



<b><u>Decision Ref:</u></b>	2020-0171
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Tracker Mortgage
<b><u>Conduct(s) complained of:</u></b>	Failure to offer a tracker rate throughout the life of the mortgage
<b><u>Outcome:</u></b>	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' principal private residence.

The loan amount was €260,000 and the term was 35 years. The Letter of Approval which was signed on **15 February 2006** detailed that the Loan Type was a "2 Year Fixed Rate Home Loan".

**The Complainants' Case**

The Complainants' mortgage loan account with the Provider issued on an initial two-year fixed interest rate in **2006**.

The Complainants submit that when the two-year fixed interest rate period on the mortgage loan account expired in **2008** they received "a letter with further fixed term options" from the Provider. They state that when the initial fixed interest rate period expired, "we were never offered a tracker rate" and they then opted to apply a further five-year fixed interest rate to the mortgage loan account.

The Complainants submit that they telephoned the Provider in **February 2018** to query why they had not been offered a tracker rate for the mortgage loan account in **2008**. They state that the Provider informed them that the mortgage loan account had automatically defaulted to a tracker interest rate at the end of the fixed rate period in **2008**, and that the Complainants had subsequently opted to apply the five-year fixed interest rate.

The Complainants submit that they were not informed by the Provider either that the tracker rate was available in **2008** or that it was the default rate following the expiry of the fixed period. They further state that they were not informed by the Provider that their mortgage loan account had automatically defaulted to a tracker interest rate at the end of the fixed interest rate period in **March 2008**. They submit that they were unaware of this when they opted to apply the five-year fixed interest rate to the mortgage loan account in **2008**.

The Complainants outline that they were *“eager to get a tracker rate as our mortgage was very high and were never advised that we were actually on a tracker rate. We feel we were never placed on a tracker rate and the bank is now being misleading in advising us that we were on a tracker and then decided to come off it.”*

The Complainants submit that having a tracker rate on the mortgage loan account from the date of expiry of the fixed rate *“would have had a serious impact on [the Complainants’] quality of life since 2007. The saving we would have made on a tracker mortgage would have been significant.”*

The Complainants are seeking;

- a) The tracker rate to be applied to the mortgage loan account; and
- b) Reimbursement for the overpaid interest paid on the mortgage loan account since **2008**.

### **The Provider’s Case**

The Provider states that it does not accept the Complainants’ submission that they were not offered a tracker interest rate option at the end of their fixed interest rate period in **March 2008**.

The Provider details that it issued a **Letter of Approval** to the Complainants on **8 February 2006** for a home loan in the amount of €206,000 repayable over a period of 35 years. It states that the rate of interest was fixed for the first two years at 3.70%, after which the Provider or the Complainants could elect to apply a variable rate. The Provider submits that the Letter of Approval did not contain a contractual entitlement to a tracker rate on the expiry of the initial fixed rate period or at any point in time during the term of the loan. The

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Provider relies on **Special Condition A** of the Complainants' **Letter of Approval, General Condition 5** of the **General Mortgage Loan Approval Conditions** and the **European Standardised Information Sheet** in support of this.

The Provider states that the loan was drawn down on **13 March 2006** and a fixed rate of 3.70% applied to the account until **13 March 2008**.

The Provider submits that on or about **21 February 2008**, its mortgage processing system automatically issued a letter to the Complainants which reminded them that their fixed rate period was due to expire, together with an attached options form which contained all of the rate options then available to the Complainants. It details that the options were fixed rates for 1, 2, 3, 4, 5, 7 and 10 year terms, the standard variable rate option of 5.44%, and a tracker variable rate option of 5.30% (ECB + 1.30%). The Provider outlines that the tracker variable rate was included because since **2006** it *"had been offering a tracker rate option on expiry of a fixed rate to certain existing customers who did not have a contractual entitlement to such a tracker rate option."* It outlines that during the period between **mid-2006** and **mid-2009**, these customers, including the Complainants, were automatically issued with a tracker rate option on the expiry of a fixed rate period.

The Provider states that the automated options letter issued in **February 2008** also informed the Complainants that the tracker variable rate was the rate which the Provider would apply to the account if no rate selection was made by the Complainants, and that this in fact occurred on the date of expiry of the fixed rate. The Provider details that it *"did not in 2008 retain a copy of each individual standard form options letter automatically issued by the mortgage system."* The Provider submits that in the absence of any instruction regarding a rate selection from the Complainants, the mortgage account defaulted on **13 March 2008** to the tracker rate of 5.30%.

The Provider states that it does not accept that the Complainants were not informed that their mortgage account had defaulted to a tracker rate in **March 2008**. It refers to the mortgage loan account statements which show that a rate of 5.30% was applied to the account on **13 March 2008** when the fixed rate period expired. It states that furthermore, its automated mortgage loan processing system retrospectively issued rate and payment change confirmations to customers of the Provider on each occasion on which their interest rate changed and a consequent adjustment occurred in the monthly loan repayment amount. The Provider states that the first payment change resulting from the rate change of **13 March 2008** was applied to the account on **11 April 2008** and following this payment the Provider sent a payment change notice letter to the Complainants which confirmed the new payment amount.

The Provider states that on or about **4 July 2008**, the Complainants contacted the Provider and enquired about fixed rate options. It outlines that requests to amend rates had to be in writing and it issued the Complainants a fixed rate options letter on **04 July 2008** which included a list of the available fixed rate options and a request for the transfer fee of €100 payable for switching to a fixed rate. It outlines that this letter also included a warning that, *“If you are currently on a Tracker Rate Mortgage please note that our current margin commitment to you will expire if you convert to a fixed rate. At the end of the Fixed Rate period your mortgage will default to a variable rate which may not be a tracker rate.”*

The Provider submits that on **25 July 2008** it received a signed options form from the Complainants indicating their selection of a five-year fixed rate at 5.99% and the account was amended to the fixed rate of 5.99% on the same date.

The Provider states that it is important to consider the context within which the Complainants applied for a fixed rate in **July 2008**. It states that this was during a period when the European Central Bank was continuing to increase its refinancing rate as part of its response to an international economic downturn. It submits that there had been no reduction in the ECB rate since **2003**, and instead the rate continued to increase and was increased to 4.25% by the ECB in **July 2008**. It states that at this time the Provider’s other lending rates, including fixed rates, were also increasing due to increased costs. It states that there was no indication at this time that the ECB would reverse its rate increase policy in **October 2008**, and therefore tracker mortgage rates were less attractive to customers in **July 2008** than they subsequently became.

### **The Complaints for Adjudication**

The complaints for adjudication are;

- (a) The Provider failed to inform the Complainants that the tracker interest rate option was available to them at the end of the initial two-year fixed interest rate period in or around **February 2008**, and
- (b) The Provider failed to inform the Complainants that their mortgage loan account had defaulted to the tracker interest rate at the end of the two-year fixed interest rate period in **March 2008**.

## Decision

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

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

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

A Preliminary Decision was issued to the parties on **03 March 2020** 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.

Following the issue of my Preliminary Decision, the Complainants made a further submission under cover of e-mail to this office on **19 March 2020**, a copy of which was transmitted to the Provider for its consideration.

The Provider has not made any further submission.

Having considered the Complainants' additional submission and all of the submissions and evidence furnished to this Office, I set out below my final determination.

Before dealing with the substance of the complaint, I note the application for the mortgage loan was submitted by the Complainants to the Provider through a third party Broker. As this complaint is made against the Respondent Provider only, it is the conduct of this Provider and not the Broker which will be investigated and dealt with in this Decision. The

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Complainants were informed of the parameters of the investigation by this Office, by letter, which outlined as follows;

*“In the interests of clarity, the complaint that you are maintaining under this complaint reference number is against [the Provider] and this office will not be investigating any conduct of the named Broker in the course of investigating and adjudicating on this complaint.”*

Therefore, the conduct of the third party Broker engaged by the Complainants, does not form part of this investigation and decision for the reasons set out above.

In order to determine this complaint, it is necessary to review and set out the relevant provisions of the Complainants’ loan documentation. It is also necessary to set out the interactions between the Complainants and the Provider between **February 2008** and **July 2008**.

The **Letter of Approval** dated **08 February 2006** details as follows;

“Loan Type:	2 Year Fixed Rate Home Loan
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Purchase Price / Estimated Value:	EUR 260,000.00
Loan Amount:	EUR 260,000.00
Interest Rate:	3.70%
Term:	35 year(s)”

The **Special Conditions** to the Letter of Approval detail as follows;

**“Special Conditions**

- A. 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** outlines;

**“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.

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

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*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."*

**Page 1** of the **European Standardised Information Sheet** details as follows;

*"The interest rate is 3.70 percent.*

*This rate is fixed for 2 year(s).*

*At the end of the fixed rate period you may exercise an option to contract for another fixed rate period (if available) or to move to a variable rate. In the event of the rate becoming variable, 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 Complainants and witnessed by a solicitor on **15 February 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 conditions*
- 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.*

...

*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 two-year fixed rate of 3.70% and thereafter the option of a variable rate. The variable rate in this case 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 Complainants accepted the Letter of Offer, having confirmed that the Loan Offer had been explained to them by their solicitor and they understood the Loan Offer.

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The Provider has submitted that approximately twenty days prior to the expiry of the fixed rate period it automatically issued a **rate options letter** and **rate instruction form** to the Complainants in or around **21 February 2008** containing the currently available rate options, including the tracker interest rate of 5.30% (ECB + 1.30%).

It is disappointing that a copy of the rate options letter and rate instruction form that purportedly issued to the Complainants have not been furnished in evidence to this office. The Provider has submitted as follows;

*“The Bank did not in 2008 retain a copy of each individual standard form options letter automatically issued by the mortgage system. A copy of the standard form options letter in use on a particular date contains all of the information provided in every such letter, apart from the identification details relating to a particular account.”*

I note that the Provider did not offer any adequate reason for failing to hold a copy of the letter and form that purportedly issued to the Complainant in **February 2008**. It appears that the Provider is indicating that it did not retain copies of individual letters and forms issued at the time.

If correspondence issues by the Provider to a mortgage holder during the term of a loan and that loan remains active with the Provider, the Provider should retain that documentation on file for six years from the date the relationship with the mortgage holder ends. In this regard, **provision 49 of the Consumer Protection Code 2006 (“CPC 2006”)** and **Provision 11.4 and 11.5 of the Consumer Protection Code 2012**, outline as follows;

*“A regulated entity must maintain up-to-date consumer records containing at least the following*

- a) a copy of all documents required for consumer identification and profile;*
- b) the consumer’s contact details;*
- c) all information and documents prepared in compliance with this Code;*
- d) details of products and services provided to the consumer;*
- e) all correspondence with the consumer and details of any other information provided to the consumer in relation to the product or service;*
- f) all documents or applications completed or signed by the consumer;*
- g) copies of all original documents submitted by the consumer in support of an application for the provision of a service or product; and*
- h) all other relevant information [and documentation] concerning the consumer.*

*Details of individual transactions must be retained for 6 years after the date of the transaction. All other records required under a) to h), above, must be retained for 6*

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*years from the date the relationship ends. Consumer records are not required to be kept in a single location but must be complete and readily accessible.”*

In this regard, the Complainant’s mortgage loan was incepted for a term of **35 years** commencing from **February 2006** and the letter and form purportedly issued in **February 2008**. It is my understanding that the mortgage loan remains presently active with the Provider. The Provider is obliged to retain that documentation on file for six years from the date the relationship with the mortgage holder ends. It is therefore unclear to me why a copy of this letter and form has not been retained by the Provider.

The **template letter** which has been supplied in evidence details as follows;

*“I am writing to remind you that the current rate option on your mortgage account will end on **[REDACTED]** 2008.*

*Please find attached the current options available to you, including our competitive tracker variable rate. In calculating the new tracker rate we use the original loan amount to calculate your balance band and we use your current balance and the original valuation of your home to calculate the loan to value.*

*If we do not receive a written instruction from you in relation to the above on or before the **[REDACTED]** 2008, we will automatically default your loan to the tracker variable rate.*

*...”*

The **options form** outlined as follows;

*“Current options available*

*You may only select one option.*

*Account number: XXXXXXXXX*

*Tracker variable rate - Currently **[REDACTED]**  
(ECB + maximum **[REDACTED]**)*

*Standard variable rate - Currently **[REDACTED]***

*1 year fixed rate - Currently **[REDACTED]***

*2 year fixed rate - Currently **[REDACTED]***

*3 year fixed rate - Currently **[REDACTED]***

*4 year fixed rate - Currently **[REDACTED]***

*5 year fixed rate - Currently **[REDACTED]***

*7 year fixed rate - Currently **[REDACTED]***

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10 year fixed rate - Currently **[REDACTED]**

....

- 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 **[REDACTED]** % over the European Central Bank Refinancing Rate (the "ECB Rate"). See over the page for further details on Tracker Mortgage Loans."

The reverse side of the **options form** outlined as follows with respect to fixed interest rate loans;

#### **"Fixed Rate Loans**

Wherever 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 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."

The reverse side of the **options form** outlined as follows with respect to tracker mortgage loans;

#### **"Tracker Mortgage Loans**

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 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.

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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 Provider has submitted that the following rates were offered to the Complainants in the **options form** that issued to them;

- *"Tracker Variable Rate: 5.30% (ECB + 1.30%)*
- *Standard Variable Rate 5.44%*
- *1 Year Fixed Rate: 5.20%*
- *2 Year Fixed Rate: 5.20%*
- *3 Year Fixed Rate: 5.25%*
- *4 Year Fixed Rate: 5.25%*
- *5 Year Fixed Rate: 5.10%*
- *7 Year Fixed Rate: 5.25%*
- *10 Year Fixed Rate: 5.25%"*

The Provider has submitted a document titled ***"Lending Interest Rate Sheet effective from the start of business on the 18 February 2008"***, to support its submission that these were the rates then available on existing home loans. It appears to me that the rate options as outlined in the Lending Interest Rate sheet, correlates with the options that the Provider submits it made available to the Complainants. In these circumstances I accept that these were the options made available to the Complainants for selection in **February 2008** on the expiry of the fixed interest rate period.

Having considered the mortgage loan documentation, it is my view that the Complainants did not have a contractual entitlement to a tracker interest rate at the end of the fixed rate period in **March 2008**. It appears that the Provider offered the tracker rate option of 5.30% to the Complainants in line with its own policy at the time. The Provider has summarised its policy as follows;

*"... on [mid] 2006, the Bank introduced a policy of offering a tracker rate of interest to its existing customers who were maturing from a period of a fixed rate of interest although their loan contract did not specify 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). Therefore, a tracker mortgage rate was included in the list of options in the automated options letter issued to a customer in the month prior to the date of maturity of the fixed rate period. In the absence of a customer selection, the variable rate was applied to the mortgage. The Bank also provided in options letters issued from [mid] 2006 that, in default of selection of one of the*

*offered options, the loan would default to the tracker rate of interest on maturity of the fixed rate period."*

The Complainants have submitted that they were not informed by the Provider that the tracker interest rate was an option available to them or that it was the default rate at the end of the fixed rate period.

It appears that the Complainants are suggesting that they did not receive the options letter that purportedly issued to them in or around **February 2008**. In the Complainants' post Preliminary Decision submission, they again submit that this options letter was "*absolutely not received by us. Had we received it and seen the word tracker we would have questioned it. We sought this out having seen friends and family with the same rate. Why would we ignore this letter and then look for this rate 2/3 months later.*"

As stated above, it is most disappointing that the Provider is unable to provide a copy of this letter. However, in circumstances where the Complainants received further options letters and forms from the Provider in **July 2008** and in **June 2013** at the same address, and returned the completed options forms on both occasions, I accept that it is likely on balance that the options letter was issued by the Provider to the Complainants in or around **February 2008**. The Complainants did not return the **options form**.

In the Complainants' Post Preliminary Decision submission, they "*question the safety in using an assumption of us receiving previous correspondence from the [Provider] as proof that we must have received this rate letter.*" The Complainant submits that "*we are in the weaker position for having trusted our provider of keeping proper records and we find the template sent with redacted amounts as insulting as obviously at some point in 2008 they were in fact retaining copies of these rate letters hence the reason they were able to send on this redacted template.*" It is important for the Complainants to be aware that in the consideration of this complaint, I am entitled to test evidence and draw conclusions on the basis of the evidence before me.

The Provider has sought to rely on a payment change letter that purportedly issued to the Complainants in or around **11 April 2008** in support of its submission that the mortgage account defaulted to the tracker rate. I do not intend to take this into account in circumstances where a copy of this correspondence has not been furnished to this office. I am disappointed that the Provider has not furnished a copy of this letter in evidence. Furthermore I am disappointed that the Provider has sought to rely on this letter and yet failed to provide any explanation as to why this letter was not supplied in evidence to this office. Nonetheless, I note from the mortgage loan statements furnished in evidence that a new rate product of 5.30% was applied to the mortgage loan on **13 March 2008**. This rate accords with the tracker interest rate (ECB + 1.3%) that was available at the time.

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In the Complainants' Post Preliminary Decision submission, they submit that the amended rate detailed in their mortgage statements was never identified as a tracker rate. They submit that the statements were *"not received until January 2009 by which time we had already committed to a fixed term."* I accept that the Complainants would not have been in receipt of their statement with respect to the year ending 31 December 2008 until January 2009. In the interests of clarity the point noted above is that the change in interest rate on the statement accords with the application of the tracker interest rate to the loan.

In any event, notwithstanding whether or not the Complainants were notified by the Provider that the tracker interest rate option was available and/or was the default rate in or around **February 2008**, on the basis of the evidence before me I accept that a tracker interest rate of 5.30% was applied to the mortgage loan account on **13 March 2008**.

In the Complainants' post Preliminary Decision submissions detail that they called the Provider in **June 2008** and *"asked about a tracker [and] I was told it was not available."* I have not been provided with any evidence to support that this call took place or the matters discussed on the call.

I note the Provider submits that the Complainants contacted it in or around **July 2008** to request details of fixed rate options. Nothing has been furnished in evidence to support this, however, it does not appear to be a matter that is in dispute between the parties. In the Complainants' post Preliminary Decision submission, they submit that *"we did chose to fix in July 2008 it was because we were told by [the Provider] that we were not going to get a tracker rate."*

I note that the Provider issued a further **options letter** and **form** to the Complainants on **04 July 2008**. This letter, which has been furnished in evidence, details as follows;

*"I am attaching a list of our current fixed rate options as requested.*

*...*

*If you want to change to a fixed rate, you should also send us a transfer fee of €100.*

*We would strongly recommend that you consider your options carefully before choosing to fix your mortgage. If you are currently on a Tracker Rate Mortgage please note that our current margin commitment to you will expire if you convert to a fixed rate. At the end of the Fixed Rate period your mortgage will default to a variable rate which may not be a tracker rate. Your new rate could be higher or lower than our current rates depending on market factors and as a consequence you may incur higher interest over the term of the loan.*

*..."*

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The **options form** details as follows;

*"Please tick the option you want.*

Account Number: XXXXXX-XXXXXXXX

...

Current Rate	5.30%	€ 1,351.87
2 Year fixed rate Mortgage currently	6.35%	€ 1,524.81
5 Year fixed rate Mortgage currently	5.99%	€ 1,464.56
7 Year fixed rate Mortgage currently	6.10%	€ 1,482.86
10 Year fixed rate Mortgage currently	6.10%	€ 1,482.86

...

*If you choose a fixed rate, the standard fixed rate conditions will apply.*

..."

I note that the Complainants signed the **options form** opting for the five-year fixed rate of 5.99%, which was stamped received by the Provider on **25 July 2008**.

I accept that it was made clear to the Complainants that they may not be given the option of a tracker interest rate again by the Provider. It is clear to me that the Complainants made their interest rate selection in **July 2008** having been informed that the tracker interest rate option might not be made available to them again.

A recording of a telephone call has been provided in evidence. I have considered the audio recording of the telephone call between a representative of the Provider and the First Complainant on **13 February 2018**. I note that the Provider's representative advised the First Complainant during this call that it did not appear that the Complainants had been offered a tracker rate option at the end of the initial fixed rate period in **2008**, however the Provider's representative went on to state that *"I need to get it looked into"*. She advised the First Complainant that she would log her query in relation to the tracker interest rate as a complaint and the Provider would carry out a full review of the account. There is no evidence that the Provider has *"misled"* the Complainants or been *"dishonest"* with the Complainants, as the Complainants have suggested, as to the application of interest rates on their mortgage loan account.

As outlined above the Complainants did not have a contractual entitlement to a tracker interest rate on their mortgage loan account on the expiry of the fixed interest rate period. The Provider as a matter of policy offered the Complainants a tracker interest rate of ECB + 1.30% in or around **February 2008**, which was applied to the account on **13 March 2008**. Some four months later the Complainants chose to apply a five-year fixed interest rate to

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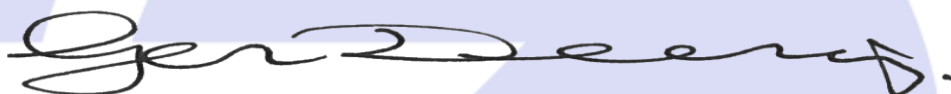
the mortgage loan account in **July 2008**. The Complainants were advised by the Provider when changing interest rate from the tracker rate to the fixed rate that the commitment to the tracker rate margin of ECB + 1.3% would expire if the Complainants converted to a fixed rate and that at the end of the fixed rate a tracker rate may not be available. The Complainants nonetheless elected to apply the 5 year fixed rate to their mortgage loan account at the time.

For the reasons set out above, 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.**



**GER DEERING**  
**FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

3 April 2020

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.