



<u>Decision Ref:</u>	2021-0421
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Tracker Mortgage
<u>Conduct(s) complained of:</u>	Failure to offer a tracker rate throughout the life of the mortgage
<u>Outcome:</u>	Rejected

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

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' principal private residence.

The loan amount was €239,200.00 and the term of the loan was 30 years. The particulars of the Letter of Approval dated **11 July 2008** detailed that the loan type was a "1 Year Disc Tracker (>80% LTV) Home Loan".

The mortgage loan account was redeemed by the Complainants on **14 March 2011**.

The Complainants' Case

The Complainants drew down their mortgage loan account in **October 2008** on a 1-year discounted tracker rate of ECB + 1.3%.

The Complainants outline that prior to the expiry of the discounted tracker rate period in **October 2009**, they received an interest rate options letter from the Provider. They submit that the tracker rate on offer had "sky rocketed" to 4.25% (ECB +3.25%).

The Complainants assert that the Provider “miss-sold” them the discounted tracker rate product which “was sold as the cheaper option but the benefits or the downfalls of this discount were not explained to us or clearly through the T&C’s”.

They submit that the use of the term “Tracker lead (sic) us to believe this was a Tracker Mortgage, not a 1 year discount product.” They state that they had “not clearly been advised that after year one the rate would jump by whatever the Bank set their tracker rates to”. They further submit that they believe that the “actual ECB rate for 2009 was only ECB [plus] 1%”.

In response to the Provider’s reasons for increasing the tracker margin for its customers, such as its cost of funds and cost of credit risk, the Complainants submit that it is “NOT OUR FAULT & Why would it not affect all “Tracker Mortgages”.” They state in this regard that the tracker interest rate and margin of ECB + 3.25% was applicable only for discounted tracker mortgages and that other tracker mortgages “were aligned with the ECB rate +1% etc”.

The Complainants detail that in **2011** they had “no other choice” but to pay “nearly €1000.00 to change our mortgage” to a third-party provider as they could not afford to continue meeting the monthly mortgage repayments on their mortgage held with the Provider.

The Complainants submit that other customers of the Provider who “had the same T&C’s as [the Complainants]” have received redress and compensation from the Provider as part of the Central Bank directed Tracker Mortgage Examination.

The Complainants are seeking the following:

- (a) For a tracker interest rate to be applied to the mortgage loan at “a realistic rate of 1% or 1.5% over ECB” and backdated to **2009**
- (b) To be reimbursed for the cost of transferring their mortgage to a third party Provider in **2011**; and
- (c) Compensation for the stress caused.

The Provider's Case

The Provider outlines that it issued the Complainants a **Letter of Approval** on **11 July 2008** for a mortgage loan in the amount of €239,200, repayable over a term of 30 years. The Provider details that the Complainants drew down their mortgage loan on **9 October 2008**.

The Provider states that the mortgage loan was subject to an initial 12-month discounted tracker rate of 5.30% (ECB + 1.30%) and at the end of the discounted period, the rate applied to the account would either be a rate selected by the Complainants from the rate options offered by the Provider or, in the absence of any selection by the Complainants, a variable rate "*which may not be a tracker variable rate*". The Provider refers to **Special Condition 1** of the **Letter of Approval** in support of this and states that this information was also set out in the **Letter of Suitability** and the **European Standardised Information Sheet**.

The Provider outlines that prior to the expiry of the initial discounted tracker interest rate period, it issued a letter enclosing a **rate options form** to the Complainants in **September 2009**, in which the following interest rates were offered to the Complainants:

<i>"Tracker Variable rate (ECB+3.25%)</i>	<i>4.25%</i>
<i>LTV Variable rate</i>	<i>3.65%</i>
<i>2 Year Fixed Rate</i>	<i>5.25%</i>
<i>5 Year Fixed Rate</i>	<i>5.75%</i>
<i>7 Year Fixed Rate</i>	<i>6.10%</i>
<i>10 Year Fixed Rate</i>	<i>6.10%</i>

The Provider states that the Complainants completed and signed the rate options form dated **30 September 2009** selecting the LTV variable rate of 3.55% which was applied to the account on **9 October 2009**.

The Provider submits that the Complainants did not have any entitlement to be offered a specific tracker rate or margin on expiry of the initial discounted period in **October 2009** and it is satisfied that the Complainants' mortgage loan documentation was "*sufficiently clear and transparent*" in this regard.

The Provider refutes the Complainants' submission that the interest rate options offered to the Complainants in **October 2009** were "*not fair or reasonable*".

It details that the tracker rate and margin of ECB + 3.25% that was applicable when the Complainants' 12-month discounted interest rate was due to expire in **October 2009**, was based on a number of factors as follows;

- “(i) the Bank’s cost of funds which is influenced by wholesale borrowing rates and deposit interest rates;*
- (ii) the cost of credit risk associated with mortgage lending, the operational costs (costs of originating and servicing the product on an ongoing basis), the cost of capital (the economic cost of capital which must be held against the risk being taken on, in line with prudential regulations i.e. risk weighted assets), and;*
- (iii) the Bank’s competitive position”.*

The Provider further submits that there was a *“significant level of turmoil in the Irish and international financial markets over the course of 2008 and 2009, giving rise to serious funding difficulties for all banks ... Deteriorating economic conditions and in particular, the rapid rise of unemployment rates in Ireland led to rising levels of loan arrears and in turn, increased impairment provisioning by banks which increased the cost of risk”*. The Provider submits that it was entitled to have regard to these factors when setting the tracker margins *“and to do so was not unreasonable or improper”*.

The Provider submits that the Complainants' mortgage loan remained on the LTV variable rate until it was redeemed on **14 March 2011**.

The Provider states that the Complainants' submission that other customers of the Provider, with identical terms and conditions to the Complainants, have been offered redress by the Provider *“is not correct”*. It details that the Complainants' mortgage account was reviewed and assessed in accordance with the Central Bank directed Tracker Mortgage Examination and the Complainants were not offered redress because they *“were not entitled to redress”*. It states that the *“fact that the Complainants had moved to another financial institution in 2011 was not relevant in the assessment of the Complainants' account.”*

The Complaint for Adjudication

The complaint for adjudication is that the Provider wrongly offered the Complainants an expensive tracker interest rate of ECB + 3.25% on the expiry of the discounted tracker rate period in **October 2009**.

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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 **05 August 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.

Following the issue of my Preliminary Decision, the following submissions were received from the parties:

1. Correspondence from the Complainants to this office dated **9 August 2021**;
2. Correspondence from the Provider to this office dated **23 August 2021**;
3. Correspondence from the Complainants to this office dated **24 August 2021**;
and
4. Correspondence from the Provider to this office dated **03 September 2021**.

Copies of these additional submissions were exchanged between the parties.

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

The issue to be determined is whether the Provider applied the incorrect tracker rate margin to the Complainants' mortgage loan account on the expiry of the discounted period in **October 2009**. In order to determine this complaint, it is necessary to review and set out the certain interactions between the Complainants and the Provider between **2008** and **2009** and to set out the relevant provisions of the Complainants' loan documentation.

The Complainants signed an **Application for Credit** on **19 May 2008**.

Section 2 – Details of Mortgage of the application form set out as follows:

"Type of Loan:

...

<i>Amount of Loan required</i>	<i>€239,200.00</i>
<i>Purchase price/value of property</i>	<i>€260,000.00</i>
<i>Loan type</i>	<i>Disc Tracker (LTV>80%/<500K) Homeloan</i>
<i>Repayment Term required</i>	<i>30 year(s)"</i>

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 26th June 2008*". This document outlines as follows:

<i>"Rates applicable to New Home Loans</i>	<i>RATE</i>	<i>APR</i>
...		
<i>1 Year Discounted Tracker LTV <80%</i>	<i>5.05%</i>	<i>5.4%</i>
<i>1 Year Discounted Tracker LTV >80%</i>	<i>5.30%</i>	<i>5.6%"</i>

I note that tracker interest rates were on offer generally by the Provider when the Complainants application for a mortgage loan was processed in **July 2008**. The Provider has submitted that the ECB base rate applicable to the Complainants' mortgage loan application was 5.30% (ECB + 1.30%).

Having considered the Provider's published **Lending Interest Rates** document, as quoted above, it is clear that the tracker interest rates which available at that point in time were discounted and varied from 5.05% (ECB + 1.05%) to 5.30% (ECB + 1.30%), depending on loan to value. The evidence shows that a tracker interest rate of ECB + 1.30% was available from the Provider for loans with a loan-to-value ratio over 80% at the time the Complainants' application for a mortgage loan was approved.

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The Complainants had applied for a mortgage loan of €239,200.00 and the value of the property was €260,000.00.

The Provider issued a **Letter of Suitability** to the Complainants on **11 July 2008** which outlined as follows:

“The following outlines our proposal based on the information you have given us regarding your personal circumstances, financial needs and plans. The loan preferences and options you have chosen are listed, as at July 11th, 2008.

Proposal

We propose the following:

Tracker – A variable interest rate that is linked to the ECB rates.

Mortgage details agreed

You have selected a loan type from a range which we are prepared to offer you based on your needs and circumstances. You have chosen a repayment term and flexible options (where relevant) to achieve a repayment amount best suited to your needs and preferences. Details are as follows:

- *Amount of loan required: €239,200.00*
- *Property price/value €260,000.00/€245,000.00*
- *Loan Purpose Moving House*
- *Loan Type 1yr Disc Tracker (>80% LTV) Home Loan*
- *Repayment term required: 30 Years*

...

You have been advised that at the end of any discounted/fixed rate period you will receive a maturity options letter. This letter will provide you with a list of all products available to you at the time. This list may or may not include your original product selection.”

The **Letter of Approval** dated **11 July 2008** details as follows:

<i>“Loan Type:</i>	<i>1yr Disc Tracker (>80% LTV) Home Loan</i>
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<i>Purchase Price / Estimated Value:</i>	<i>€260,000.00</i>
<i>Loan Amount:</i>	<i>€239,200.00</i>
<i>Interest Rate:</i>	<i>5.3%</i>
<i>Term:</i>	<i>30 year(s)”</i>

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

“Special Conditions

- 1. The interest rate applicable to this tracker loan may be varied from time to time by [the Provider] provided the interest rate will not exceed 1.30% over the European Central bank Refinancing Rate (the “ECB rate”) for the first 12 months from the date of the advance (“the Discount Period”). [The Provider] reserves the right to alter said percentage over the ECB Rate at any time prior to drawdown. The ECB rate may be varied from time to time by the European Central Bank (“ECB”). In the event of any variation of the ECB Rate during the Discount period and subject to the above reservation, the interest rate applicable to this loan will not be more than 1.30% over the ECB rate as varied by the ECB. On expiry of the Discount Period, the interest rate will be such as may be selected by the Applicant(s) from [the Provider’s] rates then offered by [the Provider] for selection by the Applicant(s) or such variable interest rate (which may not be a tracker variable rate) as will apply in the absence of such selection. In the event of any variant of the ECB Rate, the revised interest rate for the loan will apply not later than one calendar month from the date provided by the ECB as the date on which the variation to the ECB Rate will take effect.*

...

- 5. The interest rate and mortgage repayment indicated in the letter of approval are based on the ECB rate applicable at the date of the letter of approval and takes into account the discount period referred to above. The ECB rate may change on or before drawdown.*

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6. *If, for whatever reason, an event which fundamentally affects the use of the ECB rate as a reference rate for this loan, [the Provider], in its sole discretion, shall be entitled to use such other reference rate or other method or basis of calculation as it deems fair and reasonable and notwithstanding the use of such other reference rate or method or basis of calculation, the rate so calculated by [the Provider] shall be and apply as the reference rate applicable to this loan in place of the ECB rate.*

...
”

Page 1 of the European Standardised Information Sheet attaching to the Letter of Approval details as follows:

“This document does not constitute a legally binding offer.

The figures are provided in good faith and are an accurate representation of the offer that the lender would make under current market conditions based on the information that has been provided. It should be noted, however, that the figures could fluctuate with market conditions.

The provision of this information does not oblige the lender to grant credit.

...

Nominal Rate

The interest rate is 5.3 percent.

The interest rate may vary from time to time. Notice will be given in respect of rate increases. No notice will be given for decreases in rate.

...

The interest rate applicable to this loan is a variable rate loan but will not exceed 1.30% over the European Central bank refinancing rate (“the ECB Rate”) for the first 12 months from the date of issue of the loan (“the Discounted Period”).

On expiry of the Discounted Period you may exercise an option to contract for a fixed rate period (if available) or to move to a variable rate which you may select from the then current [Provider] rates offered to you by [the Provider].”

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The **Acceptance of Loan Offer** was signed by the Complainants and witnessed by their solicitor on **15 July 2008**. The Acceptance of Loan Offer states as follows:

"1. I/we the undersigned accept the within offer on the terms and conditions set out in

- i. Letter of Approval*
- ii. the General Mortgage Loan Approval conditions*
- iii. [the Provider's] Mortgage Conditions.*

copies of the above which I/we have received and agree to mortgage the property to [the Provider] as security for the mortgage loan.

...

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

It is clear to me that the **Letter of Approval** envisaged an initial discounted tracker interest rate of ECB + 1.30% for a period of 12 months and thereafter the rate applied to the account would be a rate selected by the Complainants from the Provider's "rates then offered by" the Provider for selection at that time or "such variable rate (which may not be a tracker variable rate) as will apply in the absence of such selection".

The Provider has submitted that it issued a **rate options letter** and **form** to the Complainants prior to the expiry of the 12-month discounted tracker interest rate period. I am disappointed to note that I have not been provided in evidence with a copy of the **letter** that accompanied the rate options form.

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;*
- 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;*

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*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 2008** and the rate options letter purportedly issued in **September 2009**. The Provider is obliged to retain that documentation on file for six years from the date the relationship with the mortgage holder ends. I note that the mortgage was redeemed in **March 2011**.

Therefore, in the circumstances I accept that there is no breach of the Consumer Protection Code.

In any event, it does not appear to be in dispute between the parties that this letter was received by the Complainants in or around **September 2009**. The Provider has submitted into evidence a template of the **rate options letter** which details as follows:

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

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. These options may or may not include a tracker option and if included, may have a higher percentage margin over the ECB rate than that applying to your loan prior to the fixed rate period. Therefore at the end of the fixed rate period, our rates, in respect of any product options, 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 [DATE], the interest rate on your mortgage will be the Tracker Variable Rate.*

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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.

Thank you for your valued business.”

The **rate options form** signed by the Complainants on **30 September 2009** has been provided in evidence and details as follows:

*“Current options available:
You may only select one option.*

...

		<i>Monthly Repayment EUR</i>
<i>--- Tracker Variable Rate*</i>	<i>- Currently: 4.2500%</i>	<i>1174.18</i>
<i>--- LTV variable rate**</i>	<i>- Currently: 3.6500%</i>	<i>1093.77</i>
<i>--- 2 year fixed rate</i>	<i>- Currently: 5.2500%</i>	<i>1314.65</i>
<i>--- 5 year fixed rate</i>	<i>- Currently: 5.7500%</i>	<i>1387.73</i>
<i>--- 7 year fixed rate</i>	<i>- Currently: 6.1000%</i>	<i>1439.97</i>
<i>--- 10 year fixed rate</i>	<i>- Currently: 6.1000%</i>	<i>1439.97</i>

...

- * The interest rate that applies to this Tracker Mortgage Loan will never be more than 3.2500% over the European Central Bank Refinancing Rate (the “ECB Rate”). See over the page for further details on Tracker Mortgage Loans.*
- ** In calculating your loan to value (“LTV”) ratio, we use the current loan balance and the most recent valuation on file for this mortgage.”*

The Complainants did not select the tracker interest rate option and instead signed the **rate options form** on **30 September 2009** electing to apply the LTV variable rate of 3.65%. The variable interest rate was applied to the account on **9 October 2009** in accordance with the Complainants’ instructions.

The Provider has summarised its policy in relation to tracker rates at the time, as follows:

- *“The Bank ceased offering tracker rate loans on [mid] 2008. It also ceased offering a switch to a tracker rate from another variable rate on that dated (sic).*

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- While the Bank commenced the withdrawal of its tracker mortgage interest rate offering in July 2008, it continued until August 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 interest rates to maturing loans where customers had a contractual right to a tracker rate.
- In October 2008 when the Complainants' mortgage account was issued, the Bank's tracker rate was ECB + 2.25% for home loans. In October 2009, on maturity of their discounted tracker rate, the Bank's tracker rate was ECB + 3.25% for customers, and the Complainants, who did not have a particular tracker margin specified in the special conditions of their Letter of Approval."

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 31st August 2009". This document outlines as follows:

"Home Loan Rates for Existing Business

LTV Variable applicable to existing Home Loans since 27/07/09. LTV Tracker Maturity Rates applicable to existing Home Loans since 31/08/09	RATE	APR
...		
Tracker Rate LTV <80%	4.25%	4.3%
Tracker Rate LTV >80%	4.25%	4.3%"

The Complainants take issue with the application of the tracker interest rate of ECB + 3.25% to their mortgage loan on the expiry of the initial discounted tracker rate period. They submit that the tracker interest rate margin of 3.25% is "neither FAIR nor reasonable". They outline that they had understood that the mortgage loan account would switch to the tracker rate of ECB + 1.00% or ECB + 1.50%.

I cannot accept the Complainants' submissions in this respect. The **Letter of Approval** set out that the tracker rate applicable to the mortgage loan for 12 months would be 5.30% (ECB + 1.30%). **Special Condition 1** sets out that the interest rate applicable at the end of the 12-month period would be a rate selected by the Complainants from rate options offered by the Provider at that time or in the absence of any selection by the Complainants, a variable rate "which may not be a tracker variable rate".

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There was no guarantee in the Special Conditions or any other conditions applicable to the Complainants' mortgage loan that a specific tracker mortgage margin would be made available to the Complainants at the end of the discounted period. The evidence shows that the tracker interest rate that the Provider had available for home loans for existing business in **October 2009** was 4.25% (ECB + 3.25%) and that was the tracker interest rate that was offered to the Complainants for their mortgage loan. The Provider has outlined the factors which influenced the margin at that point in time and I accept that it was within the Provider's commercial discretion to set this rate.

It is important for the Complainants to be aware that the Complainants' mortgage loan is governed by the terms and conditions of their mortgage loan documentation. In these circumstances, the terms and conditions of the loan were clear. There is no evidence that the Provider agreed that a tracker interest rate of ECB + 1.00% or ECB + 1.50% would be applied to the Complainants' mortgage loan upon the expiry of the discounted period. It was a matter for the Complainants to consider the terms and conditions of the **Letter of Approval**, to ensure that they were happy with the terms offered and that they aligned with any discussions that they had before signing the Letter of Approval.

The Complainants have also submitted that the margin of 3.25% was only applicable to discounted tracker mortgages and the interest margin on other tracker mortgages were not increased. It is important for the Complainants to be aware that their mortgage loan is governed by the terms and conditions of their mortgage loan documentation. In these circumstances the terms and conditions of the loan were clear. If the Complainants were not happy with the terms of the **Letter of Approval**, including the type of interest rate or the fact that the mortgage loan contract did not stipulate a specific tracker mortgage rate margin that would be applied at the end of the initial 12-month period, the Complainants could have decided not to accept the offer made by the Provider. Instead, the Complainants accepted the Provider's offer by signing the **Acceptance of Loan Offer** on **15 July 2008**, and in doing so, confirmed that their solicitor had fully explained the terms and conditions of the mortgage loan to them.

The Complainants, in their post-Preliminary Decision submission dated **24 August 2021**, submit as follows:

"It should have been an onus on the bank to explain the t&c as this product were very different to previously offered Tracker products... Somewhere it should have a separate explanation to advise in terms simplified to applicant's what is different in this product to previous products. I don't believe that would have even been clear to a solicitor."

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The Complainants appear to maintain that the terms of the **Letter of Approval** dated **11 July 2008**, in particular the nature of the applicable interest rate, were not set out clearly by the Provider. In this regard, it is appropriate to consider **Article 5** of the **Council Directive 93/13/EEC on Unfair Terms in Consumer Contracts** which details as follows:

“In the case of contracts where all or certain terms offered to the consumer are in writing, these terms must always be drafted in plain, intelligible language.

Where there is doubt about the meaning of a term, the interpretation most favourable to the consumer shall prevail. This rule on interpretation shall not apply in the context of the procedures laid down in Article 7 (2).”

I have reviewed the **Letter of Approval** dated **11 July 2008** together with the terms and conditions attaching thereto and I accept that the mortgage loan documentation is drafted in *“plain, intelligible language”*. As outlined above, it is clear from the **Special Conditions** that a tracker interest rate of ECB + 1.30% applied to the mortgage loan for the first 12 months and thereafter the interest rate applied to the account would be a rate selected by the Complainants from the Provider’s then current rates on offer upon the expiry of the discounted tracker interest rate period, or in the absence of selection of an interest rate by the Complainant, a variable interest rate would apply. The **Special Conditions** attaching to the **Letter of Approval** clearly stipulate that this variable rate may not be a tracker variable rate. It is clear to me therefore that while the Complainants’ mortgage loan account was drawn down on a tracker interest rate of ECB + 1.30%, there was no guarantee given to the Complainants in the mortgage loan documentation that they would be entitled to a further tracker interest rate at the end of the tracker interest rate period. It transpired however that the Provider offered the Complainants a tracker interest rate, a LTV variable rate and a number of fixed interest rate options on the maturity of the discounted rate period.

I note that the Complainants refer to other customers of the Provider *“who had the same T&C’s as [them]”* and who received redress and compensation as part of the Central Bank directed Tracker Mortgage Examination. It is important for the Complainants to understand that the Complainants’ mortgage loan is governed by the terms and conditions of the Complainants’ mortgage loan documentation. In adjudicating on this complaint, it is not relevant to consider the entitlements (contractual or otherwise) of other individuals who hold mortgage loans with the Provider.

The evidence suggests that the Complainants requested interest rate options for their mortgage loan account in **January 2011** and **February 2011**, as the Provider issued **rate options letters** and **forms** to the Complainants on **25 January 2011**, **31 January 2011** and **3 February 2011**. I have not been provided with any evidence to suggest that the Complainants completed and returned any of these **rate options forms**.

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The Complainants, in their post-Preliminary Decision submission dated **24 August 2021**, submit as follows:

"I was never entitled to be offered a Tracker after not accepting the 1st rate. As I went onto a variable rate this was never offered again but was never clear this would not have been offered again in t&c's, why only offer once but not again when it would have been the cheaper option when the variable rates increased. By offering it even once should have meant it should have been offered again. While I understand banking officials do not advise on which mortgage rate to accept it must be the majority of people that pick Variable or Tracker would pick the cheaper, in which the Discounted Tracker was for us and its clear the banking officials knew this but to not explain clearly what the product meant is not the same as advising of which rate to take".

The Complainants appear to be of the view that they should have been offered a tracker interest rate at subsequent stages during the term of the mortgage loan after they had instructed the Provider to apply a variable interest rate as opposed to a further tracker interest rate in **October 2009**. In this regard, it is important to note that pursuant to the terms of the **Letter of Approval** dated **11 July 2008**, the Complainants were only entitled to a tracker mortgage interest rate for the first 12 months of the mortgage loan. There was no contractual entitlement on the part of the Complainants to be offered a tracker rate of interest on the expiry of this 12-month period, let alone at any other stage during the term of the loan. While I appreciate that the Complainants were offered a tracker interest rate in the rate options form dated **30 September 2009**, which they did not accept, this did not give rise to a contractual entitlement to be offered further tracker interest rates at later dates.

The Complainants, in their post-Preliminary Decision submission dated **9 August 2021**, also submit as follows:

"I noted that in your document [Preliminary Decision] that you said that I made no contact with the bank regarding interest rates until Feb 2011. Unfortunately, you have taken this conclusion in the fact that I never rang the [Provider's telephone] line however you have forgotten that these institutions have physical banks which at the time was in my local town of [Location Redacted] in which I dealt with all my queries regarding my rates...it was here that I went to regarding interest rates changing each month & at no point was I ever advised that I could ring someone over the phone to discuss mortgage interest rates."

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In the interests of clarity, I am not suggesting that the Complainants did not contact the Provider until **February 2011** regarding interest rates. Rather, there is no evidence to suggest that the Complainants completed and returned the rate options forms that were issued by the Provider to the Complainants on **25 January 2011, 31 January 2011** and **3 February 2011** to implement any changes to the applicable interest rate on their mortgage loan.

The Provider, in its post-Preliminary Decision submissions dated **23 August 2021** and **3 September 2021**, states as follows:

“It is noted that the Preliminary Decision did not state that the Complainants made no contact with the Bank until February 2011. The Bank acknowledges that the Complainants may have visited their local branch to seek mortgage related information. Due to the passage of time the Bank is not in a position to comment on conversations that may have occurred between the Bank and the Complainants during such visits...It should also be noted that staff will not advise customers as to which interest rate option to choose as this is a decision for a customer to make based on personal circumstances.”

I note that while the Complainants may have visited their local branch to discuss interest rates at this time, for the avoidance of any doubt and as outlined previously, there is no evidence to suggest they returned their completed rate option forms to the Provider during these visits in order to implement at interest rate changes.

It appears that the Complainants contacted the Provider in or around **February 2011** with respect to redeeming the mortgage loan.

I note that the Provider wrote to the Complainants by letter dated **24 February 2011** which outlined as follows:

“Thank you for your recent request for the amount you need to pay to clear your mortgage. Here are the details.

<i>Loan Number</i>	<i>Amount €</i>	<i>Daily Accrual</i>	<i>Inclusive of fixed rate exit fee €</i>
<i>[ending 3370]</i>	<i>229,321.90</i>	<i>35.39</i>	<i>0.00</i>

Please note that the figures quoted are in accordance with the request received by [the Provider]. Please do not include vacate or accountable trust receipt fee in the amount you pay to clear the above mortgages.

/Cont'd...

...”

I note from the **mortgage loan statements** that the account remained on the variable interest rate until the account was redeemed in full on **14 March 2011**.

The Complainants, in their post-Preliminary Decision submission dated **9 August 2021**, submit as follows:

“The only reason we made the decision to move banks was because of the increasing interest rates which in 2001 [sic] had gotten to 5.7% and we were afraid we would not be able to make the payments. We left [the Provider] to [another financial provider] for a [4.75%] rate, its hardly a move that was made without feeling we had no other choice.”

I note the Complainants redeemed their mortgage loan account with the Provider and moved to another financial provider in **March 2011**. While I do not consider this submission to have any bearing on my final determination of this particular complaint, it is important to note that the Complainants decided to switch financial service providers in **2011** of their own choice.

I do not accept, based on the evidence available, that the Complainants had a contractual or any other entitlement to a specific tracker interest rate margin on the expiry of the discounted tracker rate period in **October 2009**. The Complainants had a right to select one of “rates then offered by [the Provider]” on the expiry of the discounted period in **October 2009**. The Provider offered the Complainants the then current tracker interest rate of ECB + 3.25% (then 4.25%).

However, the Complainants did not accept this rate and instead selected the variable interest rate option which applied to the mortgage loan until the mortgage account was redeemed in **March 2011**.

It is important for the Complainants to understand that the fact that any other customers of the Provider, had a different tracker interest rate and margin applied to their mortgage loans held with the Provider, did not in any way create an obligation on the Provider to offer the Complainants the same tracker interest rate on their mortgage loan with the Provider. 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.

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

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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

17 November 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.