



<u>Decision Ref:</u>	2021-0033
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Tracker Mortgage
<u>Conduct(s) complained of:</u>	Failure to offer a tracker rate at point of sale
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

This complaint relates to a mortgage loan account held by the Complainants with the Provider. The mortgage loan account which is the subject of the complaint was secured on the Complainants' private dwelling house. It appears that the Complainants no longer reside at this property.

The loan amount was €257,000 and the term of the loan was 35 years. The Letter of Approval which was signed on **3 April 2006** outlined the Loan Type as "*Further Advanced Variable Rate*".

It appears that the Provider transferred its interest in the mortgage loan account to another financial service provider in **2018**.

The Complainants' Case

The Complainants submit that in **2005** they applied for a mortgage with the Provider via a broker and "*were offered an advanced variable rate home loan mortgage from [the Provider] for the first year. This mortgage account was only a 12 month introductory mortgage and then after the initial 12 months were up we reverted to a standard variable interest rate mortgage of 5.1%.*"

The Complainants say that they have since queried with the Provider *“as to why we didn't receive an option to take out a tracker mortgage on the property ... [the Provider] have advised that at the time (2005/2006) that the interest rates were more attractive on the standard variable rate mortgage and that we took up this option as a result. However, [w]e are not fully satisfied with that opinion”*.

The Complainants further outline that in **2005** *“we had two other properties ... that were cross referenced against the mortgage on the new property. The mortgage account on the two apartments is a tracker mortgage.”*

The Complainants do not accept the Provider's submission that information in relation to tracker, variable and fixed interest rates were available to the Complainants' broker to discuss with the Complainants in **2005**. They state that *“The tracker mortgage option might well have been available, but we never had any such discussions and were certainly not advised by [the Provider] that this option was available. Furthermore, if this option was discussed with us and based on the rates that [the Provider] have provided in their response ... it would have been advantageous to take up the tracker mortgage option at the rate offered of 3.1% (Loan Amount 250,000E - 749,999E) as we ended up taking up a rate of 5.1% after the initial 12 month period expired. This is further proof that had we known about the tracker rates available we would have undoubtedly availed of them. It doesn't take long to work out that a 3.1% Interest rate (Tracker) compared to 5.1% rate (Variable) is significantly more attractive. We would have taken the tracker option if it was offered and discussed with us.”*

The Complainants further submit that the Provider stated they applied for a loan in the amount of €236,000 on a fixed interest rate of 2.99%. They say *“A loan amount to this value was never signed for ... Similarly, the reference made to 2.99% is inaccurate ... the amount of initial loan that we signed on April 3rd 2006 does not make reference to this rate. We therefore, disagree with the [Provider's] response ... and we herein provide back-up documentation outlining the home loan mortgage amount (257,000Euro) and the interest rate provided. This would strongly indicate that [the Provider] are providing inaccurate information”*.

On expiry of the initial 12 month discount variable rate period in **May 2007**, the Complainants' mortgage loan automatically converted to the Provider's standard variable rate of 5.10%. The Complainants submit that *“providing a variable rate of 5.10% does not offer value to the customer and clearly works in favour of the lender, [the Provider].”*

The Complainants further submit that in **May 2007** *“there was no offering of a tracker rate, at this point why were we not made aware of the tracker rate on offer?”*

We feel that this is unjust because tracker mortgage options we[re] available and we feel that [the Provider] did everything in their power to hide this from us. It was clear that the bank were directing us away from a tracker mortgage option as they only ever offered variable and fixed rate options to us.”

The Complainants outline that “As a result of not receiving or being offered a tracker rate, we had no choice but to move our very young family to [Country] in order to service our mortgage which meant we had to leave our elderly, ill parents in Ireland and also our siblings. This has had a major impact on our lives both physically and mentally. In addition [the Provider] has sold our home loan to a vulture fund, we had a restructure agreement in place which we are servicing (no arrears) and we had a realistic goal to return to Ireland and revert to full capital and interest. Whatever hopes we had of returning to Ireland have now been shattered, [the Provider] need to be held accountable for their actions.”

The Provider’s Case

The Provider submits that it had no direct involvement with the Complainants during the application process as the Complainants completed their mortgage loan application with their chosen broker who submitted the application to the Provider on their behalf. It states that it provided information on all products available from the Provider to the Complainants’ broker, who had the responsibility to ensure that the Complainants were fully informed of all options available to them before they made their final decision on the loan type and rate for which they applied. The Provider submits that it was not a party to the discussions between the Complainants and their broker in respect of the Complainants’ selected interest rate.

The Provider details that the Complainants completed two **applications for credit** in respect of three properties which showed that the Complainants intended to purchase a new home and refinance two apartments they already owned for the purpose of redeeming two existing loans not held with the Provider and providing equity. It states that the application for the Complainants’ mortgage loan account ending **5910** was submitted on their behalf by a broker on **22 November 2005**.

The Provider states that the application form included a range of different types of loan for selection, “one of which was a tracker home loan”. The Provider relies on its **Rate Sheet** dated **17 November 2005** which shows the rates applicable to new home loans at that time. It submits that the Complainants decided to apply for a new home loan rate in the amount of €236,000 repayable over a period of 35 years at a one year fixed interest rate, which was 2.99% at the time of completion.

The Provider submits that on **21 December 2005** its electronic diary entry shows that *“the selected rate was changed to a discount variable rate and a Letter of Approval issued in which the Complainants were offered the amount for which they had applied repayable over 35 years with an initial discount variable rate”*.

The Provider states that on **27 January 2006** the Complainants subsequently amended their application by completing an application form in which they applied for a period of four months from the date of drawdown during which the monthly repayments would be deferred, with the exception of insurance and mortgage protection payments, and added to the amount of the loan.

The Provider states it subsequently issued an amended **Letter of Approval** to the Complainants on **31 January 2006** which included *“special conditions in respect of a discount variable rate and a deferral of monthly repayments for a period of four months as requested by them.”* It states that the amended Letter of Approval provided for a loan amount of €257,000, and the interest rate applicable to the mortgage loan for the first 12 months was the new business variable rate after which the rate would convert to the Provider’s prevailing standard variable rate. The Provider relies on **Special Condition A** of the Complainants’ **Letter of Approval** in support of this. It states that the Complainants did not have a contractual entitlement to be offered a tracker rate of interest at any time during the term of the mortgage loan.

The Provider submits that the loan offer was accepted on **3 April 2006** by the Complainants in the presence of their solicitor and they confirmed that their solicitor had fully explained the terms and conditions of the loan to them. It details that the mortgage loan was drawn down on **9 May 2006** on the new business variable rate of 2.94% and the monthly repayments commenced on **9 October 2006**, in accordance with **Special Condition G** of the **Letter of Approval** which provided for the four month repayment deferral.

The Provider states that on **9 May 2007** the rate of interest on the mortgage account was changed to the Provider’s current standard variable rate of 5.10% as provided for in **Special Condition A** of the Letter of Approval. It states that it has no record of the Complainants having requested or received any interest rate options in relation to the mortgage account ending **5910** in or around **May 2007**.

The Provider submits that it *“firmly rejects the Complainants’ unfounded submissions ... that they were guided away from a tracker and a tracker rate was hidden or withheld from them. There is no basis for the Complainants’ claim in this regard. Interest rate options available to customers of the Bank are published widely.”*

The Complaint for Adjudication

The complaints for adjudication are as follows;

- a) The Provider did not offer the Complainants a tracker interest rate when they applied for their mortgage loan in **November 2005**, and
- b) The Provider did not offer the Complainants a tracker interest rate on the expiry of the initial 12 month business variable rate in **May 2007**.

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 19 January 2021, 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.

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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.

The issue to be determined is whether the Provider failed to offer the Complainants the option of a tracker interest rate when they applied for the mortgage loan in **2005** and on the expiry of the initial discounted variable rate period in **2007**. In order to determine this, it is necessary to review and set out the relevant provisions of the Complainants’ mortgage loan documentation. It is also necessary to consider the details of certain interactions between the Complainants and the Provider between **2005** and **2007**.

I have considered the **Application for Credit** furnished in evidence, which is date stamped **5 December 2005**.

The **“case summary”** section of the form details as follows;

*“Applicants are buying a PDH for €315k. They each have an apt in Dublin valued @ €270k ea, with mortgages €184k ea. They propose to refinance both apts to max LTV., towards purchase of PDH, and require overall facilities as follows:
RIP on both apartments €459k (LTV 85%), to clear existing & provide equity.
PDH mortgage on New Hse €236k (75%) Int. Only
Total €695k”*

I note that in the **“Mortgage Details”** section of the **application form**, **“€236,000”** is written in response to the question **“loan amount”** and **“35 years”** is written in response to the question **“loan term”**. In response to the question **“type of loan”** the option **“home loan”** is ticked.

The other types of loan available were tracker home loan, interest only home loan, RIP, tracker RIP, interest only RIP, further advance, secured personal loan, pension mortgage, a Named Provider product, and other. In response to the question **“rate type”** the option **“fixed”** was ticked. The other rate type options available were tracker, fixed, discount, split or other. In response to the question **“if fixed specify fixed period”** the words **“1 yr fixed”** are written.

The Provider has submitted into evidence a copy of a published marketing document entitled **Lending Interest Rates**, which is noted as being **“effective from the start of business on the 17th November 2005”**.

This document outlines as follows;

“Rates applicable to new Home Loans

1 Year Discounted Variable Rate	2.69%	3.5%
1 Year Discounted Variable Rate (when borrowing <50% of the property value)		
2.49%	3.5%	
2 Year Discounted Variable Rate	2.99%	3.5%
1 Year Fixed Rate	2.99%	3.6%
2 Year Fixed Rate	3.70%	3.6%
3 Year Fixed Rate	3.99%	3.8%

Tracker Mortgage (Home Loan and Residential Investment Property)

Loan Amount of €150,000 - €249,999	3.40%	3.5%
Loan Amount of €250,000 - €749,999	3.10%	3.1%
Loan Amount of €750,000 or more	2.90%	2.9%

A further **[Named Product] Mortgage Application Form** signed by the Complainants, has been submitted in evidence. This form was generated on **27 January 2006** and details as follows;

~~“We wish to apply for [Named Product] Mortgage* on my [Provider] home loan, for the following number of months, from the date of drawdown:~~

- 1 Month
- 2 Months
- 3 Months
- 4 Months ✓

~~“We are aware that during the payment holiday period chosen above no mortgage repayments will be payable.~~

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✗We are aware that all insurance premiums will continue to be payable during the payment holiday period.

✗We are aware that the interest portion of my monthly repayments, will be added to the principal at the end of the month, or each month of the holiday period (if for more than one month) and will be repayable over the remaining term of the loan”

I note that tracker interest rates were on offer generally by the Provider when the Complainants applied for the mortgage loan in or around **November 2005**. The Complainants availed of the services of a third party Broker during the application stage of the mortgage loan application. I note that the **Application for Credit** outlined the types of interest rate options available generally on mortgage loans, including the tracker rate.

In circumstances where the Complainants were engaging with a Broker with respect to the mortgage loan application, I accept that there was no requirement for the Provider to communicate directly to the Complainants at that time.

Furthermore the fact that tracker interest rate options were available generally as part of the Provider’s suite of products at the time, did not oblige the Provider to offer the Complainants a tracker interest rate on this loan application. Therefore, the evidence does not support the Complainants’ submission that the tracker interest rate option “*was never given*” to them by the Provider.

Furthermore, nothing in the evidence submitted indicates that that if a mortgage application was submitted by the Complainants selecting a tracker interest rate loan as their preference whether it would have resulted in the Provider acceding to that request and issuing a Letter of Offer on that basis. There was no obligation on the Provider, contractual or otherwise to give the Complainants the option of a tracker interest rate on their mortgage loan when they made their application to the Provider.

I note that the Complainants’ broker wrote to the Provider by letter dated **12 December 2005** detailing as follows;

“I enclose Valuation in the above case and should be obliged for your letter of offer as soon as possible.”

I note that the Provider’s internal email dated **21 December 2005** detailed as follows;

“CONFIRMED AS DISC VAR OVER 35 YRS”

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The **Letter of Approval** dated **31 January 2006** details as follows;

<i>“Loan Type:</i>	<i>Further Advance Variable Rate</i>
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<i>Purchase Price / Estimated Value :</i>	<i>EUR315,000.00</i>
<i>Loan Amount :</i>	<i>EUR257,000.00</i>
<i>Interest Rate :</i>	<i>2.94%</i>
<i>Term :</i>	<i>35 year(s)”</i>

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

“Special Conditions

- A. *The interest rate applicable to this loan will, for a period of 12 months from the date of the issue of the loan, be the new business variable rate. This rate currently equates to the interest rate shown above.*

The new business variable rate, being a variable rate, may change from time to time and without regard to the standard variable rate or any variations thereof, during the 12 month period from the date of cheque issue in accordance with the mortgage conditions. On the expiry of the 12 month period, the new business variable rate will cease and the interest rate applicable to this loan shall revert to the prevailing standard variable rate applicable to loans of this type.

...

- G. *That the repayment on this loan (but not any insurance premium or mortgage protection premium) will be deferred for the first 4 month(s) from the date of drawdown and thereafter the repayments will be recalculated over the remaining term of the loan. The monthly accrued interest will be added to the principal at the end of the month or each month (if for more than one month) and the interest will accrue on the increased principal accordingly. The “amount of each instalment” set out in the important information on the letter of approval has been recalculated so as to take account of the deferral.”*

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

“CONDITIONS RELATING TO FIXED RATE LOANS.

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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."

The **Acceptance of Loan Offer** was signed by the Complainants and witnessed by a solicitor on **3 April 2006**.

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I note that 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 Condition*
- 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 12 month new business variable interest rate and thereafter the Provider’s standard variable rate would apply, with repayments deferred for the first four months.

The standard variable rate, in the Complainants’ mortgage loan documentation, made no reference to varying in accordance with variations in the ECB refinancing rate. Rather it was a variable rate which could be adjusted by the Provider.

The Complainants accepted the **Letter of Approval** having confirmed that it had been explained to them by their solicitor in **April 2006**. If the Complainants were not happy with the terms of the Letter of Offer, including the type of interest rate, the Complainants could have decided not to accept the offer made by the Provider. There was no contractual or other obligation on the Provider to offer the Complainants a tracker interest rate on the expiry of the initial 12 month new business rate period in **May 2007**.

The Provider states that it *“has no record of the Complainants having requested or having received any interest rate options in relation to the mortgage loan account ending 5910 in or around May 2007”*. It is disappointing that the Provider has not explained why it does not hold any record of correspondence with or documentation issued to the Complainants in relation to the expiry of the initial new business variable rate period or in relation to current interest rate options when the initial variable rate period expired in **May 2007**.

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Provision 49 of the **Consumer Protection Code 2006** governs retention of records and was not effective until **01 July 2007**. In these circumstances, while I am disappointed that the Provider has failed to retain any records relating to the rate change in **May 2007**, there was no breach of the CPC 2006.

Nonetheless, it is not in dispute between the parties that an options form was not signed at the time electing to apply any interest rate to the mortgage loan and the mortgage loan account was automatically switched to the standard variable rate of 5.10% on the expiry of the initial 1-year discounted variable interest rate period in **May 2007**.

In any event, 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 variable rate period which applied from **April 2006** to **May 2007**. It would have been a matter of commercial discretion for the Provider to offer the Complainants the option of a tracker interest rate on the mortgage loan. The Provider has summarised its policy at the time 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 ceased offering the tracker mortgage interest rate in [mid] 2008 to new business, it continued until [mid] 2009 its policy of offering a tracker interest rate maturity option to existing fixed rate customers whose contracts did not contain an entitlement to be offered a tracker rate, at maturity of an existing fixed rate period.

After [mid] 2009, the Bank continued to offer and / or apply Tracker rates to maturing loans where customers had a contractual right to same."

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It appears that the Complainants contacted the Provider in or around **July 2007** requesting details of the available fixed interest rates. The Provider has supplied in evidence a copy of its letter to the Complainants dated **9 July 2007** which details as follows;

“Thank you 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.

...

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

The options form enclosed with the Provider’s letter dated **9 July 2007** detailed as follows;

<i>“Current rate</i>	<i>5.35%</i>	<i>€</i>	<i>1,372.00</i>
<i>1 Year fixed rate Mortgage currently</i>	<i>5.35%</i>	<i>€</i>	<i>1,372.00</i>
<i>2 Year fixed rate Mortgage currently</i>	<i>5.55%</i>	<i>€</i>	<i>1,405.34</i>
<i>3 Year fixed rate Mortgage currently</i>	<i>5.60%</i>	<i>€</i>	<i>1,413.73</i>
<i>5 Year fixed rate Mortgage currently</i>	<i>5.60%</i>	<i>€</i>	<i>1,413.73</i>
<i>7 Year fixed rate Mortgage currently</i>	<i>5.60%</i>	<i>€</i>	<i>1,413.73</i>
<i>10 Year fixed rate Mortgage currently</i>	<i>5.60%</i>	<i>€</i>	<i>1,413.73</i>

...

- If you choose a fixed rate, the standard fixed rate conditions will apply.”*

The Provider wrote to the Complainants again on **11 July 2007**, as follows;

“Thank you 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.”

An **options form** was enclosed with the Provider’s letter dated **11 July 2007** which detailed as follows;

<i>“Current rate</i>	<i>5.35%</i>	<i>€</i>	<i>1,372.00</i>
<i>1 Year fixed rate Mortgage currently</i>	<i>5.35%</i>	<i>€</i>	<i>1,371.83</i>
<i>2 Year fixed rate Mortgage currently</i>	<i>5.55%</i>	<i>€</i>	<i>1,405.12</i>
<i>3 Year fixed rate Mortgage currently</i>	<i>5.60%</i>	<i>€</i>	<i>1,413.49</i>
<i>4 Year fixed rate Mortgage currently</i>	<i>5.50%</i>	<i>€</i>	<i>1,396.76</i>

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5 Year fixed rate Mortgage currently	5.60%	€	1,413.49
7 Year fixed rate Mortgage currently	5.60%	€	1,413.49
10 Year fixed rate Mortgage currently	5.60%	€	1,413.49

...

- *If you choose a fixed rate, the standard fixed rate conditions will apply.”*

No evidence has been provided to show whether the Complainants completed and signed the fixed rate **options form**.

The evidence shows that in or around **July 2007** the Complainants contacted the Provider to request a fixed interest rate for their mortgage loan account and the Provider made that interest rate option available to the Complainants. There was no contractual or other obligation on the Provider to offer the Complainants a tracker interest rate when they contacted the Provider in **July 2007**.

It is important for the Complainants to understand that they did not have a contractual or other entitlement to a tracker interest rate on their mortgage loan account, and accordingly, there was no contractual or other obligation on the Provider to offer the Complainants a tracker interest rate on the mortgage account in **2007**, or at any other time, even if they had contacted the Provider and requested that a tracker interest rate be applied to the mortgage loan account.

The evidence shows that the choice to take out the mortgage loan on the terms and conditions offered by the Provider was a choice that was freely made by the Complainants. I note that the Provider did not have any policy on offering tracker interest rates to customers, on demand, where there was no contractual right to a tracker interest rate in the underlying mortgage loan documentation.

It appears from the evidence before me that Complainants did not request that the Provider apply a tracker interest rate to their mortgage loan at any point in time. In any event, as I have already stated, even if they had, there was no obligation on the Provider to accede to such a request. Nor was there any obligation on the Provider to contact the Complainants at any stage to offer a tracker interest rate to the Complainants on their mortgage loan. Nonetheless, if the Complainants wished to pursue the potential option of applying a tracker interest rate on the mortgage loan, the Complainants could have contacted the Provider at the time. It would then have been a matter of commercial discretion for the Provider as to whether it wished to accede to any such request made by the Complainants to apply a tracker interest rate to the mortgage loan.

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It was entirely within the Provider's rights and commercial discretion whether to accede to that request, if it was made. There is no evidence before me which suggests that the Complainants ever made such a request.

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**

9 February 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**

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