



<u>Decision Ref:</u>	2020-0258
<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

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 amount was €202,400.00 and the term of the loan was 35 years. The particulars of the Letter of Approval dated **18 February 2008** detailed that the loan type was a "3 Year Fixed New Business Home Loan". The Complainants' mortgage loan is currently on a tracker mortgage rate of ECB + 3.25%.

The Complainants' Case

The Complainants submit that they applied for a mortgage loan with the Provider through a Broker in **2007**. They state that their mortgage loan account issued on an initial three year fixed interest rate of 5.3%.

The Second Complainant submits "*I mostly went along with what [the First Complainant] told me at the time. I do however recall [the First Complainant] specifically requesting, a tracker mortgage at the time. As he heard, this was the best, at the time. I recall the lady in the [Broker's] office telling us, that she would see what she could do, but there's not many*

banks giving that now. Sure enough, we got what we were told was a tracker mortgage. She told us, that the only bank to give us a tracker was [the Provider]. She then told us it was the ECB plus 1%, but we would have to go fixed for a few years first. Three years at 5.3% interest. We were at the time led to believe that we were getting a mortgage that was ECB plus 1%.”

The Complainants further state *“we have never heard off [sic] a '1 year Tracker' until now. This was not on offer to us or other products at the time. [The First Complainant] requested a 'Tracker mortgage', with the view that it was ECB plus 1%. Our Broker instructed us, that we had to go fixed for 3 years in order to get a tracker. On this instruction that is what was applied for. There was no other discussion about different products/rates. We where [sic] encouraged to apply and told we wouldn't get the chance again. Special condition 6 was not discussed with us at any stage during the process of application or completion by our broker or solicitor. At the time, [Provider] branch was not even in [Named City] at the time. We relied on our broker for guidance. As mentioned on page 5, the broker did not include an interest rate or type of rate in the application. We got a 3 year fixed on the instruction from the broker.”*

The Complainants say that *“My hand written letter to [the Broker] dated 21 December 2010 was looking for information and advice with regard to our Mortgage. We did not receive this from the broker.”*

They further state *“The letter from the bank January 2011, did not state that we could move from fixed any earlier. It was not until March 2011 that we knew what rate our Mortgage would be.”*

The Complainants submit that in **2011** *“After the fixed rate time was up, we got a letter in the post to tick a box and sign for it, for us to get our tracker rate. I have a letter dated 01/04/2011 informing us that our tracker rate is 4.25%.”* The Complainants state that the rate options they were offered at the time were as follows;

*“Tracker 4.25%
LTV 5.65%
2year fixed 7.25%
5year fixed 8.75%
7year fixed 9.10%
10year fixed 9.10%”*

The Complainants submit that they *“realize now that these are crazy percentages”*.

The Complainants further submit that *“It was only last year that upon getting an annual statement from [the Provider] that I realized that our mortgage is in fact ECB + 3.25%. Every year, we got a statement that I didn’t understand.”*

The Complainants want the Provider to make any *“necessary amendments”* to their mortgage loan and *“Look at giving us our Tracker Mortgage, ECB Rate plus 1%”*.

The Provider’s Case

The Provider states that the Complainants’ Broker was an independent intermediary and was not a tied agent of the Provider. It submits that it provides information on its entire suite of products to brokers in an effort to keep them up to date on all product and rate options, and brokers can also access this information through the Provider’s online broker service. The Provider states that it did not have interactions with the Complainants’ Broker at the time the mortgage loan was applied for in **2007** with respect to interest rate offerings on the mortgage loan account.

The Provider also submits that in **2008** there were 3 Provider branches operating in the Complainants’ area.

The Provider details that the Complainants completed their mortgage loan application with their broker on **29 August 2007** and the Broker furnished the application form to the Provider on **25 October 2007**. The Provider details that its electronic diary recorded that insufficient detail was attached to the application, in particular an interest rate or type of rate was not identified in the application submitted.

The Provider states the Broker submitted the Complainants’ Application for Credit dated **8 November 2007** to the Provider on **19 November 2007**. It states that in **November 2007**, new customers applying to the Provider for a loan with an LTV ratio of 80 - 95%, could have selected from a 1 Year Discount Tracker LTV rate of 4.70% (ECB + 0.70%), a standard variable rate of 5.35% and fixed rate options for 1, 2, 3, 4, 7 and 10 year terms. It relies on its **Rate Sheet** dated **12 November 2007** in support of this.

The Provider submits that on **31 January 2008** the Complainants’ Broker confirmed to the Provider that the Complainants’ preference was for a 35 year term and a 3 year fixed rate. The Provider states that in **January 2008**, new customers applying to the Provider for a loan with an LTV ratio of 80 - 95%, could have selected a 1 Year Discount Tracker LTV rate of 4.70% (ECB + 0.70%). It relies on its **Rate Sheet** dated **10 December 2007** in support of this.

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The Provider details that the Complainants' **Letter of Approval** dated **18 February 2007** provided for a three-year fixed new business interest rate of 5.30%. It states that the Complainants' mortgage loan drew down on **1 April 2008** on a 3-year fixed interest rate of 5.05%, in accordance with **General Condition 5.1** of the Letter of Approval, which provided that the rate may vary between the date of the Letter of Approval and the date of drawdown.

The Provider further states that its **Rate Sheet** dated **4 February 2008** provided for a 1 Year Discount Tracker LTV rate of 4.85% (ECB + 0.85%) at that time for customers with an LTV ratio of 80 - 95%. It submits that therefore at no stage was there a tracker interest rate of ECB + 1.00% available to the Complainants.

The Provider states that the terms and conditions of the Complainants' Letter of Approval did not guarantee a specific tracker rate, nor did they contain any reference to any specific margin to be applied above the ECB rate, either on the expiry of the 3 year fixed interest rate, or otherwise. It states that the loan agreement provided that the rate would be a rate appropriate to the loan on the date of expiry of the fixed rate period. The Provider relies on **Special Condition 6** in support of this. It states that on **14 March 2008** the Complainants accepted the Letter of Approval and in doing so confirmed that their solicitor had fully explained the terms and conditions of the loan offer to them.

The Provider submits that on **11 March 2011**, in advance of the expiry of the fixed rate period, it sent the Complainants an **options letter** setting out the various interest rates available to them, including a tracker interest rate of 4.25% (ECB + 3.25%), an LTV variable rate of 5.65% and fixed rate options for 2, 5, 7 and 10 year terms. It states that the letter explained that these rates were offered on the basis that in the absence of the Complainants' written instruction, the account would default to the then current tracker rate of 4.25% (ECB + 3.25%). The Provider submits that the Complainants signed and accepted the options form on **24 March 2011** indicating their preference for the tracker rate of ECB + 3.25%, and the Provider applied this rate to the account on **1 April 2011** in accordance with the Complainants' written instruction.

The Provider states that the Complainants were not offered a tracker interest rate of ECB + 1.00% in **April 2011** as they were offered the tracker interest rate appropriate to their loan in accordance with the conditions of their loan offer, which was ECB + 3.25%. It states that the Complainants had no entitlement to a tracker interest rate of ECB + 1.00%.

The Complaint for Adjudication

The complaint for adjudication is that the Provider wrongly placed the Complainants' mortgage loan account on the incorrect tracker interest rate of ECB + 3.25% on the expiry of the 3-year fixed interest rate period in **April 2011**.

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 the preliminary determination of this office in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

Following the issue of my Preliminary Decision, the following submissions were received from the parties:

1. Email from the Complainants on **26 June 2020**; and
2. Letter from the Provider dated **07 July 2020**;

Copies of these additional submissions were exchanged between the parties.

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Having considered these additional submissions and all of the submissions and evidence furnished to this Office, I set out below my final determination in respect of this complaint.

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 only 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 issue to be determined is whether the Provider applied the incorrect tracker interest rate of ECB + 3.25% to the Complainants’ mortgage loan account in **April 2011** when the initial fixed interest rate period expired. In order to determine this, it is necessary to review and set out the relevant provisions of the Complainants’ mortgage loan documentation. It is also necessary to consider the details of certain interactions between the Complainants and the Provider between **2007** and **2011**.

It appears that there are two parts to the **application form**. The first part is Broker branded and was signed by the Complainants on **29 August 2007**. The second part is the Provider branded application form called *“Application for Credit”* which was signed by the Complainants on **08 November 2007**.

The Broker section of the application form details;

“This application form is divided into two parts. Part 1 captures relevant information about you the applicant(s). Part 2 (the inserts) gives you important information about the lenders, including statutory warnings.”

I note that in the *“MORTGAGE TYPE, RATE AND TERM DETAILS”* section of the Broker-branded part of the application, in response to the question *“please tick your choice of interest rate”* the option of *“fixed”* has been ticked and in response to the question *“fixed rate term”* it is detailed *“Clients go on fixed rate if needed”*. In response to the question *“if*

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you wish to split your loan over different terms, please provide details” it is detailed “Fixed rate [with] an option to change or lump pay lump sum into mortgage in a few years”.

In the section “DETAILS OF MORTGAGE REQUIRED” of the Provider-branded part of the application, in response to the question “Loan Type” the Broker has written “annuity”.

The “DECLARATION” section of the mortgage application form details as follows:

“I/We Hereby declare that I/we have read and understood this part of the mortgage application form and that the information I/we have tendered herein is correct.”

The application is signed by both Complainants and dated **29 August 2007**.

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 12th November 2007”. This document outlines as follows;

“Repayment Home Loans

Rates applicable to New Home Loans

	RATE	APR
<i>1 Year Discounted Tracker Rate</i>		
<i>LTV <80% loan <€500K</i>	<i>4.60%</i>	<i>4.9%</i>
<i>1 Year Discounted Tracker Rate</i>		
<i>LTV <80% loan €500K+</i>	<i>4.55%</i>	<i>4.8%</i>
<i>1 Year Discounted Tracker Rate</i>		
<i>LTV 80% - 95% loan <€500K</i>	<i>4.70%</i>	<i>5.2%</i>
<i>1 Year Discounted Tracker Rate</i>		
<i>LTV 80% - 95% loan €500K - €1M</i>	<i>4.70%</i>	<i>5.0%</i>
<i>1 Year Discounted Tracker Rate</i>		
<i>LTV <80% loan €1M+</i>	<i>4.55%</i>	<i>4.8%</i>
<i>Tracker Rate LTV 95%+ loan <€500K</i>	<i>5.10%</i>	<i>5.2%</i>
<i>Tracker Rate LTV 95%+ loan €500K+</i>	<i>4.90%</i>	<i>5.0%</i>

I note that tracker interest rates were on offer generally by the Provider when the Complainants submitted their application for a mortgage loan in **November 2007**. The Provider has submitted that the ECB base rate in **November 2007** was 4.00% (ECB + 0.70%). The Complainants availed of the services of a third party Broker during the application stage of the mortgage loan application. I note that the Broker’s application form outlined the types of interest rate options available as fixed or variable.

In circumstances where the Complainants were engaging with a Broker with respect to the mortgage application, there was no requirement for the Provider to communicate directly

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with the Complainants at that time. Furthermore the fact that tracker interest rate options were available generally as part of the Provider's suite of products at the time, did not oblige the Provider to offer the Complainants a tracker interest rate on the loan application. There is no evidence before me which supports the Complainants' submission that they were "led to believe" by the Provider "that we were getting a mortgage that was ECB plus 1%."

I note that the Provider's internal note recorded on **30 January 2008** at **17:02:27** details as follows;

"as per [Broker name] 3 yr fixed 35 years"

The **Letter of Approval** dated **18 February 2008** details as follows;

<i>"Loan Type:</i>	<i>3 Year Fixed New Business Home Loan</i>
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<i>Purchase Price / Estimated Value :</i>	<i>€ 220,000.00</i>
<i>Loan Amount :</i>	<i>€ 202,400.00</i>
<i>Interest Rate :</i>	<i>5.3%</i>
<i>Term :</i>	<i>35 year(s)"</i>

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

(6) *"On expiry of the fixed rate period and without affecting the entitlement of the Applicant to apply at any time to fix the rate for a further period (if available), the interest rate applicable to the Loan will be the **then current [Provider] Tracker Mortgage rate appropriate to the Loan as may be varied from time to time in accordance with variations to the European Central Bank refinancing rate ("the ECB rate")**. In the event of any variation of the ECB rate, the revised interest rate for the Loan will apply not later than 1 calendar month from the date provided by the ECB as the date provided by the ECB as the date on which the variation to the ECB rate will take effect."* **[My emphasis]**

The **Acceptance of Loan Offer** was signed by the Complainants and witnessed by a solicitor on **14 March 2008**. 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*

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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 three fixed interest rate and thereafter the option of a further fixed period, if available, or the Provider's "then current" tracker mortgage interest rate.

The Complainants have submitted that their Broker informed them during the application process that they would have an interest rate of "ECB plus 1%, but we would have to go fixed for a few years first. Three years at 5.3% interest. We were at the time led to believe that we were getting a mortgage that was ECB plus 1%." It is important for the Complainants to understand that in order for them to have a contractual right to a specific tracker interest rate margin on their mortgage loan at the end of the fixed interest rate period in **2011** that right would need to have been specifically outlined in the mortgage loan documentation that was signed by the parties. However no such right was contained in the **Letter of Approval** dated **18 February 2008** which was signed by the Complainants on **14 March 2008**. The Provider could not be committed under contract to offer the Complainants a particular interest rate on the basis of verbal discussions with a third party Broker. 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 with the Broker before signing the Letter of Approval. The Complainants accepted the Letter of Approval on **14 March 2008**, having confirmed that the terms and conditions of the Loan Offer had been explained to them by their solicitor.

I note that the Complainants have submitted that "Special condition 6 was not discussed with us at any stage during the process of application or completion by our broker or solicitor." I again re-iterate that this complaint is maintained against the Provider and in these circumstances this office will not be considering any conduct of the third party broker or solicitor.

I note that the Complainants wrote to their Broker by letter dated **21 December 2010** as follows;

"As far as we know our mortgage of three year fixed is for renewal in April we think but not sure of this. I would appreciate if you could inform us if this is so and any other advice with regard."

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The Complainants have submitted that the above letter to the Broker “was looking for information and advice with regard to our Mortgage. We did not receive this from the broker.”

The Provider wrote to the Complainants by letter dated **6 January 2011** and detailed as follows;

“I wish to confirm that your mortgage details are as follows:

<i>*Product Type</i>	<i>Home Loan – 3 Year Fixed Rate</i>
<i>Fixed rate expiry date</i>	<i>01/04/2011</i>
<i>...</i>	
<i>*Interest rate:</i>	<i>5.05%”</i>

The Complainants submitted that “The letter from the bank January 2011, did not state that we could move from fixed any earlier.” If the Complainants wished to pursue the potential option of breaking from the fixed interest rate on the mortgage loan, they could have contacted the Provider to request this. It does not appear to me from the evidence that the Complainants made any request to break early from the fixed interest rate period in favour of an alternative interest rate product. If such a request was made, it would then have been a matter of commercial discretion for the Provider as to whether it was willing to accede to any such request made by the Complainants and if so whether a fixed rate breakage fee would apply.

The Provider wrote to the Complainants by letter dated **11 March 2011** which detailed as follows;

“I am writing to remind you that the current rate option on your mortgage account will end on 01 Apr 2011. 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 01 Apr 2011, the interest rate on you loan will be the Tracker Variable Rate.*

Switches to Fixed Rate

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If you avail of a Fixed Rate, our tracker rate commitment to you is deemed to be at an end and our prevailing variable rate (currently LTV variable) will apply on expiry of this fixed term (although we may offer you a further fixed term at the interest rates then prevailing). For the avoidance of doubt, we wish to advise you that if you avail of a Fixed Rate, you will lose the ability to avail of a Tracker Rate Mortgage in the future.

Switches to Variable Rates or Other Rates

If you avail of or default to a Variable Rate (currently LTV variable) or Other Rate, our tracker rate commitment to you is deemed to be at an end. For the avoidance of doubt, we wish to advise you that if you avail of a Variable Rate or Other Rate, you will lose the ability to avail of a Tracker Rate Mortgage in the future.

We strongly suggest you consult your financial or legal advisor before making a decision regarding mortgage options.

To discuss your options with a [Provider] mortgage advisor please contact your local branch or telephone [PHONE NUMBER] to arrange an appointment (please note that advice cannot be given during the telephone call)."

The **reverse side** of the Provider's letter detailed as follows under the heading **"TRACKER MORTGAGE LOANS"**;

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

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Under the heading “*INFORMATION REGARDING YOUR MORTGAGE OPTIONS*” it is further detailed that;

“Variable Rates

...

Tracker rate mortgages – *this is set at a fixed percentage or ‘margin’ above the ECB rate as set out in your mortgage contract. Tracker rates provide the benefit of a guaranteed link to the ECB rate which continues over the term of your mortgage unless you decide to switch to another mortgage rate option.”*

The **rate options form** detailed as follows;

“...

Please tick the option you want below. You may only pick one option and everyone signed up to the mortgage must sign below.

Account number: [ending] 3886

<i>--- Tracker variable rate*</i>	<i>CURRENTLY 4.25%</i>	<i>...</i>
<i>--- LTV Variable Rate**</i>	<i>CURRENTLY 5.65%</i>	<i>...</i>
<i>--- 2 Year Fixed Rate</i>	<i>CURRENTLY 7.25%</i>	<i>...</i>
<i>--- 5 Year Fixed Rate</i>	<i>CURRENTLY 8.75%</i>	<i>...</i>
<i>--- 7 Year Fixed Rate</i>	<i>CURRENTLY 9.10%</i>	<i>...</i>
<i>--- 10 Year Fixed Rate</i>	<i>CURRENTLY 9.10%</i>	<i>...</i>

In choosing the option above I/We acknowledge that I/We may incur higher interest over the term of the loan.

I/We have read the content of this letter and the information relating to housing loans printed on the reverse side of this form, together with “INFORMATION REGARDING YOUR MORTGAGE OPTIONS”

If we do not receive a written instruction from you in relation to the above on or before the 01 Apr 2011, the interest rate on your mortgage will be the Tracker Variable Rate.*

...

**The interest rate that applies to this Tracker Mortgage Loan will never be more than the European Central Bank Refinancing Rate (the “ECB Rate”) plus a margin of 3.25%. See over the page for further details on Tracker Mortgage Loans.”*

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Under the heading "**TRACKER MORTGAGE LOANS**" the reverse of the rate options form contained the same text as on the reverse side of the options letter (as extracted above).

The Complainants signed the rate options form on **24 March 2011** and selected the tracker interest rate of 4.25%.

The Provider wrote to the Complainants by letter dated **1 April 2011**, detailing as follows;

"I wish to advise you that in accordance with the terms of your loan, the rate of interest has been amended to a tracker rate currently 4.250% (ECB + max. 3.250%)."

The reverse side of the options letter and the form which the Complainants signed on **24 March 2011**, 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 a tracker interest rate was applied to the mortgage loan, the percentage of 3.25% 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 have submitted that it was only several years later "*that upon getting an annual statement from [the Provider] that I realized that our mortgage is in fact ECB + 3.25%. Every year, we got a statement that I didn't understand.*" In my view it was clear from the rate options form they signed on **24 March 2011**, and from the Provider's letter dated **1 April 2011**, that the tracker interest rate and margin applicable to their mortgage account in **April 2011** was 4.25% (ECB + 3.25%). Having considered the evidence before me, I do not accept that there is any basis on which the Complainants could reasonably have assumed that a tracker interest rate of ECB + 1.00% was applied to the mortgage account at this time.

The Provider has submitted into evidence a copy of a published marketing document entitled **Lending Interest Rates**, which is noted being "*effective from the start of business on 28th March 2011*". This document outlines as follows;

"Home Loan Rates for Existing Business

...

LTV Variable applicable to existing Home Loans

Since 21/01/2011. LTV Tracker Maturity Rates

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Applicable to existing Home Loans since 31/08/09	RATE	APR
...		
Tracker Rate LTV <80%	4.25%	4.3%
Tracker Rate LTV >80%	4.25%	4.3%

The evidence shows that the tracker interest rate that the Provider had available for home loans for existing business in **March 2011** was 4.25% and that was the same tracker interest rate that was offered to the Complainants for their mortgage loan. In these circumstances it appears to me that the Complainants were offered the option of the “then current [Provider] tracker mortgage rate appropriate to the loan” at the time of expiry of the fixed period, in accordance with **Special Condition 6**. It was within the Provider’s commercial discretion to set this rate. The Complainants were notified of this rate on **11 March 2011** in advance of the expiry of the fixed period.

The Complainants’ in their post Preliminary Decision Submission dated **26 June 2020** details as follows:

“....

We realize our own mistake's. We did sign everything and not know what we were signing. We now realize that 'communication and transparency,' was the issue in the past.

Myself and husband would not have agreed to any lump some [sic] payments, if there had been any, in our case, as we would have viewed this, as tax payers money, therefore we wouldn't be looking to pursue matters any further. We as a country has already bailed out.

'The margin was the only issue for us and still is.'

We wanted it reduced for the remainder of our mortgage.

We were hoping that you may have been in a position to mediate on our behalf, that we are currently unhappy with our 'Margin of interest.'

But now that all is completed we can plan for the future. There has been growing competition in the market with regard to mortgage's, in recent times.

We wish for you to relay to [the Provider] that we hope to do business with them in the future.

I thank you for all the work you have done in examining our mortgage.“

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It appears that the Complainants are still of the view that the margin applicable to their mortgage loan account is too high and they “*wanted it reduced for the remainder of [their mortgage]*”. The Complainants have requested as part of their post Preliminary Decision Submission that this office mediate on the Complainants’ behalf with respect to the margin of interest applicable to the mortgage. It is not a matter for this office to engage in any mediation or negotiation on behalf of the Complainants with respect to the interest rate margin applicable to their mortgage.

The Complainants in their post Preliminary Decision Submission also requested that the Provider contact them with respect to “*cheaper products and services*” going forward. These are matters to be discussed between the parties themselves.

I do not accept, based on the evidence available, that the Complainants had a contractual or other entitlement to a tracker interest rate of ECB + 1.00% on the expiry of the fixed interest rate period in **April 2011**, or indeed at any other stage during the term of the mortgage. The Complainants had a right to the “*then current [Provider] tracker mortgage rate appropriate to the loan*” on the expiry of the fixed interest rate period in **April 2011**. The Provider offered the Complainants the rate of ECB + 3.25% (4.25%) and the Complainants signed the rate options form on **24 March 2011** selecting this option. I understand that this tracker interest rate continues to apply to the Complainants’ mortgage loan.

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
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

30 July 2020

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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.

