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| <u>Decision Ref:</u> | 2021-0014 |
| <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 Application of interest rate |
| <u>Outcome:</u> | Rejected |

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The complaint relates to a mortgage loan held by the Complainants with the Provider. The mortgage loan was secured on the Complainants' private dwelling house.

The **Letter of Approval** detailed that the loan amount was €612,000 and the term of the loan was 30 years. The loan type was outlined as a "1 Year Fixed Rate Home Loan". The Acceptance of Loan Offer was signed on **12 July 2005**. The mortgage loan account was redeemed on **16 August 2018**.

The Complainants' Case

The Complainants detail that they drew down their mortgage loan account with the Provider in **July 2005** on an initial 1-year fixed interest rate of 2.55%. The Complainants outline that the fact that the **Letter of Approval** "does not refer to a tracker is irrelevant" and "this is hardly surprising as our original loan offer was for a 1yr fixed rate only." They detail that on the expiry of the initial fixed rate period on **15 July 2006**, their mortgage loan account defaulted to the Provider's standard variable rate of 4.1%.

They Complainants detail that on review of their mortgage statements in **2011** they became aware that their mortgage account “*had been switched onto a tracker rate of 1.1% above ECB*” in **September 2006**.

They detail that the tracker interest rate applied of 4.1% (ECB + 1.1%) was “*equal to the standard variable rate*” that had previously applied to the mortgage loan account, which meant that their repayments “*remained the same and we were not alerted to this extremely significant change to our loan.*”

The Complainants submit that the application of the tracker rate of ECB + 1.1% to the mortgage loan account in **September 2006** was “*not merely a rate change, but was the application of an entirely different product.*” The Complainants refer to their mortgage loan statement of **September 2006** which details that a “*New Product 4.1%*” was applied to support this. They detail that the “*tracker carries different terms and conditions to the standard variable rate we were on, and it[s] application has far reaching implications for future repayments.*”

The Complainants state that they were “*unaware*” that the tracker interest rate of ECB + 1.1% was applied to their mortgage account in **September 2006** as this was done by the Provider without any notification, advice or agreement with them. They outline that this “*product change was made entirely at the direction and discretion of [the Provider] and the responsibility to adequately advise us their customers in relation to this change lies with [the Provider].*” They further state that the “*fact there is no written documentation or contract as regards the tracker ECB + 1.1% cannot be taken to mean we had, or have no entitlement to this rate, as [the Provider] simply did not provide any such documentation or written agreement.*”

The Complainants do not accept the Provider’s “*assumption*” that the Complainants or their broker requested the tracker interest rate in **September 2006**. They submit that the Provider has furnished “*no evidence to support this assumption*” and therefore “*any such assumption has no value*” as it is not supported by any documentary evidence. The Complainants state that the Provider’s submission that it has no other explanation for the application of the tracker rate “*is mystifying as [the Provider has] already clearly outlined ... that ECB +1.1% was applied to our loan ‘solely as a matter of policy’.*” They refer to the Provider’s letter dated **21 March 2012** which detailed that the Provider’s tracker rate policy was “*based on loan balances*”. They state the Provider outlined in this letter that as the Complainants’ mortgage loan balance was €608,157.24 in **September 2006** they qualified for the tracker product and their account was converted to the applicable tracker rate of ECB + 1.1%.

The Complainants outline that as rates “rose” in **2006**, they enquired with the Provider about the available fixed rate options. They detail that in **December 2006** the Provider offered them a 2 year fixed rate of 4.61% or a 3 year fixed rate of 4.85%. They outline that they opted for the 2 year fixed interest rate of 4.61%.

They detail that they were not provided with information regarding the consequences of applying the fixed interest rate in respect of their “*entitlement to a tracker/ other rates in the future*”.

The Complainants reject the Provider’s submission that a rate reduction of 0.24% was applied to the fixed interest rate of 4.85%, reducing it to 4.61%, in response to a request from their broker. They submit that this was “*not the case*” and that “*4.61% was the rate we were offered and the rate we accepted.*”

The Complainants state if they have been “*properly advised*” by the Provider that they were on a tracker rate in **2006** they “*most certainly would have viewed the situation differently and chose[n] a different course of action.*” They do not accept the Provider’s statement that they chose to move from their tracker interest rate in **December 2006** on the basis that they were “*under the false impression we were still on the standard variable rate which our loan had defaulted to in July of that year*”.

The Complainants further outline that after they opted to apply a fixed interest rate of 4.61% to the mortgage account, “[*the Provider*] contacted us to confirm the new rate was 4.85%. Clearly this was not the rate we had chosen, hence we contacted [*the Provider*] to ask that this be rectified immediately ... [*the Provider*] did immediately rectify this error.”

The Complainants submit that in **December 2006** the Provider failed “*for a second time to adequately advise and inform*” them of significant information regarding their mortgage loan account. They submit that in addition to the wrong rate being applied initially, they received “*a rather strongly worded letter*” from the Provider requesting a payment of €100.00 to process their request to apply a fixed rate to their mortgage loan account. They further outline that there was no mention of the tracker rate applying to their mortgage loan account prior to the fixed rate in this letter.

The Complainants outline that on the expiry of the two year fixed rate period in **December 2008** they were contacted by the Provider and were “*given the option to re-fix the mortgage*”. They detail that the rate options letter they received did not mention a tracker interest rate and they were only offered fixed or variable rate options. They submit that they contacted their broker for advice as the rate options outlined “*were pretty unattractive*”. They detail that their broker contacted the Provider on their behalf “*and*

found we were able to avail of a tracker rate of 1.68% + ECB.” They detail they then opted to apply the tracker interest rate of 4.9% (ECB +1.68%).

The Complainants state that the Provider’s “assertion” that their loan “defaulted” to the tracker rate of ECB + 1.68% in **December 2008** is inaccurate. They state that the tracker rate option of ECB + 1.68% was not offered to the Complainants “in the list of options provided” in **December 2008**. They further submit that the Provider has not provided any evidence to support what they were actually offered in **2008**, nor to show that a tracker interest rate of ECB +1.68% was applied by default.

The Complainants submit that they did not return the rate options letter to the Provider in **2008**. They outline that the template rate options letter furnished in evidence by the Provider “*incidentally differs in font/layout and page numbering*” and is of no relevance.

The Complainants have queried “[on] what basis did [the Provider] ultimately apply the new tracker rate of 1.68% + ECB base rate and why were we not offered the option to go back to our original tracker rate of 1.1% above ECB.” They have also queried the Provider’s submission that the rate of ECB + 1.68% was applied to their account in accordance with the “terms” of their loan. The Complainants submit that this is at odds with the Provider’s claim that the rate of ECB + 1.68% was applied to their mortgage loan account by default. They contend that the tracker rate of ECB + 1.68% was only applied to the mortgage loan account after their broker contacted the Provider.

The Complainants assert that the Provider has “not kept adequate documentation of these matters” and relies on “a series of assumptions and beliefs in providing explanation of the above matters.” The Complainants submit that this “is wholly unsatisfactory and unacceptable to us and does not absolve [the Provider] in any way of their responsibility to provide notification advice and information in the event they make significant changes to our mortgage account.” The Complainants do not accept the “template documentation” furnished in evidence by the Provider and submit that these documents are “of no relevance” and should not be given any “weight or consideration in determining our complaint.”

The Complainants further submit that the Provider’s submissions lack “consistency, transparency, is based on assumption, lacks supporting evidence and relies on adhering to ‘Bank Policy and ‘standard practice’. They state that “such a reliance on policy and standard practice is indeed a weak defence when it cannot be shown that such policy or practice was of an adequate or reasonable standard.” The Complainants submit that the Provider was “acting in line with their bank ‘policy’ where it so suited them and yet did not comply with their own stated policy at other times.”

The Complainants outline that the Provider's failure "*denied us the possibility to remain on ECB+1.1%.*" They detail that the Provider's failure to advise the Complainants that the tracker rate of ECB + 1.1% had been applied in **December 2006** has "*had far reaching implications for our future repayments and family finances and has resulted in us making significant overpayments on our loan since December 2006.*"

The Complainants are seeking the following;

- a) The Provider to "*re-instate*" the tracker interest rate of 1.1% + ECB on their mortgage loan account; and
- b) The Provider to "*refund overpayment due to*" to the Complainants "*as a consequence of being overcharged interest since December 2008*" which the Complainants estimate as €180 per month or €7,500 over the 42 month period.

The Provider's Case

The Provider outlines that the Complainants' mortgage was sold to them by a broker in **July 2005**. It details that the "*mortgage broker was not acting as a tied agent for the Bank*". It submits that the issue of advice was between the Complainants and the broker, and that the Provider "*did not give the Complainants any financial advice in relation to this particular loan, nor was it obliged to do so.*" The Provider submits that it appears from its records that the Complainants' broker continued to act on their behalf with regard to their mortgage after the drawdown of their mortgage.

The Provider submits that the Complainants were issued with a **Letter of Approval** on **11 July 2005** for a loan amount of €612,000 over a term of 30 years on an initial 1 year fixed rate of 2.55%. The Provider submits that the Complainants "*have no contractual entitlement to a tracker interest rate*". It states that the loan offer did not contain any price promise regarding a tracker interest rate, nor did it contain "*any reference to any specific margin to be applied above the ECB rate, either on the expiry of the Complainants' fixed interest rate period, or otherwise.*" The Provider states that it is clear that the **Letter of Approval** provided for "*the option at the end of the initial one year fixed interest rate period to choose a further fixed interest rate option or a variable interest rate option*". It relies on **Special Condition A**, **General Condition 5** and **General Condition 1.10** of the **Letter of Approval** in support of this.

The Provider further states that **the European Standardised Information Sheet** which accompanied the Letter of Approval, although not legally binding, also explained on **page 1** that the interest rate "*is 2.55%. This rate is fixed for 1 year(s)...you may exercise an option to contract for another fixed rate period (if available) or move to a variable rate*".

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The Provider details that the Complainants accepted the Letter of Approval on **12 July 2005** and confirmed that their solicitor had fully explained the terms and conditions of the mortgage to them. The Provider states that it is clear that the terms and conditions of the Letter of Approval do not provide any contractual entitlement to a tracker interest rate nor make any reference to a specific margin over the ECB rate to be applied to this mortgage loan account.

The Provider outlines that tracker interest rate products were launched in **early 2004** and were available to existing customers.

It details that from **2004 to 2008** *“certain existing mortgage loan customers who did not have a contractual right to a tracker rate and who enquired about switching their mortgage loan account to a tracker rate were provided with a tracker rate option.”*

The Provider details that its procedure is that twenty days prior to the expiry of any fixed rate period, it offers customers a list of available interest rate options, which include a default rate should the customer not indicate a preferred option. The Provider outlines that it automatically issued the Complainants a rate options letter in or around **23 June 2006**, twenty days prior to the expiry of the fixed rate, and provided a variable rate option and fixed rate options. The Provider states that these letters were issued through an automated system and in **2006** the Provider did not retain copies of these letters unless the *“customers returned them requesting a particular rate.”* It submits that if a copy of a rate options letter was not retained by the Provider *“it can therefore be assumed that it was not returned by the customer.”* It states that it does not have a copy of the options letter issued to the Complainants on the expiry of their initial 1-year fixed rate in **July 2006** and therefore it is *“assumed by the Bank that the Complainant did not return a completed options letter and that the default rate applied.”*

The Provider details that the default rate at this time was the Provider’s standard variable rate and that *“the likelihood is that because the Complainants did not complete the options letter on 14 July 2006, the mortgage defaulted to the standard variable rate”*, however it submits that in the *“absence of documentation this cannot be stated with absolute certainty.”* It outlines that the standard variable rate of 4.1% was applied to the mortgage loan account on **14 July 2006**.

The Provider submits that it applied a tracker interest rate of 4.10% (ECB + 1.1%) to the Complainants’ mortgage loan account on **11 September 2006**. It outlines that whilst the Complainants did not have any contractual entitlement to a tracker interest rate, this Tracker Mortgage rate was being offered by the bank to certain customers at this time as a matter of policy. The Provider outlines that it assumes that it applied the tracker rate at the request of the Complainants or their broker, as the interest rate on the account had

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previously been adjusted in **July 2006** and the Provider *“cannot provide any other explanation as to why it would be adjusted again, just two months later other than at the request of either the Complainants or their broker.”* The Provider further states that it is *“notable”* that on **11 September 2006** it *“introduced a “switching” options letter for such customers”* which *“included a tracker rate”*.

The Provider outlines that from **mid-2006** the Provider started offering *“a tracker interest rate as the default rate, on expiry of fixed or discounted rate periods, solely as a matter of policy and not, in this instance, because the customer had any contractual entitlement to any, or particular, tracker interest rate.”* The Provider submits that the Complainants did not fall into this category of customers in **September 2006** as their mortgage account was not expiring from a fixed or discounted period. It outlines that the default variable rate was applied to the mortgage loan account in **July 2006** and as a result, a default tracker rate would not have applied to the mortgage loan account in **September 2006**.

The Provider states that it does not accept the Complainants’ submission that the tracker rate of ECB + 1.1% was applied to the mortgage loan account at *“entirely the direction and discretion”* of the Provider and it states that this submission *“is difficult to understand.”* It states that due *“to the passage of time the Bank is not able to offer any further explanation as to why the mortgage was changed”* in **September 2006**. It outlines as there was no contractual entitlement to a tracker rate *“there would have been no other reason as to why their account would have been adjusted in this way.”*

The Provider submits that it *“does not provide any advice in relation to which interest rate options a customer should avail of.”* It outlines that this is a decision for the Complainants to make alone. The Provider submits that it *“conducted a reasonable search”* and *“has not located any records at all of the Complainants seeking any such advice from [the Provider]”* in or around **September 2006**.

The Provider does not accept the Complainants’ submission that the application of the tracker rate of ECB + 1.1% to the mortgage loan account in **September 2006** signified the application of a different product. It submits that at that time tracker rates were being applied by the Provider as the default rate when a customer did not actively select an available option at the end of a fixed or discounted period.

It states that *“At no time has the application of a default tracker rate been considered to be the application of an entirely different product. It was the application of an alternative interest rate where no rate had been selected by a customer at the expiry of a fixed or discounted period.”*

The Provider outlines that it would have issued a "Payment Change" letter to the Complainants on **15 September 2006** "confirming the amended rate and new monthly repayments on their mortgage." The Provider details that the tracker interest rate increased from 3.00% to 3.25% on **12 October 2006**, which would have resulted in a further Payment Change letter being issued to the Complainants on **16 October 2006** again confirming the amended rate and new monthly repayment on their mortgage. It states that again, it is not in a position to provide copies of this correspondence as they were "automated letters, copies of which are not retained by the Bank".

The Provider outlines that on **20 November 2006** the Complainants' broker emailed the Provider stating that the Complainants "wished to transfer to a 2 year fixed rate" and outlining that the Broker had "been in contact with the Bank and had agreed a reduced rate of 4.61% for his clients." The Provider details that it issued the Complainants with a fixed rate options letter on **21 November 2006** which the Complainants signed and opting for the 2 year fixed rate option of 4.61%. It details that the Complainants sent the Provider a letter dated **13 December 2006** with the required fee to change to a fixed rate and requesting that the mortgage be transferred to the previously agreed 2 year fixed rate.

The Provider details that on **14 December 2006**, the rate of interest which applied to the Complainants' mortgage loan account was changed to a 2 year fixed rate of 4.85%. It submits that the Complainants contacted the Provider on **19 January 2007** "stating that the mortgage had been placed on a 2 year fixed rate of 4.85% and that they had in fact secured a rate of 4.61% through their broker." It outlines that the Provider reviewed the matter and backdated the account to the correct rate of 4.61% to **14 December 2006** and issued a letter to the Complainants confirming this on **24 January 2007**.

The Provider submits that it cannot comment on the Complainants' assertion that they were under the impression that a standard variable rate applied to their mortgage loan account up to **December 2006**. The Provider submits that "The rate that they were on in December 2006 was the same rate as the rate applicable pursuant to the variable rate which had previously applied, and it is this factor which is likely to have been overwhelmingly the most relevant factor in the Complainants opting to move to a fixed rate.

There is no evidence from December 2006 that the Complainants were concerned in any way about opting for either a variable or a tracker mortgage. Their fears at that time, understandably so, were in relation to securing a fixed rate which would obviously deliver certainty to them in terms of knowing the amount of each monthly payment."

The Provider states that the Complainants were not *“informed that a tracker interest rate would be available to the Complainants on the expiration of the two year fixed interest rate period”* as they did not have a contractual entitlement to the tracker rate. The Provider further submits that its letter of **1 December 2006** which the Complainants referred to as *“strongly worded”*, was a standard letter issued by the Provider.

The Provider details that twenty days prior to the expiry of the two year fixed rate period on **14 December 2008** it *“would have offered the Complainants a list of interest rate options including the then default ‘appropriate’ tracker interest rate of ECB + 1.68%.”* The Provider submits that it believes that the Complainants were offered a tracker interest rate of ECB + 1.68% *“solely as a matter of Bank policy and not due to the existence of any contractual entitlement to a tracker rate.”*

The Provider details that in **December 2008** the mortgage loan account did not revert to the tracker rate of ECB + 1.1% that previously applied in **September 2006**, because the Complainants were not contractually entitled to the tracker interest rate of ECB + 1.1% and there was no ‘price promise’ contained in the terms and conditions of their mortgage loan agreement. It details that the Complainants’ mortgage loan was a home loan account and in **December 2008**, the Provider’s home loan tracker rate *“applying to fixed rate maturity”* was ECB + 1.68%. It outlines that at the time, the ECB rate was 3.25% so the combined rate (ECB + margin) was 4.93%.

The Provider outlines that it does not hold a copy of the rate options letter which issued to the Complainants in **December 2008** and it assumes that the rate options letter was not signed and that the Complainants did not choose an interest rate option, so that the default tracker rate of 4.93% (ECB + 1.68%) was applied on **12 December 2008**. The Provider further details that the template rate options letter from **December 2008** furnished to this office is in a particular font and layout because it is a template.

The Provider outlines that on **12 December 2008** it wrote to the Complainants to confirm that the account had been amended to the tracker rate of 4.93% (ECB+1.68%). The Provider does not accept that the Complainants were offered a tracker interest rate of ECB + 1.68% due to the intervention of their Broker.

It contends that the Complainants have provided no evidence of any contact by their broker with the Provider on or about **14 December 2008**. The Provider submits that it is clear that the mortgage account switched to the tracker interest rate of ECB +1.68% automatically on **14 December 2008**.

The Provider submits that the calculation of the tracker margin of ECB + 1.68% was a commercial decision and was reflective of market conditions such as wholesale borrowing

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rates, deposit interest rates, interest paid on deposits and the Provider's competitive position. It further outlines that the *"economic conditions which prevailed in September 2006, differed considerably to the economic conditions that prevailed upon the expiry of the Complainants' two year fixed interest rate period, in December 2008."* The Provider submits that the difference in the tracker rate margins *"was on foot of the Bank's policy."*

The Provider does not accept the Complainants' submission that it did not offer the Complainants a tracker rate of ECB + 1.68% option as the default interest rate in its rate options letter in **December 2008**. It states that its *"submission is consistent with contemporaneous documentation whilst the submission of the Complainants is not."* It relies on its contemporaneous published lending rate sheets to support its submission.

The Provider outlines that **General Condition 5.4** clearly stated that following the application and subsequent expiry of any fixed interest rate, both the Complainant and the Provider had the option to convert to a variable rate loan agreement. The Provider submits that when the respective fixed rate periods expired, the variable rate which was being offered by the Provider was a tracker rate at a particular margin, this policy is why the Complainants' mortgage loan account defaulted to tracker interest rates on the expiry of the fixed rate periods and not due to any contractual entitlement they had to a tracker interest rate.

It submits that while it *"may be relying upon assumptions and beliefs in providing explanations, such assumptions and beliefs are grounded on the Bank's policy at that time and what the standard practice would have been at the relevant times."*

The Provider outlines that the mortgage remained on the tracker rate of ECB + 1.68% until the mortgage loan was redeemed in full on **16 August 2018**.

The Provider made a *"goodwill gesture"* offer of €5,000 to the Complainants in **February 2016** on the basis that *"through no fault of the customers, the complaint has been ongoing for some time"*. I note that the Provider has indicated that *"While the Bank notes that the Complainants have declined its offer of €5,000 in relation to the delay in this matter, this offer remains open to the Complainants."*

The Complaints for Adjudication

The complaints for adjudication are as follows;

- (a) The Provider failed to inform the Complainants that a tracker interest rate of ECB + 1.1% was applied to their mortgage loan account in **September 2006**;

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- (b) The Provider failed to advise the Complainants of the “*consequences of fixing our rate in terms of how this might affect our entitlement to a tracker/ other rates in the future*”;
- (c) The Provider failed to advise the Complainants of their contractual entitlement to a tracker interest rate when the fixed rate period expired in **December 2008**; and
- (d) The Provider failed to offer the Complainants a tracker interest rate with a margin of ECB + 1.1% in **December 2008**.

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 27 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.

Following the issue of my Preliminary Decision, the parties made the following submissions:

1. E-mail from the Complainants to this Office dated 27 November 2020.
2. Letter from the Provider to this Office dated 3 December 2020.
3. E-mail from the Complainants to this Office dated 4 January 2021.

Copies of the above submissions were exchanged between the parties.

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Having considered these additional submissions and all submissions and evidence furnished to this Office by the parties, I set out below my final determination.

Before dealing with the substance of the complaint, I note the application for the mortgage loan was submitted by the Complainants to the Provider through a third party broker. As this complaint is made against the Respondent Provider only, it is the conduct of this Provider and not the broker which will be investigated and dealt with in this Decision. The Complainants were informed of the parameters of the investigation by this office, by letter, which outlined as follows;

“In the interests of clarity, the complaint that you are maintaining under this complaint reference number is against [the Provider] and this office will not be investigating any conduct of the named Broker in the course of investigating and adjudicating on this complaint.”

Therefore, the conduct of the third party broker engaged by the Complainants, does not form part of this investigation and decision for the reasons set out above.

In order to adjudicate on this complaint, it is necessary to review and set out the relevant provisions of the Complainants’ loan documentation. It is also relevant to set out the interactions between the Provider and the Complainants between **2006** and **2008**.

The Provider issued a **Letter of Approval** dated **11 July 2005** to the Complainants, which details as follows;

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| <i>“Loan Type:</i> | <i>1 Year Fixed Rate Home Loan</i> |
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| <i>Purchase Price / Estimated Value :</i> | <i>EUR 680,000.00</i> |
| <i>Loan Amount :</i> | <i>EUR 612,000.00</i> |
| <i>Interest Rate :</i> | <i>2.55%</i> |
| <i>Term :</i> | <i>30 year(s)</i> |
| <i>Monthly Instalment :</i> | <i>EUR 2,434.07”</i> |

The **Special Conditions** to the **Letter of Approval** details 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 1 of the **General Mortgage Loan Approval Conditions** details as follows:

“ ...

1.10 Whenever the Directors of [the Provider] in their absolute discretion consider it desirable the interest rate payable under this advance may be varied”

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

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

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

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

(a) a sum equal to one half of the amount of interest (calculated on a reducing balance basis) which would have been payable on the principal sum desired to be repaid, for the remainder of the Fixed Rate Period, or

(b) a sum equal to [the Provider’s] estimate of the loss (if any) occasioned by such early repayment, calculated as the difference between on the one hand the total amount of interest (calculated on a reducing balance basis) which the applicant would have paid on the principal sum being repaid to the end of the Fixed Rate Period at the 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.”

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The **General Conditions** also detail;

*“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** was signed by the Complainants and witnessed by a solicitor on **12 July 2005**. 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.”*

The Complainants’ mortgage loan account was drawn down on **15 July 2005**. The Provider sent the Complainants a letter dated **15 July 2005**, confirming the details of the mortgage loan agreement.

It is clear to me that the **Letter of Approval** envisaged a one year fixed interest rate and thereafter a variable rate which could be adjusted by the lender. The Complainants accepted the Letter of Offer, having confirmed that the Loan Offer had been explained to them by their solicitor. It is not disputed by the parties that there is no contractual entitlement to a tracker interest rate outlined in the mortgage loan agreement.

The Complainants sent the Provider an undated letter which was stamped received by the Provider on **20 July 2005**.

This letter detailed as follows;

“Please note that we would like to skip the next 4 months payments of our mortgage under [Provider product] mortgage you are currently advertising.

Please let us know by return if there are any more forms necessary for completion and when we can avail of the skipped payments.

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Thanking you in anticipation.”

The Provider responded to the Complainants by letter dated **26 July 2005**, stating the following;

“Further to recent communications with this area, I confirm that the Company is agreeable to reducing your mortgage repayments for the months of July August Sept & October 2005 inclusive. As a result of the above, your revised monthly repayment from the month of 31st July 2005, amounts to €1.00. The repayment is inclusive of insurance and TRS where applicable. This repayment is applicable from the last working day in 31st July 2005 and your account has been amended accordingly.

After this period your new monthly repayment will be recalculated and advised to you.

Please note that the repayment due on the last working day of the month (ie due on 31st November 2005), will be called by direct debit on that day but may take up to 5 working days to reach your bank account.

I trust that the above is to your satisfaction and should you have any further queries please do not hesitate to contact Mortgage Services on [Phone number].”

A “[**Provider**] Servicing Request” dated **30 September 2005** has been provided in evidence which details as follows;

“The above customer has requested written confirmation of whether or not his d/d will bill on 30/11/05 as he requested a [Provider product] mortgage but the review date listed on the system is 01/11/05.”

I note the Provider wrote to the Complainants by letter dated **03 October 2005** outlining as follows;

“I refer to your recent enquiry regarding the above numbered mortgage account and confirm that the moratorium on this loan is due to expire on 01 December 2005.

I confirm therefore that your first full monthly repayment will be due on 31 December 2005. I confirm that confirmation of your revised repayment will be issued to you on expire of the moratorium.

/Cont’d...

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

I note that the Complainants commenced paying their mortgage repayments in full in **December 2005**.

The Provider has summarised its policy in relation to tracker rates as follows;

“...on [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...Between [mid] 2006 and [mid] 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 rate. From [mid] 2009, in the absence of a customer selection the tracker interest rate was applied to the mortgage as the default interest rate.”

The Provider has submitted that approximately twenty days prior to the expiry of the fixed rate period, in or around **23 June 2006** it “*automatically*” issued a **rate options letter** to the Complainants containing the interest rate options currently available to be applied to the account and a **rate instruction form** listing each of the options available for the Complainants to select. The Provider has provided in evidence a copy of a “*template of the options letter*” issued to the Complainants at this time.

I am disappointed to note that a copy of the letter and the rate options form that purportedly issued to the Complainants on **23 June 2006** has not been furnished in evidence to this office. The Provider has submitted that it did not retain copies of options letters in advance of issuing them and only “*imaged*” the options letter if it was returned by the customers selecting a particular rate.

In any event, it does not appear to be in dispute between the parties that an **options letter and form** was issued to the Complainants in or around **June 2006**. The template letter furnished in evidence outlines as follows;

“ONLY ONE OPTION MAY BE TICKED

Re: [Redacted]

** MONTHLY REPAYMENT*
EUR*

| | | | |
|------------------------------|---------------------|--------------|----------------|
| <i>--- Variable Rate</i> | <i>- Currently:</i> | <i>4.10%</i> | <i>1259.98</i> |
| <i>--- 1 year fixed rate</i> | <i>- Currently:</i> | <i>4.45%</i> | <i>1302.94</i> |
| <i>--- 3 year fixed rate</i> | <i>- Currently:</i> | <i>4.85%</i> | <i>1353.01</i> |
| <i>--- 5 year fixed rate</i> | <i>- Currently:</i> | <i>4.99%</i> | <i>1370.79</i> |

/Cont’d...

*Contact [Provider] at [phone number]. If you would like to hear about [the Provider's] competitive range of ECB Tracker mortgages.
..."*

I have not been provided with a template of the **rate options form** that issued in or around **23 June 2006**. Nonetheless it is not disputed that the Complainants were not offered the option of a tracker interest rate in **June 2006**.

Having considered the mortgage loan documentation, it is my view that the Complainants did not have a contractual entitlement to a tracker interest rate at the end of the fixed interest rate period in accordance with **General Condition 5.4**. As detailed above, the variable rate was a variable rate which could be adjusted by the Provider and was not a tracker interest rate. There was no obligation on the Provider to offer alternative interest rate options on the expiry of the fixed interest rate period in **July 2006**, beyond the variable rate as set out in the mortgage loan contract.

It does not appear from the evidence that the Complainants completed or returned the rate options form selecting an interest rate in **July 2006**.

The Complainants' **mortgage loan statement** shows that a "*New Product 4.100%*" was applied to the mortgage loan account on **14 July 2006**. It appears that this refers to the application of the default standard variable rate of 4.1% on the expiry of the fixed interest rate period.

The **mortgage loan statement** further shows that a "*Rate Change 4.350%*" was applied to the account on **09 August 2006**.

The **mortgage loan statement** further details that a "*New Product 4.100%*" was applied to the Complainants' mortgage loan account on **11 September 2006**. No other documentary evidence has been provided, however it is not disputed between the parties that a tracker interest rate of 4.1% (ECB + 1.1%) was applied to the mortgage account at the time. However the Complainants contend that they were not informed of this at that time.

The Complainants have submitted that they do not accept the Provider's "*assumption*" that the Complainants or their broker requested to switch to the tracker interest rate at **September 2006**. There is no evidence before me regarding any communications between the Complainants and/or their broker and the Provider in **September 2006** in relation to the application of the tracker interest rate of ECB + 1.1%. It is most disappointing that the Provider is unable to provide an explanation as to why the tracker interest rate of ECB +

/Cont'd...

1.1% was applied to the Complainants' mortgage loan account in **September 2006**. Nor is the Provider able to produce any records evidencing the rate change.

In any event there was no contractual or other obligation on the Provider to offer the Complainants a tracker interest rate in **September 2006**. It appears that the Provider, in line with its own policy at the time, applied the tracker interest rate of 4.1% (ECB + 1.1%) to the Complainants' mortgage loan account on **11 September 2006**.

I note that the Provider wrote to the Complainants by letter dated **13 September 2006**, which detailed as follows;

"Please be advised that as of today your account is in order. We confirm that we have noted in our records that the arrears accrued through no fault of your own and arose as a result of a technical error on behalf of [the Provider]. Please be advised that this matter will not have an adverse effect on your credit rating.

We apologise for any inconvenience this may have caused you, we trust this is to your satisfaction however if you have any further queries please do not hesitate to contact the undersigned."

It appears that a "technical error" occurred on the Complainants' mortgage loan account which was rectified by the Provider in or around **September 2006**. The nature of this error is not clear to me from the evidence before me. In any event this matter does not appear to form part of the matters complained of and neither party has made submissions in relation to this.

The **mortgage loan statements** detail that a "Rate Change 4.350%" was applied to the mortgage loan account on **12 October 2006**. This appears to support the Provider's submission that the tracker interest rate margin increased from 3.00% to 3.25% at that time.

The Provider has submitted into evidence an email from the Complainants' broker to the Provider on **20 November 2006** at **11:14am**, detailing as follows;

*"i spoke to [the Complainants] and they are happy to go with the 2 year fixed special rate that you mentioned
their account number is ; [account number]
if u can send this option out to them when u get a chance thanks".*

The Provider's employee sent an internal email on **20 November 2006** at **16:27pm**, which details as follows;

/Cont'd...

*“both the broker and customers are friends of mine.
2 Year fixed with a reduction of .24 %
Can u approve”*

The Provider’s employee responded to the internal email on **20 November 2006 at 18:17pm** as follows;

“Can you send info on account [Account number] for a two year rate of 4.61%.”

I note that there is a handwritten annotation on the copy emails submitted in evidence which states *“broker no fee [account number] 4.35%”*.

In circumstances where the Complainant was engaging with a Broker with respect to the mortgage loan, I do not accept that there was any requirement for the Provider to communicate directly with the Complainants in relation to the interest rate options for the loans at that time. The evidence shows that in **November 2006** the Complainants’ broker requested a *“special”* 2 year fixed interest rate option for the Complainants’ mortgage loan account, which is consistent with the Provider’s submission that this was a negotiated interest rate.

In any event I do not consider that it is material to the conduct complained of whether the Broker negotiated a reduced rate of 4.61% at the time. What is relevant is that this is the fixed rate that was offered to the Complainants by the Provider in **November 2006**.

The Provider wrote to the Complainants by letter dated **21 November 2006**, 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 two year fixed rate of 4.61%. Please tick the rate you would like and return it to:

[Address]

If you have any questions please contact us on [Phone Number].”

The Provider issued the Complainants a letter dated **01 December 2006**, as follows;

“I refer to your request to amend the rate on the above account. I would like to confirm that I have no record of payment of the administration fee of €100 for conversion of the account from a variable to a fixed rate Loan.

/Cont’d...

If you would like to proceed with the conversion, I would be grateful if you could arrange to send me a cheque for €100.00 and I will advise you of your revised repayment at the new fixed rate. Please quote your mortgage reference number on all correspondence.

Kindly note that in order to ensure your loan is fixed at the rate quoted in the loan offer, your €100.00 must be received by [the Provider] WITHIN 7 DAYS OF THIS LETTER or otherwise the [Provider] will have no alternative but to maintain the Loan at a Variable Rate of Interest.”

The Complainants sent an undated letter to the Provider, which was stamped received by the Provider on **13 December 2006** and outlined as follows;

“I refer to your letter of the 1st December regarding amendment of the rate on our mortgage. I enclose a cheque for 100euros as requested and trust that the loan will now be fixed as agreed.

I would like to point out that this is the first time any such administration fee was disclosed to us and as such I was a little disappointed with the tone of your letter and look forward to confirmation of our fixed rate repayment.”

The Complainants signed a **rate options form** on an unspecified date which was returned to the Provider in **December 2006**. The **form** outlines as follows;

“Please tick the option you want.

Account Number: [Account Number]

Approximate repayment

| | | eur € |
|---------------------------------------|-------|--------------|
| Current Rate | 4.35% | € 3,082.81 |
| 1 Year fixed rate Mortgage currently | 4.75% | € 3,225.78 |
| 2 Year fixed rate Mortgage currently | 4.61% | € 3,175.38 ✓ |
| 3 Year fixed rate Mortgage currently | 4.85% | € 3,262.02 |
| 5 Year fixed rate Mortgage currently | 4.85% | € 3,262.02 |
| 7 Year fixed rate Mortgage currently | 5.15% | €3,371.93 |
| 10 Year fixed rate Mortgage currently | 5.25% | €3,408.96 |

Date:

...

- *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.*

/Cont'd...

- *If you choose a fixed rate, the standard fixed rate conditions will apply.*
- *The above fixed rates are valid for 7 working days."*

The Complainants signed the form and selected the 2 year fixed interest rate option of 4.61%. The form submitted in evidence has a handwritten annotation which details "*EC Done 14/12/06 €100 paid*".

I note the Complainants' submission that they were unaware that the account was on a tracker interest rate and not a standard variable rate in **December 2006**. The Complainants have submitted that they sought to fix the interest rate on the mortgage loan account in **December 2006** as interest rates "*rose*". Therefore it appears to me that the Complainants were aware of the moving nature of variable type rates and elected to apply the fixed interest rate period in **2006**, to protect themselves from the uncertainty of a variable type rate. The Complainants of their own volition decided to move to the fixed interest rate of 4.61%. 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.

The **mortgage loan statements** show that on **14 December 2006** a "*New Product 4.850%*" but also a "*Rate Change 4.610%*" were applied.

The Provider's internal document entitled "*[Provider] Servicing Request*" dated **19 January 2007** has been provided in evidence and details as follows;

"The above customer sent in frol and 100.00 on the 8th of December and requested the 2 year fixed rate of 4.61%. They have been put on a rate of 4.85%. The customer is extremely unhappy with this as he sent in the request before the rates changed, he has been on a number of times and seriously considering moving to [another Provider] as he has had nothing but problems with us. He is looking for written confirmation that the rate will be 4.61% within the next week. If possible could someone get back to me on this???"

The Provider wrote to the Complainants by letter dated **24 January 2007**, detailing as follows;

"I am writing to you again about your mortgage.

We have now amended your mortgage as follows :

/Cont'd...

Product type: 2 Year Fixed Rate Home Loan
Term remaining: 343 Months
Due date: 31/01/2007
New repayment: €2,921.86
**Balance outstanding:* €606,286.73
***Loan type:* Annuity
Interest rate: 4.61%

...

I hope this is to your satisfaction, if you have any questions, please phone [Redacted] on [Phone number]"

It appears from the evidence that the Provider erroneously applied the fixed interest rate of 4.85% to the Complainants' mortgage loan account in **December 2006**. While such an error on the Provider's part is unsatisfactory, I note that the error was rectified and the Complainants' mortgage loan account was backdated accordingly to the correct fixed interest rate of 4.61%.

The Provider has submitted that approximately twenty days prior to the expiry of the fixed rate period in **December 2008**, it automatically issued a **rate options letter** and **rate instruction form** to the Complainants containing the currently available rate options, including the tracker interest rate of ECB + 1.68% as an option but also detailing it as the default interest rate.

It is most disappointing that a copy of the rate option letter issued to the Complainants has not been furnished in evidence to this office. The Provider has submitted that it did not retain copies of rate options letters if they were not returned by the Complainants.

I note that issues with respect to document retention have arisen with respect to the Complainants' mortgage loan account. It appears that the Provider has not retained copies of the correspondence that issued to the Complainants as follows;

- In **July 2006**
- In **September 2006**
- In **October 2006**
- In **December 2008**

Provision 49 of the Consumer Protection Code 2006 (which was fully effective from **01 July 2007**) outlines as follows;

/Cont'd...

“A regulated entity must maintain up-to-date consumer records containing at least the following

- a) a copy of all documents required for consumer identification and profile;*
- b) the consumer’s contact details;*
- c) all information and documents prepared in compliance with this Code;*
- d) details of products and services provided to the consumer;*
- e) all correspondence with the consumer and details of any other information provided to the consumer in relation to the product or service;*
- f) all documents or applications completed or signed by the consumer;*
- g) copies of all original documents submitted by the consumer in support of an application for the provision of a service or product; and*
- h) all other relevant information [and documentation] concerning the consumer.*

Details of individual transactions must be retained for 6 years after the date of the transaction. All other records required under a) to h), above, must be retained for 6 years from the date the relationship ends. Consumer records are not required to be kept in a single location but must be complete and readily accessible.”

The Complainants’ mortgage loan was incepted for a term of **30 years** commencing from **July 2005** and the letter purportedly issued in or around **December 2008**. The mortgage loan account was redeemed in **2018**.

The Provider is obliged to retain that documentation on file for six years from the date the relationship with the mortgage holder ends. I cannot make any findings with respect to retention of records on the account in **July, September or October of 2006**, as the **CPC 2006** was not in effect at that time. However it is unclear to me why this documentation issued in **December 2008** has not been furnished by the Provider. This is most disappointing.

Notwithstanding this, I note that it is not in dispute between the parties that a letter and options form were issued to the Complainants in or around **December 2008**.

The Provider has furnished this office with a copy of a template letter indicating the content of the letter that would have notified the Complainants of the expiry of the fixed rate which it submits was issued automatically by the Provider’s automated loan processing system to the Complainants in or around **December 2008**. The template letter details as follows;

/Cont’d...

"I am writing to remind you that the current rate option on your mortgage account will end on [redacted].

Please find attached the current options available to you.

We recommend that you consider your options carefully before making your selection. If you choose a fixed rate, then at the end of the fixed rate period we will send you a list of the product options available to you which may or may not include a tracker option. Our rates at that time could be higher or lower than our current rates depending on market factors and as a consequence you may incur higher interest over the term of the loan.

If we do not receive a written instruction from you in relation to the above on or before the [redacted], the interest rate on your mortgage will be the tracker variable rate.

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

I am disappointed that a template **rate options form** has not been provided in evidence.

In any event, having considered the Complainants' mortgage loan documentation, it is my view that that the Complainants did not have a contractual entitlement to a tracker interest rate at the end of the fixed interest rate period in **December 2008**. The fact that the Provider was offering tracker interest rates to new or existing mortgage customers at that time, did not create an obligation (contractual or otherwise) on the Provider to offer a tracker interest rate to the Complainants on the mortgage loan account again in the future. It appears that the Provider, again in line with its own policy at the time, offered the Complainants a tracker interest rate of ECB + 1.68%.

The Provider has furnished in evidence a copy of the "*Lending Interest Rate*" Sheet applicable from **05 December 2008**;

"Repayment Home Loans

...

Rates applicable to New & Existing Home Loans

| | | |
|--------------------------|--------------|-------------|
| <i>2 Year Fixed Rate</i> | <i>5.75%</i> | <i>5.0%</i> |
| <i>5 Year Fixed Rate</i> | <i>5.75%</i> | <i>5.7%</i> |
| <i>7 Year Fixed Rate</i> | <i>6.10%</i> | <i>6.0%</i> |

/Cont'd...

| | | |
|--------------------|-------|-------|
| 10 year Fixed Rate | 6.10% | 6.19% |
|--------------------|-------|-------|

| LTV Variable maturity rates applicable to Existing Home Loan post 05/12/08 | Rate | APR |
|---|-------------|------------|
|---|-------------|------------|

| | | |
|-------------------------|------|------|
| Variable Rate LTV < 80% | 5.3% | 5.4% |
|-------------------------|------|------|

| | | |
|-------------------------|------|------|
| Variable Rate LTV > 80% | 5.4% | 5.5% |
|-------------------------|------|------|

| LTV Tracker maturity rates applicable to Existing Home Loan post 05/12/08 | Rate | APR |
|--|-------------|------------|
|--|-------------|------------|

| | | |
|------------------------|-------|------|
| Tracker Rate LTV < 80% | 4.93% | 5.0% |
|------------------------|-------|------|

| | | |
|------------------------|-------|------|
| Tracker Rate LTV > 80% | 4.93% | 5.0% |
|------------------------|-------|------|

The evidence shows that the tracker interest rate that the Provider had available in **December 2008** of 4.93% (ECB + 1.68%) was the same tracker interest rate that was offered to the Complainants for their mortgage loan. It was within the Provider's commercial discretion to set this rate. It is important for the Complainants to understand that they were not contractually entitled to a tracker rate or to a particular tracker rate and margin, either at this time or any other time during the lifetime of the mortgage loan.

The Complainants have submitted that their broker contacted the Provider which resulted in the Provider offering a tracker rate of ECB + 1.68% to the Complainants in **December 2008**. However no evidence has been provided which shows that any communications took place between the Provider and the broker at this time.

The Provider issued a letter to the Complainants on **12 December 2008** which outlines as follows;

"I wish to advise you that in accordance with the terms of your loan, the rate of interest has been amended to a tracker rate currently 4.930% (ECB+ max 1.680%).

Confirmation of your revised monthly payment calculated at the new rate of interest will be forwarded to you shortly.

I trust the above is to your satisfaction and should you have any query please contact [the Provider] at [phone number]."

I am of the view that the content of this letter may have been confusing in circumstances where it indicated that *"in accordance with the terms of your loan"* the rate on the mortgage loan account was amended to a tracker interest rate of ECB + 1.68%. This contradicts the Provider's submission that the tracker interest rate of ECB + 1.68% was applied in line with its policy at that time. While this is most disappointing, the fact

/Cont'd...

remains the Complainants' mortgage loan documentation did not provide for a tracker interest rate entitlement at the end of a fixed interest rate period. **General Condition 5.4** in the **General Mortgage Loan Approval Conditions** provided that either party would have the "option" of converting the loan to a variable rate loan following a fixed rate period. There was no contractual right or obligation on the Provider to apply a tracker interest rate with a margin of 1.1%, or any other margin to the mortgage loan at that time.

The application of the tracker rate of ECB + 1.68% to the mortgage loan account is detailed in the **mortgage loan statement** as "New Product 4.930%" on **12 December 2008**. I note that that the 2 year fixed rate applicable to the Complainants' mortgage loan account was not due to expire until **14 December 2008** (a Sunday) but a tracker interest rate of ECB +1.68% was applied on **12 December 2008** (a Friday).

Having considered the Complainants' mortgage loan documentation, I am of the view that there was no contractual entitlement to a tracker interest rate or to a particular margin of ECB + 1.1% either in **September 2006** or in **December 2008**.

It is important for the Complainants to understand that the Complainants' mortgage loan is governed by the Letter of Approval and terms and conditions attaching to the Letter of Approval, none of which contain a contractual entitlement to a tracker interest rate be it at the end of a fixed interest rate period or at any stage during the term of the mortgage loan.

I note that the Provider has indicated that "While the Bank notes that the Complainants have declined its offer of €5,000 in relation to the delay in this matter, this offer remains open to the Complainants." I now understand that the Provider's goodwill gesture of €5,000 compensation has been accepted by the Complainants and has been paid into an account of the Complainants' choosing.

In those circumstances and for the reasons outlined in this Preliminary 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

19 January 2021

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

ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.