



<b><u>Decision Ref:</u></b>	2020-0241
<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**

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

The loan account was €340,000.00 and the term of the loan was 30 years. The particulars of the mortgage loan offer signed by the Complainants on **03 April 2007** detailed that the interest rate applicable was "2 Year Fixed New Business Home Loan" at 4.75%. The interest rate applicable to the Complainants' mortgage loan since **April 2009** is ECB base rate + 2.25%.

##### **The Complainants' Case**

The Complainants submit that in **April 2007** they took out a mortgage loan with the Provider through a Broker. They outline that *"We had been in a mortgage with [another Provider] until then and the rate was a lower tracker however, [the Broker], whilst selling me a 'serious illness' assurance policy, suggested the [Provider] mortgage was long-term more suitable for us. As neither myself nor my husband were au-fait with financial products in particular mortgage products, we took the advice of this Financial Advisor."*

The Complainants state that *“The loan was taken out on a Residential Tracker Rate basis (0.25% above the ECB) and we were offered the option to take a Residential Fixed Rate for a period of 2 years (4.75%). We opted to take this 2 year fixed rate option as [the Second Complainant’s] employment was not as secure as it was originally as he was employed in the trade industry and the economy was down turning and with a fixed rate we were sure of what the monthly repayment would be each month without fluctuations and this offered us more peace of mind. When opting for the ‘fixed term’ of 2 years, the agreement was on expiry, the loan would go back on to the original tracker rate of 0.25% above the ECB.”*

They assert that *“[h]ad we been made aware at the time of taking out the mortgage and accepting the fixed term by [the Broker], that the subsequent tracker rate we would move to at the end of that period, would not be that available to us there and then (0.25% above ECB), we would never have chosen to start the fixed rate option. We would have secured the 0.25% above ECB option – it would have been of no benefit to us to not opt to secure this rate and instead opt to fix and then move to a higher tracker.”*

The Complainants submit that prior to the expiry of the fixed interest rate period in **April 2009** the Provider wrote to them to set out the available rate options, including the tracker interest rate option of 4.25% (ECB + 2.25%). They state that on **9 April 2009** they opted to apply the tracker interest rate option to the mortgage loan. They submit that *“[t]he option for the original tracker rate when the mortgage was taken out and referred to by [the Broker] was not noted as an option. At the time I do recall being concerned about this and I called a member of the team in [the Provider] to confirm the rate being offered.”*

The Complainants detail that *“[a]fter the end of year statement for 2015 arrived [they] took the opportunity to review all of [their] documentation on file in relation to [their] mortgage and [they] began to realise [they] should have in fact reverted to the original tracker rate, and not the tracker rate which was applicable at the time (April 2009) which was significantly higher than the original tracker of April 2007 at 2.25% above the ECB.”*

The Complainants submit that *“[i]t is absolutely a fact that the advice to take ... out the residential tracker mortgage with [the Provider] in April 2007 but to immediately fix the rate for 2 years was advice [they] both accepted with utmost good faith and the agreement to be offered the original tracker rate of 0.25% on top of the ECB which was not followed through on has severely impacted on [their] lives.”*

The Complainants outline that since **2009**, *“[i]n order to continue to meet repayments, credit union loans, bank loans were accessed. This was in the view of 'keeping things afloat' and not fall into the circumstances of not being able to meet [their] repayments and fall*

*into arrears. When [they] asked for assistance again [they] were outright denied. Usual living occurrences such as holidays, down time were put on hold for a long period.*

The Complainants detail the different medical, social and family circumstances they had to contend with as a result of the “high” cost of their mortgage.

The Complainants submit that they “would implore [the Provider] to honour the original offer by agent [tied agent name] and revert to the original rate of 0.25% above the ECB.”

### **The Provider’s Case**

The Provider submits that the Complainants completed an application for a mortgage facility of €340,000 on **13 March 2007** through a Broker. It states that the purpose of the loan was to clear the Complainants’ existing lending facilities with two other financial service providers. The Provider submits that it was not privy to the discussions which took place between the Complainants and their Broker in **2007**.

The Provider submits that the Complainants’ Broker was an employee of a subsidiary of the Provider which acted in the capacity of mortgage intermediary on behalf of the Complainants and was a tied agent of the Provider. It states that as a tied agent the only mortgage lending products with which the Complainants’ Broker dealt, were the Provider’s mortgage lending products. It details that this subsidiary received a commission of 1% from the Provider in respect of mortgage loans for which it applied as mortgage intermediary on behalf of applicants, which was the same rate of commission paid to all other tied agents and to independent mortgage brokers who were not agents of the Provider. The Provider submits that all tied agents and independent intermediaries processed loan applications in the same way on behalf of applicants.

The Provider states with respect to interest rate offerings on the Complainants’ mortgage loan that the Complainants’ Broker, in common with all other tied brokers and independent intermediaries, had access to the Provider’s dedicated broker website which contained details of all lending products being offered by the Provider. The Provider outlines that it has “*never at any time offered a tracker interest rate of ECB + 0.25%*”. It states that if the Complainants had selected a tracker rate mortgage in **March 2007** then the tracker rate margin applicable to a loan application of the amount of the Complainants’ loan in **March 2007** was 4.60% (ECB + 1.10%).

The Provider submits that a **Letter of Approval** issued on **27 March 2007** in which the Complainants were offered a 2 Year Fixed Rate New Business Home Loan for €340,000, repayable over a 30 year term, at an initial fixed rate of 4.75% for two years. The Provider submits that the Complainants signed the **Letter of Acceptance** in the presence of their solicitor on **3 April 2007**, and confirmed when doing so that their solicitor had explained

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the terms and conditions of the **Letter of Approval** to them. The proceeds of the loan issued on **19 April 2007**.

The Provider details that the **Letter of Approval** outlined that at the end of the fixed interest rate period, the interest rate applicable would be the tracker mortgage rate appropriate to the balance outstanding on the loan at the date of the expiry of the fixed period. The Provider relies on **Special Condition 4** and **General Mortgage Loan Approval Condition 5** in support of this. It states that the terms and conditions outlined in the Complainants' **Letter of Approval** did not include a guarantee that a particular tracker rate margin above the ECB rate would be offered to them either on expiry of the fixed rate period or at any stage during the mortgage term.

The Provider submits that the Complainants' fixed rate term was due to expire on **19 April 2009** and in accordance with the Provider's procedure, a letter enclosing a list of the rate options available was issued to the Complainants 20 days prior to the expiry date. It states that this list included fixed rates for 2, 5, 7 and 10 year terms, a LTV variable rate of 4.05%, and a tracker variable rate of 4.25% (ECB + 2.25%) which was the Provider's "*tracker rate appropriate to the Complainants loan on the date of expiry of the fixed rate term*".

The Provider details that the Complainants wrote to it on **09 April 2009** confirming that they wished to avail of the tracker interest rate offered and enclosing the signed **options form** dated **8 April 2009** confirming their preference. The Provider states that the mortgage was amended to a tracker rate of 3.75% (ECB + 2.25%) on **17 April 2009**, following an ECB base rate reduction to 1.5% on **03 April 2009**.

The Provider submits that the Complainants were not offered a tracker rate of ECB + 0.25% in **April 2009** because their mortgage terms and conditions did not include a guarantee that a tracker rate of ECB + 0.25% would be offered at any time during the term of the loan.

The Provider submits that it sets interest rates at its absolute discretion and such decisions are commercial in nature. It states that the calculation of the margin above 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 rates paid on deposits, and the Provider's competitive position.

The Provider submits that the Complainants' mortgage loan account has remained on the tracker rate of ECB + 2.25% since **April 2009**.

## **The Complaint for Adjudication**

The complaint for adjudication is that the Provider wrongly failed to offer the Complainants a tracker interest rate of ECB + 0.25% for their mortgage loan account when the initial fixed interest rate period expired in **April 2009**.

## **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 **17 June 2020**, outlining my preliminary determination 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, my final determination is set out below.

The issue to be determined is whether the Provider failed to offer the Complainants the option of a tracker interest rate with a margin of ECB + 2.25% on their mortgage loan account in **April 2009** on the expiry of the two-year fixed interest rate period. 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 **April 2009**.

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I note that the First Complainant wrote to the tied agent on an unspecified date enclosing the application form together with supporting documentation required. In this letter the First Complainant detailed as follows;

*"I have not completed areas of the application referred to term and type of loan. Reason being, I would like you to re-quote on a term of 30 years instead of 35 years and also, my plan would be when bonuses etc are received to put these payments off the mortgage – however, if this would carry a penalty on a fixed mortgage, then I would opt for a variable. But, if I took out a fixed new business rate for 2 years, and could still make 'extra lump sum' repayments from time to time without a penalty being imposed, I would take this option."*

I have considered the **application form** furnished in evidence. It appears that there are two parts to the application form. The first part is called "*loan application*" and is date-stamped **15 March 2007**. The second part is called "*Application for Credit*" and was signed by the Complainants on **13 March 2007**.

I note that in the "*case summary*" section of the loan application the tied agent has written "*The client are looking to re-finance their current mortgage. Transfer from [third party Provider].*"

In the "*mortgage details*" section of the loan application the Complainants, in response to the question "*Rate Type*", did not select any of the rate types from those available, which included tracker, fixed, variable, discount, split and other.

In the section "*details of mortgage required*" of the Application for Credit the Complainants left the question "*Loan Type*" blank.

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 19<sup>th</sup> February 2007*". This document outlines as follows;

<b><i>"Repayment Home Loans</i></b>	<b><i>RATE</i></b>	<b><i>APR</i></b>
...		
<b><i>Rates applicable to new Home Loans</i></b>		
<i>1 Year Discounted Tracker Rate</i>	4.19%	4.9%
<i>1 Year Discounted Tracker Rate (when borrowing &lt;50% of the property value)</i>	3.99%	4.9%
<i>2 Year Discounted Tracker Rate</i>	4.49%	4.9%
<i>1 Year Fixed Rate</i>	4.39%	4.9%

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2 Year Fixed Rate	4.75%	4.9%
3 Year Fixed Rate	4.99%	5.0%
4 Year Fixed Rate	5.15%	5.1%
5 Year Fixed Rate	5.15%	5.1%
7 Year Fixed Rate	5.15%	5.2%
10 Year Fixed Rate	5.15%	5.2%

**Tracker Mortgage (Home Loan and Residential Investment Property)**

Loan Amount of €0 - €99,999	4.85%	5.0%
Loan Amount of €100,000 - €249,999	4.75%	4.9%
Loan Amount of €250,000 - €749,999	4.60%	4.7%
Loan Amount of €750,000 or more	4.40%	4.5%

I note that the **Approval in Principle** document details as follows;

"Broker: [Redacted] Date Reviewed: 20/03/2007

...

Loan Purpose:	Purchase Price:	Loan Amount:
<u>Refinance/Restructure</u>	<u>€0</u>	<u>€340,000</u>
Loan Type:	Rate:	Term:
<u>Home Loan</u>	<u>4.39%</u>	<u>30 year(s)</u>
LTV: <u>72%</u>	<b>Please ensure the rate and term quoted are correct</b>	
Product Name:	<u>1 Year Fixed New Business Home Loan</u>	

I note that tracker interest rates were on offer generally by the Provider when the Complainants applied for the mortgage loan in **March 2007**. The Complainants availed of the services of a tied agent of the Provider during the application stage of the mortgage loan application. I again note that the application form outlined the types of interest rate options available generally on mortgage loans, including the tracker rate.

There is no evidence before me that a tracker interest rate of ECB + 0.25% was available from the Provider at the time the Complainants applied for their mortgage loan. At the time the Complainants applied for their mortgage loan on **13 March 2007**, the ECB base rate was 3.5%. Having considered the Provider's published **Lending Interest Rates** document, as quoted above, it is clear that the tracker interest rates which were then available, varied from 3.99% (ECB + 0.44%) to 4.85% (ECB + 1.35%), depending on loan to value or the amount borrowed. There was no tracker interest rate of 3.75% (0.25% margin + 3.5% base rate) available as an option as the Complainants have suggested. If a tracker

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rate of 3.75% was available then it would have been set out in the Provider's **Lending Interest Rates** document and there was no such rate.

The Complainants submit that they decided to apply for a fixed interest rate "*as [the Second Complainant's] employment was not as secure as it was originally as he was employed in the trade industry and the economy was down turning and with a fixed rate we were sure of what the monthly repayment would be each month without fluctuations and this offered us more peace of mind.*" From the evidence it appears to me that Complainants were aware of the moving nature of variable type rates and elected to apply for a fixed interest rate loan in **2007** to protect themselves from the uncertainty of a variable type rate. The Complainants of their own volition decided not to choose the option of an available tracker interest rate at the time and instead selected a fixed interest rate. For the avoidance of any doubt, I re-iterate that the evidence shows there was no tracker interest rate option of ECB + 0.25% at the time the Complainants' mortgage loan was applied for on **13 March 2007**.

The Provider issued a **Letter of Approval** dated **27 March 2007** to the Complainants, which details as follows;

<i>"Loan Type:</i>	<i>2 Year Fixed New Business Home Loan</i>
<i>Purchase Price / Estimated Value:</i>	<i>€450,000.00</i>
<i>Loan Amount:</i>	<i>€340,000.00</i>
<i>Interest Rate:</i>	<i>4.75%</i>
<i>Term:</i>	<i>30 year(s)</i>
<i>...</i>	
<i>LTV:</i>	<i>76%"</i>

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

***"Special Conditions***

*...*

*4. 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 issue of the loan. On expiry of the fixed interest period, and where the applicant chooses the option of a tracker mortgage interest rate, the interest rate applicable to the loan will be the tracker mortgage rate appropriate to the balance outstanding on the loan at the date of expiry of the fixed rate period. In the absence of instructions from the applicant at the expiry of the fixed rate period, the interest rate for the loan will be the tracker mortgage rate applicable to the balance outstanding on the loan, at the date of expiry of the fixed rate period and may be*

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*varied in accordance with variations to the European Central Bank refinancing rate.”*

**General Condition 5** of the **General Mortgage Loan Approval Conditions** details as follows;

*“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 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 final 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 as it 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 loan.”*

The **Acceptance of Loan Offer** was signed by the Complainants and witnessed by a solicitor on **03 April 2007**. The **Acceptance of Loan Offer** states as follows:

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- “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 interest rate and thereafter a tracker mortgage rate *“appropriate to the balance outstanding on the loan at the date of expiry of the fixed rate period”*. The Complainants accepted the terms of the Letter of Approval, having confirmed that the loan offer had been explained to them by their solicitor in **April 2007**.

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 **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 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;*
- 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.*

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*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 Complainant’s mortgage loan was incepted for a term of **30 years** commencing from **April 2007** 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.

The Provider has submitted in evidence a **template letter** which it states is *“identical in all key respects to that issued to the Complainants”*. The 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 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 our 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.*

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

The **rate options form** 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:XXXXXXXXX9556*

		<i>Monthly Repayment</i>	
		<i>EUR</i>	<i>...</i>
<i>--- Tracker variable rate</i>	<i>- Currently 4.25%</i>	<i>1797.88</i>	<i>...</i>
<i>(ECB + maximum 2.2500%)*</i>			
<i>--- LTV variable rate **</i>	<i>- Currently 4.05%</i>	<i>1758.67</i>	<i>...</i>
<i>--- 2 year fixed rate</i>	<i>- Currently 5.25%</i>	<i>2000.73</i>	<i>...</i>
<i>--- 5 year fixed rate</i>	<i>- Currently 5.75%</i>	<i>2106.24</i>	<i>...</i>
<i>--- 7 year fixed rate</i>	<i>- Currently 6.10%</i>	<i>2181.63</i>	<i>...</i>
<i>--- 10 year fixed rate</i>	<i>- Currently 6.10%</i>	<i>2181.63</i>	<i>...</i>

*...*

*\*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.”*

Under the heading **“Tracker Mortgage Loans”** the reverse of the **rate options form** contained the following;

- 1. “The interest rate applicable to Tracker Mortgage Loans is made up of the European Central Bank Refinancing Rate (“the ECB Rate”) plus a percentage over the ECB Rate. The amount of the percentage over the ECB Rate will depend on the amount of the loan and that percentage will not be exceeded during the term of the loan.*
- 2. The ECB rate may be increased or decreased from time to time by the European Central Bank (ECB). We will apply all increases or decreases within one month from the date announced by the ECB as the effective date.*
- 3. If we cannot use the ECB Rate for this loan, we will use another reference rate or calculation that is fair and reasonable.*
- 4. If more than one Tracker Mortgage Loan exists on the property, these loans cannot be added together to get a different interest rate over the ECB rate.”*

It appears that the Complainants placed a call to the Provider on **08 April 2009**. The Provider did not furnish in evidence a recording of the telephone call between the Provider

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and the Complainants purported to have taken place in or around **08 April 2009**. While this is disappointing, I accept that that due to IT restrictions and the passage of time the Provider was not in a position to retrieve telephone call recordings prior to **2012**. It does not appear to be in dispute that the call was in relation to the available interest rate options.

The Complainants signed the options form on **8 April 2009** and selected the tracker variable rate option of 4.25% (ECB + 2.25%). This has been furnished in evidence.

I note that the Complainants wrote to the Provider by letter dated **9 April 2009** enclosing the signed options form and detailing as follows;

*"I refer to your recent letter in which you outlined options available to us as we are approaching the end of the current Fixed Term.*

*I attach the form, signed by both of us, confirming the Tracker Variable Rate option is the one we would like to take up.*

*I spoke with a member of your staff yesterday who confirmed that the rate on the form (4.25%) will have altered to the EBC [sic] + 2.25%.*

*Can you confirm you have noted this is the option we have chosen and confirm the repayment at your earliest convenience."*

The reserve side of the options form which the Complainants signed on **08 April 2009** contained detail about the tracker interest rate offer, 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"*. Therefore, 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 as set by the European Central Bank.

The Complainants take issue with the application of the tracker interest rate of ECB + 2.25% to their mortgage loan on the expiry of the two-year fixed interest rate period. They outline that it had been *"agreed"* that the mortgage loan account would *"revert to the original rate of 0.25% above the ECB"*.

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I cannot accept the Complainants' submissions in this respect. The **Particulars of Mortgage Loan** set out that the rate applicable to the mortgage loan for two years would be fixed at 4.75%. **Special Condition 4** sets out that the interest rate applicable at the end of the fixed rate period would be the tracker mortgage rate "*appropriate to the balance outstanding on the loan at the date of expiry of the fixed rate period*". There was no guarantee in the Special Conditions or any other conditions applicable to the Complainants' mortgage loan that a specific tracker mortgage margin would be made available to the Complainants at the end of the fixed period. It is important for the Complainants to be aware that the Complainants' mortgage loan is governed by the terms and conditions of their mortgage loan documentation. In these circumstances the terms and conditions of the loan were clear. There is no evidence that the Provider agreed that a tracker interest rate of ECB + 0.25% would be applied to the Complainants' mortgage loan upon the expiry of the fixed rate period. It was a matter for the Complainants to consider the terms and conditions of the **Letter of Approval**, to ensure that they were happy with the terms offered and that they aligned with any discussions that they had before signing the Letter of Approval. The Complainants accepted the **Letter of Approval** on **03 April 2007**, having confirmed that the terms and conditions of the Loan Offer had been explained to them by their solicitor.

If the Complainants were not happy with the terms of the **Letter of Approval**, including the type of interest rate or the fact that the mortgage loan contract did not stipulate a specific tracker mortgage rate margin that would be applied at the end of the fixed period, the Complainants could have decided not to accept the offer made by the Provider. Instead the Complainants accepted the Provider's offer by signing the **Acceptance of Loan Offer** on **03 April 2007**, and in doing so, confirmed that their solicitor had fully explained the terms and conditions of the mortgage loan to them.

The Provider has submitted into evidence a copy of a document titled **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 Loan 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>Tracker Rate LTV &lt;80%</i>	4.25%	4.3%
<i>Tracker Rate LTV &gt;80%</i>	4.25%	4.3%
..."		

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The Provider has also submitted into evidence a copy of a document titled **Lending Interest Rates** which is noted as being “effective from the start of business on the 3<sup>rd</sup> April 2009”. This document outlines as follows;

**“Home Loan Rates for Existing Business**

<b>LTV Variable/LTV Tracker Maturity Rates applicable To Existing Home Loans since 13/02/09</b>	<b>RATE</b>	<b>APR</b>
...		
Tracker Rate LTV <80%	3.75%	3.8%
Tracker Rate LTV >80%	3.75%	3.8%
...”		

The evidence shows that the tracker interest rate that the Provider had available in **March 2009** of 4.25% (ECB + 2.25%) was the same tracker interest rate that was offered to the Complainants for their mortgage loan, and the tracker interest rate that the Provider had available in **April 2009** of 3.75% (ECB + 2.25%) was the same tracker interest rate that was applied to the loan. In these circumstances it appears to me that the Complainants were offered the option of the tracker mortgage rate “appropriate to the balance outstanding on the loan at the date of expiry of the fixed rate period”, in accordance with **Special Condition 4**. It was within the Provider’s commercial discretion to set this rate.

I note that the Complainants have submitted that they want the Provider to “honour” the agreement to “revert” the mortgage account to the tracker interest rate of ECB + 0.25%. In the interests of clarity, a tracker interest rate of ECB + 0.25% never applied to the mortgage account. Having considered the Complainants’ mortgage loan documentation, I find the Complainants had a contractual entitlement to the tracker interest rate “appropriate to the balance outstanding on the loan at the date of expiry of the fixed rate period”. The Provider offered the Complainants a tracker interest rate of ECB + 2.25% in or around **March 2009** and the Complainants signed the options form on **8 April 2009** to indicate that this was their preference. The Provider, in line with **Special Condition 4**, applied the tracker mortgage rate of 3.75% (ECB + 2.25%) to the mortgage account. This was the tracker mortgage rate applicable at the time. I accept that this was clearly outlined in the Complainants’ Letter of Approval. I note the Complainants’ mortgage remains on a tracker interest rate of ECB + 2.25%.

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

/Cont’d...

**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**

9 July 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.**