



<u>Decision Ref:</u>	2020-0444
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Tracker Mortgage
<u>Conduct(s) complained of:</u>	Failure to offer a tracker rate throughout the life of the mortgage
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

This complaint relates to five mortgage loan accounts held by the Complainants with the Provider.

- Mortgage loan account ending **2213** was for the loan amount of IR£58,000 and the term of the loan was 20 years. The Letter of Approval dated **23 April 1996** detailed that the loan type was “Home Loan” and the applicable interest rate “will for a period of 12 months from the date of the issue of the loan be charged at a rate of 0.5% below the variable rate normally applicable to loans of this type”. This loan was secured on the Complainants’ principal private property and was redeemed in full on **31 August 2015**.
- Mortgage loan account ending **6093** was for the loan amount of IR£30,000 and the term of the loan was 20 years. The Letter of Approval dated **6 August 1997** detailed that the loan type was a “Home Loan” and the applicable interest rate was “discounted by 0.5% per annum on the amount of the loan for a period of 12 months from the date of the advance”. This loan was secured on the Complainants’ principal private property and was redeemed in full on **22 October 2008**.

- The mortgage loan account ending **6353** was for the loan amount of IR£15,000 and the term of the loan was 15 years. The Letter of Approval dated **8 March 1999** detailed that the loan type was a “*Further Advance*” on a variable interest rate of 5.50%. This loan was secured on the Complainants’ principal private property and was redeemed in full on **22 October 2008**.
- The mortgage loan account ending **0693** was for the loan amount of IR£80,000 and the term of the loan was 20 years. The Letter of Approval dated **7 January 2000** detailed that the loan type was a “*Residential Investment Property Loan*” on a variable interest rate of 4.89%. This loan is secured on the Complainants’ residential investment property.
- The mortgage loan account ending **8824** was for the loan amount of €80,000 and the term of the loan was 20 years. The Letter of Approval dated **24 November 2003** detailed that the loan type was a “*Residential Investment Loan 1 Year Fixed New Business Rate*” at an interest rate of 2.59%. This loan is secured on the Complainants’ residential investment property.

The Complainants’ Case

The Complainants state that “*we believe that we had a contractual right to be offered a tracker rate each time our rate came up for review at the end of a fixed term. At no time were we informed of the availability of a tracker rate, or, given the option to opt for one.*”

The Complainants detail that they were not offered a tracker interest rate by the Provider when they requested “*new rate options*” for their mortgage loan accounts in **2006**. They submit that “*It appears that the Bank is denying its responsibility to place the loan on a tracker on the basis that the borrowers requested a new fixed rate in May 2006.*”

The Complainants outline that “*during the period [mid] 2006 tracker rates appeared on the 20 day option letters on expiry of fixed and discounted rate period, and from [mid] 2006 tracker rates became the default rate on expiry of fixed or discounted terms. Therefore [they] should have defaulted to the tracker if the fixed rate was allowed to run until maturity in August 2006.*” They state however that at no stage “*was a tracker rate ever mentioned as an option or indeed offered to them despite the stated Bank policy.*”

The Complainants have also queried whether there was “*a notification about a breakage fee in respect of the early exit from the 3 year fixed rate in May 2006 - which was not due to expire until August 2006*”. They further submit that “*Not alone did the [Provider] not make them aware of the tracker mortgage product for these loans but it charged [them] a flat fee each time they changed a fixed rate*”.

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The Complainants outline that they are in *“financial difficulty because of the very high rates charged by [the Provider] over the years and the Bank forcing us to sell a property in 2016 realising significant residual debt.”*

The Complainants submit that *“Many customers are now a lot better off because of tracker rates and they wonder why this product, which would have saved them a significant amount of money, was never offered to them or even discussed with them as an option on these property loans when their fixed rates expired.”*

The Complainants are seeking for a tracker interest rate to be applied to their mortgage loan accounts from **August 2006** and *“the accounts recalculated at tracker mortgage rates with redress and compensation applied”*.

The Provider’s Case

The Provider details that tracker rates for new business customers were launched by the Provider in **early 2004**.

The Provider outlines as follows in respect of the Complainants’ five mortgage loan accounts:

Mortgage loan account ending 2213

The **Letter of Approval** for mortgage loan account ending **2213** issued on **23 April 1996** in the amount of IR£58,000 on a variable interest rate of 6.50% for a term of 20 years. The Provider refers to **Special Condition A** of the mortgage loan agreement which provided that *“the interest rate applicable to this loan will for a period of 12 months from the date of the issue of the loan be charged at a rate of 0.5% below the variable rate normally applicable to loans of the type provided the applicant maintains the loan for three years from the date of loan issue”*. It also refers to **Special Condition C** which stated that *“All General Mortgage Loan Approval Conditions apply”*.

The Provider submits that its records indicate that in **May 1997** the Complainants opted to apply a three year fixed interest rate of 7.55% which was applied on **28 May 1997**. It outlines that on **26 May 2000** on the expiry of the three year fixed rate period, the interest rate was changed to the current variable rate of 4.89% and the Complainants subsequently opted to apply a three year fixed rate of 6.20% to the mortgage loan which was applied on **3 August 2000**.

On the expiry of the 3 year fixed rate period the Provider states that the Complainants opted to apply a further 3 year fixed interest rate of 3.75% to the mortgage loan on **1 August 2003**.

In **April 2006** the Provider states the Complainants made an enquiry about the current fixed rate options available to them at that time and a fixed rate options form was issued to the Complainants following their enquiry. The Complainants completed the options form on **18 May 2006** confirming that they wished to avail of a five year fixed rate of 4.9%, which was applied to the account on **25 May 2006**, effective from **1 May 2006**.

The Provider details that the fixed rate options letter sent in **April 2006** at the request of the Complainants *"was not a fixed rate expiry options letter. It was a standard rate switching letter sent to customers who were considered the Bank's fixed rate options to which to switch from whatever rate currently applied to their account."* It states that in **2006**, its fixed rate expiry letters automatically issued 20 days before the scheduled expiry date of a fixed rate period and not at any earlier date. It further details that the mortgage loan account did not have a fixed rate expiry date in **2006** as the Complainants requested to commence the new fixed rate period prior to expiry of the fixed rate period which commenced in **August 2003**.

The Provider details that if the Complainants had been issued with a fixed rate expiry letter 20 days before the scheduled maturity date of their fixed rate period on **1 August 2006**, it would have included a tracker rate option because from **mid-2006** the Provider was including a tracker rate option in 20-day letters for certain accounts including account ending **2213**. It states *"Had the Complainants not have instructed the Bank to amend their interest rate to a 5 year fixed rate in May 2006, the options form that would have issued prior to the expiry of their fixed rate in August 2006 would have included the option of a tracker interest rate."*

The Provider details that it issued an options form to the Complainants on **8 April 2011** prior to the expiry of the five year fixed rate period. The Complainants completed the form on **20 April 2011** opting for the two year fixed interest rate at 7.25%, which was applied to the account on **29 April 2011**.

Prior to the expiry of the two year fixed rate period, the Provider issued an options form to the Complainants on **28 March 2013**. It states that it has no record of the form being returned by the Complainants, and the interest rate on the account defaulted to the LTV variable rate of 4.13% on **1 May 2013**.

The Provider submits that the Complainants were not offered a tracker rate on expiry of their 5 year fixed rate in **May 2011** or their 2 year fixed rate in **May 2013** as the

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Complainants' loan agreement did not include a contractual right for a tracker rate to be offered or made available to them at any stage during the term of their loan.

The mortgage loan account ending **2213** remained on the LTV variable rate until the account was redeemed on **31 August 2015**.

Mortgage loan account ending 6093

The **Letter of Approval** for mortgage loan account ending **6093** issued on **6 August 1997** in the amount of IR£30,000 on a variable interest rate of 7.00% for a period of 20 years. The mortgage loan account was drawn down on **23 September 1997**.

The Provider states that the loan account did not include a contractual right for a specified rate to be offered or made available to the Complainants on expiry of their fixed interest rate periods. It refers to **Special Condition A** which states that the interest rate applicable to the loan was discounted by 0.5% per annum on the amount of the loan for a period of 12 months from the date of the advance, at the end of which discount period the reduction would cease and the interest rate applicable to the loan would increase by 0.5% per annum on the amount of the loan. The Provider also refers to **Special Condition E** which stated that "*All General Mortgage Loan Approval Conditions apply*". It details that the **General Mortgage Loan Approval Conditions** also provide that if a loan is a variable rate loan, the payment rates may be adjusted by the lender from time to time.

The Provider states that it offered the Complainants a three year fixed interest rate of 6.20% in **July 2000**, which the Complainants accepted. The fixed rate was applied to the account on **3 August 2000**. On the expiry of the three year fixed interest rate, the Provider details that the Complainants completed a rate options form selecting a three year fixed interest rate of 3.75% which was applied to the mortgage loan on **1 August 2003**.

In **April 2006** the Provider outlines that the Complainants contacted the Provider with regard to fixed rate options currently available to them at that time and on **21 April 2006** a fixed rate options form was issued to the Complainants following their enquiry. The Complainants completed the form on **18 May 2006** confirming that they wished to avail of the five year fixed rate of 4.79%, which was applied to the account on **25 May 2006**, effective from **1 May 2006**. The Provider details that the account did not have a fixed rate expiry date in **2006** as the Complainants requested to commence a new fixed rate period prior to expiry of the fixed rate period which commenced in **August 2003**.

The mortgage loan account ending **6093** remained on the fixed rate of 4.79% until the account was redeemed on **22 October 2008**.

Mortgage loan account ending 6353

The **Letter of Approval** for mortgage loan account ending **6353** issued on **8 March 1999** for a further advance loan in the amount of IR£15,000 on a variable interest rate of 5.50% for a period of 15 years. The proceeds of the loan were drawn down on **17 May 1999**.

The Provider submits that the Complainants' loan account did not include a contractual right for a specific interest rate to be offered or made available to them on expiry of their fixed interest rate periods. The Provider refers to **Condition 5** of the **General Mortgage Loan Approval Conditions**. It states that **Condition 5.4** of their contract provided that the Complainants and the Provider each had the option at the end of each fixed rate period to convert to a variable rate loan.

The Provider states that its records indicate that the Complainants subsequently opted for a three year fixed interest rate of 6.20% which was applied to the account on **3 August 2000**. Prior to the expiry of the three year fixed rate period the Provider states that it issued an options form to the Complainants setting out the rate options to them at that time. The Complainants opted to apply a three year fixed interest rate of 3.75% to the mortgage loan which was applied on **1 August 2003**.

The Provider submits that on **21 April 2006** a fixed rate options form was issued to the Complainants following a request from them at that time. The Complainants completed the options form on **18 May 2006** confirming that they wished to avail of the five year fixed rate of 4.79%.

The mortgage loan account ending **6093** remained on the five year fixed interest rate of 4.79% until the account was redeemed on **22 October 2008**.

Mortgage loan account ending 0693

The **Letter of Approval** for mortgage loan account ending **0693** issued on **7 January 2000** for a residential property loan in the amount of IR£80,000 on a variable interest rate of 4.89% for a period of 20 years. The loan drew down on **15 March 2000**.

The Provider refers to **Condition 5** of the **General Mortgage Loan Approval Conditions** which states that on the expiry of a fixed rate period, the Provider and the Complainants would have the option to apply a variable interest rate to the mortgage loan.

The Provider states that following a request from the Complainants it offered them a three year fixed interest rate of 6.20% in **July 2000**, which they accepted and was applied to the account on **3 August 2000**. It further details that following a request from the

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Complainants, a three year fixed interest rate of 3.75% was applied to the mortgage loan on **1 August 2003**.

The Provider outlines that on **13 April 2006**, a request was sent to its Mortgage Department for a fixed rate options form to be issued to the Complainants following their enquiry in respect of fixed rate options. The Complainants completed the options form on **18 May 2006** confirming that they wished to avail of the five year fixed rate of 4.9%, which was applied to the account on **25 May 2006**, effective from **1 May 2006**. The Provider details that the mortgage loan account did not have a fixed rate expiry date in **2006** as the Complainants requested to commence a new fixed rate period prior to expiry of the fixed rate period which commenced on **1 August 2003**.

The Provider states that it issued an options form to the Complainants on **8 April 2011** prior to the expiry of the five year fixed rate period. The Complainants completed the form on **20 April 2011** opting for the two year fixed interest rate at 7.25%, which was applied to the account on **29 April 2011**.

Prior to the expiry of the two year fixed rate period, the Provider states it issued an options form to the Complainants on **28 March 2013**. It states that it has no record of the form being returned by the Complainants and the interest rate on the account defaulted to the LTV variable rate of 5.64% on **1 May 2013**.

The Provider submits that the Complainants were not offered a tracker rate on expiry of their 5 year fixed rate in **May 2011** or their 2 year fixed rate in **May 2013** as the Complainants did not have an entitlement to be offered a tracker rate.

Mortgage loan account ending 8824

The **Letter of Approval** for mortgage loan account ending **8824** issued on **24 November 2003** for a residential property loan in the amount of €80,000 on an initial fixed interest rate of 2.59%. The term of the loan was 20 years. The Provider refers to **Special Condition A** and **Condition 5** of the **General Mortgage Loan Approval Conditions** of the mortgage loan agreement which states that on the expiry of a fixed rate period, the Provider and the Complainants would have the option to apply a variable interest rate to the mortgage loan.

The Provider outlines that the fixed rate period applying to the loan account commenced on **09 December 2003** and ended on **09 December 2004** when the interest rate changed to a variable rate of 3.55%.

The Provider submits that the Complainants contacted it in **April 2006** and enquired about the fixed interest options available to them at that time. Their loan account was operating on a variable rate at that time. The Provider issued a fixed rate options form to the Complainants on **5 April 2006** which they completed and signed on **12 April 2006** confirming that they wished to apply a five year fixed rate of 4.29% to their mortgage account. The fixed interest rate was applied to the account on **4 May 2006**. The Provider submits that there was no fixed rate period maturing on this account in **May 2006**.

The Provider states it issued an options form to the Complainants prior to the expiry of the fixed rate period in **May 2011**. The Complainants completed the form on **20 April 2011** opting for the two year fixed interest rate at 7.25%, which was applied to the account on **4 May 2011**.

Prior to the expiry of the two year fixed rate period, the Provider details that it issued an options form to the Complainants on **3 April 2013**. It states that it has no record of the form being returned by the Complainants and the interest rate on the account defaulted to the LTV variable rate of 5.64% on **3 May 2013**. The Provider submits that the Complainants were not offered a tracker rate on expiry of the 5 year fixed rate in **May 2011** or the 2 year fixed rate in **May 2013** as they did not have an entitlement to a tracker rate of interest.

The Provider does not accept the Complainants' submission that the Provider had a duty to inform them about the tracker interest rates which were available in **April 2006**. It submits that *"There is no basis in their loan agreements with the Bank or otherwise by which the Complainants can assert that the Bank had a duty to provide the Complainants with information regarding tracker interest rates. The Complainants have provided no basis for this assertion."*

The Provider outlines that when repayment of a loan in full or in part is made, or with the agreement of the Provider, a loan can be switched to a variable rate loan or a fixed rate loan before expiry of the fixed rate period. It states that when a customer requested a rate switch, other than a rate switch on maturity of a fixed period, and the Provider agreed, there was a fixed administration fee of €100 in respect of each rate switch applied. The Provider states that it does not dispute that the Complainants were required to pay the Provider's administration fee of €100 when fixing the interest rate on their mortgage accounts.

The Provider details that during its investigation of this complaint, it noted that its correspondence of **27 April 2018** *"is unclear in its details with regard to the fixed rate options form being issued to the Complainants in 2006 for the loan account numbers [ending] 2213, [ending] 6093 and [ending] 0653."* It details that *"our records indicate the*

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Complainants approached the Bank in April 2006 and enquired about the available fixed rates prior to the expiry of the fixed rates in August 2006 and as a result, an options form was issued which the Complainants subsequently returned in May 2006, prior to the expiry of their fixed rates in August 2006. [The Provider] regret this was not clearly detailed in the Bank's response of 27 April 2018."

The Provider further states that its correspondence of **23 May 2018** refers to "discussions" between the Provider and the Complainants "with regard to the available interest rate types on offer during the period in question. Regrettably, the Bank cannot clarify the specific discussions that would have taken place in this instance and [the Provider] apologise for any confusion caused as a result."

In light of "the above service issues" the Provider has offered the Complainants a "gesture of goodwill" in the amount of €500.00.

The Complaint for Adjudication

The complaint for adjudication is that the Complainants "were never offered a tracker mortgage in relation to these properties; no official of the Bank ever discussed a t[r]acker mortgage rate with them or presented it to them as an option when their fixed rate loans expired on these property loans".

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.

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A Preliminary Decision was issued to the parties on 17 November 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, I set out below my final determination.

In order to determine this complaint it is necessary to review and set out the relevant provisions of the Complainants' loan documentation. It is also relevant to set out certain interactions between the Provider and the Complainants between **2006** and **2013**.

The complaint relates to five mortgage loan accounts held by the Complainants with the Provider. I will set out the details of each mortgage loan account in turn.

Mortgage account ending 2213

The **Letter of Approval** for mortgage account ending **2213** dated **23 April 1996** details as follows;

*“Loan Type: Home Loan
Loan Amount: £ 58,000.00
...
Term: 20 years Interest Rate: 6.5000”*

The **Mortgage Special Conditions** details as follows;

“A. THE INTEREST RATE APPLICABLE TO THIS LOAN WILL FOR A PERIOD OF 12 MONTHS FROM THE DATE OF THE ISSUE OF THE LOAN BE CHARGED AT A RATE OF 0.5% BELOW THE VARIABLE RATE NORMALLY APPLICABLE TO LOANS OF THIS TYPE PROVIDED THE APPLICANT MAINTAINS THE LOAN FOR THREE YEARS FROM THE DATE OF LOAN ISSUE: THIS CURRENTLY EQUATES TO THE INTEREST RATE SHOWN ABOVE.

IN THE EVENT OF THE LOAN BEING REDEEMED WITHIN A PERIOD OF THREE YEARS FROM LOAN ISSUE DATE, AN AMOUNT EQUIVALENT TO THE 0.5% REDUCTION WILL BECOME PAYABLE TO [THE PROVIDER]. WHERE A LOAN IS REDEEMED WITHIN A PERIOD OF THREE YEARS FROM LOAN ISSUE DATE AND A FURTHER [PROVIDER]

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MORTGAGE IS TAKEN OUT WITHIN SIX MONTHS OF THE REDEMPTION DATE THE AMOUNT EQUIVALENT TO THE 0.5% WILL BE REFUNDED

...

C. ALL GENERAL MORTGAGE LOAN APPROVAL CONDITIONS APPLY.”

General Condition 5 of the **General Mortgage Loan Approval Conditions** outline;

“CONDITIONS RELATING TO FIXED RATE LOANS

- 5.1 *The interest rate applicable to this advance shall be fixed from the date of the advance for the period as specified on the Letter of Approval, and thereafter will not be changed at intervals of less than one year.*
- 5.2 *The interest rate specified in the Letter of Approval may vary before the date of completion of the Mortgage.*
- 5.3 *Whenever repayment of a loan in full or in part is made before the time agreed the applicant shall, in addition, pay a sum equivalent to one half of the amount of interest which would have been payable on the principal sum repaid, for the remainder of the fixed rate period, or*
- [The Provider’s] estimate of the loss (if any) occasioned by such early repayment, calculated as the difference between the interest which would have been payable on the principal sum for the remainder of the fixed rate period and the gross redemption yield (semi-annual basis) obtaining on the principal sum repaid, for a marketable Government security, in the currency of the loan, with a maturity date next nearest the end of the fixed rate period, whichever is the lesser.*
- 5.4 *Notwithstanding Clause 5.1, [the Provider] and the applicant shall each have the option at the end of each fixed rate period to convert to a variable rate loan agreement which will carry no such redemption fee.”*

The **Acceptance of Loan Offer** was signed by the Complainants and witnessed by a solicitor on **30 April 1996**. 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*

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iii. *[The Provider's] Mortgage conditions*

Copies of the above which I/we have received.

...

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

Mortgage account ending 6093

The **Letter of Approval** for account ending **6093** dated **6 August 1997** details as follows;

"Loan Type:	Home Loan
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Purchase Price / Estimated Value: : £ 65,000.00
Loan Amount: : £ 30,000.00
Interest Rate: : 7.0000%
Term: : 20 year(s)"

The **Mortgage Special Conditions** details as follows;

"A. THE INTEREST RATE APPLICABLE TO THIS LOAN HAS BEEN DISCOUNTED BY 0.5% PER ANNUM ON THE AMOUNT OF THE LOAN FOR A PERIOD OF TWELVE MONTHS FROM THE DATE OF THE ADVANCE. AT THE END OF THE SAID DISCOUNTED PERIOD THE REDUCTION SHALL INCREASE BY 0.5% PER ANNUM ON THE AMOUNT OF THE LOAN. IN THE EVENT OF THE LOAN BEING REDEEMED WITHIN A PERIOD OF THREE YEARS FROM THE DATE OF THE ADVANCE, AN AMOUNT EQUIVALENT TO THE 0.5% REDUCTION WILL BECOME PAYABLE TO [THE PROVIDER]. WHERE A LOAN IS REDEEMED WITHIN A PERIOD OF THREE YEARS FROM THE DATE OF THE ADVANCE AND A FURTHER [PROVIDER] MORTGAGE IS TAKEN OUT WITHIN SIX MONTHS OF THE REDEMPTION DATE, THE AMOUNT EQUIVALENT TO THE 0.5% REDUCTION WILL BE REFUNDED.

...

E. ALL GENERAL MORTGAGE LOAN APPROVAL CONDITIONS APPLY."

General Condition 5 to mortgage loan account ending **6093** contains the same text as for mortgage account ending **2213**. For the sake of brevity, I have not requoted it here.

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The **Acceptance of Loan Offer** which was signed by the Complainants and witnessed by a solicitor on **26 August 1997** contains the same text as for mortgage account ending **2213**. Again for the sake of brevity, I have not requoted it here.

The Letters of Approval for the above mortgage accounts ending **6093** and **2213** envisaged a 12 month discounted variable rate loan and thereafter the option of a variable rate. The variable rate, in the Complainants' mortgage loan documentation, made no reference to varying in accordance with variations in the ECB refinancing rate, rather it was a variable rate which could be adjusted by the Provider. The Complainants accepted each **Letter of Approval** having confirmed that it had been explained to them by their solicitor.

Mortgage account ending 6353

The **Letter of Approval** for account ending **6353** dated **8 March 1999** details as follows;

<i>"Loan Type:</i>	<i>Further Advance</i>
<i>Purchase Price / Estimated Value:</i>	<i>IR£ 70,000.00</i>
<i>Loan Amount:</i>	<i>IR£ 15,000.00</i>
<i>Interest Rate:</i>	<i>5.50%</i>
<i>Term:</i>	<i>15 year(s)"</i>

The **Consumer Credit Act 1995** section of the **Letter of Approval** outlines as follows;

"VARIABLE RATE LOANS

"THE PAYMENT RATES ON THIS HOUSING LOAN MAY BE ADJUSTED BY THE LENDER FROM TIME TO TIME."

General Condition 5 of the **General Mortgage Loan Approval Conditions** to mortgage loan account ending **6353** contains the same text as for mortgage accounts ending **6093** and **2213**.

It is clear that the Letter of Approval envisaged a variable rate loan. The variable rate in this case made no reference to varying in accordance with variations in the ECB refinancing rate, rather it was a variable rate which could be adjusted by the Provider.

The Provider has submitted that it does not hold a copy of an **Acceptance of Loan Offer** for the Complainants' mortgage loan account ending **6353**. While this is disappointing it does not appear to be disputed between the parties that the Complainants accepted the Loan Offer dated **8 March 1999**.

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Mortgage account ending 0693

The **Letter of Approval** for account ending **0693** dated **7 January 2000** details as follows;

<i>"Loan Type:</i>	<i>Residential Investment Property Loan</i>
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<i>Purchase Price / Estimated Value:</i>	<i>IR£ 90,000.00</i>
<i>Loan Amount:</i>	<i>IR£ 80,000.00</i>
<i>Interest Rate:</i>	<i>4.89%</i>
<i>Term:</i>	<i>20 year(s)"</i>

The information in relation to the **Housing Loans under Consumer Credit Act 1995** on the reverse side of each page of the **Letter of Approval** outlines as follows;

"VARIABLE RATE LOANS

"THE PAYMENT RATES ON THIS HOUSING LOAN MAY BE ADJUSTED BY THE LENDER FROM TIME TO TIME."

General Condition 5 to mortgage loan account ending **0693** contains the same text as for mortgage accounts ending **2213**, **6353** and **6093**, as quoted above.

The **General Mortgage Loan Approval Conditions** also outline;

*"IF THE LOAN IS A VARIABLE RATE LOAN THE FOLLOWING APPLIES:
"THE PAYMENT RATES ON THIS HOUSING LOAN MAY BE ADJUSTED BY THE LENDER FROM TIME TO TIME."*

The **Acceptance of Loan Offer** which was signed by the Complainants and witnessed by a solicitor on **14 January 2000** contains the same text as for mortgage account ending **2213**, **6353** and **6093**.

It is clear to me that the Letter of Approval envisaged a variable rate loan. The variable rate in this case made no reference to varying in accordance with variations in the ECB refinancing rate, rather it was a variable rate which could be adjusted by the Provider.

The Complainants accepted the Letter of Offer, having confirmed that the Loan Offer had been explained to them by their solicitor and they understood the Loan Offer.

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Mortgage account ending 8824

The **Letter of Approval** for account ending **8824** dated **24 November 2003** details as follows;

<i>“Loan Type:</i>	<i>Residential Investment Property Loan 1 Year Fixed New Business Rate</i>
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<i>Purchase Price / Estimated Value:</i>	<i>EUR 270,000.00</i>
<i>Loan Amount:</i>	<i>EUR 80,000.00</i>
<i>Interest Rate:</i>	<i>2.59%</i>
<i>Term:</i>	<i>20 year(s)”</i>

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

“Special Conditions

- A. *GENERAL MORTGAGE LOAN APPROVAL CONDITION 5 “CONDITIONS RELATING TO FIXED RATE LOANS” APPLIES IN THIS CASE. THE INTEREST RATE SPECIFIED ABOVE MAY VARY BEFORE THE DATE OF COMPLETION OF THE MORTGAGE.”*

General Condition 5 to mortgage loan account ending **8824** contains the same text as for mortgage accounts ending **2213, 6353, 6093 and 0693**, as quoted above.

The **General Mortgage Loan Approval Conditions** also outline;

*“IF THE LOAN IS A VARIABLE RATE LOAN THE FOLLOWING APPLIES:
“THE PAYMENT RATES ON THIS HOUSING LOAN MAY BE ADJUSTED BY THE LENDER FROM TIME TO TIME.”*

The **Acceptance of Loan Offer** which was signed by the Complainants and witnessed by a solicitor on **28 November 2003** contains the same text as for mortgage account ending **2213, 6353, 6093 and 0693**.

It is clear to me that this Letter of Approval envisaged a fixed interest rate of 2.59% for a period of one year with a variable interest rate applying thereafter. The variable rate in this case made no reference to varying in accordance with variations in the ECB refinancing rate, rather it was a variable rate which could be adjusted by the Provider.

The Complainants accepted the Letter of Offer, having confirmed that the Loan Offer had been explained to them by their solicitor and they understood the Loan Offer.

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Mortgage accounts ending 2213, 6093, 6353, 0693 and 8824

The evidence shows that a number of rate changes took place on the Complainants' five mortgage loan accounts, from **1997** to **2000**.

The Provider wrote to the Complainants by letter dated **5 May 2000** in relation to the account ending **2213**, which detailed as follows;

"I am writing to inform you that the fixed rate period on your mortgage account is due to expire on 28/05/2000.

In keeping with the terms of your loan, you now have the option to convert your loan to a variable interest rate loan at a current rate of 4.89%. [The Provider] also offers you the opportunity of fixing your interest rate again and I enclose details of the fixed rates currently available.

It is important to note that if we do not receive a written instruction from you in relation to the above on or before the 28/05/2000, your loan will automatically be switched to the current variable rate and interest will be calculated on a monthly basis."

The **rate options form** enclosed with the Provider's letter set out the following interest rates options;

			<i>* Monthly Repayment *</i>	
			<i>IEP</i>	<i>EUR</i>
<i>Variable Rate</i>	<i>- Currently;</i>	<i>4.89%</i>	<i>390.99</i>	<i>496.45</i>
<i>1 year fixed rate</i>	<i>- Currently;</i>	<i>5.49%</i>	<i>407.63</i>	<i>517.58</i>
<i>2 year fixed rate</i>	<i>- Currently;</i>	<i>5.95%</i>	<i>420.66</i>	<i>534.13</i>
<i>3 year fixed rate</i>	<i>- Currently;</i>	<i>6.20%</i>	<i>427.83</i>	<i>543.23</i>
<i>5 year fixed rate</i>	<i>- Currently;</i>	<i>6.50%</i>	<i>436.53</i>	<i>554.28</i>
<i>7 year fixed rate</i>	<i>- Currently;</i>	<i>6.80%</i>	<i>445.31</i>	<i>565.43</i>
<i>10 year fixed rate</i>	<i>- Currently;</i>	<i>6.95%</i>	<i>449.74</i>	<i>571.05"</i>

I note that the Complainants completed and signed **Fixed Interest Rate Offers** dated **30 June 2000** to apply a five year fixed interest rate of 6.50% to their three mortgage loan accounts ending **2213**, **6093** and **6353**.

The **reverse side** of the **Fixed Interest Rate Offers** set out the following **conditions**;

"1) The appropriate rate of interest applicable to this advance shall be fixed from the effective date of this agreement for the period specified overleaf and hereafter may not be changed at intervals of less than 1 year.

...

3) Whenever repayment in full or in part is made before the time agreed the Mortgagor(s) shall, in addition, pay a sum equivalent to one half of the amount of interest which would have been payable on the principal sum repaid, for the remainder of the fixed rate period, or [The Provider's] estimate of the loss (if any) occasioned by such early repayment, calculated as the difference between the interest which would have been payable on the principal sum for the remainder of the fixed rate period and the gross redemption yield (semi-annual basis) obtaining on the principal sum repaid, for a marketable Government security, in the currency of the loan, with a maturity date next nearest the end of the fixed rate period, whichever is the lesser.

4) Notwithstanding clause 3 the [Provider] and the Mortgagor(s) 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 redemption fee.

...

7) The conditions of your existing mortgage, save those altered in this offer APPLY

9) A fee of £75.00 is payable on return of your acceptance of this off[fer (sic)]"

I note from the evidence that the Provider issued a letter to the Complainants on **17 July 2000** in relation to their mortgage account ending **0693**, which outlined as follows;

"Further to your request to have the above loan switched from a Variable Rate loan to a Fixed Rate Loan, I attach herewith a New Loan Offer in duplicate, one of which should be signed by all parties to the mortgage and returned to [the Provider's address]"

A **Fixed Interest Rate Offer** dated **17 July 2000** was completed and signed by the Complainants on an unspecified date to apply a three year fixed interest rate of 6.70% to the mortgage loan account ending **0693**.

Subsequently, further **Fixed Interest Rate Offers** dated **18 July 2000** (accounts ending **6093** and **2213**) and **25 July 2000** (account ending **6353**) were completed and signed by the Complainants on an unspecified date(s) electing to apply a three year fixed interest rate of 6.20% to the three mortgage loan accounts.

/Cont'd...

The **reverse side** of the **Fixed Interest Rate Offers** outlined the same text as set out above and I have not requoted it here.

The **Acceptance** section of the offer letters were signed by the Complainants on the following terms;

"I/We the undersigned, having duly considered the terms and conditions of this OFFER hereby accept the offer on the terms and conditions set out herein."

The Provider wrote to the Complainants on **3 August 2000** detailing as follows;

Mortgage account ending 2213	<i>"I refer to previous correspondence and I confirm your monthly instalment calculated at a rate of 6.20(3year fixed rate)% amounts to £427.68."</i>
Mortgage account ending 6093	<i>"I refer to previous correspondence and I confirm your monthly instalment calculated at a rate of 6.20(3year fixed rate) % amounts to £229.40."</i>
Mortgage loan account ending 6353	<i>"I refer to previous correspondence and I confirm your monthly instalment calculated at a rate of 6.20(3year fixed rate)% amounts to £135.04."</i>

The three year fixed interest rate period on the four mortgage loan accounts ending **2213, 6353, 6093** and **0693** was due to expire in **August 2003**.

I note from the evidence that **rate options forms** have been provided in evidence in relation to the mortgage loan accounts ending **2213, 6093** and **6353** which detailed the following rate options;

Variable Rate - Currently; 3.55%
1 year fixed rate - Currently; 3.35%
2 year fixed rate - Currently; 3.50%
3 year fixed rate - Currently; 3.75%
5 year fixed rate - Currently; 4.25%
7 year fixed rate - Currently; 4.60%
10 year fixed rate - Currently; 4.99%"

/Cont'd...

The evidence shows that the Complainants signed the options forms on **18 July 2003** selecting the three year fixed rate option of 3.75% for mortgage accounts ending **6093** and **6353**. I note that the options form duly signed by both Complainants and selecting the three year fixed rate option of 3.75% for mortgage account ending **2213**, was returned to the Provider by fax dated **28 July 2003**.

Prior to the expiry of the three year fixed interest rate on account ending **0693**, the Provider issued a **rate options form** to the Complainants which outlined the following options;

		<i>* Monthly Repayment *</i>	
		<i>EUR</i>	
<i>Variable Rate</i>	<i>- Currently;</i>	<i>4.05%</i>	<i>677.61</i>
<i>1 year fixed rate</i>	<i>- Currently;</i>	<i>3.85%</i>	<i>658.19</i>
<i>2 year fixed rate</i>	<i>- Currently;</i>	<i>4.00%</i>	<i>655.26</i>
<i>3 year fixed rate</i>	<i>- Currently;</i>	<i>4.25%</i>	<i>677.15</i>
<i>5 year fixed rate</i>	<i>- Currently;</i>	<i>4.75%</i>	<i>701.31</i>
<i>7 year fixed rate</i>	<i>- Currently;</i>	<i>5.10%</i>	<i>718.52</i>
<i>10 year fixed rate</i>	<i>- Currently;</i>	<i>5.49%</i>	<i>737.99"</i>

The Complainants signed the form on **18 July 2003** selecting the three year fixed interest rate option of 4.25% for account ending **0693**.

I note that the Provider did not introduce tracker interest rates for its mortgage customers until **early 2004**. Therefore I accept that the Complainants could not have been offered the option of a tracker interest rate on any of their mortgage loan accounts at any stage prior to this date as it was not yet a product on offer from the Provider.

The Provider wrote to the Complainants on **8 November 2004** in relation to their mortgage account ending **8824** as follows;

"I am writing to inform you that the Fixed Rate Period On Your Above mortgage account is due to expire on 09/12/04.

In keeping with the terms of your loan, you now have the option to convert your loan back to a variable interest rate loan, currently 3.55%. [The Provider] also offers you the opportunity of fixing your interest rate for a further period and I enclose details of the fixed rates currently available.

/Cont'd...

It is important to note that if we do not receive a written instruction from you in relation to the above on or before the 09/12/04 your loan will convert to a variable interest rate loan, currently 3.55%.”

The **options form** enclosed with the letter outlined the following interest rate options;

<i>“Variable rate Mortgage currently</i>	<i>3.55%</i>	<i>€464.04</i>
<i>1 year fixed rate Mortgage currently</i>	<i>3.60%</i>	<i>€466.00</i>
<i>2 year fixed rate Mortgage currently</i>	<i>3.95%</i>	<i>€479.80</i>
<i>3 year fixed rate Mortgage currently</i>	<i>4.15%</i>	<i>€487.79</i>
<i>5 year fixed rate Mortgage currently</i>	<i>4.68%</i>	<i>€509.31</i>
<i>7 year fixed rate Mortgage currently</i>	<i>5.20%</i>	<i>€530.92</i>
<i>10 year fixed rate Mortgage currently</i>	<i>5.40%</i>	<i>€539.37”</i>

I have not been provided with any evidence indicating that the Complainants returned the completed options form to the Provider. However it does not appear to be in dispute that the rate of interest on the account was changed to the variable interest rate of 3.55% in **December 2004**. This accords with **General Condition 5.4** of the Complainants’ mortgage loan contract which provided that at the end of each fixed rate period the Provider and the applicants would have the option to convert to a variable rate loan agreement.

No evidence has been provided which shows that the Complainants contacted the Provider to request rate options for their 5 mortgage loan accounts in **April 2006**. However it does not appear to be in dispute that this is what occurred.

I note from the evidence before me that on **3 April 2006**, a representative of the Provider sent an internal email to another department within the Provider, which stated as follows;

“Account No: a/c XXXX8824

Account Name: [First Complainant]

Request for

*Could you please send out a fixed rate options letter
thanks”*

/Cont’d...

The Provider department replied to the Provider's representative by way of internal email dated **4 April 2006** and stated "will do thanks".

The Provider wrote to the Complainants on **5 April 2006** detailing as follows;

"Mortgage Account: XXXXXXXX8824

...

I refer to your recent request in relation to the above numbered mortgage account.

*In accordance with your recent request attached is a listing of [the Provider's] current fixed rate options. Please tick the desired rate and return your signed fixed rate options request to [Redacted]. If you wish to accept this offer a **transfer fee of €100.00 should accompany the attached.***

I trust this is to your satisfaction and should you have any queries please do not hesitate to contact [redacted].

...

This offer is fixed for 7 days only and [the Provider] must be in receipt of an acceptance of same, signed by all parties to the loan within this period. If the acceptance is not received within 7 days as aforesaid it may be accepted by [the Provider] at its discretion and at the interest rate and terms applicable shall be the interest rate and terms then currently applicable to this type of loan."

The **rate options form** enclosed with the letter offered the Complainants the following fixed interest rate options;

"Approximate Repayment		EUR€
<i>Variable rate Mortgage currently</i>	<i>3.85%</i>	<i>€475.47</i>
<i>1 Year fixed rate Mortgage currently</i>	<i>3.90%</i>	<i>€477.33</i>
<i>2 Year fixed rate Mortgage currently</i>	<i>3.99%</i>	<i>€480.69</i>
<i>3 Year fixed rate Mortgage currently</i>	<i>4.29%</i>	<i>€491.98</i>
<i>5 Year fixed rate Mortgage currently</i>	<i>4.29%</i>	<i>€491.98</i>
<i>7 Year fixed rate Mortgage currently</i>	<i>4.55%</i>	<i>€501.88</i>
<i>10 Year fixed rate Mortgage currently</i>	<i>4.70%</i>	<i>€507.65</i>

...

**** Please note, that if you choose a fixed rate, the standard fixed rate conditions will apply."*

/Cont'd...

The Complainants signed the options form on **12 April 2006** and opted to apply the 5 year fixed rate option of 4.29% to the mortgage loan.

Subsequently, on **13 April 2006** a representative of the Provider sent an internal email to another department within the Provider. The email was in relation to the Complainants' four mortgage accounts ending **6093, 6353, 0693** and **2213** and detailed as follows;

"SUBJECT: XXXX6093-XXXX6353-XXXX0693-XXXX2213

HI

AS DISCUSSED PLEASE SEND OUT FIXED RATE OPTIONS FORM TO THE ABOVE CUSTOMER ON THE ABOVE ACCOUNTS"

Copies of letters have been provided in evidence from the Provider to the Complainants dated **21 April 2006** in relation to the accounts ending **6093** and **6353**, as follows;

"You recently contacted us about the mortgage account shown above.

I am attaching a list of our current fixed rate options. Please tick the rate you would like and return it, signed to:

[The Provider's address]

*If you want change to a fixed rate, you should also send us a **transfer fee of €100.**"*

Completed **rate options forms** have been provided in evidence in relation to accounts ending **2213, 6093, 0693** and **6353** which outline the following interest rates;

<i>"Approximate Rate</i>	<i>eur €</i>	
...		
<i>1 Year fixed rate Mortgage currently</i>	<i>4.10%</i>	<i>...</i>
<i>2 Year fixed rate Mortgage currently</i>	<i>4.40%</i>	<i>...</i>
<i>3 Year fixed rate Mortgage currently</i>	<i>4.54%</i>	<i>...</i>
<i>5 Year fixed rate Mortgage currently</i>	<i>4.79%</i>	<i>...</i>
<i>7 Year fixed rate Mortgage currently</i>	<i>4.89%</i>	<i>...</i>
<i>10 Year fixed rate Mortgage currently</i>	<i>4.99%</i>	<i>...</i>

...

If you choose a fixed rate, the standard fixed rate conditions will apply."

/Cont'd...

The Complainants signed the forms on **18 May 2006** and selected the five year fixed rate option of 4.79% for accounts ending **2213, 6093, 0693** and **6353**.

The Provider has summarised its policy with respect to tracker interest rate offerings as follows;

- *“The Bank introduced tracker interest rate loans for new mortgage business in [early] 2004. This meant that, in addition to the other fixed and variable rates which the Bank was then offering as an initial rate of interest to mortgage loan applicants, the Bank could offer an applicant a tracker rate of interest which would vary in accordance with variations in the ECB refinancing rate.*
...
- *...[in mid] 2006, the Bank introduced a policy of offering a tracker rate of interest to its existing customers who were maturing from a period of a fixed rate of interest and although their loan contract did not specify an entitlement to be offered a tracker rate at maturity (this initiative was taken against the backdrop of the competitive mortgage market at that time). Therefore, a Tracker mortgage rate was included in the list of options in the automated options letter issued to a customer in the month prior to the date of maturity of the fixed rate period. Between [mid] 2006 and [later in] 2006 while the options letter included the offer of a tracker interest rate, in the absence of a customer selection, the variable rate was applied to the mortgage as the default interest rate. From [mid] 2006 until [mid] 2009, in the absence of a customer selection the tracker interest rate was applied to the mortgage as the default interest rate.*
- *While the Bank commenced the withdrawal of its tracker mortgage interest rate offering in [mid] 2008 to new business, it continued until [mid] 2009 its policy of offering a tracker interest rate maturity option to existing fixed rate customers whose contracts did not contain an entitlement to be offered a tracker rate at maturity of an existing fixed rate period.*
- *After [mid] 2009, the Bank continued to offer and / or apply Tracker rates to maturing loans where customers had a contractual right to same.”*

Having considered the evidence before me, including the mortgage loan documentation, it is clear to me that the Complainants did not have a contractual entitlement to a tracker interest rate on their mortgage loan accounts at any stage. Accordingly, there was no contractual or other obligation on the Provider to offer the Complainants a tracker interest rate on these accounts when they exited the three year fixed interest rate which applied to

/Cont'd...

their mortgage loan accounts ending **2213, 6093, 6353** and **0693** in **May 2006**. I note that the mortgage loan account ending **8824** was not operating on a fixed interest rate at that time but was on a variable rate.

I am of the view that the evidence shows that in **April 2006** the Complainants contacted the Provider to request a fixed interest rate for their 5 mortgage loan accounts and the Provider made that interest rate option available to the Complainants. There was no contractual or other obligation on the Provider to offer the Complainants a tracker interest rate when they contacted the Provider in **April 2006**. The Complainants' mortgage loan documentation does not provide for an entitlement to any particular interest rate type when a break in a fix interest rate period was effected by the Complainants on their mortgage accounts ending **2213, 6094, 6353** and **0693** in **April 2006**.

Had the Complainants' mortgage loan accounts ending **2213, 6093, 6353** and **0693** reached the maturity of the three year fixed interest rate period in **August 2006** it appears that the Provider may have then offered the Complainants a tracker interest rate for these accounts, as it was its policy to do so at that time. However in the context of the Complainants' mortgage loans, this is not relevant. The fact remains that the Complainants contacted the Provider of their own volition in **April 2006** and requested the application of a five year fixed interest rate of 4.79% to the mortgage loans. The Provider complied with the Complainants' request and applied the interest rate sought.

It is clear from the Provider's letter to the Complainants of **5 April 2006** (account ending **8824**) and **21 April 2006** (accounts ending **6093** and **6353**) that a fee of €100 would apply if the Complainants wished to effect a rate transfer on these accounts. It is clear that the Complainants received "*a notification about a breakage fee in respect of the early exit from the 3 year fixed rate in May 2006*" in respect of these accounts.

I am disappointed that similar correspondence has not been provided in evidence in respect of mortgage accounts ending **2213** and **0693**. Notwithstanding this, **General Condition 5.3** of the Complainants' mortgage loan agreements clearly outlines that in circumstances where the Complainants sought to break from a fixed interest rate period early, a fee would be applicable.

If the Complainants did not wish to pay the breakage fees in **April 2006** they could have opted to remain on the interest rate that was applicable to the mortgage accounts at that time. However they did not do so.

The Provider issued a letter to the Complainants on **20 October 2008** in relation to accounts ending **0693** and **8824** which outlined as follows;

"Mortgage account number: XXXX0693 and XXXX8824

/Cont'd...

...

Thank you for your recent request in relation to amending the above accounts to interest only.

I confirm that we can convert the above loans to interest only.

Mortgage account no XXXX8824 is currently on a 5 year fixed rate of 4.79% which is due to mature on 4th May 2011. Mortgage account no XXXX0693 is currently on a 5 year fixed rate of 4.79% which is due to mature on 1st May 20[1]1.

...

I confirm that when the above residential investment property loans are converted to interest only we do not offer a 5 year fixed rate. However we can offer you a 3 year fixed rate on both loans and you will keep the existing rate, the fixed rate maturity dates will not be effected. Please confirm if you wish to avail of this in writing to Mortgage Services Department [Provider's address]."

The Complainants responded to the Provider by letter dated **22 October 2008** as follows;

"Re – your letter of today, I wish to confirm that I agree to your offer of 3 year fixed rate on both account numbers, for the reason of paying interest only".

I note that the five year fixed interest rate of 4.79% continued to apply to the mortgage loan accounts ending **6093** and **6353** until those accounts were redeemed on **22 October 2008**.

On **8 April 2011** the Provider issued letters to the Complainants in relation to their mortgage loan accounts ending **2213** and **0693** which detailed as follows;

"I am writing to remind you that the current rate option on your mortgage account will end on 01 May 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. 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.

/Cont'd...

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

We strongly suggest you consult your financial or legal advisor before making a decision regarding mortgage options. *To discuss your options with [the Provider's] mortgage advisor please contact your local branch or telephone [redacted] to arrange an appointment (please note that advice cannot be given during the telephone call)."*

The **rate options form** for the account ending **0693** offered the Complainants the following interest rate options;

<i>"Option</i>			<i>Monthly Repayment</i>
<i>LTV Variable Rate **</i>	<i>CURRENTLY</i>	<i>6.45%</i>	<i>748.14</i>
<i>2 Year Fixed Rate</i>	<i>CURRENTLY</i>	<i>7.75%</i>	<i>786.80</i>
<i>5 Year Fixed Rate</i>	<i>CURRENTLY</i>	<i>9.25%</i>	<i>832.84</i>
<i>7 Year Fixed Rate</i>	<i>CURRENTLY</i>	<i>9.60%</i>	<i>843.81</i>
<i>...</i>			

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 you choose a fixed rate, the standard fixed rate conditions will apply – see overleaf"

The reverse side of the **options form** outlined as follows;

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

...

Fixed Rate Loans

Wherever (i) repayment of a loan in full or in part is made or (ii) with the agreement of [the Provider], the loan is switched to a variable rate loan or other fixed rate loan,

/Cont'd...

before expiry of the Fixed Rate Period (hereinafter called the “Early Termination”), the applicant shall, in addition to all other sums payable as a condition of and at the time of the Early Termination, pay a sum equal to [the Provider’s] estimate of the loss (if any) arising from the Early Termination. In the calculation of the said loss, [the Provider] shall endeavour to apply in so far as it is fair and practicable, the formula $C=(I-S) \times R \times (M-T)$ where C is the charge to compensate for the loss (if greater than 0), I is the swap/market fixed interest rate for the remaining fixed period, R is the amount of the Fixed Rate loan balance paid or switched at the date of Early Termination, M is the Fixed Rate Period and T is the time expired of the Fixed Rate Period at the date of Early Termination.

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 Complainants signed the form on **20 April 2011** opting to apply the two year fixed interest rate of 7.75% to the mortgage loan account.

The **rate options form** for account ending **2213** outlined the available interest rate options as follows;

				<i>Monthly Repayment (EUR)</i>
<i>LTV Variable Rate</i>	**	CURRENTLY	5.55%	707.68
<i>2 Year Fixed Rate</i>		CURRENTLY	7.25%	738.03
<i>5 Year Fixed Rate</i>		CURRENTLY	8.75%	765.45

...

If you chose a fixed rate, the standard fixed rate conditions will apply – see overleaf”

/Cont’d...

The reverse side of the **options form** contains the same text as outlined above and for the sake of brevity, I have not requoted it here.

The Complainants accepted and signed the form on **20 April 2011** opting to apply the two year fixed rate of 7.25% to their mortgage loan account ending **2213**.

The Provider wrote to the Complainants on **14 April 2011** as follows in relation to their account ending **8824**;

"I am writing to remind you that the current rate option on your mortgage account will end on 04 May 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. 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 04 May 2011, the interest rate on your mortgage will be the LTV Variable Rate **.*

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

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

The **rate options form** in relation to account ending **8824** outlined the following interest rate options;

<i>"Option</i>		<i>Monthly Repayment</i>
<i>LTV Variable Rate **</i>	<i>CURRENTLY 6.45%</i>	<i>556.79</i>
<i>2 Year Fixed Rate</i>	<i>CURRENTLY 7.35%</i>	<i>584.71</i>
<i>5 Year Fixed Rate</i>	<i>CURRENTLY 8.85%</i>	<i>632.89</i>

/Cont'd...

...

If you choose a fixed rate, the standard fixed rate conditions will apply – see overleaf”

The reverse side of the **options form** contains the same text as outlined above and again, for the sake of brevity, I have not requoted it here. The Complainants signed the form on **20 April 2011** opting to apply the two year fixed interest rate of 7.35% to the mortgage loan account ending **8824**.

The Provider wrote to the Complainants on **25 February 2013** in relation to account ending **0693** as follows;

“I can confirm that our intention is that once the 3 year interest only period expires that your loan would revert to full capital and interest repayments. However this is subject to a review at that time.

The interest rate on your buy to let mortgage is currently 7.75%. This is due to you availing of a 2 year fixed rate back on 20/04/2011 ... This arrangement is due to expire in April 2013. At that point you will be in a position to avail of the variable rate if you so wish.

...”

The Provider issued a letter to the Complainants on **3 April 2013** in relation to account ending **8824** detailing as follows;

“I am writing to remind you that the current rate option on your mortgage account will end on 04 May 2013.

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 (where available), then at the end of the fixed rate period we will send you a list of the product options available to you. 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 04 May 2013, the interest rate on your mortgage will be the LTV Variable Rate**.*

/Cont'd...

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

The **rate options form** which accompanied the letter outlined the following options;

<i>“Option</i>			<i>Monthly Repayment</i>
<i>LTV Variable Rate **</i>	<i>CURRENTLY</i>	<i>5.64%</i>	<i>551.48</i>
<i>2 Year Fixed Rate</i>	<i>CURRENTLY</i>	<i>7.35%</i>	<i>598.37</i>
<i>5 Year Fixed Rate</i>	<i>CURRENTLY</i>	<i>8.85%</i>	<i>641.29</i>
<i>...</i>			

If you choose a fixed rate (where available), the standard fixed rate conditions will apply – see overleaf”

The reverse side of the **options form** contains the same text as outlined above and again, for the sake of brevity, I have not requoted it here. The Complainants signed the rate options form on **12 April 2013** instructing the Provider to apply the LTV variable rate option of 5.64% to the mortgage loan.

The Provider wrote to the Complainants by letter dated **23 March 2013** which outlined as follows in relation to account ending **2213** and **0693**;

“I am writing to remind you that the current rate option on your mortgage account will end on 01 May 2013.

Please see 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 (where available), then at the end of the fixed rate period we will send you a list of the product options available to you...

*If we do not receive a written instruction from you in relation to the above on or before the 01 May 2013 the interest rate on your mortgage will be the LTV Variable Rate**.*

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 [redacted] to

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arrange an appointment (please note that advice cannot be given during the telephone call)."

The **rate options form** for account ending **0693** outlined the following interest rate options;

"Option			Monthly Repayment
<i>LTV Variable Rate **</i>	<i>CURRENTLY</i>	<i>5.64%</i>	<i>929.68</i>
<i>2 Year Fixed Rate</i>	<i>CURRENTLY</i>	<i>7.75%</i>	<i>994.16</i>
<i>5 Year Fixed Rate</i>	<i>CURRENTLY</i>	<i>9.25%</i>	<i>1,041.60</i>

...

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 the Fixed Rate funding loss example.

*If we do not receive a written instruction from you in relation to the above on or before the 1 May 2013 the interest rate on your mortgage will be the LTV Variable Rate**.*

...

If you choose a fixed rate (where available), the standard fixed rate conditions will apply – see overleaf".

The reverse side of the **options form** contains the same text as outlined above and I have not requoted it here.

The Complainants signed the form on **12 April 2013** and selected the LTV variable rate option of 5.64%. The Provider issued a letter to the Complainants in relation to account ending **0693** on **1 May 2013** 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 LTV variable rate currently 5.640%."

The **rate options form** in relation to account ending **2213** offered the Complainants the following interest rates;

"Option	Monthly Repayment
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<i>LTV Variable Rate **</i>	<i>CURRENTLY</i>	<i>4.34%</i>	<i>713.82</i>
<i>2 Year Fixed Rate</i>	<i>CURRENTLY</i>	<i>7.25%</i>	<i>748.01</i>

...

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 the Fixed Rate funding loss example.

*If we do not receive a written instruction from you in relation to the above on or before the 1 May 2013 the interest rate on your mortgage will be the LTV Variable Rate**.*

...

If you choose a fixed rate (where available), the standard fixed rate conditions will apply – see overleaf”

The reverse side of the **options form** contains the same text as outlined above and again, for the sake of brevity, I have not requoted it here.

The Provider has submitted that it has no record of receiving a completed rate options form from the Complainants in relation to account ending **2213**. I note that the Provider wrote to the Complainants by letter dated **1 May 2013** 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 LTV variable rate currently 4.340%.”

Although I have not been provided with evidence of this, it does not appear to be disputed that the variable rate applied to the mortgage loan account ending **2213** until the account was redeemed on **31 August 2015**.

As set out above it is my view that that the Complainants did not have a contractual or other entitlement to a tracker interest rate at any point in time, including when the Complainants broke out of the fixed interest rate period in **April 2006** or on the expiry of the fixed rate periods in **April 2011** or **April 2013**.

It is important for the Complainants to understand that they did not have a contractual or other entitlement to a tracker interest rate on their mortgage loan accounts, and accordingly, there was no contractual or other obligation on the Provider to offer the Complainants a tracker interest rate on these accounts in **April 2006, April 2011, April 2013**, or at any other time, even if they had contacted the Provider and requested that a tracker interest rate be applied to the mortgage loan accounts. The fact that the Provider

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was offering tracker interest rates to new or existing mortgage customers at the time, did not create an obligation (contractual or otherwise) on these Provider to accede to any request, if made, by the Complainants to apply a tracker interest rate to the Complainants' mortgage loans. I note that the Provider did not have any policy on offering tracker interest rates to customers, on demand, where there was no contractual right to a tracker interest rate in the underlying mortgage loan documentation.

It appears from the evidence before me that Complainants did not request that the Provider apply a tracker interest rate to any of their mortgage loans at any point in time. In any event, as I have already stated, even if they had, there was no obligation on the Provider to accede to such a request. Nor was there any obligation on the Provider to contact the Complainants at any stage to offer a tracker interest rate to the Complainants on their mortgage loans.

Nonetheless, if the Complainants wished to pursue the potential option of applying a tracker interest rate on the mortgage loans, the Complainants could have contacted the Provider at the time. It would then have been a matter of commercial discretion for the Provider as to whether it wished to accede to any such request made by the Complainants to apply a tracker interest rate to the mortgage loans. It was entirely within the Provider's rights and commercial discretion whether to accede to that request, if it was made. There is no evidence before me which suggests that the Complainants ever made such a request.

I note that in its response to this complaint the Provider has submitted as follows;

*"During the investigation of this complaint, the Bank has noted that our correspondence of 27 April 2018 is unclear in its details with regard to the fixed rate options forms being issued to the Complainants in 2006 for their loan account numbers [ending **2213, 6096** and **0693**]. As noted above, our records indicate the Complainants approached the Bank in April 2006 and enquired about the available fixed rates prior to the expiry of the fixed rates in August 2006 and as a result, an options form was issued which the Complainants subsequently returned in May 2006, prior to the expiry of their fixed rates in August 2006. I regret this was not clearly detailed in the Banks response of 27 April 2018."*

The Provider further refers to its **Final Response Letter** to the Complainants dated **23 May 2018** which stated as follows;

"During discussions with your client's, all available Interest Rate types would have been advised. This allows customers the opportunity to examine the various options and ultimately choose a mortgage interest rate suitable to their needs. I wish to

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confirm that the decision as to which rate to opt for is for each individual customer to make.”

The Provider states that it *“cannot clarify the specific discussions that would have taken place in this instance”*. The Provider has offered the Complainants *“a gesture of goodwill in the amount of €500.00”* in respect of these *“service issues”*. I understand that the offer of €500 compensation remains open to the Complainants to accept.

For the reasons outlined in this Decision, 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

8 December 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

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(b) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.

