



<u>Decision Ref:</u>	2020-0460
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Tracker Mortgage
<u>Conduct(s) complained of:</u>	Failure to offer a tracker rate throughout the life of the mortgage
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

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

The loan amount was €520,000 and the term of the loan was 35 years. The particulars of the Letter of Approval dated **13 April 2006** detailed that the loan type was a "1 Year Fixed Rate Home Loan".

The Complainants' mortgage loan account was redeemed on **17 September 2009**.

The Complainants' Case

The Complainants outline that they drew down a mortgage of €520,000 with the Provider on **1 June 2006** on a 1 year fixed interest rate of 3.45%. They detail that at the end of the initial fixed rate period, the mortgage was switched to a tracker interest rate of 4.5% on **01 June 2007**.

The Complainants submit that on **18 June 2007** "we moved to fixed rate of 4.99% and the [Provider] sales agent confirmed we would move back to the tracker rate at the end of the

fixed term.” They state that “Unfortunately this is not detailed in the correspondence provided by [the Provider] and we do not have any written confirmation. However, [the Provider] also did not reference the tracker rate of 4.5% that we had in April 2007 as can be seen in the letter from [the Provider] on 13/06/2007. It simply states “Current Rate 4.5% €2,454.46” rather than referencing “Current Tracker Rate”.”

The Complainants submit that on **23 January 2009** “we moved from the fixed rate to a variable rate of 4.55% (we were not told that we could not move back to the previous tracker rate)”. They further submit that “If we had moved to tracker rate of EBC +0.5% in January 2009 this would have been a rate of 2.5% as the ECB rate at the time was 2%.”

The Complainants refer to **General Mortgage Loan Approval Condition 5** of their loan agreement. They submit “Can [the Provider] explain why we were allowed to move from a 3 year fixed rate (4.99%) to a variable rate (4.55%) in the middle of the fixed term in January 2009 without any payment being asked of us as per condition 5.3 above? Was this policy for all customers who moved off Fixed Rate Terms early or only for customers who had a tracker rate in place in advance of the fixed year term mortgage? Can [the Provider] detail how much money should have been charged in such a situation where a customer moved from a 3Y fixed rate (4.99%) in the middle of the term to a lower variable rate (4.55%) given the mortgage balance outstanding €504,558.18 at the time?”

The Complainants submit that on **17 September 2009** they “terminated” their mortgage with the Provider and “moved” their mortgage to a third party Provider due to the “much higher” interest rates charged by the Provider. They state that “we would not have moved our mortgage to [the third party Provider] if [the Provider] had returned our mortgage to the tracker rate.”

The Complainants are seeking the following;

- a) “Refund difference between [third party Provider’s] rates and [the Provider’s] tracker rates for the past 9 years had the original mortgage of €520,000 stayed with [the Provider] on tracker rate” and
- b) “Provide option to move our mortgage back on to a tracker rate with [the Provider] for the duration of the mortgage term.”

The Provider’s Case

The Provider details that it issued a **Letter of Approval** to the Complainants on **13 April 2006** which provided for a one year fixed rate home loan of 3.45%. It states that the Letter of Approval did not contain an entitlement to a tracker mortgage at the end of the fixed

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rate period or any time during the term of the loan. It relies on **Special Condition A** and **General Mortgage Loan Approval Condition 5** of the **Letter of Approval** in support of this.

The Provider outlines that the Complainants accepted and signed the Letter of Approval on **22 May 2006**, acknowledging that their Solicitor had fully explained the terms and conditions of the loan to them.

The Provider details that its practice is to send letters to customers whose loan is reaching the end of a particular rate period to remind them that the rate period is coming to an end on a particular date. It states that this letter provides details of interest rate options available from the Provider at that time and has a form attached outlining each of the available rates, which must be ticked, signed and returned by the customer in order to select one of the rate options. The Provider further outlines that the letter explains which one of these rates will be applied to the account if the form is not completed and returned to the Bank, i.e. applied in default.

The Provider details that the Complainants' initial one year fixed rate was due to expire on **01 June 2007** and the Provider issued an options form to them in **May 2007** with a list of the then available interest rates. It outlines that the options listed included a tracker variable rate of 4.50% (ECB +0.75%). The Provider details that the letter advised that if the Complainants did not respond "*the mortgage would automatically default to the tracker variable rate*". It outlines that as the Complainants did not respond the mortgage defaulted to a tracker variable rate of 4.50% on **1 June 2007**.

The Provider states that it was not contractually obliged to offer the Complainants a tracker rate on the expiry of the fixed rate period in **2007**. It submits that during the period between **2006** and **2009**, there were circumstances in which an existing customer of the Provider with no contractual entitlement to be offered a tracker interest rate received an option of a tracker rate, among other rate options. It details that the Provider subsequently made a commercial decision to make tracker rates available to existing customers, and from **mid-2006** to **mid-2008**, tracker rates were included as an option on the Provider's interest rate options to customers who sought to change their rate of interest. It further states that from **mid-2006** to **mid-2009**, customers whose period of fixed interest was due to expire received a list of options which included a tracker option whether or not a customer's contract contained an entitlement to be offered such a rate. The Provider states that this decision to offer tracker rates to existing customers at this time was commercial in nature and made against a background of marketplace competitiveness and at the Provider's discretion.

The Provider details that on **12 June 2007** the Complainants emailed the Provider and enquired about fixing the interest rate, possibly for a 3 year period.

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It states that the Provider wrote to the Complainants on **13 June 2007** enclosing an options form listing the available fixed interest rate options. It submits that the options form advised that *"If you choose a fixed rate, the standard fixed rate conditions will apply."*

The Provider submits that it received the Complainants' completed options form dated **18 June 2007** selecting a 3 year fixed rate of 4.99%. It states that it wrote to the Complainants on **21 June 2007** to confirm that the three year fixed rate had been applied to the account.

The Provider submits that it is satisfied that the **2007** options letters and rate instruction forms were clear and transparent. It does not accept the Complainants' submission that they were informed that they would be able to avail of a tracker rate at the end of the 3 year fixed rate which they selected in **June 2007**.

The Provider submits that it is clear that the Provider did not make any reference to an entitlement to a tracker interest rate at the end of the fixed rate in its correspondence with the Complainants in **2007**. It outlines that as the Provider reviews its lending products from time to time, introducing and withdrawing lending products and rates, its staff members would not indicate interest rates which will or will not be on offer at a later point in time unless a Letter of Approval contains a particular interest rate entitlement to a tracker mortgage at the end of the fixed rate period or at any time during the term of the loan. It states that there was no entitlement to a tracker mortgage in the Complainants' contract at the end of the fixed rate period or at any time during the term of the loan.

The Provider details that the Complainants wrote to the Provider on **23 January 2009** requesting that the mortgage loan account move from the three year fixed rate to a standard variable rate. It outlines that the Provider acceded to this request and applied the requested rate.

The Provider submits that it has no record of informing the Complainants in **January 2009** that if they broke from the fixed rate, they could not move back to the previous tracker rate. It accepts however that if the Complainants had enquired in **January 2009** whether they could change to the previous interest rate that had applied to the account, they would have been informed that they could not. It states that the option to switch to a tracker rate, from another interest rate, had been withdrawn by the Provider in **late 2008**.

The Provider submits that in **January 2009** *"No fixed rate break fee was paid by the Complainants because, for a short time in late 2008 and early 2009, the Bank experienced an issue with its automated mortgage calculator formula which calculated fixed rate early exit fees."*

The result of this was that, when some customers requested the bank to compute a fixed rate exit fee during this period, the calculator charged less than the applicable fee or no fee. The fixed rate exit fee referable to the mortgage account should have reflected the funding costs of the Bank referable to the funding it had in place and the replacement funding following the fixed rate exit.

The calculator problem did not distinguish between fixed rate accounts with an entitlement to a tracker rate and fixed rate accounts with no such entitlement.”

The Provider states that from **mid-2009** “*the only fixed rate expiry options letters which contained a tracker option were those sent to customers who had a contractual entitlement to be offered a tracker rate on expiry.*”

The Provider outlines that the mortgage loan account remained on the standard variable interest rate until the Complainants redeemed the mortgage on **17 September 2009**.

The Complaint for Adjudication

The complaint for adjudication is that the Complainants were not offered the option of returning to the tracker rate in **January 2009**.

Decision

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainants were given the opportunity to see the Provider’s response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

In arriving at my Legally Binding Decision I have carefully considered the evidence and submissions put forward by the parties to the complaint.

Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties on 23 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.

At the outset I note that the Complainants redeemed their mortgage with the Provider in **September 2009** and took out a mortgage with a third party Provider. The Complainants have submitted in evidence a table comparing the rates offered by the Provider and the third party Provider with whom they currently hold a mortgage. I do not propose to consider the content of this table in this decision. The interest rates offered by other financial service providers to their customers, are not relevant, insofar as they relate to the interest rates that the Provider offered the Complainants.

In order to determine this complaint, it is necessary to review and set out the relevant provisions of the Complainants' mortgage loan documentation. It is also necessary to consider the details of certain interactions between the Complainants and the Provider in **2007** and in **2009**.

A **Letter of Approval** dated **13 April 2006** was issued to the Complainants which details as follows;

<i>"Loan Type:</i>	<i>1 Year Fixed Rate Home Loan</i>
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<i>Purchase Price / Estimated Value:</i>	<i>EUR 815,000.00</i>
<i>Loan Amount:</i>	<i>EUR 520,000.00</i>
<i>Interest Rate:</i>	<i>3.45%</i>
<i>Term:</i>	<i>35 year(s)"</i>

Special Condition A 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."*

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

“CONDITIONS RELATING TO FIXED RATE LOANS

5.1 The interest rate applicable to this advance shall be fixed from the date of the advance for the period as specified on the Letter of Approval, and thereafter will not be changed at intervals of less than one year.

5.2 The interest rate specified in the Letter of Approval may vary before the date of completion of the Mortgage.

5.3 Whenever repayment of a loan in full or in part is made before the expiration of the Fixed Rate Period the applicant shall, in addition to all other sums payable, as a condition of, and at the time of such repayment, pay whichever is the lesser of the following two sums:

- (a) A sum equal to one half of the amount of interest (calculated on a reducing balance basis) which would have been payable on the principal sum desired to be repaid, for the remainder of the Fixed Rate Period, or*
- (b) A sum equal to [the Provider’s] estimate of the loss (if any) occasioned by such early repayment, calculated as the difference between on the one hand the total amount of interest (calculated on a reducing balance basis) which the applicant would have paid on the principal sum being repaid to the end of the Fixed Rate Period at the fixed rate of interest, and on the other hand the sum (if lower) which [the Provider] could earn on a similar principal sum to that being repaid if [the Provider] loaned such sum to a Borrower at its then current New Business Fixed Rate with a maturity date next nearest to the end of the Fixed Rate Period of the loan, or part thereof, being repaid.*

5.4 Notwithstanding Clause 5.1, [the Provider] and the applicant shall each have the option at the end of each fixed rate period to convert to a variable rate loan agreement which will carry no such redemption fee.”

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

IF THE LOAN IS A VARIABLE RATE LOAN THE FOLLOWING APPLIES:

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

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The **European Standardised Information Sheet** which accompanied the Loan Offer letter outlined the below:

“Nominal Rate

The interest rate is 3.45 percent.

This rate is fixed for 1 year(s)

At the end of the fixed rate period you may exercise an option to contract for another fixed rate period (if available) or to move to a variable rate. In the event of the rate becoming variable, THE PAYMENT RATES ON THIS HOUSING LOAN MAY BE ADJUSTED BY THE LENDER FROM TIME TO TIME.

The lock-in period for this product is the fixed rate term. However this can be broken subject to payment of a redemption fee as described in the section on Early Repayment below.”

The **Acceptance of Loan Offer** was signed by the Complainants and witnessed by a solicitor on **22 May 2006**. 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.

...

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

It is clear to me that the Letter of Approval envisaged a one year fixed rate of 3.45% and thereafter a variable rate. The variable rate in this case made no reference to a tracker or the ECB rate, rather it was a variable rate which could be adjusted by the Provider. The Complainants accepted the Letter of Approval having confirmed that the Loan Offer had been explained to them by their solicitor on **22 May 2006**.

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I note that the Provider wrote to the Complainants by letter dated **18 April 2007**, which details as follows;

“Thank your [sic] for contacting the Mortgage Servicing Team in relation to the above Mortgage account

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

[Provider address]

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

If you have any questions please contact us on [Phone number] – Monday to Friday between 9:00 am – 5.30pm.”

The enclosed **options form** details as follows;

“Please tick the option you want

Account number: [Account number]

Approximate repayment

eur €

Current Rate	3.45%	€	2,134.87
1 Year fixed rate Mortgage currently	4.99%	€	2,612.70
2 Year fixed rate Mortgage currently	5.15%	€	2,664.97
3 Year fixed rate Mortgage currently	5.10%	€	2,648.59
4 Year fixed rate Mortgage currently	5.15%	€	2,664.97
5 Year fixed rate Mortgage currently	5.15%	€	2,664.97
7 Year fixed rate Mortgage currently	5.15%	€	2,664.97
10 Year fixed rate Mortgage currently	5.15%	€	2,664.97

...

*We have worked out the monthly repayments shown above based on what you currently still owe on your mortgage at the date of this letter. The above repayments do not include **Tax Relief at Source**. However, we have included your monthly insurance of €0.00, if this applies.*

- *The above figures only give you an idea of your revised monthly repayment, and may change.*
- *We will send you details of your actual repayment shortly.*

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- *If you choose a fixed rate, the standard fixed rate conditions will apply.*
- *The above fixed rates are valid for 7 working days.*
- ***Please enclose your €100.00 fixed rate transfer fee with this form. Otherwise this fixed rate transfer will not proceed.***

No evidence has been provided to me which shows that the Complainants contacted the Provider in **April 2007** to request interest rate options. In any event it does not appear from the evidence that the Complainants replied to this correspondence.

The Provider submits that it issued an options letter to the Complainants in **May 2007** prior to the expiry of the initial one year fixed rate on **01 July 2007**. It is disappointing that the Provider has failed to furnish a copy of the options letter that issued to the Complainants. Furthermore it is disappointing that the Provider has failed to offer any explanation to this office as to why it does not hold a copy of this documentation in its records. It is therefore unclear to me the basis on which the Provider has made its submissions in relation to the options letter that was issued in **May 2007** in circumstances where a copy of the letter has not been provided in evidence.

Notwithstanding this, it does not appear to be in dispute between the parties that an options letter was issued to the Complainants in or around **May 2007** which included the tracker interest rate option of 4.50% (ECB + 0.75%). I note that the Complainants' mortgage loan automatically defaulted to that rate on **01 June 2007**.

The Provider has summarised its policy on its tracker interest rate policy as follows;

“... [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 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 [...] 2006 and [...] 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 (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 mortgage loan documentation, it is my view that that the Complainants did not have a contractual or other entitlement to a tracker interest rate at the end of the fixed rate period which applied from **June 2006** to **June 2007**. It appears that the Provider, in line with its own policy at the time, offered the Complainants a tracker interest rate and applied the tracker interest rate of 4.50% (ECB + 0.75%) as the default rate on **01 June 2007**.

The evidence shows that the Complainants emailed the Provider on **12 June 2007** and detailed as follows;

"The mortgage myself and [the Second Complainant] took out last June at a fixed rate of 3.4% for 1 year has now moved to a tracker rate. We are thinking of going to a fixed rate – probably for 3 years.

...

I believe that [the Provider] have a 3 year fixed rate of 5.1% and a 3 year fixed rate of 4.99% for new business.

Would you be able to tell me if we qualify for the new business rate of 4.99% as the rate of 5.1% seems quite high? Some other banks currently have a lower rate for 3 years fixed (and pay the legal fees for transferring the business) but I would rather stay with [the Provider] due to the hassle of moving mortgages but obviously I am trying to get the best rate.

On another point, if we were to increase the mortgage by €20k (to do some work on the house) would it then be possible to avail of the 4.99% for new business? But would this mean having to go through the hassle of a brand new mortgage with legal fees etc?

Would you be able to give me a call when you get a chance"

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I note that an internal email between two employees of the Provider was sent on **13 June 2007 at 8.45am** which detailed;

“Will we give [First Complainant] the new business fixed rate. See email below. Good guy.”

A further internal email between two employees of the Provider sent on the same date at **11:06am** detailed as follows;

“Can you send out three year fixed rate of 4.99% - no admin fee on the above.”

The Provider wrote to the Complainants by letter dated **13 June 2007**, detailing as follows;

“Further to our recent communication, I am attaching a list of our current fixed rate options. You indicated that you are interested in availing of our three year fixed rate of 4.99%. Please tick the rate you would like and return it to:

[Provider address]

I trust this is to your satisfaction and should you have any queries, please do not hesitate to contact Mortgage Servicing at [phone number].”

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

“Please tick the option you want.

Account number: [XXXXXX-XXXX675]

Approximate repayment		eur €	
Current Rate	4.50%	€	2,454.46
1 Year fixed rate Mortgage currently	4.99%	€	2,610.98
2 Year fixed rate Mortgage currently	5.15%	€	2,663.05
3 Year fixed rate Mortgage currently	4.99%	€	2,610.98
5 Year fixed rate Mortgage currently	5.15%	€	2,663.05
7 Year fixed rate Mortgage currently	5.15%	€	2,663.05
10 Year fixed rate Mortgage currently	5.15%	€	2,663.05

...

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We have worked out the monthly repayments shown based on what you currently still owe on your mortgage at the date of this letter. The above repayments do not include **Tax Relief at Source**. However, we have included your monthly insurance of €0.00, if this applies.

- The above figures only give you an idea of your revised monthly repayment, and may change
- We will send you details of your actual repayment shortly
- If you choose a fixed rate, the standard fixed rate conditions will apply.
- The above fixed rates are valid for 7 working days.

I note that the Complainants signed the form on **18 June 2007** and selected the three year fixed interest rate of 4.99%.

The Provider sent the Complainants a letter dated **21 June 2007**, which detailed as follows;

*"I am writing to you again about your mortgage.
We have now amended your mortgage as follows:*

<i>Product Type:</i>	<i>3 Year Fixed Rate Home Loan</i>
<i>Term remaining:</i>	<i>408 Months</i>
<i>Due date:</i>	<i>01/07/2007</i>
<i>New repayment:</i>	<i>€2,501.89</i>
<i>*Balance outstanding</i>	<i>€513,616.17</i>
<i>**Loan type:</i>	<i>Annuity</i>
<i>Interest rate:</i>	<i>4.99%</i>

The above repayment includes TRS and insurance where relevant.

I hope this is to your satisfaction, if you have any questions, please phone our Open 24 Mortgage Servicing on [Phone number] Monday to Friday 9am to 5.30pm (we may record or monitor phone calls for training purposes and to improve our service.)

****This is only an indication of your balance and is not a payoff figure
Endowment Mortgages also displayed as Loan type Interest Only"*

On the basis of the above it appears that the tracker rate of 4.50% (ECB + 0.75%) was applied to the Complainants' mortgage loan account from **01 June 2007** to **21 June 2007**.

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Subsequently the Complainants of their own volition requested to move from the tracker interest rate of 4.50% and instead selected the higher four year fixed interest rate offered (4.99%). The rate options form clearly outlined that if the Complainants chose a *“fixed rate, the standard fixed-rate conditions will apply”*. 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.

No evidence has been furnished which shows that the Provider *“confirmed”* to the Complainants in **June 2007** that they *“would move back to the tracker rate”* when the three year fixed interest rate period expired.

In the circumstances of this complaint I have been furnished with no evidence that there was an information failing on the part of the Provider in **June 2007**.

The Complainants sent the Provider a letter dated **22 January 2009** which detailed as follows;

“I would like to transfer my homeloan mortgage from the Fixed Rate package I have with [the Provider] to the standard variable rate. On a call to your Mortgage Servicing [Phone number] I was told the existing standard variable rate of 4.55% would apply and this would move to 4.05% in early February 2009.

If you have questions in relation to this request I can be contacted at [phone number]”

The Provider wrote to the Complainants by letter dated **26 January 2009**, which details as follows;

“I am writing to you with regard to the above numbered mortgage account.

We have now amended your mortgage as follows:

<i>*Product type</i>	<i>Variable Rate (<=80%ltv) Home Loan</i>
<i>Term remaining:</i>	<i>389 Months</i>
<i>Due date:</i>	<i>01/02/2009</i>
<i>New repayment:</i>	<i>€2,393.48</i>
<i>**Balance outstanding</i>	<i>€504,558.18</i>
<i>***Loan type:</i>	<i>Annuity</i>
<i>*Interest rate:</i>	<i>4.55%</i>

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The above repayment includes TRS and insurance where relevant.

I hope this is to your satisfaction, if you have any questions, please phone our [Mortgage Service contact details] (we may record or monitor phone calls for training purposes and to improve our service.)

...

** This interest rate may be a discounted rate for a limited time. If a discounted rate, see the Special Conditions of your Letter of Approval for the period of time during which the discounted rate applies.*

*** This is only an indication of your balance and is not a payoff figure*

****Endowment Mortgages also displayed as Loan type Interest Only”*

The Complainants have submitted that “If we had moved to tracker rate of EBC +0.5% in January 2009 this would have been a rate of 2.5% as the ECB rate at the time was 2%.” There was no contractual or other obligation on the Provider to offer the Complainants a tracker interest rate in the event of a break in their fixed interest rate period. The Complainants’ mortgage loan documentation was silent as to what would happen in the event of a break in a fixed interest rate period. As such it was a matter for the Provider to decide if it wanted to accede to the request to break the fixed interest rate period and secondly what interest rate offering it would make to the Complainant. The Provider’s policy that was in place from **mid-2006** was to offer tracker interest rates on the expiry of fixed interest periods even though there was no contractual entitlement to a tracker interest rate in the mortgage loan documentation. The Provider did not have a policy on offering tracker interest rates in the event of a break in a fixed interest rate period. The three year fixed interest rate period that had been applied to the mortgage loan account by the Complainants in **June 2007** was not due to reach its maturity until **June 2010**.

The Complainants have submitted that they were advised that a tracker rate option would be available on the expiry of the three year fixed rate in **June 2010**. However in the context of the Complainants’ mortgage loan, this is not relevant. The fact remains that the Complainants contacted the Provider of their own volition in **January 2009** and requested the application of a standard variable rate of 4.55% to the mortgage loan. The Provider complied with the Complainants’ request and applied the interest rate sought.

By **mid-2008**, the Provider had commenced the withdrawal of tracker interest rates. Therefore, even if the Complainants had not broken the fixed interest rate in **January 2009** and the three year fixed interest rate period continued and reached maturity in **June 2010**, it would appear that the Provider would not have offered the Complainants a tracker

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interest rate at the time, as there was no contractual obligation on the Provider to do so as its policy of offering tracker interest rates was no longer in effect by **June 2010**.

The Complainants have queried why they were not charged a breakage fee in accordance with **General Condition 5.3** of the Complainants' mortgage loan agreement which clearly outlines that in circumstances where the Complainants sought to break from a fixed interest rate period early, a fee would be applicable. I note that the Provider has submitted that this was due to "*an issue with its automated mortgage calculator formula which calculated fixed rate early exit fees.*" While such an error on the Provider's part is unsatisfactory, it does not appear to me that the Complainants suffered any detriment due to this error in circumstances where no breakage fee was paid by the Complainants in **January 2009** as a result.

Having considered all of the evidence including the Complainants' mortgage loan documentation, I find the Complainants did not have any contractual or other entitlement to a tracker interest rate on their mortgage loan. The Provider as a matter of policy offered the Complainants a tracker interest rate of ECB + 0.75% in **June 2007**. This rate was applied by default on **1 June 2007**. However the Complainants, within days, opted to apply a fixed interest rate to the mortgage loan on **12 June 2007**.

For the reasons set out 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

15 December 2020

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Pursuant to *Section 62 of the Financial Services and Pensions Ombudsman Act 2017*, the Financial Services and Pensions Ombudsman will publish legally binding decisions in relation to complaints concerning financial service providers in such a manner that—

(a) ensures that—

(i) a complainant shall not be identified by name, address or otherwise,

(ii) a provider shall not be identified by name or address,

and

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

