which would have been payable on the principal sum desired to be repaid for the remainder of the Fixed Rate Period, or*
- (b) A sum equal to [the Provider's] estimate of the loss (if any) occasioned by such early repayment, calculated as the difference between on the one hand the total amount of interest (calculated on a reducing balance basis) which the applicant would have paid on the principal sum to that being repaid to the end of the Fixed Rate Period at the fixed rate of interest, and on the other hand the sum (if lower) which [the Provider] could earn on a similar principal sum to that being repaid if [the Provider] loaned such sum to a Borrower at its then current New Business Fixed Rate with a maturity date next nearest to the end of the Fixed Rate period of the loan, or part thereof, being repaid.*

5.4 *Notwithstanding Clause 5.1, [the Provider] and the applicant shall each have the option at the end of each fixed rate period to convert to a variable rate loan agreement which will carry no such redemption fee."*

The **General Mortgage Loan Approval Conditions** also outline;

IF THE LOAN IS A VARIABLE RATE LOAN THE FOLLOWING APPLIES:

"THE PAYMENT RATES ON THIS HOUSING LOAN MAY BE ADJUSTED BY THE LENDER FROM TIME TO TIME."

The **Acceptance of Loan Offer** was signed by the Complainant and witnessed by a solicitor on **4 January 2006**. The Acceptance of Loan Offer states as follows:

"1. I/we the undersigned accept the within offer on the terms and conditions set out in

- i. Letter of Approval*
- ii. the General Mortgage Loan Approval Condition*
- iii. [the Provider's] Mortgage Conditions.*

copies of the above which I/we have received, and agree to mortgage the property to [the Provider] as security for the mortgage loan.

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...

4. *My/our Solicitor has fully explained the said terms and conditions to me/us.*"

It is clear to me that the Letter of Approval envisaged a one year fixed interest rate of 3.08% and thereafter the option of a variable rate. The variable rate, in the Complainant's mortgage loan documentation, made no reference to varying in accordance with variations in the ECB refinancing rate, rather it was a variable rate which could be adjusted by the Provider. The Complainant accepted the **Letter of Approval** having confirmed that it had been explained to him by his solicitor in **January 2006**.

On the expiry of the initial fixed rate period in **January 2007**, the Complainant was issued a rate options form outlining the "*current options available*". The rate options form detailed as follows;

*"Current options available:
You may select one option.
Account Number: [XXX]*

			<i>Monthly repayment</i>
<i>Tracker variable rate</i>	<i>- Currently:</i>	<i>4.75%</i>	<i>793.93</i>
<i>(ECB + maximum 1.2500%)*</i>			
<i>Standard variable rate</i>	<i>- Currently:</i>	<i>4.85%</i>	<i>810.39</i>
<i>1 year fixed rate</i>	<i>- Currently:</i>	<i>4.75%</i>	<i>793.93</i>
<i>2 year fixed rate</i>	<i>- Currently:</i>	<i>4.85%</i>	<i>810.39</i>
<i>3 year fixed rate</i>	<i>- Currently:</i>	<i>4.85%</i>	<i>810.39</i>

...

- Please note, if you choose a fixed rate, the standard fixed-rate conditions will apply (see over the page).*
- *The interest rate that applies to this Tracker Mortgage Loan will never be more than 1.2500% over the European Central Bank Refinancing Rate (the "ECB Rate"). See over the page for further details on Tracker Mortgage Loans."*

The reverse of the rate options form contained the same text as **General Condition 5.3 of General Mortgage Loan Approval Conditions** (as extracted above) under the heading "**Fixed Rate Loans**". Under the heading "**Tracker Mortgage Loans**" the reverse of the rate options form contained the following;

"1. The interest rate applicable to Tracker Mortgage Loans is made up of the European Central Bank Refinancing Rate ("the ECB Rate") plus a percentage over

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the ECB Rate. The amount of the percentage over the ECB Rate will depend on the amount of the loan and that percentage will not be exceeded during the term of the loan.

2. The ECB rate may be increased or decreased from time to time by the European Central Bank (ECB). We will apply all increases or decreases within one month from the date announced by the ECB as the effective date.

3. If we cannot use the ECB Rate for this loan, we will use another reference rate or calculation that is fair and reasonable.

4. If more than one Tracker Mortgage Loan exists on the property, these loans cannot be added together to get a different interest rate over the ECB rate.”

The Complainant chose the 1 year fixed interest rate option of 4.75% and signed the options form on **8 January 2007**. This options form was stamped received by the Provider on **11 January 2007**.

The Complainant contacted the Provider to change the one year interest rate option that had been selected by him. The Provider issued a further interest rate options form on **17 January 2007**, which outlined as follows;

“Please tick the option you want

Account number: [XXX]

Approximate repayment

eur €

<i>Current Rate</i>	<i>3.08%</i>	<i>€518.47</i>
<i>1 Year fixed rate Mortgage currently</i>	<i>4.75%</i>	<i>€799.58</i>
<i>2 Year fixed rate Mortgage currently</i>	<i>4.85%</i>	<i>€816.41</i>
<i>3 Year fixed rate Mortgage currently</i>	<i>4.85%</i>	<i>€816.41</i>

...

- If you chose a fixed rate, the standard fixed rate conditions apply.*
- The above fixed rates are valid for 7 working days”*

The Complainant chose the 3 year fixed interest rate option of 4.85% and signed the options form on **19 January 2007**.

The Complainant raises two complaints with respect to his interactions with the Provider at this time, the first complaint is that the Provider failed to inform the Complainant of the

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“consequences” and *“cost implications”* of not opting for a tracker interest rate in the options form signed on **8 January 2007**. The second is that the Provider failed to offer him a tracker interest rate on his mortgage loan in the second options form that was signed on **19 January 2007**.

Having considered the mortgage loan documentation, it is my view that that the Complainant did not have a contractual entitlement to a tracker interest rate at the end of the fixed rate period which applied from **January 2006** to **January 2007**.

It appears that the Provider, in line with its own policy at the time, offered the Complainant the option of a tracker interest rate of 4.75% (ECB + 1.25%) on the mortgage loan.

The Provider has summarised its policy as follows;

“...[In mid] 2006, the Bank introduced a policy of offering a tracker rate of interest to existing customers who were maturing from a period of a fixed rate of interest, although their loan contract did not provide an entitlement to be offered a tracker rate at maturity (this initiative was taken against the backdrop of the competitive mortgage market at that time).

The Complainant of his own volition decided not to choose the option of a tracker interest rate of ECB + 1.25% (4.75%) at the time and selected the one year fixed interest rate offered (4.75%).

The reverse side of the options form which the Complainant signed on **8 January 2007**, contained detail about the tracker interest rate offering, such that the Complainant could have made an informed decision as to which interest rate to choose at the time. The Provider had set out in a clear and comprehensible manner that the interest rate applicable to a tracker mortgage loan is made up of *“the European Central Bank Refinancing Rate (“the ECB Rate”) plus a percentage over the ECB Rate”*. As such, the Complainant ought to have been aware that, in circumstances where he opted for the tracker interest rate, the percentage of 1.25% above ECB would not be exceeded during the term of the loan and the ECB rate would fluctuate in accordance with the European Central Bank.

It is understood from the Complainant’s submissions that the *“consequences”* and *“cost implications”* that the Complainant is referring to is the longer term comparison between an ECB tracker interest rate and other rate options, fixed and variable. It is a matter of fact that the ECB base rate ultimately began and continued to drop from late 2008 to March 2016, when it was reduced to 0%. There is no evidence that the Provider knew or could have known in January 2007, when the ECB Base Rate was 3.5%, that the ECB base interest

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rate was ultimately going to reduce to 0% some nine years later such that it could have advised the Complainant of the “*cost implications*” of not selecting the tracker interest rate that was offered to him by the Provider at that time.

The Complainant submits that the Provider did not offer him a tracker interest rate on his mortgage loan in the second options form that issued on **17 January 2007**. It is unclear from the evidence on the file the method by which the Complainant made contact with the Provider in between 08 January 2007 and 17 January 2007, when the second rate options form issued to the Complainant. However I have been provided with evidence in the form of a letter from the Complainant to the Provider, after the fact, dated **15 March 2007**, wherein the Complainant outlines;

“I seem to be on the wrong repayment amount for the above mortgage. I was offered €810.39 as a 3 year fixed but went for the 1 year fixed, with more information I then decided to go for the 3 year fixed but was offered €816.41 and then got word that my mortgage was for €820.88”

On the basis of this evidence it is clear that the Complainant had selected the one year fixed rate but then “*decided*” to amend the option to a three year fixed rate “*with more information*”. In any event there was no contractual obligation on the Provider to offer the Complainant a tracker interest rate at the time. The Provider in accordance with its policy that was in place at the time in January 2007, had offered the Complainant the option of a tracker interest rate on the expiry of the fixed interest rate period. The Complainant did not select that option and instead opted for a one year fixed interest rate. When the Complainant subsequently changed his mind the evidence shows that he was seeking a three year fixed interest rate period and that was the option he selected on the second options form that was signed on **19 January 2007**.

The Complainant submits that he wrote to the Provider, by letter dated **24 December 2008** requesting to break out of the fixed interest rate period that was applied to the mortgage loan at the time and it was not outlined to him by the Provider, prior to sending this letter, that he had the option of a tracker interest rate. The documentary evidence, particularly the Provider’s internal email chain from **09 December 2008** to **17 December 2008**, indicates that the Complainant did contact the Provider at this time in relation to the rate offerings on his four accounts.

The first email on the **9 December 2008** reads;

“The above customer phoned in relation to tracker rates on the above mtgs and has an appointment for Thursday to discuss options on same. He has advised that he spoke to mtg services and advised to contact the branch.

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Client says ltv's on the properties need to update so that we can offer the best tracker to him. Due to the set up of the loans I am not sure how we can do this?"

I note that mortgage loan account ending **7869** was included in the mortgage accounts listed.

The response to this email on the **10 December 2008**, details as follows;

"Please note, we can only offer tracker rates to clients that are meeting maturity of their fixed rates. This client has at least 5 months left before reaching maturity on one of them at the earliest. We CANNOT offer tracker rates on any of these if they are looking to break their fixed rates.

[...]

*On [mortgage loan ending **7869**] there is a fref of €0, best is 5.4% LTV Variable."*

It appears that the Complainant attended a meeting in the Provider's branch on **16 December 2008**. This office has not been provided in evidence with any notes of this meeting. However, the internal email chain records the following on that date;

"Customer was with us in the branch today to discuss this following on from the email below. We explained to the customer that this was the best rate on offer and that there was no room for negotiation only to be told by the customer that he had all ready [sic] been offered 4.55% by head office."

The Complainant wrote to the Provider by letter dated **24 December 2008** and outlined that he wished to break out of the fixed interest rate period on his mortgage loan account ending **7869** and that the new variable rate applicable to the loan would be 4.65%. The 4.55% rate referenced above, relates to one of the Complainant's other mortgage loan accounts which is not the subject of the complaint to this office.

I do not accept the Complainant's submission that he had the option of a tracker interest rate in **December 2008**. There was no contractual or other obligation on the Provider to offer the Complainant a tracker interest rate in the event of the break in a fixed interest rate period. The Complainant's mortgage loan documentation was silent as to what would happen in the event of a break in a fixed interest rate period. As such it was a matter for the Provider to decide if it wanted to accede to the request to break the fixed interest rate period and secondly what interest rate offering it would make to the Complainant. The Provider's policy that was in place from mid-2006 was to offer tracker interest rates on the expiry of fixed interest periods even though there was no contractual entitlement to a tracker interest rate in the mortgage loan documentation. The Provider did not have a

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policy on offering tracker interest rates in the event of a break in a fixed interest rate period. The three year fixed interest rate period that had been applied to the mortgage loan account by the Complainant in **January 2007** was not due to reach its maturity until **January 2010**.

By mid-2008, the Provider had commenced the withdrawal of tracker interest rates. The Provider outlines that its policy was as follows;

“[The Provider] made a commercial decision to commence the withdrawal of the Tracker product in [mid-2008] (the withdrawal of the Tracker for new customers and as a switching option for existing variable rate customers), maturing fixed rate customers without contractual Tracker entitlements, continued to be offered a Tracker rate by the [Provider] up until the end of [mid] 2009. After [mid] 2009 the [Provider] continued to offer and/or apply Tracker rates to maturing loans where customers had a contractual right to same.”

As such, even if the Complainant had not broken the fixed interest rate in December 2008 and the three year fixed interest rate period continued and reached maturity in January 2010, the Provider would not have offered the Complainant a tracker interest rate at the time, as there was no contractual obligation on the Provider to do so and the policy of offering tracker interest rates was no longer in effect by January 2010.

The variable interest rate of 4.65% was applied to the Complainant’s mortgage loan account ending **7869** on **2 January 2009**.

The Provider wrote to the Complainant by letter dated **06 March 2009** and outlined that *“due to a recent interest rate change, the monthly repayment”* on the Complainant’s loan had changed. The letter outlined the interest rate was 4.15% and was applicable from 13 February 2009. The Complainant wrote to the Provider on **15 April 2009** and outlined that the interest rate applicable to the loan did not appear to have been reduced by the 0.5%.

The Provider issued a fixed interest rate options letter containing a 2 year fixed interest rate option of 4.15% to the Complainant on **01 July 2009**. The Complainant did not respond to this.

The Provider wrote to the Complainant on **07 August 2009** and outlined that the interest rate had changed to 4.45%, applicable from 27 July 2009. The Complainant wrote to the Provider on **21 August 2009** and expressed dissatisfaction with the increase in the variable interest rate applied to his loan. He outlined *“I would be interested in reading your comments and your justification for charging me 4.45% when the ECB is 1%”*.

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The Provider responded by letter dated **31 August 2009** and outlined as follows;

"I understand from your letter dated 21st August 2009 that you are dissatisfied with an interest rate of 4.45% charged on the above mortgage loan. This interest rate is a non tracker residential investment Variable rate and is not tied to the ECB movements.

The cost of borrowing whether in the wholesale or interbank market has become considerably higher than the nominal rate set by the ECB and it is no longer moving in parallel with movements in the ECB rate. So while the ECB rate reduced, the actual cost of borrowing on the interbank market did not move in parallel. As your mortgage contract does not provide that the interest rate is to track the ECB rate, there is no obligation on the Bank to move the rate in line with ECB rate changes."

The Provider wrote to the Complainant on **02 October 2009, 01 February 2010, 04 March 2010** and **18 March 2010** offering the Complainant the option of a 2 year fixed interest rate of 5.35% for the mortgage loan account. Further fixed interest rate options letters were issued by the Provider to the Complainant on **29 March 2010, 12 April 2010, 20 May 2010** and **25 July 2010**. The Complainant selected the 2 year fixed interest rate of 5.35% and signed the options form on **30 July 2010**.

The Complainant disputes that he "*only*" requested fixed interest rate options from the Provider during this time period and that rather he requested that he be provided with all interest rate options. The Complainant submits that the Provider failed to offer him a tracker interest rate during this time period. There was no contractual or other obligation on the Provider to offer the Complainant a tracker interest rate on his mortgage loan. Even if the Complainant requested "*all options*", it was a matter for the Provider to decide, having regard to the terms and conditions of the Complainant's loan what interest rates to offer the Complainant when he was seeking to move from the variable interest rate that applied to his loan from **July 2009** to **July 2010**. The Provider was under no contractual or other obligation to offer a tracker interest rate to the Complainant on his mortgage loan, during this time.

Having considered the Complainant's mortgage loan documentation, I find the Complainant did not have any contractual or other entitlement to a tracker interest rate on his mortgage loan. The Provider as a matter of policy offered the Complainant a tracker interest rate of ECB + 1.25% in January 2007, but the Complainant did not take the Provider up on this offer.

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

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Conclusion

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

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

17 December 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.