



<b><u>Decision Ref:</u></b>	2020-0177
<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 Application of interest rate
<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 €238,000 and the term of the loan was 30 years. The particulars of the mortgage loan offer accepted by the Complainants on **20 February 2004** detailed that the loan type was a "2 Year Fixed Rate Home Loan".

**The Complainants' Case**

The Complainants submit that on the expiry of the initial fixed rate period on their mortgage loan account in **February 2006**, they opted to apply a one year fixed interest rate of 3.75% to their mortgage account. In **February 2007**, the Complainants applied a further fixed interest rate to the mortgage loan for a period of two years at a rate of 5.15%.

On expiry of the two year fixed interest rate period in **March 2009**, the Complainants' mortgage loan account defaulted to a tracker interest rate of ECB + 2.25%.

On **24 November 2017**, the second named Complainant telephoned the Provider to query the tracker rate which their mortgage loan account was operating on. The Complainant submits that she was then informed by the Provider that the interest rate applicable to their mortgage loan account since **March 2009** was ECB + 2.25%.

The Complainants submit that they never agreed to the tracker interest rate of ECB + 2.25% and that they never received any correspondence from the Provider regarding what rate was to apply at the expiry of the fixed rate period in **March 2009**. The Complainants do not accept that the Provider issued an interest rate options letter to them in or around **February 2009**.

The Complainants submit that they were entitled to be offered a tracker interest rate of ECB + 1.25% in **March 2009**. In this regard, they refer to an interest options letter signed by the Complainants on **13 February 2007**, which outlined that *"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")"*.

The Complainants dispute that they would have agreed to a rate of ECB + 2.25% when the most recent document which they signed detailed that the interest rate applied to their account would not exceed 1.25% over the ECB rate. They submit that the Provider applied the higher tracker interest rate margin of 2.25% to their mortgage loan account without their permission. In this regard, the Complainants submit that they have been *"OVERCHARGED by 1% every month since March 2009"*.

The Complainants are seeking any overpayments of interest to be refunded to them and an apology from the Provider for the stress this has caused both themselves and their family.

### **The Provider's Case**

The Provider submits that the Complainants did not have a contractual right to be offered a tracker interest rate on their mortgage loan account at any point in time. In this regard, the Provider makes reference to **Condition A** of the **Special Loan Conditions** in the **Letter of Approval** which states that **General Mortgage Loan Approval Condition 5** applies to the mortgage loan account. The Provider notes that **Condition 5** states that the Provider could apply a variable rate of interest to the account on expiry of the fixed interest period. The Provider states that this was agreed by the Complainants at the commencement of their loan as one of the terms and conditions, which were explained to them by their own solicitor.

The Provider outlines that the mortgage loan was drawn down on **26 February 2004** on a 2 year fixed interest rate. The Provider details that on the expiry of that fixed interest rate

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period the Complainants selected a 1 year fixed interest of 3.75% which was applied to the mortgage loan on **27 February 2006**.

The Provider states that prior to the expiry of the fixed rate period in **February 2007**, the Complainants were issued an options letter listing the interest rate options available at that point in time, which explained the rate which would apply if the Complainants failed to select a rate. The list contained 9 interest rate options, including a standard variable rate, fixed rates and a tracker variable rate. The tracker interest rate option offered at the time was ECB + 1.25%.

The Provider submits that the fixed rate period applying to the Complainants' mortgage loan account ceased on **27 February 2007** and in the absence of a rate selection by the Complainants, the default tracker interest rate of ECB + 1.25% was applied to the mortgage loan. The Provider details that the Complainants had in fact completed a rate selection on **13 February 2007**, which was received by the Provider on **1 March 2007**. The Complainants opted for a 2 year fixed rate of 5.15%, which was applied to the account on **03 March 2007**.

The Provider submits that, in line with commercial decisions, the margins above the ECB rate for the Provider's tracker interest rate lending changed over time. The Provider states that the Complainants were offered a *"Tracker variable rate (ECB + maximum 1.25%)\*"* in **February 2007** on the basis of a policy that existed at that time. It states that the asterisk denoted an explanation further down the page which states *"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 Provider details that the rate options offered to the Complainants on the letter were options to apply at that time and not at any future time. It submits that this information was included to inform the Complainants that if they chose to have the tracker interest rate applied to the account on **27 February 2007**, the interest rate that would apply to the loan from that date would not exceed 1.25% over the ECB rate. The Provider strongly disagrees with the Complainants' submission that their mortgage loan account is operating on the incorrect tracker interest rate.

The Provider asserts that an options letter was issued to the Complainants prior to the expiry of the fixed interest rate period in **March 2009**, which included the then current tracker rate of ECB + 2.25%. It details that the Provider offered the Complainants a tracker interest rate at this time as a matter of policy. The Provider outlines that the letter confirmed that in default of selection, the tracker rate would be applied to the account. The Provider submits that it did not receive a rate selection from the Complainants and accordingly, the interest rate on their account was amended to the then current tracker rate of 4.25% (ECB + 2.25%) on **2 March 2009**.

The Provider submits that an options letter was “*automatically*” issued to the Complainants in **February 2009** in advance of the expiry of the fixed rate period. It says that their mortgage processing system produced this letter automatically and no manual intervention was required to ensure that it was sent to the customers on the correct date. The Provider notes that the Complainants did not alert them in **2009** that they did not receive an options letter at the end of the fixed period.

The Provider submits that interest rates are set at its absolute discretion. It says that it made a number of interest rate changes during **2007** and **2008** and in **December 2008**, the tracker rate was amended to ECB + 2.25%. It says that the calculation of the margin above the ECB rate was based on a commercial decision made by the Provider and was made taking into account a number of factors including wholesale lending and borrowing rates, interest rate paid on deposits, and the Provider’s competitive position.

The Provider submits that it is satisfied that the rates offered to the Complainants were correct.

### **The Complaints for Adjudication**

The complaints for adjudication are that:

- (a) the Provider wrongfully failed to offer the Complainants the option of reverting to a tracker interest rate of ECB + 1.25% in **March 2009**, and;
- (b) the Provider wrongfully placed the Complainants’ mortgage loan account on a tracker interest rate of ECB + 2.25% in **March 2009** without obtaining the Complainants’ agreement.

### **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

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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 **29 April 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.

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

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 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.

The issues to be determined are whether the Provider wrongfully failed to offer the Complainants the option of a tracker interest rate of ECB + 1.25% on their mortgage loan account on the expiry of the fixed interest rate period in **March 2009** and whether the Provider applied a tracker interest rate of ECB + 2.25% in **March 2009** without seeking the Complainants' agreement to same.

In order to adjudicate on this complaint, 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 between the Provider and the Complainants between **March 2007** and **March 2009**.

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The **Letter of Approval** dated **30 April 2003** details as follows;

<i>“Loan Type:</i>	<i>2 Year Fixed Rate Home Loan</i>
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<i>Purchase Price / Estimated Value:</i>	<i>EUR 260,000.00</i>
<i>Loan Amount:</i>	<i>EUR 238,000.00</i>
<i>Interest Rate:</i>	<i>3.60%</i>
<i>Term:</i>	<i>30 year(s)”</i>

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** 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.*

*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*

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*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 Complainants and witnessed by a solicitor on **20 February 2004**. I note that 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 2 year fixed rate interest of 3.60% 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 Approval** having confirmed that it had been explained to them by their solicitor in **February 2004**.

The Complainants completed a rate options form on **2 February 2006**, electing to apply a one year fixed interest rate of 3.75% to the mortgage loan account. The interest rate applying to the mortgage loan was applied to the mortgage loan account on **27 February 2006**.

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I note that the Provider submits that it wrote to the Complainants prior to the expiry of the fixed rate period in **February 2007** listing the interest rate options available at the time and explaining the rate which would be applied by the Provider if the Complainants did not select a rate. However I note that a copy of this letter has not been furnished in evidence, nor has the Provider given any explanation as to why this letter has not been furnished.

**Provision 49 of the Consumer Protection Code 2006** (which was fully effective from **01 July 2007**) outlines 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 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.”*

The Complainants’ mortgage loan was incepted for a term of **30 years** commencing from **April 2003** and the letter purportedly issued in **February 2007**. There is no indication that the mortgage has been redeemed or disposed of in any way. 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 unclear to me, in the absence of any explanation, why this documentation has not been furnished by the Provider.

Nonetheless, I note that it is not in dispute between the parties than an options letter was issued by the Provider to the Complainants at this time. The **rate options form** enclosed with the options letter that was signed by the Complainants, has been furnished in evidence, and details as follows;

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*“Current options available:*

*You may only select one option.*

*Account Number: [XXXXXXXXXX]1783*

			<i>*Monthly repayment*</i>
			<i>EUR</i>
<i>Tracker variable rate</i>	<i>- Currently:</i>	<i>4.75%</i>	<i>1228.10</i>
<i>(ECB + maximum 1.2500%)*</i>			
<i>Standard variable rate</i>	<i>- Currently:</i>	<i>4.85%</i>	<i>1241.30</i>
<i>1 year fixed rate</i>	<i>- Currently:</i>	<i>4.99%</i>	<i>1259.90</i>
<i>2 year fixed rate</i>	<i>- Currently:</i>	<i>5.15%</i>	<i>1281.33</i>
<i>3 year fixed rate</i>	<i>- Currently:</i>	<i>5.10%</i>	<i>1274.62</i>
<i>4 year fixed rate</i>	<i>- Currently:</i>	<i>5.15%</i>	<i>1281.33</i>
<i>5 year fixed rate</i>	<i>- Currently:</i>	<i>5.15%</i>	<i>1281.33</i>
<i>7 year fixed rate</i>	<i>- Currently:</i>	<i>5.15%</i>	<i>1281.33</i>
<i>10 year fixed rate</i>	<i>- Currently:</i>	<i>5.15%</i>	<i>1281.33</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** under the heading **“TRACKER MORTGAGE LOANS”** detailed as follows;

- “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 summarised its policy with respect to tracker interest rate offerings as follows;

- *"...[in 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 and 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. Between [mid] 2006 and [later in] 2006 while the options letter included the offer of a tracker interest rate, in the absence of a customer selection, the variable rate was applied to the mortgage as the default interest rate. From [mid] 2006 until [mid] 2009, in the absence of a customer selection the tracker interest rate was applied to the mortgage as the default interest rate.*
- *While the Bank commenced the withdrawal of its tracker mortgage interest rate offering in [mid] 2008 (it continued until [mid] 2009 its policy of offering a tracker interest rate maturity option to existing fixed rate customers whose contracts did not contain an entitlement to be offered a tracker rate at maturity of an existing fixed rate period.*
- *After [mid] 2009, the Bank continued to offer and / or apply Tracker rates to maturing loans where customers had a contractual right to same."*

Having considered the evidence before me, including the mortgage loan documentation, it is clear to me that that the Complainants did not have a contractual entitlement to a tracker interest rate at the end of the fixed rate period which applied from **February 2006** to **February 2007**. It appears that the Provider, in line with its own policy at the time, offered the Complainants a tracker interest rate, though it had no obligation to do so.

The reverse side of the options form which the Complainants signed on **13 February 2007**, contained detail about the tracker interest rate offering, such that the Complainants 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 Complainants ought to have been aware that, in circumstances where they opted for the tracker interest rate, the percentage of 1.25% would not be exceeded during the term of the loan and the ECB rate would fluctuate in accordance with the European Central Bank.

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However the Complainants did not opt to accept the tracker interest rate option and instead signed the options form on **13 February 2007**, electing to apply the 2 year fixed interest rate of 5.15%. The rate options form is date stamped as received by the Provider on **01 March 2007**. As the rate options form was not received by the Provider by the time the fixed interest rate period expired on **27 February 2007**, the Complainants' mortgage loan defaulted to the tracker interest rate of 4.75% (ECB + 1.25%) on **27 February 2007**. On **02 March 2007** the Complainant's instructions to apply the 2 year fixed interest rate to their mortgage loan were implemented by the Provider.

The Provider submits that it wrote to the Complainant in **2009**, prior to the expiry of the fixed interest rate period, outlining the rate options available for selection and the default rate which would be applied on the expiry of the fixed rate period if the Complainants did not make a selection. The Provider has not furnished a copy of this letter or the rate options form in evidence, nor has the Provider given any explanation as to why this letter has not been furnished. **Provision 49 of the Consumer Protection Code 2006**, as quoted above, obliges the Provider to retain certain records including all correspondence with the Complainants. It is disappointing that the Provider does not appear to have retained these records in accordance with the Consumer Protection Code.

The Provider has furnished a **template letter** in evidence which it details is "*similar in all material respects*" to the options letter issued to the Complainants in **February 2009**. This template letter details as follows:

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

*Please find attached the current options available to you.*

*We recommend that you consider your options carefully before making your selection. If you chose a fixed rate, then at the end of the fixed rate period we will send you a list of the product options available to you which may or may not include a tracker option. Our rates at that time could be higher or lower depending on market factors and as a consequence you may incur higher interest over the term of the loan.*

*If we do not receive a written instruction from you in relation to the above on or before the [DATE], the interest rate on your mortgage will be the tracker variable rate."*

The Provider submits that the following options were made available to the Complainants in the rate options form that issued to them:

<i>“Variable rate LTV &lt;80%</i>	<i>4.05%</i>
<i>Tracker rate LTV &lt; 80%</i>	<i>4.25%</i>
<i>2 Year Fixed</i>	<i>5.25%</i>
<i>5 Year Fixed</i>	<i>5.75%</i>
<i>7 Year Fixed</i>	<i>6.10%</i>
<i>10 Year Fixed</i>	<i>6.10%”</i>

The Provider has submitted into evidence a copy of a published marketing document entitled **Lending Interest Rates**, which is noted as being “*effective from the start of business on the 13<sup>th</sup> February 2009*”.

This document outlines as follows;

***“Home Loans Rates for Existing Business***

<b><i>LTV Variable/ LTV Tracker Maturity Rates applicable To Existing Home Loans since 13/02/09</i></b>	<b><i>RATE</i></b>	<b><i>APR</i></b>
<i>Variable Rate LTV &lt;80%</i>	<i>4.05%</i>	<i>4.1%</i>
<i>...</i>		
<i>Tracker Rate LTV &lt;80%</i>	<i>4.25%</i>	<i>4.3%</i>

<b><i>Fixed Rates Applicable to Existing Home Loans</i></b>	<b><i>RATE</i></b>	<b><i>APR</i></b>
<i>2 Year Fixed</i>	<i>5.25%</i>	<i>4.5%</i>
<i>5 Year Fixed</i>	<i>5.75%</i>	<i>5.1%</i>
<i>7 Year Fixed</i>	<i>6.10%</i>	<i>5.5%</i>
<i>10 Year Fixed</i>	<i>6.10%</i>	<i>5.9%</i>

*Existing business LTV Variable rates and existing business LTV Tracker rates pre 13/02/2009 available on request. The rate applicable to individual customers is determined in accordance with their loan documentation.”*

The Provider submits that it did not receive a response to the rate options letter and form from the Complainants and in those circumstances, in accordance with its policy at the time applied the tracker interest rate of 4.25% to the Complainants’ mortgage loan from **02 March 2009**. I understand that the ECB base rate was 2.00% at the time and as such the tracker interest rate offered and applied at the time was ECB + 2.25% (4.25%).

There is a dispute between the parties as to whether the rate options letter and form were received by the Complainants. The Complainants submit as follows:

*“...we dispute the fact that any letter was sent to us. We dispute the fact that we would have agreed to a rate of 2.25% given the last signed document stated our rate would be no more than 1.25% over the ECB Rate.”*

On the basis of the evidence before me it is unclear whether the Complainants received the options letter and form that the Provider submits it issued to the Complainants in **February 2009**, however, it is not in fact central to the issues for determination whether these documents were or were not received by the Complainants at that time. The reason for this is that the Complainants did not have a contractual or other entitlement to be offered a tracker interest rate of ECB + 1.25% at the end of the fixed interest rate period in **March 2009**.

As detailed above, the Provider was not contractually obliged to offer the Complainants the option of a tracker interest rate on the mortgage loan at any time. It did so in **2007** and **2009** as a matter of policy despite not being obliged to do so.

The Complainants had been offered a tracker interest rate of ECB + 1.25% on the expiry of the earlier fixed interest rate period in **February 2007**. The Complainants did not accept that offer at that time. However, by the time the Complainants' subsequent fixed interest rate period had expired in **March 2009**, the tracker interest rate that was then available from the Provider was a rate of ECB + 2.25%. The evidence in the form of the **Lending Interest Rates** document supports that this was the tracker interest rate available from the Provider at that time.

The Complainants appear to be operating under the misconception that the options form that they signed on **13 February 2007**, somehow entitled them to a tracker interest rate of ECB + 1.25% at a later point in time. This however is not the case, as the Complainants did not select that tracker interest rate option (ECB + 1.25%) in **2007**. The rate options form that was signed in **February 2007** is clear that the options outlined were “*current options available*” and the Complainants could “*only select one option*”. The Complainants did not select the tracker option. The options form did not entitle the Complainant to the option of the tracker interest rate of ECB + 1.25% at a later point in time. There is no reasonable interpretation of the documentation that supports that outcome.

The Complainants take issue with the application of the tracker interest rate of ECB + 2.25% to their mortgage loan from **March 2009**, without their “*approval*” or “*agreement*”. On the basis of **General Condition 5** of the **General Mortgage Loan Approval Conditions**, the Provider had the option under the mortgage contract of converting the loan to a variable

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rate loan agreement. As detailed above, that variable rate was a variable rate which could be adjusted by the Provider and was not a tracker interest rate.

I understand that the Provider applied the tracker interest rate of ECB + 2.25% to the Complainants' mortgage loan as the default rate as a matter of policy, as the tracker interest rate was a "competitive" rate. I note that at the time in **March 2009**, the tracker interest rate of 4.25% (ECB + 2.25%) was in fact higher than the variable rate of 4.05% that the Provider could have converted the mortgage loan to in accordance with **General Condition 5**. However the tracker interest rate subsequently dropped to 3.75% (ECB + 2.25%) on **03 April 2009**. In circumstances where it has been established that the Complainants did not have any right, contractual or otherwise, to a tracker rate of ECB + 1.25% at the time, it is unclear whether the Complainants may have selected one of the alternative interest rate type options, fixed or variable, that were available at that time.

Whilst it seems that the Complainants are not happy with the tracker interest rate of ECB + 2.25% as they perceive this rate to be "high", the Complainants have not indicated that they would have foregone the option of the tracker interest rate of ECB + 2.25% in favour of the variable rate of 4.05% in **March 2009**.

I note that the following tracker interest rates have applied to the Complainants' mortgage loan since **March 2009**:

Date	Rate Applied (ECB + 2.25%)
02 March 2009	4.25%
03 April 2009	3.75%
30 April 2009	3.50%
05 June 2009	3.25%
18 April 2011	3.50%
18 July 2011	3.75%
21 November 2011	3.50%
29 December 2011	3.25%
30 July 2012	3.00%
31 May 2013	2.75%
29 November 2013	2.50%
30 June 2014	2.40%
30 September 2014	2.30%
31 March 2016	2.25%

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Having considered the evidence in this matter, the Complainants did not have a contractual entitlement to a tracker interest rate on their mortgage loan. The Provider offered the Complainants the option of a tracker interest rate of ECB + 1.25% in **February 2007**, however the Complainants elected not to accept this rate and instead to choose a 2 year fixed interest rate at the time. At the end of the 2 year fixed interest rate the Complainants' mortgage loan defaulted to a tracker interest rate of ECB + 2.25%, which was the Provider's then available tracker interest rate. This default rate was applied as a matter of policy and not as a result of any contractual entitlement. The Complainants were not entitled as a matter of policy or contract to a tracker interest rate of ECB + 1.25% on the mortgage loan in **March 2009**.

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**

22 May 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.