



<u>Decision Ref:</u>	2020-0320
<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 Failure to offer a tracker rate at point of sale
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The complaint relates to a mortgage loan held by the Complainant with the Provider. The mortgage loan is secured on the Complainant's private dwelling house.

The loan amount was €255,000 and the term of the loan is 35 years. The **Letter of Approval** dated **11 February 2008** detailed the loan type as “*Disc Tracker (LTV>80%<95%/500K) Homeloan*”. Following the discounted period the Complainant's mortgage loan account was placed on a tracker interest rate of ECB + 2.25%.

The Complainant's Case

The Complainant states that he got approval for a tracker mortgage from the Provider's branch at a rate of ECB + 1.1%. During the application process and before he commenced making payments, the Complainant explains that a representative from the Provider contacted him and “*told [him] because [he] was a good loyal customer they could give [him] the first year at ECB + 0.9% to which [he] was obviously very happy*”. The Complainant submits that he asked the Provider's representative what would happen upon the expiry of the one year discount period and states that he was informed that “*[he] would go back up to the 1.1% rate*”. The Complainant states that his mortgage loan

account ultimately issued as a 1 year discount tracker mortgage at a rate of ECB + 0.90% in **April 2008**.

The Complainant submits that on expiry of the discount period in **April 2009**, the Provider applied a tracker interest rate of ECB + 2.25% despite him having been assured by the Provider's representative that a tracker rate of ECB + 1.1% would apply. The Complainant submits that this *"really annoyed [him] and [he] contacted the bank but to no avail"*.

The Complainant maintains that he *"was made a fool of by the bank"* because the Provider's representative *"got [him] to sign a contract for year one at a rate of ECB +0.90% because [he] was a loyal customer"* and the Provider's representative clearly stated that his mortgage loan account would revert to a rate of ECB + 1.1% thereafter. Moreover, the Complainant states that the Provider's representative *"never gave [him] a contract to sign for that, which looking back was very stupid of [the Complainant] but [he] believed [the Provider's representative] and the bank and also trusted them at the time."* The Complainant states that the advice to apply the discount interest rate was given to him by the Provider's representative when he attended at the Provider's branch without his solicitor.

The Complainant contends that the Provider is *"very quick to dismiss there (sic) own actions with there (sic) customers."* He submits that the Provider is making this out to be his *"sole decision"* and is not *"taking any responsibility for [its] actions"*. The Complainant argues that while the Provider has stated that it does not *"advise on what interest rate you as a customer should take"*, quite the *"total opposite"* happened in his case. He submits that he *"was advised of this lower rate without [his] solicitor present and before [he] signed any mortgage final agreement"*. The Complainant re-iterates in later submissions that when he asked the Provider's representative *"about the rate after the first year she told [him] it would definitely go back to the rate of 1.1%"*. The Complainant further states that he was *"a bit naïve believing the bank had [his] best interests at heart"* and he is still *"very upset by this whole unjustified big increase in [his] [m]ortgage rate"*.

The Complainant is of the view that the Provider's representative *"obviously felt [he] was wronged"* because when he contacted the Provider to complain about the new rate of ECB + 2.25% having been applied to his account in **April 2009**, the Provider's representative told him that she would ring the *"head branch to sort it out but came back to [him] saying the bank won't honour it or change it."* The Complainant feels *"cheated by the bank"* and notes that the Provider still has no interest in communicating with him with regard to the matter. The Complainant asserts that he would never have agreed to the discount tracker interest rate of ECB + 0.9% if he had known his mortgage loan account *"wasn't going back to the 1.1%"*.

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The Complainant is seeking the following;

- (a) That the Provider be directed to apply a tracker interest rate of ECB + 1.1% to his mortgage loan account; and
- (b) Compensation for the additional monthly payments as a result of being placed on the alleged incorrect tracker interest rate since **April 2009**.

The Provider's Case

The Provider details that the Complainant completed and submitted an **application for credit** on **27 November 2006** for a 1 year discount tracker interest rate of *"(ECB + max 0.69%) Home Loan"*. The Provider explains that due to a number of delays with the property to which the loan related, the Complainant was not issued with a **Letter of Approval** until **11 February 2008**. The Provider details that a Letter of Approval issued to the Complainant on **11 February 2008** for a loan amount of €255,000.00 to be paid over a 35 year term. It states that the Letter of Approval provided for a 1 year discount tracker interest rate of ECB + 0.85%. The Provider states that on **14 February 2008**, the Complainant signed and accepted the terms of the Letter of Approval together with the Provider's **Mortgage Conditions** referred to therein and in doing so, confirmed that his solicitor had fully explained the said terms and conditions to him. The mortgage loan was subsequently drawn down on **04 April 2008** on an interest rate of 4.85% (ECB + 0.85%), as opposed to ECB + 0.90% to which the Complainant refers to.

The Provider asserts that the **Letter of Approval** *"did not contain a guarantee of a particular rate that would be applied when the discount period ended"*. The Provider submits that it has no record of the Complainant having been advised by a mortgage adviser of the Provider's branch that the mortgage account would revert to a rate of ECB + 1.1% when the discount period ended. The Provider notes that the mortgage adviser who the Complainant says he met with is no longer employed by the Provider however *"she was a long standing member of staff and was a very experienced mortgage advis[e]r"*. However, the Provider maintains that the *"contract between the Bank and the Complainant clearly contains no reference whatsoever to a specific tracker variable interest rate available on a future date following the discount period."* In addition, the Provider notes that it *"did not know what range of lending products or interest rates would be provided to the Complainant at the end of the discount rate period and, therefore, could not say what tracker rate would or would not be available"*.

The Provider states that **Special Condition 9** of the **Mortgage Special Conditions** outlines what is to occur on the expiry of the discount interest rate period in **April 2009**, that is, the discount interest rate would revert to the Provider's current tracker mortgage rate as

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appropriate to the loan. The Provider explains that upon the expiry of the discount period in **April 2009**, a tracker interest rate of ECB + 2.25% was applied in accordance with the terms of the Letter of Approval. The Provider further explains that the rate of 3.75% (ECB +2.25%) was the Provider's then current tracker interest rate appropriate to home loans applicable as of **4 April 2009**. The Provider states that the Complainant's mortgage loan account has remained on that rate to date.

In terms of calculating its current tracker mortgage rate, the Provider submits that it has a right to change its products and interest rates at its discretion. The Provider explains that the *"calculation of the appropriate tracker rate has changed over time, based on commercial decisions, made by the Bank, dependent on market conditions"* taking into account a number of factors to include *"wholesale lending and borrowing rates"*, *"interest rates paid on deposits"* and the Provider's *"competitive position"*. The Provider explains that *"[w]hen setting the tracker margin in relation to the Complainant's loan, the Bank had regard to its current tracker mortgage rate applying to home loans which was ECB +2.25% in April 2009"*.

In response to the Complainant's assertion that, when he contacted the Provider in **2008**, he was advised by a mortgage adviser of the Provider to apply the discount tracker rate without his solicitor present, the Provider submits that the Complainant had in fact submitted an application for credit for a *"1 Year Discount Tracker (ECB + max 0.69%) Home Loan dated 27 November 2006"*, which pre-dates the meeting that the Complainant refers to. On receipt of the application for credit, the Provider states that it issued a Letter of Approval along with a proposal letter to the Complainant dated **11 February 2008**. The Provider details that this *"loan offer was accepted by the Complainant, with the benefit of independent legal advice on 14 February 2008"*.

In response to the Complainant's submission that the Provider's mortgage adviser contacted the Provider's *"head branch"* when the Complainant complained about the application of the higher tracker interest rate in **2009**, the Provider states that it has no record of receiving a complaint during **2009** from the Complainant.

The Provider outlines that the Complainant's mortgage loan account was included in the review of the mortgage accounts undertaken as part of the Central Bank of Ireland led Tracker review. The Provider submits that as a result of the Tracker Mortgage Examination the Complainant's mortgage loan account was not eligible for redress and/or compensation and was deemed not impacted.

The Complaint for Adjudication

The conduct complained of is that the Provider incorrectly applied a tracker interest rate of ECB + 2.25% to the Complainant's mortgage loan account on the expiry of the discount interest rate period in **April 2009**, rather than a tracker interest rate of ECB + 1.1%.

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 Complainant was 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 **31 August 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.

The issue to be determined is whether the Provider incorrectly applied a tracker interest rate of ECB + 2.25% to the Complainant's mortgage loan account on the expiry of the discount tracker interest period in **April 2009**. In order to determine this, it is necessary to review and set out the relevant provisions of the Complainant's mortgage loan documentation. It is also necessary to consider the details of certain interactions between the Complainant and the Provider between **January 2007** and **April 2009**.

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The **Application for Credit** issued by the Provider to the Complainant, which was signed by the Complainant on **27 November 2006** details as follows;

“...

2. Details of Mortgage Required

Type of Loan:

Amount of loan required	EUR 269,560.00
Property price/Value of property	EUR 293,000.00
Loan type	1 Year Discount Tracker (ECB +MAX 0.69%) Home Loan
Repayment Term required	35 Years...”

Therefore, it appears that as early as **November 2006**, the Complainant had applied for a mortgage home loan at a discount tracker interest rate. A memo dated **22 September 2006** signed by the mortgage adviser of the Provider’s branch notes as follows;

“I wish to confirm that I personally know this customer and confirm their identity and/or address.

The reason the customer was unable to supply this documentation was [Complainant] applied for the mortgage in January 07. Due to delays with the property the mortgage application had to be rekeyed onto [the Provider’s system]. The address documentation he originally submitted is now out of date. I am happy to make the customer compliant as his passport is in date and he has been transacting and receiving statements from his current account which was opened in 1996.”

I note from the Provider’s submissions and the evidence submitted that due to a number of delays with the property the subject of the loan, a **Letter of Approval** did not issue until **February 2008**.

The mortgage adviser of the Provider’s branch issued a **Proposal Letter** dated **11 February 2008** to the Complainant which details as follows;

“The following outlines our proposal based on the information you have given us regarding your personal circumstances, financial needs and plans. The loan preferences and options you have chosen are also listed, as at February 11th, 2008.

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Proposal

We propose the following:

Tracker- A variable interest rate that is linked to ECB rates.

Mortgage details agreed

You have selected a loan type from a range which we are prepared to offer you based on your needs and circumstances. You have chosen a repayment term and flexible options (where relevant) to achieve a repayment amount best suited to your needs and preferences. Details are as follows:

- Amount of loan required €255,000
 - Property price/value €293,000.00
 - Loan Purpose Buying a Home (PPR)
 - Loan Type Disc Tracker (LTV>80%<95%/<500K) Homeloan
 - Repayment term required 35 years
- [...]

The loan amount had been derived from your stated borrowing requirement and by calculating your ability to repay from the following items of information you have supplied:

- The individual elements of your income
- Your financial commitments
- Our lending policy.

[Provider's] assessment of whether you can afford to enter into a mortgage contract is based on current interest rates, which may rise in the future, and your current circumstances, which may change in the future.

Please review the information in this letter and ensure the mortgage features and details best suit your requirements and wishes, given the advice from [Provider's] staff and the information you provided. You should take the necessary time to consider and query any information provided to you in relation to your loan application [...]" (my emphasis)

The Provider also issued a cover letter dated **11 February 2008** to the Complainant noting the following:

"I am pleased to tell you that we have approved your application for a mortgage. The conditions set out in the following documents apply:

- *Letter of Approval*
- *General Mortgage Loan Approval Conditions*
- *[Provider's] Mortgage Conditions*
- *Copy of the Valuers report (if this applies)*

If you want to accept our offer, please sign the Acceptance of Loan which has been sent with the mortgage documentation to your solicitor. You should sign the Acceptance of Loan in the presence of your solicitor, who must witness your signature. Then return the acceptance to us as soon as possible so we can process your loan..."

The **Letter of Approval** dated **11 February 2008** that issued to the Complainant details as follows;

<i>Loan Type:</i>	<i>Disc Tracker (LTV>80%,96%/500K) Homeloan</i>
<i>"Purchase Price/Estimated Value:</i>	<i>€293,000.00</i>
<i>Loan Amount</i>	<i>€255,000.00</i>
<i>Interest Rate:</i>	<i>4.85%</i>
<i>Term:</i>	<i>35 year(s)"</i>
<i>...</i>	
<i>LTV:*</i>	<i>87%"</i>

The Letter of Approval also contains information relating to housing loans within the meaning of the **Consumer Credit Act 1995** as follows;

*"VARIABLE RATE LOANS
"THE PAYMENT RATES ON THIS HOUSING LOAN MAY BE
ADJUSTED BY THE LENDER FROM TIME TO TIME"*

The following notice is contained within the Letter of Approval in relation to 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.”

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

“4. The interest rate and mortgage repayment indicated in the letter of approval are based on the ECB rate applicable at the date of the letter of approval and take into account the discount period referred to above. The ECB rate may change on or before drawdown.

5. If, for whatever reason, an event occurs which fundamentally affects the use of the ECB rate as a reference rate for this loan, [the Provider], in its sole discretion, shall be entitled to use such other reference rate or other method or basis of calculation as it deems fair and reasonable and notwithstanding the use of such other reference rate or method or basis of calculation, the rate so calculated by [the Provider] shall be and apply as the reference rate applicable to this loan in place of the ECB rate.

...

9. The interest rate applicable to this tracker loan may be varied by [the Provider] provided it will not exceed 0.85% over the European Central Bank (the “ECB”) refinancing rate (the “ECB rate”) for the first 12 Months (the discount period) from the date of loan issue.

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The ECB rate may be varied from time to time by the ECB. In the event of any variation of the ECB rate during the discount period, the interest rate will not be more than 0.85% over the ECB rate as varied by the ECB. [The Provider] reserves the right to alter the said percentage over the ECB rate at any time prior to drawdown. On expiry of the discount period, the interest rate will be the then current [Provider] tracker mortgage rate (comprising of a certain percentage over the ECB rate) appropriate to the loan as may be varied in accordance with variations to the ECB rate. In the event of any variation of the ECB rate the revised interest will apply not later than 1 calendar month from the effective date provided by the ECB. ”

The **General Mortgage Loan Approval Conditions** attached to the Letter of Approval note the following;

***“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 **European Standardised Information Sheet** included in the Letter of Approval notes the following;

“The interest rate is 4.85 percent

The interest rate may vary from time to time. Notice will be given in respect of rate increases. No notice will be given for decreases in rate.

The option to apply for a fixed rate product (if available) may be exercised by you at any time otherwise the rate will remain a variable rate

*The interest rate applicable to this loan is a variable rate loan but will not exceed 0.85% over the European Central Bank Refinancing Rate (The ECB Rate) for the first 12 months (the Discount Period) from the date of issue of the loan. On expiry of the Discount Period, the interest rate applicable to the loan will be the then current [Provider’s] tracker mortgage rate (comprising of a certain percentage over the then ECB rate) appropriate to the loan as may be varied by the European Central Bank. **THE PAYMENT RATE ON THIS HOUSING LOAN MAY BE ADJUSTED BY THE LENDER FROM TIME TO TIME.**”*

I note that the European Standardisation Sheet does not constitute a legally binding offer.

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Condition 4.3 of the Provider's **Mortgage Conditions 2002** attaching to the Letter of Approval states as follows;

"[The Provider] may from time to time increase or reduce the Appropriate Rate....A reduction in the Appropriate Rate may be made without notice or formality and so as to take effect from such date as [the Provider] may determine but [the Provider] reserves the right not to permit a reduction in the Monthly Repayment".

The "Appropriate Rate" is defined at **condition 1.10** in the "**Interpretation**" section to the **Mortgage Conditions 2002** as *"the rate or rates of interest per centum per annum for the Advance as specified in the Letter of Approval, or such increased or reduced rate or rates of interest as may from time to time be payable on the Advance and any Additional Advance under the terms hereof"*.

Condition 4.14 of the Provider's **Mortgage Conditions 2002** attaching to the Letter of Approval states as follows;

"An increase in the Appropriate Rate shall not come into force unless or until notice of the increase has been either:

4.14.1 served on the Mortgagor in writing or

4.14.2 advertised in a national newspaper, provided always that the advertisement need only specify the fact of an increase, the date on which it becomes effective and that details may be obtained from any branch office of [the Provider].."

The **Acceptance of Loan Offer** was signed by the Complainant and witnessed by his solicitor on **14 February 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.*

copies of the above which I/we have received, and agree to mortgage the property to [the Provider] as security for the mortgage loan.

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4. My/our Solicitor has fully explained the said terms and conditions to me/us."

It is clear to me that by issuing the **Letter of Approval** dated **11 February 2008**, the Provider offered the Complainant a discount tracker interest rate that would not exceed 0.85% over the European Central Bank rate for the first 12 months of the term of the loan. **Special Condition 9** of the **Special Conditions** attaching to the Letter of Approval provides that on the expiry of the discount interest rate period, the Provider's current tracker mortgage rate as appropriate to the loan would apply. I note that there is no reference whatsoever in the particulars of the Letter of Approval or indeed the Special Conditions or General Conditions that a specific tracker interest rate of ECB + 1.1% would be available following the expiry of the discount interest rate period. The Complainant accepted the terms of the Letter of Approval together with the **Special Conditions**, the **General Mortgage Loan Approval Conditions** and the Provider's **Mortgage Conditions 2002** by signing the **Acceptance of Loan Offer**. By signing the Acceptance of Loan Offer, the Complainant confirmed that his solicitor fully explained the said terms and conditions to him.

The Provider submits that an options form and accompanying cover letter issued to the Complainant in **March 2009** before the expiry of the one year discount tracker interest rate period. The Provider explains that it was its practice at the time to provide interest rate options twenty days before the expiry of the rate period. This would appear to be in line with the **Mortgage Conditions 2002** attaching to the Letter of Approval outlined above which required the Provider to notify the Complainant of any increase in the interest rate referred to in the Letter of Approval in writing. This office requested the Provider to submit a copy of the options form and accompanying cover letter that issued to the Complainant, however the Provider has detailed that it has not retained a copy of the letter and form which issued.

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;*

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- 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 Complainant's mortgage loan was incepted for a term of **35 years** commencing from **April 2008** and the options form and cover letter purportedly issued in **March 2009**. There is no indication that the mortgage had been redeemed or disposed of in any way. The Provider is obliged to retain that documentation on file for six years from the date the relationship with the mortgage holder ends. It is unclear to me, why the documentation was not retained on file and furnished to this office. The Provider details that "[a]t the time of issuing the Complainant's automated letter and form, it was not the practice of the Bank to retain a copy of such correspondence". It is most disappointing that the Provider had a practice in place with respect to the retention of records that appears was not in compliance with the obligations on the Provider under the **CPC 2006**. It is most unsatisfactory that the Provider has failed to retain a copy of this correspondence.

The Provider has furnished this office with "a copy of a template options form and accompanying cover letter" which it submits was issued automatically by the Provider's automated loan processing system to the Complainant in **March 2009**. The template letter details as follows;

"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 above on or before]the Interest rate on your mortgage will be the tracker variable rate.

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We value your business highly at [Provider] so if you have any questions regarding your options, please contact our decided mortgage team on [contact number]. They will be happy to help."

The template **rate options form** enclosed with the template options letter details as follows;

<i>"Tracker variable rate (ECB + maximum 2.2500%)*</i>	<i>- Currently: 5.50%</i>
<i>LTV variable rate**</i>	<i>- Currently: 5.30%</i>
<i>2 year fixed rate</i>	<i>- Currently: 5.75%</i>
<i>5 year fixed rate</i>	<i>- Currently: 5.75%</i>
<i>7 year fixed rate</i>	<i>- Currently: 6.10%</i>
<i>10 year fixed rate</i>	<i>- Currently: 6.10%"</i>

Please fill in and return the attached form before the expiry date to: [Provider's address]

[...]

- 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 Provider submits that while it does not hold an exact copy of the letter and rate options form that issued to the Complainant, it has no evidence that the letter and rate options form that issued was returned as undelivered to the Complainant by the postal authorities. It further submits that unless the Complainant elected otherwise, the tracker rate of ECB + 2.25% would apply to the Complainant's mortgage loan account on the expiry of the one year discount interest rate period. It does not appear to be in dispute between the parties than an options form was issued by the Provider to the Complainant prior to the expiry of the discount period and that in the absence of the Complainant selecting another rate the tracker rate of ECB + 2.25% was applied to the mortgage loan on **04 April 2009**.

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The Complainant submits that the Provider should have applied the tracker interest rate of ECB + 1.1% to the mortgage loan, at the expiry of the discounted period on **04 April 2009**. In this regard, it is important for the Complainant to note that the agreed terms of his mortgage loan are ultimately contained in the Letter of Approval signed and accepted by the Complainant in the presence of his solicitor as opposed to any oral discussions that may have taken place between the Complainant and the mortgage adviser of the Provider's branch prior to the issuing of the Proposal Letter and Letter of Approval. Equally, while I note that the Complainant had applied for a 1 year discount tracker interest rate of ECB + 0.69% by completing an application for credit on **27 November 2006**, the Letter of Approval dated **11 February 2008** contains the loan offer that was actually offered by the Provider to the Complainant. **Special Condition 9** attaching to the Letter of Approval clearly states that a discount tracker interest rate of ECB + 0.85% would apply to the mortgage loan account for the duration of the first 12 months and thereafter the Provider's current tracker mortgage rate as appropriate to the loan would apply. There is no guarantee in the Special Conditions or any other conditions attaching to the Letter of Approval that a specific tracker mortgage margin would be made available to the Complainant at the end of the discount period and there is certainly no reference to the interest rate reverting to a tracker interest rate of ECB + 1.1%.

The Proposal Letter accompanying the Letter of Approval asks the Complainant to review the details of the mortgage loan documentation and features of the approved loan to ensure that they best suit his requirements and wishes following information and advice given by the Provider's staff. Interestingly, the Proposal Letter is signed by the mortgage advisor of the Provider's branch who the Complainant says assured him that an interest rate of ECB + 1.1% would apply to the mortgage loan account at the end of the discount period. I have not been provided with any evidence to suggest that the Complainant queried why there was no specific reference to an interest rate of ECB + 1.1% in his loan documentation, in advance of signing it, given this did not align with the advice that he says he was given by that particular mortgage advisor. In fact, the Complainant has stated in his submissions that the Provider's representative never furnished him with an agreement to this effect. In addition, it is to be noted that the Complainant had the benefit of independent legal advice when considering the terms and conditions referred to in the Loan Approval and by signing the Loan Acceptance indicated that his solicitor had fully explained the said terms and conditions to him. If it was the case that the Complainant was not satisfied with the terms and conditions of the approved mortgage loan offered to him by the Provider, he was under no obligation to accept them and could have queried them.

For completeness, it is necessary to now consider how the specific interest rate of ECB + 2.25% came to be applied to the mortgage loan account after the discount period bearing in mind that **Special Condition 9** provides that the Provider's current tracker mortgage rate as appropriate to the loan would apply. In this regard, the Provider has submitted into evidence a copy of a document entitled **Lending Interest Rates**, which is noted as being "effective from the start of business on the 13th February 2009".

This document outlines as follows;

"Home Loans Rates for Existing Business

	Rate	APR
LTV Variable/LTV Tracker Maturity Rates applicable to Existing Home Loans since 13/02/09		
....		
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 in **February 2009** was 4.25% (ECB + 2.25%) which is in line with the interest rate referred to in the rate options form i.e. "ECB + maximum 2.2500%". The Provider submits that the ECB rate at that time was 2%. However given the Provider's practice to offer interest rate options twenty days before the expiry of the rate period in line with **Mortgage Conditions 2002**, I accept that the Lending Rates effective from **February 2009** were the appropriate interest rates to be offered to the Complainant in **March 2009**, at which time the Provider asserts that a rate options form issued. Based on my review of the Provider's contemporaneous lending sheet applicable in **March 2009**, I accept that the Complainant was offered the option of the "then current [Provider] tracker mortgage rate ... appropriate to the loan" at the time of expiry of the discount period, in accordance with **Special Condition 9**. I have also been provided with a copy of the **Lending Interest Rates**, "effective from the start of business on the 3^d April 2009".

This document outlines as follows;

"Home Loans Rates for Existing Business

	Rate	APR
LTV Variable/LTV Tracker Maturity Rates applicable to Existing Home Loans since 03/04/09		
....		
Tracker Rate LTV <80%	3.75%	3.8%
Tracker Rate LTV >80%	3.75%	3.8%

/Cont'd...

I note that on **4 April 2009**, at the end of the discount interest rate period, the interest rate was amended to 3.75%. This comprised the ECB rate of 1.5% (having reduced from 2% bearing in mind that the ECB rate may be increased or decreased from time to time by the European Central Bank) and the then current margin appropriate to home loans which was 2.25%, again in line with the rate options form.

I accept it was within the Provider's commercial discretion to set the tracker margin rate. Given the frequent fluctuations in the ECB base rate, it is reasonable to conclude that in **April 2008**, the Provider would not have been in a position to inform the Complainant of the exact tracker interest rate that would apply to his mortgage loan account a year later in **April 2009**.

It is important for the Complainant to understand that his mortgage loan is governed by the terms and conditions attaching to the Letter of Approval that he accepted in the presence of his solicitor. In this instance, I accept that the terms and conditions were clear as to what would occur at the end of the discount interest rate period in **April 2009**, that is the Provider's then current tracker mortgage rate would apply.

If the Complainant was not happy with the terms of the Letter of Approval, including the type of interest rate applied to his loan account or the fact that the loan agreement did not stipulate a specific tracker mortgage rate margin that would be applied at the end of the discount period, the Complainant could have decided not to accept the offer made by the Provider. Instead the Complainant accepted the Provider's offer by signing the Acceptance of Loan Offer on **14 February 2008**, and in doing so, confirmed that his solicitor had fully explained the terms and conditions of the mortgage loan to him.

Having considered the Complainant's mortgage loan documentation, I am of the view that, on the expiry of the discount rate in **April 2009**, the Complainant had a contractual entitlement to the then current tracker mortgage rate as appropriate to his loan as set by the Provider in line with **Special Condition 9** of the Letter of Approval. There was no contractual entitlement to a guaranteed interest rate of ECB + 1.1%. It is clear from the Provider's lending rate sheets applicable in **March** and **April 2009** that the Provider's current home loan tracker rate at the time was ECB + 2.25% therefore that was the rate that was correctly applied to the Complainant's mortgage loan account as of **4 April 2009**.

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**

24 September 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.