



<u>Decision Ref:</u>	2021-0264
<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 Failure to offer a tracker rate throughout the life of the mortgage
<u>Outcome:</u>	Rejected

**LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

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

The loan amount was €334,800 and the term of the loan was 25 years. The Loan Offer Letter signed by the Complainants on **19 June 2006** detailed that the loan type was a *"One Year Fixed Residential Investment Loan (Interest Only)"*.

The Complainants' Case

The Complainants submit that in **2006** they initially requested for their mortgage loan account to be placed on the *"best interest rate linked to the ECB (European Central Bank) interest rate"*. The Complainants state that despite this request, their mortgage account was placed on *"an exorbitant mortgage rate"* of 5.80% which they state is *"not offered to new customers on the market."*

The Complainants further submit that the Provider failed to offer a tracker interest rate on their mortgage loan account on the expiry of a fixed rate period in **June 2010**. They state that they requested a tracker rate at the time, but the Provider failed to respond to their request and their account was *"automatically put on a variable rate"*.

The Complainants further state that they have never gotten “an interest rate cut” even though they have sought a lower rate on numerous occasions and mortgage interest rates “are almost 0% (ECB)”.

The Complainants assert that they have been poorly treated by the Provider over the years and their mortgage “has become unaffordable”. They state that there is “a lack of engagement from [the Provider] to provide a reasonable case for charging [them] 6% when they borrow @ 0%.”

The Complainants estimate that they “have paid over €230,000 in interest to date”.

The Complainants are seeking the following;

- a) A reduction on the interest rate applied to their mortgage loan account, and;
- b) A refund of the difference in interest rates paid on their mortgage loan account and the tracker interest rate, backdating to **June 2006**.

The Provider’s Case

The Provider submits that the Complainants were not offered a tracker interest rate on their mortgage loan account in **June 2006** because they “applied for a loan which was not a tracker rate loan”. It details that the loan offer made to the Complainants was “based on the application which the Complainants had made through their broker”. It states that therefore it cannot comment on the Complainants’ submission that they initially requested that their mortgage account operate on the “best interest rate linked to the ECB (European Central Bank) interest rate”.

The Provider notes that the Complainants’ Broker applied for their mortgage loan on their behalf on **26 April 2006**. It details that the application was submitted for a residential investment loan in the amount of €334,800, repayable over a period of 25 years. The Provider submits that the Complainants requested to have a one-year fixed interest rate 3.45% applied to the mortgage loan with interest only repayments, however, this interest rate increased to 3.78% between the date of the application and the date of the loan offer issued on **1 June 2006**.

The Provider states that it was not a party to the discussions between the Complainants and the Broker in relation to the mortgage loan application. It outlines that a “number of interest rates were available” from the Provider at that point in time, including the option of a tracker rate which it states the Complainants could have applied for. It states however that instead the Complainants opted to apply for a one-year fixed interest rate.

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The Provider submits that the Complainants did not have a contractual right to be offered a tracker interest rate on their mortgage loan account at any point in time. In this regard, the Provider refers to **General Mortgage Loan Approval Condition 5** of the mortgage loan agreement which provided that the Provider could apply a variable rate of interest to the account on expiry of the fixed interest period.

The Provider details that three separate fixed rate periods applied to the Complainants mortgage loan account, which expired on the following dates;

- **26 June 2007**
- **25 June 2010**
- **1 August 2012.**

The Provider states that prior to the expiry of the initial fixed interest rate period in **June 2007**, the Complainants were issued an options letter listing the interest rate options available to them at that point in time, including a standard variable rate, fixed rate options and a tracker variable rate of 4.85% (ECB + 1.10%). It outlines that the Complainants completed the options form on **10 June 2007** electing to apply a three-year fixed interest rate of 5.10% to the account, which was applied on **26 June 2007**.

The Provider states that the standard variable rate option was offered to the Complainants in accordance with **General Condition 5** of their mortgage agreement, however the fixed and tracker rate options were provided at the Provider's discretion. In this regard the Provider details that it began offering tracker interest rates to residential investment customers in **early 2004**. It states that from **mid-2006** until **mid-2009** it offered tracker rate options to existing customers whose accounts were maturing from a fixed interest rate period, irrespective of whether or not they had a contractual entitlement to a tracker rate. It further details that from **late 2006** until **mid-2009** a tracker interest rate was the default interest rate on the maturity of interest rate periods in respect of customers with no contractual entitlement to a maturity tracker rate.

The Provider submits that prior to the expiry of the three-year fixed rate period on **25 June 2010**, it issued a rate options letter to the Complainants offering them an LTV variable rate of 4.95% and a 2-year fixed interest rate of 5.35%. It outlines again that the "*basis for the variable rate option*" was **General Condition 5** and that the fixed rate option was offered "*at its discretion*". The Provider details that the variable interest rate of 4.95% was applied to the mortgage loan account on **25 June 2010** and the Complainants subsequently opted to apply the two-year fixed interest rate to their mortgage loan account, which was applied on **23 August 2010**, effective from **1 August 2010**.

The Provider states that on **2 July 2012**, prior to the expiry of the two-year fixed interest rate on **1 August 2012**, it issued another rate options letter to the Complainants. The options form offered an LTV variable rate and 2- and 5-year fixed interest rate terms. Again, the Provider details that the variable rate was offered in accordance with **General Condition 5** and the fixed rate options were offered at its discretion.

The Provider details that the Complainants have enquired about reducing the interest rate applicable to their mortgage loan on a number of occasions. It states that the Complainants wrote to the Provider on **3 June 2015** seeking a lower interest rate on their mortgage loan account and it responded by letter dated **12 June 2015** advising that it was *“not in a position to offer them a lower rate at that time.”*

The Provider submits that the Complainants issued another letter to the Provider on **8 March 2017** *“raising a number of queries with regard to their current interest rate at that time.”* The Provider informed the Complainants by letter dated **10 March 2017** that it was not in a position to offer a reduced interest rate on their account, and it issued a further letter on **15 March 2017** addressing the queries which the Complainants had raised in its letter of **8 March 2017**.

The Provider outlines that the Complainants sent a further letter to the Provider querying the interest rates available for their account, to which it responded on **8 May 2017** informing the Complainants that it had previously responded to their queries in its letter of **15 March 2017**.

The Provider submits that it *“was not and is not in a position to offer the Complainants a rate reduction”*.

The Complaints for Adjudication

The complaints for adjudication are that the Provider wrongfully failed to offer the Complainants a tracker interest rate at the following points in time;

- a) when the mortgage loan account was drawn down in **June 2006**, and;
- b) on expiry of the fixed rate period in **June 2010**

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 7 July 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.

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.

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In order to determine this complaint, it is necessary to review and set out the relevant documentation relating to the Complainants' mortgage loan. It is also necessary to consider the details of certain interactions between the Complainants and the Provider in **April 2006** and **June 2010**.

The Complainants signed the **Application for Credit** on **26 April 2006** which was accompanied by the Broker's **Application Form**.

Section 2 of the **Application Form** set out a number of loan types and the "*Residential Investment Loan*" option was ticked.

The form further detailed:

"
Interest Rate: 3.45%
Type of Mortgage: Interest Only with Fixed 1 yr Repayment Term: 25
Purchase Value/Price: €372,000 Loan Amount: €334,800.00"

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 10th April 2006*".

This document outlines as follows:

"
Tracker Mortgage (Home Loan and Residential Investment Property)
Loan Amount €0 - €99,999 3.85% 3.9%
Loan Amount €100,000 - €249,999 3.75% 3.8%
Loan Amount €250,000 - €749,999 3.60% 3.7%
Loan Amount of €750,000 or more 3.40% 3.5%

...
Residential Investment Property Loans & Commercial Mortgages
Rates available on request.
..."

I note that tracker interest rates were on offer generally by the Provider when the Complainants applied for the mortgage loan in **April 2006**. The Complainants availed of the services of a third party Broker during the application stage of the mortgage loan application. 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.

I have not been furnished with any documentary evidence of any discussions which may have taken place between the Provider and the Complainants' Broker during the application stage in relation to interest rate options. Notwithstanding this, it is important for the Complainants to be aware that the Provider was under no obligation to offer them any mortgage or any particular type of mortgage in **2006**.

It was a matter for the Provider to decide firstly, if it was willing to offer the Complainants any borrowing at the time and secondly, how that offer would be structured. 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 for their mortgage loan.

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. The Complainants applied for an interest only mortgage on a one-year fixed interest rate, and that is what they were offered by the Provider.

I note that the Provider issued the following **Letters of Approval** to the Complainants:

- A **Letter of Approval** was issued to the Complainants on **16 May 2006** for a "*One Year Fixed Residential Investment Loan (Interest Only)*" in the amount of €300,000, at a fixed interest rate of 3.45%.
- An **Amended Letter of Approval** was issued to the Complainants on **25 May 2006** also for a "*One Year Fixed Residential Investment Loan (Interest Only)*" in the amount of €334,000, at a fixed interest rate of 3.78%.

- A further **Amended Letter of Approval** issued to the Complainants on **29 May 2006** which provided for a *“One Year Fixed Residential Investment Loan (Interest Only)”* in the amount of €334,800, at a fixed interest rate of 3.78%.

I have not been provided with any evidence to suggest that the above Letters of Approval were signed or accepted by the Complainants.

An **Amended Letter of Approval** dated was issued to the Complainants on **1 June 2006**, which details as follows:

<i>Loan Type:</i>	<i>One Year Fixed Residential Investment Loan (Interest Only)</i>
<i>“Purchase Price/Estimated Value:</i>	<i>EUR 372,000.00</i>
<i>Loan Amount</i>	<i>EUR 334,800.00</i>
<i>Interest Rate:</i>	<i>3.78%</i>
<i>Term:</i>	<i>25 year(s)”</i>

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

“Special Conditions

- A. *[The Provider] will accept monthly repayments, as set out in the Letter of Approval, representing repayment of interest only (as may be varied from time to time and including insurance premiums where applicable) for the first three years from the date of cheque issue or such other period as [the Provider] may decide.*

[The Provider] reserves the right to review the deferral of the repayment of principal at any time during the term of the loan, including the first three years of the term and may require the applicant to cease the interest only repayment and require the payment of principal and interest and the applicant will immediately arrange to pay the revised monthly repayment comprising the repayment of principal and interest calculated over the remaining term so that the principal and interest will be discharged within the existing term of the loan.”

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

“CONDITIONS RELATING TO FIXED RATE LOANS

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

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

5.3 Whenever repayment of a loan in full or in part is made before the 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 to that being repaid to the end of the Fixed Rate Period at the fixed rate of interest, and on the other hand the sum (if lower) which [the Provider] could earn on a similar principal sum to that being repaid if [the Provider] loaned such sum to a Borrower at its then current New Business Fixed Rate with a maturity date next nearest to the end of the Fixed Rate period of the loan, or part thereof, being repaid.*

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

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

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

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

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The **Acceptance of Loan Offer** was signed by the Complainants and witnessed by a solicitor on **19 June 2006** 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 one-year fixed interest rate of 3.78% and thereafter a variable rate, with interest only repayments for the first three years from the date of drawdown. The variable rate, in the Complainants’ mortgage loan documentation, made no reference to varying in accordance with variations in the ECB refinancing rate, rather it was a variable rate which could be adjusted by the Provider.

The Complainants accepted the Letter of Approval having confirmed that the Loan Offer had been explained to them by their solicitor in **June 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.

The Provider has submitted that it issued a **rate options form** to the Complainants prior to the expiry of the discounted tracker rate period in **June 2007**. It is disappointing that a copy of the **rate options letter** that would have issued to the Complainants with the form has not been furnished in evidence to this office, nor has the Provider provided any explanation as to why this letter has not been furnished.

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

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

- a) a copy of all documents required for consumer identification and profile;*
- b) the consumer’s contact details;*
- c) all information and documents prepared in compliance with this Code;*
- d) details of products and services provided to the consumer;*

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- 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 **25 years** commencing from **June 2006** and the rate options letter purportedly issued in or around **June 2007**. There is no indication that the mortgage has been redeemed or disposed of in any way. The Provider is obliged to retain that documentation on file for six years from the date the relationship with the mortgage holder ends.

It is therefore unclear to me, in the absence of any explanation, why this correspondence has not been furnished by the Provider. This is disappointing.

Nonetheless a copy of the **rate options form** issued to the Complainants prior to the expiry of the one-year fixed interest rate in **June 2007** has been provided in evidence and outlines as follows:

“

		<i>*Monthly repayment*</i>	
		<i>EUR</i>	
- Tracker variable rate (ECB + maximum 1.1000%)*	- Currently:	4.85%	1321.45
- Standard variable rate	- Currently:	5.10%	1389.41
- 1 year fixed rate	- Currently:	4.99%	1359.51
- 2 year fixed rate	- Currently:	5.15%	1403.00
- 3 year fixed rate	- Currently:	5.10%	1389.41

...

- Please note, if you choose a fixed rate, the standard fixed-rate conditions will apply (see over the page).

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- **The interest rate that applies to this Tracker Mortgage Loan will never be more than 1.1000% over the European Central Bank Refinancing Rate (the "ECB Rate"). See over the page for further details on Tracker Mortgage Loans.**

The reverse of the rate options form contained the same text as **General Condition 5.3 of General Mortgage Loan Approval Conditions** (as extracted above) under the heading "**Fixed Rate Loans**". For the sake of brevity, I have not quoted it here.

Under the heading "**Tracker Mortgage Loans**" the reverse of the rate options form contained the following;

- "1. The interest rate applicable to Tracker Mortgage Loans is made up of the European Central Bank Refinancing Rate ("the ECB Rate") plus a percentage over the ECB Rate. The amount of the percentage over the ECB Rate will depend on the amount of the loan and that percentage will not be exceeded during the term of the loan.*
- 2. The ECB rate may be increased or decreased from time to time by the European Central Bank (ECB). We will apply all increases or decreases within one month from the date announced by the ECB as the effective date.*
- 3. If we cannot use the ECB Rate for this loan, we will use another reference rate or calculation that is fair and reasonable.*
- 4. If more than one Tracker Mortgage Loan exists on the property, these loans cannot be added together to get a different Interest rate over the ECB rate."*

The Complainants did not opt to accept the tracker interest rate option of 4.85% (ECB + 1.10%) which they were offered by the Provider and instead signed the **rate options form** on **10 June 2007** electing to accept the 3-year fixed interest rate of 5.10%.

The reverse side of the options form which the Complainants signed on **10 June 2007** contained detail about the tracker interest rate offer, such that the Complainants could have made an informed decision as to which interest rate to choose at the time. The Provider had set out in a clear and comprehensible manner that the interest rate applicable to a tracker mortgage loan is made up of "*the European Central Bank Refinancing Rate ("the ECB Rate") plus a percentage over the ECB Rate*".

Therefore, the Complainants ought to have been aware that, in circumstances where they opted for the tracker interest rate or did not select another rate and allowed the mortgage loan to default to the tracker interest rate, the percentage of 1.10% above ECB would not be exceeded during the term of the loan and the ECB rate would fluctuate as set by the European Central Bank. The Complainants however opted not to choose the tracker interest rate of 4.85% (ECB + 1.10%) and instead chose to apply a 3-year fixed interest rate of 5.10% to the mortgage loan in **June 2007**.

In its response to this complaint, the Provider has summarised its policy with respect to tracker interest 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 (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. In the absence of a customer selection, the tracker interest rate was applied to the mortgage as the default interest rate.*

The Bank also provided in options letters issued from [mid] 2006 that, in default of selection of one of the offered options, the loan would default to the tracker rate of interest on maturity of the fixed rate period.

- *The Bank ceased offering new tracker rate loans on [mid] 2008. It also ceased offering a switch to a tracker rate from another variable rate on that date.*
- *While the Bank commenced the withdrawal of its tracker mortgage interest rate in [mid] 2008, it continued until [mid] 2009 its policy of offering a tracker interest rate maturity option to existing fixed rate customers whose contracts did not contain an entitlement to be offered a tracker rate at maturity of an existing fixed rate period.*
- *After [mid] 2009, the Bank continued to offer and / or apply Tracker rates to maturing loans where customers had a contractual right to same.”*

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Having considered the mortgage loan documentation, I accept that the Complainants did not have a contractual entitlement to a tracker interest rate at the end of the fixed rate period which applied from **June 2006** to **June 2007**. It appears that the Provider, in line with its own policy at the time, offered the Complainants a tracker interest rate, though it had no obligation to do so.

Prior to the expiry of the 3-year fixed rate period in **June 2010**, the Provider issued a **rate options form** to the Complainants. Again, it is disappointing to note that a copy of the **rate options letter** that would have issued to the Complainants with the form has not been furnished in evidence to this office. Again, the Provider has not furnished any explanation outlining why a copy of this letter has not been furnished in evidence. I refer again to the Provider's obligations under **Provision 49 of the Consumer Protection Code 2006** (which was fully effective from **01 July 2007**).

The **rate options form** issued to the Complainants in or around **June 2010** set out the following interest rate options:

"

			<i>Monthly Repayment EUR</i>
<i>LTV Variable Rate **</i>	- Currently:	4.9500%	1418.50
<i>2 Year Fixed Rate</i>	- Currently:	5.3500%	1527.66

...

- *Please note, if you choose a fixed rate, the standard fixed-rate conditions will apply (see over the page)."*

The reverse of the rate options form contained the same text as **General Condition 5.3 of General Mortgage Loan Approval Conditions** (as extracted above) under the heading "**Fixed Rate Loans**". Again, for the sake of brevity, I have not requoted it here.

I note that the Complainants completed and signed the rate options form on **17 June 2010** selecting the 2-year fixed interest rate of 5.35%.

The **mortgage loan statements** show that the Complainants' mortgage loan defaulted to an LTV variable rate of 4.95% on **25 June 2010**, in accordance with **General Condition 5.4** of their mortgage loan agreement.

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The Complainants issued a letter to the Provider dated **13 August 2010** which stated as follows:

“Just a note further to your letter of August 12th, to advise that I returned the options form on the 17 June '10 to fix my mortgage (2 yr fixed) at 5.35% (copy enclosed).

Please note that we are finding it difficult to [repay] the current mortgage payments and will not be paying 5.45% interest.”

I note from the **mortgage loan statements** that the 2-year fixed interest rate of 5.35% was applied to the mortgage loan on **23 August 2010** and backdated to **1 August 2010**.

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 **June 2010** or at any other time, even if they contacted the Provider and requested that a tracker interest rate be applied to the mortgage loan account. **General Condition 5.4** of their mortgage loan agreement clearly sets out that on the expiry of the fixed rate period, the Complainants would be offered a variable interest rate which could be increased or decreased at the Provider's discretion. There was no reference to ECB or the ECB refinancing rate.

The Provider issued a **rate options letter** to the Complainants on **2 July 2012** which stated the following:

“I am writing to remind you that the current rate option on your mortgage account will end on 01 Aug 2012.

Please find attached the current options available to you.

We recommend that you consider your options carefully before making your selection...

I we do not receive a written instruction from you on or before the 01 Aug 2012, the interest rate on your mortgage will be the LTV Variable Rate”.

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The **rate options form** enclosed with the letter offered the Complainants the following options:

<i>“ Option</i>		<i>Monthly Repayment</i>
<i>LTV Variable Rate **</i>	<i>Currently: 5.99%</i>	<i>1,638.54</i>
<i>2 Year Fixed Rate</i>	<i>Currently: 7.35%</i>	<i>2,012.27</i>
<i>5 Year Fixed Rate</i>	<i>Currently: 8.85%</i>	<i>2,424.46”</i>

As outlined above, the Complainants 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 **August 2012**.

I have not been furnished with any evidence as to whether the Complainants completed the options form. In any event, I note from the **mortgage loan statements** that the LTV variable rate of 5.64% was applied to the account on **1 August 2012**. The evidence shows that the mortgage loan account has remained on a variable rate since **August 2012**.

The Complainants submit that they have been placed on an *“exorbitant rate”* which is *“unavailable to the general public”*. They have submitted that they have sought a reduced interest rate on numerous occasions but have never been given *“an interest rate cut”*.

In this regard I note that the Complainants sent a letter to the Provider on **3 June 2015** which stated as follows:

“We would be grateful if the following questions can please be answered as soon as possible.

- 1. When was the mortgage loan taken out on [the mortgaged property]?*
- 2. How much interest have we paid since the beginning of the mortgage loan?*
- 3. How much capital have we paid since the beginning of the mortgage loan?*
- 4. What was the interest rate year by year? What were the figures?*
- 5. Why is the interest rate now a whopping 5.8%?*
- 6. Are we entitled to move our mortgage to another provider? If so, what are the changes?*

We are writing as we want a lower mortgage interest rate to be charged on our mortgage.

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We want a settlement on the mortgage loan.

We currently save with you and you only give us 1.2% of the interest on a 15 month rolling savings scheme yet you charge 5.8%?? Please explain."

The Provider responded by letter dated **12 June 2015** as follows:

"Following letter received by [the Provider] on 08/06/2015, we would like to explain to you the bank's position on Standard Variable Rate (SVR) mortgages.

We fully understand that you are unhappy with our SVR and that you would like this rate to be lower.

While our SVR is similar to the SVRs charged by other lenders, we would like to assure you that everyone in [the Provider] is working hard to get the bank to a position where we could take a commercial decision to reduce this rate.

The SVR takes account of a number of significant costs the bank must recoup: these include the bank's cost of borrowing, cost of risk and cost of capital.

Our commitment to our customers is that the bank is working to reduce these costs and that, as these costs come down, the bank will aim to share the benefit of these lower costs with customers. Unfortunately, we are not in a position to do this yet.

I would like to thank you for making your views known to us and I am sorry that I cannot give you the news that you want to hear. But I hope that this letter has clarified why we are not yet in a position to do what you would like us to do.

I am enclosing Mortgage Statements from 26/06/2006, the date the loan on [the mortgaged property] issued.

I also enclosed Redemption Figures for your information.

I trust this is to your satisfaction and if you have any further queries, please do not hesitate to contact our [redacted] Mortgage line at [redacted]."

/Cont'd...

The Complainants wrote a further letter to the Provider dated **8 March 2017** which detailed as follows:

"This is my 3rd communication to your bank seeking this information. To say I am annoyed with your [illegible] lack of response is an understatement.

As previously requested I would be grateful if you can please furnish the following information as a matter of priority

- 1) What mortgage rate am I paying on the above mortgage?*
- 2) Please justify the rationale for the rate charged at 1).*
- 3) Can a statement be provided of how much has been paid in monthly repayments since the commencement of the mortgage in 2006.*
- 4) Can this mortgage be moved (transferred) to another bank to administer?*
- 5) Please send me a copy of your mortgage rates being charged for new business (mortgage business).*
- 6) Please advise of the new balance remaining on the mortgage.*
- 7) Please provide a copy of statements for the past 10 years (wef 26/6/06)*
- 8) Please advise what repayments are to be if (Capital + Interest) are repaid?"*

The Provider issued its response to the Complainants by letter dated **15 March 2017** which detailed as follows:

"I refer to your recent correspondence of 8 March 2017 in relation to your complaint.

Customer service is our first priority and we are naturally concerned when any aspect of our service fails to meet with our customers' expectation. I would like to thank you once again for bringing this matter to my attention and would like to take this opportunity to outline the situation to you.

*I note you are dissatisfied with the lack of response in relation to your previous queries on mortgage account [ending **1980**]. All efforts are made to ensure our customers receive a professional and efficient service and I apologise that your experience was contrary to this.*

I wish to confirm your mortgage interest rate is the Variable rate (LTV) of 5.80%. Please find enclosed the Variable Rate Mortgage Policy- Summary Statement, which confirms how [the Provider] determines the variable interest rate.

/Cont'd...

I can confirm I have ordered mortgage statements from loan issue on 26 June 2006 until today's date. Please note you will receive these under separate cover.

I wish to confirm you can transfer your mortgage to a different provider. Please note [the Provider] will not discharge the loan until the balance outstanding is redeemed in full. I can confirm I have ordered you a redemption figure which you will receive under separate cover. This figure will confirm the full balance outstanding.

Please find enclosed a copy of our Mortgage Lending Rates as of 13 February 2017, as requested.

I can confirm if your mortgage switched to full principal and interest repayments, the monthly instalment would be approximately €2,716.53. Please note this figure is based on today's details and subject to change. This figure does not include TRS or insurance if applicable. Please note we require written signed confirmation if you wish to switch your loan to full principal and interest repayments."

Following the Provider's letter of **15 March 2017**, the Complainants issued a further undated letter to the Provider which stated as follows:

"Please advise if there are other variable mortgage rates available or a fixed rate mortgage available for us.

What are our options?

...

P.S. you are charging us 5.80%, your BCOF is 0.25%.

Explain."

The Provider responded by letter dated **8 May 2017** which outlined as follows:

"Please find enclosed a copy of the letter that previously issued to you dated 15 March 2017 which include a copy of the Mortgage Lending Rates. I have also ordered up to date redemption figures for you, these will issue under separate cover.

/Cont'd...

I trust this is to your satisfaction and if you have any further queries please do not hesitate to contact our [redacted] mortgage line @ [redacted]."

On the basis of the evidence before me, it appears that there were no further interactions between the parties in relation to interest rates available for the Complainants' 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, or indeed any other interest rate to customers, on demand, where there was no contractual right to such an interest rate in the underlying mortgage loan documentation. There was no obligation on the Provider to accede to a request to apply a "lower mortgage interest rate" to the mortgage loan. It was 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 lower interest rate to the mortgage loan. It was entirely within the Provider's rights and commercial discretion not to accede to that request.

Having considered the evidence in this matter, the Complainants did not have a contractual entitlement to a tracker interest rate on their mortgage loan. The evidence shows that the Provider did not have any direct involvement with the Complainants during the application process and 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. The Provider offered the Complainants the option of a tracker interest rate of ECB + 1.10% in **June 2007** as a matter of policy and not as a result of any contractual entitlement. The Complainants decided not to accept this tracker rate and instead chose a 3-year fixed interest rate at the time.

On the expiry of the fixed rate period in **June 2010**, the Provider was no longer offering tracker rates to customers who did not have a contractual entitlement to a tracker rate. Accordingly, a standard variable rate applied to the Complainants' account in accordance with the terms and conditions of their mortgage loan agreement. A fixed interest rate was subsequently applied to the account in **August 2010** at the Complainants' request.

For the reasons set out in this Decision, I do not uphold this complaint.

/Cont'd...

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

3 August 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.