



<u>Decision Ref:</u>	2020-0180
<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 Complainants with the Provider. The mortgage loan that is the subject of this complaint was secured on the Complainants' private dwelling home.

The loan amount was €210,000 and the term was 30 years. The Letter of Approval which was signed on **05 August 2004** outlined the loan type as "*Variable Rate Home Loan*".

The Complainants' Case

The Complainants drew down their mortgage loan account with the Provider in **April 2005** on an initial 12-month variable rate of 2.69%. On the expiry of the initial 12-month period the Complainants opted to apply a three year fixed interest rate of 4.29% to the mortgage account in **April 2006**.

Prior to the expiry of the fixed interest rate period in **April 2009**, the Complainants say that the Provider issued a **rate options letter** to them dated **20 March 2009**. The enclosed **rate options form** quoted a tracker interest rate option of 4.25% (ECB + 2.25%), an LTV variable interest rate option of 4.05% and a number of fixed rate options. The Complainants

completed and signed the rate options form on **4 April 2009** and selected the LTV variable interest rate.

The Complainants assert that the tracker interest rate of 4.25% (ECB + 2.25%) quoted in the **rate options form** issued to them on **20 March 2009** was *“incorrect”* and *“the Provider quoted the appropriate Tracker Rate as being 4.25% when in fact it was 3.75%”*. They say that the tracker interest rate on **20 March 2009** was actually 3.75% (ECB + 2.25%) as the ECB rate on that date was 1.50%. They submit that as a result they selected what they believed to be the *“cheapest available rate”*, which was the LTV variable rate option of 4.05%, when in fact the cheapest rate at that time was the tracker interest rate of 3.75%.

The Complainants' mortgage account automatically defaulted to the tracker interest rate of 3.75% on **9 April 2009**. They submit that the tracker interest rate on **9 April 2009** was actually 3.50% (ECB + 2.25%) as the ECB rate on that date was 1.25%. The Complainants' mortgage was subsequently switched to the LTV variable rate of 3.55% on **14 April 2009** when the Provider received the signed options form.

The Complainants state that *“the 30 day period that the Bank have for implementing ECB rate cuts is too long and they should update overnight.”*

The Complainants also submit that *“No where on any [Provider] Documentation did it state to us that if we moved from our Tracker Rate which we did on April 14th 2009 that we would not be allowed to go back on it at a later date.”*

The Complainants submit that in **September 2017** the Provider informed them that at that point in time there were no lower rate options available to them, however they say that there was a tracker interest rate of ECB + 2.25% available.

The Complainants are seeking the following;

- a) For the Provider to *“return”* their mortgage account to a tracker interest rate of ECB + 2.25%.
- b) A refund of the interest they have overpaid on the mortgage account from **14 April 2009** to date.
- c) An offer of compensation.

The Provider's Case

The Provider states that a **Letter of Approval** was issued to the Complainants on **30 July 2004** which was accepted and signed by the Complainants on **5 August 2004**. It details that the Letter of Approval provided for a Variable Rate Home Loan of €210,000 repayable over

a period of 30 years. The mortgage loan was drawn down on an initial 12-month new business variable interest rate of 2.69% on **14 April 2005**.

The Provider submits that the mortgage contract contained no entitlement to a tracker rate at any time during the mortgage loan term. It states that on the expiry of a fixed rate period the Provider or the Complainants could apply a variable rate of interest to the mortgage loan account. It relies on **Special Condition A** of the Letter of Approval and **Condition 5** of the **General Mortgage Loan Approval Conditions** in support of this.

The Provider submits that on **13 April 2006** the Complainants opted to change the interest rate on the account to a three year fixed interest rate of 4.29%.

The Provider states that on the expiry of any fixed rate period applying to a mortgage loan account, it provides certain information to the customer, including a list of rate options available at that time from which the customer can select the new rate applying to the account. It states that also included in this information is the variable rate which will be applied by the Provider if no selection is made by the customer.

The Provider details that for a period from **mid-2006** to **mid-2009**, it introduced a policy of including a tracker rate option in its automated maturity options forms sent to certain existing customers prior to expiry of the fixed rate period, although those customers had no contractual entitlement to be offered a tracker rate option on maturity of a fixed rate period. It details that from that date, its rate options letters included a tracker variable rate. It states that from **mid-2006** to **mid-2009** it also selected a tracker rate as the rate which it applied on the date of fixed rate expiry if no rate option was selected by the customer. It states that it is for this reason that a tracker rate option was included in the list of options provided to the Complainants in the options letter that issued prior to the fixed rate expiry date on **13 April 2009**. It states that it was not, and is not, contractually obliged to offer the Complainants a tracker rate at expiry of a fixed rate period or at any juncture throughout their loan term.

The Provider submits that approximately twenty days before the three year fixed interest rate period was due to expire, it issued an **options letter and form** dated **20 March 2009** to the Complainants. The Provider details that the following rate options were offered to the Complainants;

- Tracker variable rate of 4.25% (ECB +2.25%)
- LTV variable rate of 4.05%
- 2 Year Fixed Rate of 5.25%
- 5 Year Fixed Rate of 5.75%
- 7 Year Fixed Rate of 6.10%
- 10 Year Fixed Rate of 6.10%.

/Cont'd...

The Provider outlines that the letter informed the Complainants that the tracker rate option would be applied by the Provider if no indication of the Complainants' preferred option was received prior to expiry of the fixed rate. It states that the letter also contained a warning that if the Complainants chose a fixed rate, then at the end of the fixed rate period the rates could be higher or lower than the current rates depending on market factors. It states that the Complainants were therefore aware that the rates provided in **March 2009** were "*current*" rate options and that only one rate could be selected. It states that there was no express or implied indication in the letter that any of the rates would be available on any date other than the date on which the fixed rate period ended.

The Provider states that it subsequently implemented an ECB rate reduction of 0.50% on **03 April 2009** which reduced the tracker interest rate from 4.25% to 3.75%. The LTV variable rate was also decreased to 3.55% on that date.

The Provider states that on **04 April 2009** the Complainants completed and signed the rate options form, ticking the LTV variable rate as their selected rate option. It submits that the date of expiry of the fixed rate was **13 April 2009**, which was a bank holiday, and therefore the fixed rate period expired on the previous working day, **09 April 2009**. It outlines that it did not receive the Complainants' signed options form prior to **09 April 2009** and as a result the account switched to the tracker interest rate of 3.75% (ECB + 2.25%) on that date. The Provider submits that it received the Complainants' signed options form on **14 April 2009** and the variable interest rate of 3.55% was duly applied to the account on that date.

The Provider states that it was the practice of the Provider to apply any ECB rate increase or decrease to relevant customers' loan accounts within a period of **30 days** from the date on which an increase or decrease was applied by the ECB to the Provider. The Provider does not accept that the 30 day period to implement an ECB rate increase or decrease is too long, or that it should be implemented overnight. It states that it is not practically possible for technical reasons to implement rate changes within such a time frame. It details that the **Consumer Protection Code** provides for a period of 30 days within which a bank is obliged to apply a change by the ECB in its refinancing rate to customers' accounts.

The Provider states that prior to **2012**, it provided customers with retrospective notice of an applied rate change. It states that in accordance with the updated **Consumer Protection Code 2012**, it introduced a new type of standard letter which is issued to mortgage loan customers 30 days before the introduction of a rate increase or decrease and which provides details of the forthcoming rate change, however this was not a requirement in **2009**.

The Provider states that its current or prevailing tracker rate available on **20 March 2009** was not 3.75%, it was 4.25% which comprised an ECB rate of 2.00% and a margin of 2.25%. The Provider refers to its **Lending Rates** sheet dated **13 February 2009** in support of this, which lists the Provider's rates available up to and including **20 March 2009**. The Provider

/Cont'd...

states that the ECB rate of 2.00% was applied by the ECB during a period from **21 January 2009** to **11 March 2009**. It states that within 30 days of the introduction of the new rate by the ECB on **11 March 2009** the Provider applied the new ECB rate to the relevant customers' accounts. It states that this was not done by **20 March 2009** and accordingly the ECB rate applicable to the tracker option in the Complainants' fixed rate maturity letter was the ECB rate of 2.00%.

The Provider submits that the ECB introduced a new refinancing rate of 1.50% on **11 March 2009**, and therefore the current tracker rate available on **09 April 2009** was 3.75%, which comprised the ECB rate of 1.50% and a margin of 2.25%. It refers to its **Lending Rates** sheet dated **03 April 2009** in support of this.

The Provider details that the margin of 2.25% was based on a number of factors, including the Provider's cost of funds, the cost of credit risk and the Provider's competitive position. In addition, it states that there are a number of external factors which affect decisions around the pricing of mortgage loan products. It states that "*as is well known*", there was significant turmoil in the Irish and international financial markets over the course of **2008-2009**, giving rise to funding difficulties for all banks. It states that as a result the cost of both wholesale funding and deposit funding increased significantly which increased the cost of funds. It details that deteriorating economic conditions, and in particular the rapid rise of unemployment, led to rising levels of loan arrears which in turn increased impairment provisioning by banks which increased the cost of credit risk. It further states that mortgage lending interest rates in Ireland in **2009** were affected by inaccessibility of wholesale funding following the nationalisation of a major Irish bank. The Provider states that it was entitled to consider these factors when setting the tracker margin and "*to do so was not unreasonable or improper*".

The Provider states that there was no basis upon which it was obliged to offer a tracker rate to the Complainants in **September 2017** as they had no entitlement at any time during the lifetime of their loan to be offered a tracker rate option.

The Complaints for Adjudication

The complaints for adjudication are as follows;

- (a) The Provider incorrectly advised the Complainants that the prevailing tracker rate was 4.25% (ECB + 2.25%) instead of 3.75% (ECB + 2.25%) in **March 2009**.
- (b) The Provider failed to inform the Complainants in **March 2009** that by selecting another rate option, they would be unable to avail of a tracker rate in the future.
- (c) The Provider failed to offer the Complainants a tracker interest rate of ECB + 2.25% in **September 2017**.

/Cont'd...

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 **17 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.

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 relevant to set out the Provider's interactions with the Complainants in **March and April of 2009** and in **2017**.

The **Letter of Approval** dated **30 July 2004** details as follows;

/Cont'd...

<i>“Loan Type:</i>	<i>Variable Rate Home Loan</i>
--------------------	--------------------------------

Purchase Price / Estimated Value: EUR 260,000.00
Loan Amount: EUR 210,000.00
Interest Rate: 2.69%
Term: 30 Years
...”

Special Condition A of the **Mortgage Special Conditions** details as follows;

“THE INTEREST RATE APPLICABLE TO THIS LOAN WILL, FOR A PERIOD OF 12 MONTHS FROM THE DATE OF THE ISSUE OF THE LOAN, BE THE NEW BUSINESS VARIABLE RATE. THIS RATE CURRENTLY EQUATES TO THE INTEREST RATE SHOWN ABOVE. THE NEW BUSINESS VARIABLE RATE, BEING A VARIABLE RATE, MAY CHANGE FROM TIME TO TIME AND WITHOUT REGARD TO THE STANDARD VARIABLE RATE OR ANY VARIATIONS THEREOF, DURING THE 12 MONTH PERIOD FROM THE DATE OF CHEQUE ISSUE IN ACCORDANCE WITH THE MORTGAGE CONDITIONS. ON EXPIRY OF THE 12 MONTH PERIOD, THE NEW BUSINESS VARIABLE RATE WILL CEASE AND THE INTEREST RATE APPLICABLE TO THIS LOAN SHALL REVERT TO THE PREVAILING STANDARD VARIABLE RATE APPLICABLE TO LOANS OF THIS TYPE.”

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*

/Cont’d...

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 Complainants and witnessed by a solicitor on **5 August 2004**. 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

- Letter of Approval*
- The general Mortgage Loan Approval conditions*
- [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."

The Letter of Approval envisaged a variable rate loan of 2.69% for the first 12 months from the date of issue. The variable rate, in the Complainants' 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 Complainants accepted the **Letter of Approval** having confirmed that it had been explained to them by their solicitor in **August 2004**. The mortgage loan was drawn down on **14 April 2005**.

On the expiry of the initial 12 month variable rate period, the Provider wrote to the Complainants and enclosed a rate options form. I note that a copy of the Provider's letter to

/Cont'd...

the Complainants enclosing the **options form** has not been furnished in evidence. It is not in dispute between the parties that a letter issued to the Complainants at this time. The **rate options form** that was signed by the Complainants, has been furnished in evidence, and details as follows;

“ONLY ONE OPTION MAY BE TICKED

Re: [XXXXXXXXXX]1356

			<i>Monthly repayment</i>	
<i>Variable rate</i>	<i>- Currently:</i>	<i>3.85%</i>	<i>1090.31</i>	<i>...</i>
<i>1 year fixed rate</i>	<i>- Currently:</i>	<i>3.90%</i>	<i>1096.15</i>	
<i>2 year fixed rate</i>	<i>- Currently:</i>	<i>3.99%</i>	<i>1106.71</i>	<i>...</i>
<i>3 year fixed rate</i>	<i>- Currently:</i>	<i>4.29%</i>	<i>1142.33</i>	<i>...</i>
<i>5 year fixed rate</i>	<i>- Currently:</i>	<i>4.29%</i>	<i>1142.33</i>	<i>...</i>
<i>7 year fixed rate</i>	<i>- Currently:</i>	<i>4.55%</i>	<i>1173.72</i>	<i>...</i>
<i>10 year fixed rate</i>	<i>- Currently:</i>	<i>4.70%</i>	<i>1192.05</i>	<i>...</i>

...”

The Complainants selected the 3 year fixed interest rate option of 4.29% and signed the **options form** on an unspecified date. The fixed interest rate period for the mortgage loan account commenced on **12 April 2006**.

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 **20 March 2009** containing the currently available rate options, including the tracker interest rate of 4.25% (ECB + 2.25%). It is disappointing that a copy of the rate options letter that purportedly issued to the Complainants has not been furnished in evidence to this office, nor has the Provider provided 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;*

/Cont’d...

- 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 2005** and the letter purportedly issued in **March 2009**. 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 therefore unclear to me, in the absence of any explanation, why this correspondence has not been furnished by the Provider. This is most disappointing.

The Provider has furnished this office with a template letter. The template 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 [DATE].

Please find attached the current options available to you.

We recommend that you consider your options carefully before making your selection. If you choose 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 than your current rates 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.”

/Cont’d...

We value your business highly at [the Provider] so if you have any questions regarding your options, please contact our dedicated mortgage team on XXXX XXX XXX. They will be happy to help you.”

The **rate options form** has been furnished in evidence, and details as follows;

“Current options available:

You may only select one option.

Account Number: [XXX]

			Monthly repayment EUR	
Tracker variable rate (ECB + maximum 2.2500%)*	- Currently:	4.25%	1138.24	...
LTV variable rate**	- Currently:	4.05%	1116.38	...
2 year fixed rate	- Currently:	5.25%	1251.19	...
5 year fixed rate	- Currently:	5.75%	1309.88	...
7 year fixed rate	- Currently:	6.10%	1351.79	...
10 year fixed rate	- Currently:	6.10%	1351.79	...

...

- 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 2.2500% over the European Central Bank Refinancing Rate (the “ECB Rate”). See over the page for further details on Tracker Mortgage Loans.”
- **In calculating your loan to value ratio we use your current loan balance and the most recent valuation on file for this mortgage.

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.

/Cont’d...

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. [my emphasis]***
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."*

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 **April 2009**. It appears that the Provider offered the tracker rate option of 4.25% (ECB + 2.25%) 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 tracker 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 selected the LTV variable rate option of 4.85% and signed the **options form** on **4 April 2009**. I note that the Complainants have crossed out "4.85%" on the options form and handwritten "3.30%" next to it on the form. The monthly repayment figure of "1116.38" has also been crossed out by the Complainants and "850 - + 109.84 - 959.84" has been handwritten above it on the form.

I note from the evidence that on the expiry of the fixed interest rate period on **9 April 2009** the Complainants' mortgage account defaulted to the tracker interest rate of 3.75% (ECB + 2.25%). The reason for this is that the options form which had been signed by the Complainants on **4 April 2009** had not yet been processed by the Provider. Following receipt of the Complainants' instruction the account was then switched to the LTV variable rate of

3.55% on **14 April 2009**. The LTV variable rate on the account was further reduced to 3.30% on **30 April 2009**.

The Complainants take issue with the tracker interest rate option of 4.25% (ECB + 2.25%) that was outlined in the **rate options form** on **20 March 2009**. They say that they selected the LTV variable rate of 4.05% in the belief that it was *“the cheapest option”*, however *“this was not the case the cheapest option at the time was the Tracker Variable Rate of 3.75%”*.

The Provider has submitted into evidence a copy of a published marketing document entitled **Lending Interest Rates** *“effective from the start of business on the 13th February 2009”*, to support its submission that these were the rates then available on existing home loans. This document outlines as follows;

“Home Loans Rates for Existing Business

...	Rate	APR
Variable Rate LTV<80%	4.05%	4.1%
Variable Rate LTV>80%	4.15%	4.2%
Tracker Rate LTV <80%	4.25%	4.3%
Tracker Rate LTV >80%	4.25%	4.3%

The Provider has also submitted its **Lending Interest Rates** noted as being *“effective from the start of business on the 3rd April 2009”*. This document outlines as follows;

“Home Loans Rates for Existing Business

...	Rate	APR
Variable Rate LTV<80%	3.55%	3.6%
Variable Rate LTV>80%	4.65%	3.7%
Tracker Rate LTV <80%	3.75%	3.8%
Tracker Rate LTV >80%	3.75%	3.8%

The Provider has also furnished a table showing the dates on which the changes to the ECB refinancing rates were implemented by the Provider in **early 2009**, as follows;

<i>“Date of ECB Change of Rate</i>	<i>[Provider] Implementation Date</i>	<i>ECB Rate (After ECB Change)</i>
21 Jan	13 Feb	2.00%
11 Mar	03 Apr	1.50%
8 Apr	30 Apr	1.25%

The evidence shows that the tracker interest rate that the Provider had available on **20 March 2009** of 4.25% (ECB + 2.25%) was the same tracker interest rate that was offered to the Complainants for their mortgage loan. As such, the Complainants were offered the option of the then current home loan tracker interest rate at the time of expiry of the fixed period. The Provider was under no obligation to notify the Complainants before they completed and signed the options form on **4 April 2009** of the ECB rate reduction of 0.50%, which had been implemented by the Provider on **3 April 2009**.

The reverse side of the options form which the Complainants signed on **4 April 2009**, 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 or did not select another rate and allowed the mortgage loan to default to the tracker interest rate, the percentage of 2.25% 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. In addition the Complainants ought to have been aware that the Provider would *“apply all increases or decreases within one month from the date announced by the ECB as the effective date”*. There is no obligation on the Provider to implement changes to the ECB rate *“overnight”* as the Complainants have suggested.

The Complainants’ handwritten annotations relating to the LTV variable option rate on the signed **options form**, as outlined above, suggests to me that they were aware that since they received the options form in **March 2009** that the LTV variable rate had reduced. This is somewhat at odds with their submission that they *“opted for the Cheapest option which according to [the Provider’s] offer (20/03/2009) was the LTV Variable of 4.05%”*.

I note from the evidence that the tracker interest rate of 3.75% (which comprised the ECB rate of 1.50% and the Provider’s margin of 2.25%) was applied by default to the mortgage account on **9 April 2009**. The Complainants have submitted that *“the ECB Rate on the 09/04/2009 was 1.25% with a margin of 2.25% is 3.5%”*. It appears from the evidence that the ECB rate was reduced to 1.25% on **8 April 2009**, however this was not implemented by the Provider until **30 April 2009**, which reduced the tracker interest rate at that time to 3.50% (ECB + 2.25%). Upon receipt of the Complainants’ signed rate options form, the LTV variable rate of 3.55% was applied to the account on **14 April 2009**. This rate was subsequently reduced to 3.30% on **30 April 2009**. It appears to me that if the Complainants were indeed seeking to apply *“the Cheapest option”* to the mortgage account as they have outlined in their submissions, then the LTV variable rate remained the lowest interest rate available to them, at that time.

/Cont’d...

The Complainants have submitted that the Provider failed to inform them that by switching from the tracker interest rate in **April 2009** they would be unable to revert to the tracker rate at a later point in time. The evidence shows that a tracker interest rate was applied to the Complainants' mortgage loan account between **9 April 2009** and **13 April 2009** by default and once the Complainants' signed **options form** was received their selected mortgage choice of the LTV variable rate was applied to the mortgage loan. In these circumstances, I do not accept that there was any obligation on the Provider to inform the Complainants that they would be unable to "revert" to the tracker rate at a later point in time. The Complainants clearly made their selection for the LTV variable rate at the time. The **rate options form** and the **letter** clearly outlined that the options that were made available to the Complainants at that time were "current options". Having considered those options the Complainants elected for the LTV variable rate. There was no contractual obligation on the Provider to offer the Complainants a tracker interest rate on their mortgage loan and as such the Complainants could not reasonably have expected to "revert" to a tracker interest rate, that they did not elect to apply to their mortgage loan and which applied by default for five days, at a later point in time.

I note that the Provider wrote to the Complainants by letter dated **22 September 2017**, which detailed as follows;

"Interest Rate Information

It is important that you keep your mortgage under regular review as there may be alternative options available that could provide savings on your mortgage.

At this point in time there are no lower rate options available to you.

You can find out more information on all available mortgage interest rates by visiting any [Provider] branch or contacting us on XXXX XXX XXX.

Our Variable Rate Mortgage Policy Summary Statement, which details the factors that result in a variable interest rate change, is available to view on our website [www.\[Provider\].ie](http://www.[Provider].ie)

..."

The Complainants wrote to the Provider by letter dated **27 October 2017**, which detailed as follows;

"As per your correspondence dated 22/09/2017 (copy letter attached Number 2) you say that at this point in time there are no lower rate options available to us, however I wish to point out that there is the tracker rate with a margin of 2.25% which is 2.25%.

/Cont'd...

I am now requesting the following on our Mortgage please,

- 1. Please return our Mortgage to a Tracker Rate currently 2.25%.*
- 2. Please arrange to re-calculate the Interest I overpaid the Bank from the 14/04/2009 to date and refund it to us.*
- 3. Please arrange an offer of compensation."*

The Provider in its Final Response letter dated **15 March 2018**, detailed as follows;

"...the Bank is unable to reduce the rate on your mortgage account to a Tracker rate of ECB + 2.25%, as you have requested."

As set out above, having considered the Complainants' mortgage loan documentation, I accept that there was no contractual obligation on the Provider under **Special Condition A of the Letter of Offer** or **General Condition 5** of the **General Mortgage Loan Approval Conditions** to offer the Complainants a tracker interest rate at the end of a fixed interest rate period or at any other stage during the life of the mortgage. It was a matter of commercial discretion for the Provider as to whether it wished to accede to the request made by the Complainants to apply a tracker interest rate to the mortgage loan in **October 2017**. I accept that it was entirely within the Provider's rights not to accede to this request.

For the reasons outlined 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

**GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

12 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.