



<b><u>Decision Ref:</u></b>	2021-0509
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Tracker Mortgage
<b><u>Conduct(s) complained of:</u></b>	Failure to offer a tracker rate throughout the life of the mortgage
<b><u>Outcome:</u></b>	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 €305,000 and the term was 25 years. The **Letter of Approval** which was signed by the Complainants on **21 March 2006** outlined the loan type as *"One Year Fixed Residential Investment Loan (Interest Only)"*.

**The Complainants' Case**

The Complainants detail that their mortgage loan was drawn down on **18 May 2006** subject to a 1-year fixed interest rate. The Complainants submit that it was their expectation that a rate options letter would issue approximately one month prior to the expiry of the fixed rate as this was normal practice at the time.

The Complainants outline that they became concerned on **11 May 2007** as they had not received any correspondence from the Provider in respect of interest rates available on the expiry of the fixed rate period. The Complainants submit that important information was withheld from them, and they were not given the opportunity to choose a competitive tracker rate of interest.

The first Complainant states that he *“was proactive and diligent and contacted [the Provider]”*. He explains that he sought a discount on the available fixed rate options during the call with the Provider, and this was subsequently agreed with the Provider. The Complainants refer to emails with the Provider in this regard.

The Complainants submit that whilst they did discuss the new business rates widely advertised by the Provider on this telephone call, it was *“existing business”* rates that the Complainants should have been offered. The Complainants submit that they researched the interest rates available at that time, however *“at no time were [the Complainants] advised they were entitled to a ‘Tracker rate’”*.

They outline that they accept that the Provider is not in a position to offer advice or recommendations in respect of interest rate choices, however they submit that they *“feel the bank are responsible for advising [the Complainants] of ‘all’ options available to them.”*

The Complainants detail that on **16 May 2017**, the Provider issued correspondence to them in relation to discounted fixed rate options and they selected a 3-year fixed rate at 4.85% and returned the options letter to the Provider on the same day.

They outline that the default interest rate to be applied to the mortgage loan account on the expiry of the fixed rate, and in the absence of written instructions, was a tracker rate of 4.85%. The Complainants submit that they *“were not made aware of this during the call or at any time in writing.”* They detail that the Provider has *“no recording of this telephone call but email trails included confirm that [first Complainant] was in fact speaking to [employee of the Provider] regarding this matter.”* The Complainants rely on **section 3.5** and **section 4.3** of the **Central Bank of Ireland Framework for Conducting the Tracker Mortgage Examination** in this regard.

The Complainants submit that that the Provider’s press release concerning a property review for **2006** detailed that property prices in [county name] had risen by 15.9%. They submit that their loan to value (LTV), having regard to this increase, amounted to 73.3% LTV in **May 2007**. The Complainants state that if this had been discussed with them, they would have been aware that they *“were in fact entitled to the lower tracker rate of 4.55% for loans <80% <500k.”*

They outline that if the Provider had *“fulfilled their obligations and written to [the Complainants] they would have been offered a competitive tracker rate, however, because of the [Provider’s] sharp practice [the Complainants] were completely unaware that they were entitled to the tracker rate at all.”* As a result, the Complainants maintain that they *“could not make an informed decision regarding the rate choices available to them.”*

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They submit that this important information was “withheld” during their decision-making process.

The Complainants do not accept that the Provider’s automated process of issuing a rate options letter 20 days prior to the expiry of the fixed rate, is evidence that the rate options letter was issued to the Complainants. They submit that they “*believe the Bank’s automated process failed.*” They rely on the fact that the Provider does not have a copy of the letter that purportedly issued to the Complainants at this time. They submit that this supports their recollection of events. The Complainants state that the template letter provided in evidence by the Provider, is “*irrelevant*” as this letter was not addressed to the Complainants.

The Complainants outline that the failure to notify the Complainants “*has resulted in significant overcharging since 2007 on their mortgage account.*” The Complainants rely on the **Addendum to the Consumer Protection Code 2012**, specifically **Chapter 6, section 6.6.**

The Complainants submit that their mortgage loan account defaulted to a tracker rate of 4.85% on the expiry of the fixed rate on **18 May 2007**. They detail that “*this information has been withheld as no default letter is issued to advise [the Complainants] of the rate change or their entitlement to the tracker facility.*” The Complainants rely on **section 3.2** and **section 3.3** of the **Central Bank of Ireland Framework for Conducting the Tracker Mortgage Examination** in this regard. They submit that these sections outline that where the Provider’s documentation is not available or cannot be located, then “*the lenders should ensure that this will work to the benefit, and not the detriment, of the customer.*”

The Complainants submit that it is the Provider’s two automated systems that are at fault, the first being the rate options letter that was to be issued to the Complainants 20 days prior to expiry of the fixed rate, and second the default interest rate letter that was to be issued to the Complainants when the mortgage loan account defaulted to a tracker rate in **May 2007**. They submit that there is no evidence to support the Provider’s submission “*that [the Complainants] were aware of their entitlement to a Tracker rate.*”

The Complainants outlined that they received confirmation that their interest rate was amended to the 3-year fixed interest rate on **14 June 2007**, which had increased to 5% by that time.

The Complainants submit that they accept that their “*loan approval, terms and conditions did not guarantee a tracker rate would be available in the future*”. However, the Complainants indicate that the Provider has “*breached numerous conditions set out in the “Central Bank framework for Conducting the Tracker Mortgage Examination.”*”

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The Complainants detail that they *“have been severely penalised by [the Provider] and lost their opportunity to avail of a tracker rate simply because they were ‘proactive’ in contacting the bank”*.

The Complainants outline that the mortgage loan was sold to another mortgage provider in **2018**.

The Complainants are seeking that their mortgage loan account *“revert”* to the ‘default’ tracker rate of ECB + 1.10% from **18 May 2007**.

### **The Provider’s Case**

The Provider outlines that the Complainants submitted their mortgage application through a third-party broker in **December 2005** and that a **Letter of Approval** issued to them on **26 January 2006** which provided for a loan amount of €259,250.00 subject to a 1-year fixed interest rate of 3.08% and a term of 25 years.

The Provider submits that the Complainants signed a **Letter of Acceptance**, having confirmed their understanding and acceptance of the mortgage loan terms and conditions, with the benefit of independent legal advice on **21 March 2006**. The Provider refers to **Special Condition F** and **General Condition 5** in relation to what would transpire at the end of the fixed interest rate period. The mortgage loan account was drawn down on **18 May 2006** on a fixed interest rate of 3.45%.

The Provider outlines that the Complainants’ fixed rate was due to expire on **18 May 2007**. It submits that a rate options letter automatically issued 20 days prior to the expiry of the fixed rate, in or around **28 April 2007**. It outlines that a tracker rate option of 4.85% (ECB + 1.10%) was offered to the Complainants in this rate options letter and it was detailed that a tracker rate would be applied as a default rate, in the absence of written instructions. It submits that *“there is no record of the options letter or the rate confirmation letter being returned undelivered.”*

The Provider submits that it does not have a copy of this rate options letter. It details that it has provided a template rate options letter *“in order to show the format and content of the letter sent to the Complainants is the version of the automated letter which was issued to the Complainants.”* It outlines that this is the same format as the letter issued to the Complainants.

The Provider states that during the period between **June 2006** and **August 2009**, the Provider's rate option letters included a tracker rate option for existing customers who did not have a contractual entitlement to a tracker rate. The Provider outlines that its policy at the time offered a tracker rate of interest to 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. It further submits that the tracker interest rate was the automatic default rate during this period, in the absence of any written instructions detailing otherwise.

The Provider submits that the Complainants contacted the Provider on **11 May 2007** seeking a more favourable fixed rate option. The Provider outlines that the Complainants informed the employee of the Provider that it was aware of the new business rates and of the fixed rate offerings and enquired whether the Provider could improve those rates to retain their business. It states that *"the Bank's staff dealing with mortgage customers who wished to discuss interest rate options were trained to and did discuss all available interest rate options. However, the decision as to which rate to choose is for the customer alone to make based on personal circumstances."* The Provider states that the Complainants were enquiring specifically on an interest rate of 4.85%, which was the rate the mortgage loan account was due to default on the expiry of the fixed rate and sought to have it fixed for three years.

The Provider submits that the rate options letter issued automatically to the Complainants prior to them contacting the Business Retention Unit. It details that after internal discussions, it issued the Complainants a fixed rate options switching form on **16 May 2007** which offered the Complainants three fixed rate options which had been reduced below the Provider's standard fixed rate.

The Provider submits that due to *"technical limitations"* resulting from the Provider's telephone recording system no longer being in use, it does not have a copy of the audio recording in question. It relies on the internal records which *"show the nature of the Complainants' request for lower fixed rates and the Bank's decision to provide them with lower fixed rates."* The Provider asserts that the Complainants sought a discounted 3-year fixed rate to be applied to the mortgage loan account. It submits that the Complainants' recollection of events is not supported by the evidence.

The Provider details that the fixed rate period expired on **18 May 2007** and as the Complainants had not submitted any written instructions to apply a different interest rate, the Provider's default tracker rate of 4.85% was applied to the mortgage loan account.

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It outlines that the Complainants returned a fixed rate options form signed on **16 May 2007** to apply a 3-year fixed rate of 4.85%. The Provider submits that it applied the 3-year fixed rate of 5.10% to the mortgage loan account on **01 June 2007**. As the Provider had agreed to a decreased fixed interest rate, it adjusted the rate accordingly and the agreed rate of 4.85% applied to the mortgage loan account on **27 June 2007**. The Provider outlines that an interest rate adjustment of €35.54 was due to the Complainants as a result of the delay in implementing the interest rate and the adjustment has since been processed to the account. The Provider has offered a gesture of goodwill in the sum of €250.00 for the delay in implementing the discounted fixed interest rate.

The Provider does not accept the Complainants' submission that they "*were not informed in 2007 that a tracker rate of interest was available to them*" and that the default interest rate on the expiry of the fixed rate was a tracker rate interest rate.

The Provider outlines that the "*automated procedure in place at the time was to issue a letter to every customer whose fixed rate period was due to expire 20 days prior to the expiry date. In this letter, the date of the fixed rate period was noted and a list of rate options was provided to enable selection of a new rate by the account holder.*" The Provider submits that it "*is satisfied that its automated mortgage processing system did not fail in 2007 in the manner asserted by the Complainants or at all.*"

The Provider outlines that there is an error in its final response letter dated **7 February 2018** which stated that the automatic options letter did not issue in circumstances where the Complainants contacted the Provider to obtain details of fixed rate options. The Provider notes that this is incorrect and that the letter did in fact issue. It submits that the maturity options letter issued automatically in the normal course and the manually generated letter was issued through a manual process, unconnected with the automated options issuance process. The Provider has offered a gesture of goodwill in the sum of €250.00 in recognition of this service issue.

The Provider details that it withdrew tracker rate offerings in **mid-2008** but continued to offer a tracker rate option on the expiry of a fixed rate period to customers who did not have a contractual entitlement to a tracker rate up until **August 2009**.

### **The Complaint for Adjudication**

The complaint for adjudication is that the Provider failed to inform the Complainants that their mortgage loan account was due to default to a tracker interest rate in **May 2007**, when the fixed interest rate period expired.

## 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 **13 October 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 Complainants' representative made an additional submission by way of letter dated **04 November 2021**, a copy of which was transmitted to the Provider for its consideration.

The Provider has not made any further submission.

Having considered the Complainants' representative additional submission and all submissions and evidence furnished by both parties to this office, I set out below my final determination.

Before dealing with the substance of the complaint, I note that 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.

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The Complainants were informed of the parameters of the investigation by this office, by letter dated **08 June 2020**, 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.

At outset, I note the Complainants refer to the **Addendum to the Consumer Protection Code**, specifically **Chapter 6, section 6.6** however it is important to note that this Addendum did not come into effect until **01 January 2019** and therefore will not be considered as part of this Decision. I also note that the Complainants refer to the provisions of the **Central Bank of Ireland Framework for Conducting the Tracker Mortgage Examination**. In circumstances where this office has no role in the Central Bank of Ireland directed Tracker Mortgage Examination, I do not propose to consider the provisions of the framework in the determination of this complaint.

The issue to be determined is whether the Provider failed to inform the Complainants that the mortgage loan account was due to default to a tracker interest rate in **May 2007**, when the fixed interest rate period expired. In order to determine this complaint, it is necessary to review and set out the relevant provisions of the Complainants’ mortgage loan documentation. It is also necessary to consider the details of certain interactions between the Complainants and the Provider in **2007**.

The **Letter of Approval- Particulars of Mortgage Loan** dated **26 January 2006** details as follows:

<i>“Loan Type:</i>	<i>One Year Fixed Residential Investment Loan (Interest Only)</i>
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<i>Purchase Price / Estimated Value:</i>	<i>EUR 305,000.00</i>
<i>Loan Amount:</i>	<i>EUR 259,250.00</i>
<i>Interest Rate:</i>	<i>3.08%</i>
<i>Term:</i>	<i>25 year(s)”</i>

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**Special Condition F** of the **Letter of Approval** dated **26 January 2006** details as follows:

*“GENERAL MORTGAGE LOAN APPROVAL CONDITION 5 “CONDITIONS RELATING TO FIXED RATE LOANS” APPLIES IN THIS CASE. THE INTEREST RATE SPECIFIED ABOVE MAY VARY BEFORE THE DATE OF COMPLETION OF THE MORTGAGE.”*

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

***“5. 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.*

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- 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 variable rate loan agreement which will carry no such redemption fee."*

The **General Mortgage Loan Approval Conditions** also details the following:

*"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 their solicitor on **21 March 2006**. The Acceptance of Loan Offer states as follows:

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

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

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

*...*

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

It is clear that the **Letter of Approval** dated **26 January 2006** envisaged a 1-year fixed interest rate with the option of a variable rate of interest to apply thereafter. 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 signed the **Acceptance of Loan Offer** on **21 March 2006**, having confirmed that the terms and conditions of the loan offer had been explained to them by their solicitor. The Complainants' mortgage loan was drawn down on **18 May 2006** on a fixed interest rate of 3.45%. I note that a variation in the interest rate from that outlined in the Letter of Approval is permitted under **General Condition 5.2**.

The Provider submits that a **rate options letter** issued automatically to the Complainants on or around **28 April 2007**, prior to the expiry of the fixed interest rate period on **18 May 2007**. The Provider states that it did not retain a copy of the letter but that its automated system issued the rate options letter to the Complainants. I note that the Complainants dispute receiving the rate options letter from the Provider.

**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 the letter, there was no breach of the **Consumer Protection Code 2006**.

The Provider has however submitted in evidence a copy of a **template letter**, which it details issued to customers in **April 2007** who were on a fixed interest rate that was due to expire. This letter 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, including our competitive tracker variable rate. In calculating the new tracker rate we use the original loan amount to calculate your balance and we use your current balance and the original valuation of your home to calculate the loan to value.*

*If we do not receive a written instruction from you in relation to the above on or before the [DATE], we will automatically default your loan to the tracker variable rate.*

*We value our 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 Complainants maintain that they were not informed by the Provider that the tracker interest rate was an option available to them or that it was the default rate at the end of the fixed rate period. The Complainants' representative, in his submissions dated **4 November 2021**, repeats those submissions. It appears that the Complainants are suggesting that they did not receive the options letter that purportedly issued to them on **28 April 2007**. The Provider submits that it has no record of the options letter having been returned undelivered.

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The Complainants' representative, in his submissions dated **4 November 2021**, maintains that I am basing my Decision on an "*assumption*" in respect of the Complainants receiving the options letter in **April 2007**. I do not accept this assertion by the Complainants' representative. In determining a complaint to this office, I must consider the evidentiary documentation before me and make a determination based on the submissions from the parties to a complaint and the documentary evidence. In circumstances where the Complainants received a further options letter and form from the Provider a couple of weeks later in **May 2007** (dealt with in further detail below) at the same address, and completed and returned that options form to the Provider, I remain of the view that it is likely on balance that the options letter was issued by the Provider to the Complainants on **28 April 2007**.

The Complainants' representative, in his submissions dated **4 November 2021**, submits that it is "*unbelievable and unprofessional*" that the Provider "*would supply paperwork which clearly relates to another borrowers account and it is beyond belief that your office did not challenge the Provider on this*". I have already expressed my disappointment that the Provider did not retain a copy of the actual letter that issued to the Complainants. For the avoidance of any doubt, the Provider submitted a copy of a redacted letter containing the text from letters that issued to customers in **April 2007** who were on a fixed interest rate that was due to expire. The redacted letter supplied by the Provider in evidence did not contain details pertaining to any other customer of the Provider.

The Complainants contacted the Provider in **May 2007** to discuss applicable interest rate options on the expiry of the fixed interest rate period. It is disappointing to note that this telephone recording has not been provided in evidence. The Provider submits that "*due to a number of constraints, including a passage of time and technical limitations of the Bank's historic telephone recording system, which is no longer use, [the Provider] is not in a position to retrieve a copy of the call in question.*"

The Complainants state that when they contacted the Provider on **11 May 2007**, the Provider failed to advise them that a tracker rate option was available and was the default rate to be applied on **18 May 2007**. The Provider does not accept this submission and submits that it advised the Complainants of all interest rates available, including the tracker rate.

The Provider's internal email dated **11 May 2007** details as follows:

*"Hi [employee of the Provider] – can we offer a 2 year discounted fixed rate at 4.85% to this customer?"*

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[Account number] – Non Broker contact

- 4.65% fixed rate offer from [another Provider]
- 4.85% offer from [another Provider]
- Customer told me that he has seen our new business rates and he said we would have to improve on them if he is to stay.
- He has a property in the UK through [other provider].”

The employee of the Provider replied to this request stating “approved”. I note that there is no reference to discussing interest rate options in general, only specifically discussing the new business rates and fixed rate options on foot of an enquiry by the Complainants.

The Provider subsequently issued the Complainants with a letter dated **16 May 2007**, detailing as follows:

“Dear [Complainants],

Further to our recent communication, I am attaching a list of our current fixed rate options. You indicated that you are interested in availing of our three year fixed rate of 4.85%. Please tick the rate you would like and return it to [Provider address and contact details]...”

The **rate options form** enclosed with the letter dated **16 May 2007** details as follows:

“

		<i>eur €</i>
Current Rate	3.45%	€745.34
1 Year fixed rate Mortgage currently	4.99%	€1,078.04
2 Year fixed rate Mortgage currently	5.15%	€1,112.61
✓3 Year fixed rate Mortgage currently	4.85%	€1,047.85

....

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

The Complainants signed and accepted the rate options form on **16 May 2007**, opting for a 3-year fixed interest rate of 4.85%. I note that this interest rate was not applied to the Complainants’ mortgage loan account until **27 June 2007**. In fact, a 3-year fixed interest rate of 5.10% was applied to the Complainants’ mortgage loan account on **01 June 2007**.

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However, given the Provider had agreed a reduced 3-year fixed interest rate of 4.85%, the Provider carried out a rate adjustment which resulted in €35.54 being processed to the Complainants' mortgage loan account and the correct fixed rate of 4.85% applied as of **27 June 2007**. I note that the Provider has offered the Complainants a gesture of goodwill in the sum of €250 in light of this issue.

The Complainants' representative, in his post Preliminary Decision submissions dated **4 November 2021**, states that the Complainants did not enquire about any specific interest rate when they contacted the Provider in **May 2007** but rather "*the most competitive rate available*". The documentary evidence before me shows that the Complainants informed the Provider of competitive fixed rates being offered by alternative Providers at the time and in response, the Provider agreed on a number of discounted fixed interest rates to offer to the Complainants at the time. It also remained open to the Complainants to allow their mortgage loan default to the tracker variable interest rate at the time. The Provider offered the Complainants a range of discounted fixed interest rates in an effort to retain their business and the Complainants ultimately accepted a 3 -year discounted fixed interest rate of 4.85%.

In the intervening period however from **18 May 2007**, when the initial fixed interest rate period came to an end, to **01 June 2007**, the Complainants' mortgage loan account defaulted to a tracker interest rate of 4.85% (ECB+1.10%), in line with the Provider's policy at that time.

The Provider has summarised its policy with respect to tracker interest rate offerings as follows:

- *"...[in mid] 2006, the Bank began to including a tracker rate of interest in automated rate options issued to certain existing customers whose accounts were due to expire from a period of a fixed rate of interest and whose loan contract did not specify an entitlement to be offered a tracker rate of maturity.*
- *Between [mid] 2006 and [later in] 2006 while the options letter included the offer of a tracker interest rate, in the absence of a customer selection, the variable rate was applied to the mortgage as the default interest rate. From [mid] 2006 until [mid] 2009, in the absence of a customer selection the tracker interest rate was applied to the mortgage as the default interest rate.*
- *While the Bank commenced the withdrawal of its tracker mortgage interest rate offering in [mid] 2008, it continued until [mid] 2009 its policy of offering a tracker interest rate maturity option to existing fixed rate customers whose contracts did not contain an entitlement to be offered a tracker rate at maturity of an existing fixed rate period.*

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

Based on the evidence before me, it is unclear whether the Complainants received the rate options letter and form that the Provider submits it issued to the Complainants in **April 2007**. I note that the Complainants' representative has made a number of submissions in relation to the non-receipt of this letter by the Complainants in his post Preliminary Decision submissions dated **04 November 2021**, which I have duly considered. However, it is not in fact central to the issue for determination whether these documents were or were not received by the Complainants at that time. The reason for this is that the Complainants did not have a contractual entitlement to be given the option of any rate other than a variable interest rate in accordance with **General Condition 5.4 of Letter of Approval** dated **26 January 2006**. As detailed above, that variable rate was an interest rate which could be adjusted by the Provider and was not a tracker interest rate. It appears to me that the Provider, in line with its own commercial discretion and policy at the time, applied a tracker interest rate of 4.85% to the Complainants' mortgage loan from **18 May 2007** as the default rate.

It was open to the Complainants to remain on the default tracker interest however the Complainants did not do so. Instead, the Complainants of their own volition approached the Provider in **May 2007** with a view to obtaining a further fixed interest rate and a fixed interest rate of 4.85% was applied to the account in **June 2007**, approximately only 2 weeks after the interest rate on the mortgage loan account had defaulted to a tracker interest rate. This was a choice that was freely made by the Complainants.

I note that there were service failures on the Provider's part in its dealings with the Complainants however, the Provider has already offered the Complainants the total sum of €500 as a gesture of goodwill in respect of its failings as to (i) the rate adjustment made in **June 2007** (€250) and (ii) the error in the letter dated **8 February 2018** (€250). I understand that this offer of €500 remains open to the Complainants to accept.

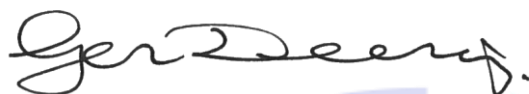
In light of the foregoing, I consider these offers (totalling €500) to be a reasonable attempt to resolve this complaint in the context of the Provider's errors, therefore I do not uphold this complaint.

### **Conclusion**

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is rejected.

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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**

13 December 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.