



<u>Decision Ref:</u>	2021-0521
<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 €180,000 and the term of the loan was 30 years. The particulars of the mortgage loan offer accepted by the Complainants on **2 September 2002** detailed that the loan type was a "Variable Rate Home Loan". The rate applied to the loan account was a discounted variable interest rate of 3.70% for the first 12 months.

The mortgage loan account was redeemed on **7 October 2010**.

The Complainants' Case

The Complainants outline that they drew down a mortgage loan account with the Provider in **2002** on a 12-month variable interest rate. The Complainants state that a discounted interest rate of "1% below the variable rate" normally applicable to mortgage loans applied to their mortgage loan account. The Complainants submit that the Letter of Approval did not contain any right to a tracker interest rate either on expiry of a fixed rate period or at any point during the term of the mortgage.

The Complainants submit that on the expiry of the initial 12-month period, the interest rate on the mortgage loan account *“moved in line with changes in the ECB rate plus a margin of 1.35% over the next few years.”*

The Complainants state that in **January 2007**, the interest rate on their mortgage loan account switched to a 2-year fixed interest rate of 4.85% and remained on that rate until **January 2009**.

The Complainants submit that they received an unsigned letter from the Provider in **December 2008** which outlined the interest rate options available at the end of the 2-year fixed interest rate period, to include a tracker interest rate of 4.75% (ECB + 2.25%). The Complainants submit that this was the first and only time that a margin of 2.25% was quoted or charged to them. The Complainants note that their mortgage loan account automatically defaulted to a tracker rate of interest at the end of the fixed interest rate period.

The Complainants maintain that their mortgage loan account was moved to a tracker rate of interest in **January 2009** without their consent and in violation of the terms of their mortgage loan agreement. In this regard, the Complainants assert that the Provider *“performed a breach of contract”*. The Complainants submit that the Provider issued a letter dated **10 January 2009** to them which was not in accordance with the loan agreement. They submit that the tracker rate of 4.75% (ECB + 2.25%) that was applied to their mortgage loan account in **2009**, was more expensive than the variable rate that they were contractually entitled to. They further submit that the Provider *“specifically chose the moment to change [their] mortgage product at a time when it was facing severe losses on residential property loans.”*

The Complainants submit that their mortgage loan account remained on a tracker interest rate until the mortgage loan account was redeemed on **7 October 2010**.

The Complainants explain that until **December 2008**, the Provider had never previously contacted them in relation to tracker interest rates which it introduced in **early 2004**. They submit that *“either we were entitled to a tracker product on our mortgage at the time of the tracker products inception, not at a specific time of [the Provider’s] choosing, or consequently [the Provider] broke the terms and conditions of our original loan agreement.”* The Complainants note that the Provider *“clearly states on more than one occasion”* that they were not contractually entitled to a tracker interest rate at any point during the term of the mortgage.

The Complainants are seeking compensation in respect of the Provider's alleged overcharging on their mortgage loan account.

The Provider's Case

The Provider outlines that the mortgage loan was drawn down on **17 September 2002** on a variable interest rate of 3.70% *"which was 1% lower than the Bank's standard variable rate of 4.70%"*. The Provider details that on the expiry of the 12-month discounted period on **17 September 2003**, the then current standard variable rate of 3.55% was applied to the mortgage loan account.

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 **Condition A** of the **Special Loan Conditions** in the **Letter of Approval** which states that on the expiry of the initial 12-month discounted variable interest rate period, the Provider's standard variable rate would be applied to the account. The Provider states that this was agreed by the Complainants at the commencement of their loan as part of the terms and conditions, which were explained to them by their own solicitor.

The Provider submits that a variable rate of interest applied to the mortgage loan account from drawdown in **September 2002** until the Complainants opted to apply a 2-year fixed interest rate to the mortgage loan in **January 2007**.

The Provider states that the Complainants were issued an options letter in or around **2007** listing the interest rate options available at that point in time. The Provider explains that the list contained five interest rate options, including a standard variable rate, fixed interest rates and a tracker variable rate. The Provider notes that the tracker interest rate option offered at the time was 4.5%. The Provider states that the Complainants completed the options form on **6 January 2007** and opted to apply a 2-year fixed interest rate of 4.85% to the mortgage loan account.

Prior to the expiry of the fixed interest rate period in **January 2009**, the Provider states that it issued an options letter to the Complainants which included the option of the then current tracker interest rate of ECB + 2.25%. The Provider explains that it could have applied a variable rate of interest to the mortgage loan account as the default rate in accordance with **General Mortgage Loan Approval Condition 5** however it also offered the Complainants a tracker interest rate as a matter of policy at that time. The Provider outlines that the options letter stated that in default of selection by the Complainants, a tracker interest rate would be applied to the mortgage loan account.

The Provider submits that it did not receive a rate selection from the Complainants and accordingly, the interest rate on their mortgage loan account was amended to the then current tracker rate of 4.25% (ECB + 2.25%) on **9 January 2009**. The Provider notes that the tracker interest rate of ECB + 2.25% applied to the mortgage loan account until the account was redeemed on **7 October 2010**.

The Provider submits that it *“reserves the right to set its interest rates at its discretion”*. It details that interest rates are *“commercial in nature”* and the calculation of the tracker interest rate was based on a number of factors, including the following:

- The cost of funding which is influenced by wholesale borrowing rates and deposit interest rates
- The cost of credit risk associated with lending, operational costs and costs of capital
- The Provider’s competitive position

The Provider acknowledges that the tracker interest rate of ECB + 2.25% which was applied to the Complainants’ mortgage loan account in **January 2009** was more expensive than the LTV variable rate at that point in time. However, it notes that while the tracker interest rate was higher from **January 2009** until **July 2009**, it was less than the LTV variable rate available from **27 July 2009** until the mortgage loan account was redeemed on **7 October 2010**.

The Provider states that it *“strongly rejects”* the Complainants’ submission that the Provider illegally broke the mortgage loan agreement by applying a tracker interest rate to the account. In this regard, the Provider notes that a *“tracker variable rate is a variable rate.”* The Provider reiterates that it informed the Complainants that if they did not select one of the interest rate options prior to the expiry of the fixed rate period in **January 2009**, the Provider’s default rate was the tracker variable rate.

The Provider asserts that the application of the tracker interest rate to the mortgage loan account in **January 2009** was *“not inconsistent with the loan agreement which provided that the Bank could apply a variable rate to the account.”* The Provider states that *“the variable rate selected by the Bank was a tracker variable rate.”*

The Complaints for Adjudication

The complaints for adjudication are as follows:

- (a) The Provider wrongfully failed to offer the Complainants a tracker interest rate at any stage between **January 2004** and **December 2008**, and;
- (b) The Provider placed the Complainants' mortgage loan account on a tracker rate of 4.75% (ECB + 2.25%) in **January 2009** without their consent and in violation of the terms of their mortgage loan agreement.

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 23 November 2021, outlining my preliminary determination in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

In the absence of additional submissions from the parties, within the period permitted, I set out below my final determination.

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Before dealing with the substance of the complaint, I note the application for the mortgage loan was submitted by the Complainants to the Provider through a third-party broker. As this complaint is made against the Respondent Provider only, it is the conduct of this Provider and not the broker which has been investigated and will be dealt with in this Decision. The Complainants were informed of the parameters of the investigation by this office, by letter dated **26 April 2019**, which outlined as follows:

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

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

In order to adjudicate on this complaint, it is necessary to review and set out the relevant provisions of the Complainants’ loan documentation. It is also relevant to set out certain interactions between the Provider and the Complainants between **January 2004** and **January 2009**.

The Provider issued a **Letter of Approval** dated **29 August 2002** to the Complainants which details as follows:

“Loan Type:	Variable Rate Home Loan
Purchase Price / Estimated Value:	EUR 200,000.00
Loan Amount:	EUR 180,000.00
Interest Rate:	3.70%
Term:	30 year(s)”

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

“Special Conditions

- A. THE INTEREST RATE APPLICABLE TO THIS LOAN WILL FOR A PERIOD OF 12 MONTHS FROM THE DATE OF ISSUE OF THE LOAN BE CHARGED AT A RATE OF 1% BELOW THE VARIABLE RATE NORMALLY APPLICABLE TO THE LOANS OF THIS TYPE. THIS CURRENTLY EQUATES TO THE INTEREST RATE SHOWN ABOVE.”

The relevant provisions of the **General Mortgage Loan Approval Conditions** attached to the **Letter of Approval** detail as follows:

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

The Letter of Approval 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 a solicitor on **2 September 2002**. I note that the Acceptance of Loan Offer states as follows:

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

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

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

...

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

The mortgage loan account statements submitted in evidence show that the mortgage loan account was drawn down on **17 September 2002** on a rate of 3.7%.

It is clear to me that the **Letter of Approval** provided for a 12-month discounted variable interest rate at 1% less than the Provider's standard variable rate. The Letter of Approval envisaged that the Provider's standard variable rate would apply to the mortgage loan account at the end of the discounted interest rate period. The variable rate in this case 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. It appears that this is not in dispute between the parties. The Complainants accepted the terms and conditions of the **Letter of Approval** having confirmed that the terms and conditions had been explained to them by their solicitor.

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Following the drawdown of the funds in **September 2002**, the variable interest rate on the Complainants' mortgage loan account switched to a variable rate of 3.20% on **2 January 2003**. The variable rate subsequently decreased to 3.05% on **20 March 2003** and decreased further to 2.55% on **23 June 2003**. On the expiry of initial 12-month discounted variable rate period on **17 September 2003**, the Provider's standard variable interest rate of 3.55% was applied to the Complainants' mortgage loan account, in line with the Special Conditions of the Letter of Approval. The Complainants' mortgage loan account remained on the Provider's standard variable interest rate until **January 2007**.

The Complainants submit that "on expiry of the fixed rate period, mortgage rate moved in line with changes in the ECB rate plus a margin of 1.35% over the next few years". For the avoidance of any doubt, this mortgage loan did not commence on a fixed interest rate period and a tracker interest rate of ECB + 1.35% was not applied to the mortgage loan from **September 2003**. Rather, as outlined, the mortgage loan commenced on a 12-month discounted variable rate and thereafter moved to a standard variable rate.

The Provider appears to have issued two variations of an **options form** to the Complainants in or around **January 2007**.

The first **options form** that issued to the Complainants in or around **January 2007** set out the following interest rate options:

<i>"Approximate repayment</i>		<i>eur €</i>
<i>Current Rate</i>	<i>4.60%</i>	<i>€912.18</i>
<i>1 Year fixed rate Mortgage currently</i>	<i>4.75%</i>	<i>€926.56</i>
<i>2 Year fixed rate Mortgage currently</i>	<i>4.85%</i>	<i>€936.17 ✓</i>
<i>3 Year fixed rate Mortgage currently</i>	<i>4.85%</i>	<i>€936.17</i>
<i>5 Year fixed rate Mortgage currently</i>	<i>4.85%</i>	<i>€936.17</i>
<i>7 Year fixed rate Mortgage currently</i>	<i>5.15%</i>	<i>€965.31</i>
<i>10 Year fixed rate Mortgage currently</i>	<i>5.25%</i>	<i>€975.12</i>

The options form outlined that in circumstances where the Complainants chose a fixed interest rate option, "the standard fixed rate conditions will apply".

The "standard fixed rate conditions" are set out in **General Condition 5** of the **General Mortgage Loan Approval Conditions** of the Letter of Approval which details as follows:

"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 Complainants completed the options form on **6 January 2007** and elected to apply a 2-year fixed interest rate of 4.85%.

A second **options form**, titled **Application Form**, was also signed by the Complainants on **6 January 2007** and set out the following options:

<i>"Repayment Rate</i>	<i>Interest Rate / APR</i>	<i>Cost per €000 (20years)</i>
<i>Current standard variable rate loan</i>	<i>4.6%/ 4.7%</i>	<i>€6.38</i>
<i>Tracker rate (€100,000 - €249,000)</i>	<i>4.5%/ 4.6%</i>	<i>€6.33</i>

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2-year fixed rate	4.85%/ 4.8%	€6.52 ✓
3-year fixed rate	4.85%/ 4.8%	€6.52
5-year fixed rate	4.85%/ 4.8%	€6.52”

The evidence shows that the second **options form** included a tracker interest rate option of 4.5%. I note that the Provider introduced tracker interest rates to its suite of mortgage products in **early 2004**. The Provider has summarised its policy with respect to tracker interest rate offerings as follows:

- *“... [in mid] 2006, the Bank introduced a policy of offering a tracker rate of interest to its existing customers who were maturing from a period of a fixed rate of interest and 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 variable rate was applied to the mortgage. The Bank also provided in the options letter issued from [later in] 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 [in 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 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.*
- *After [mid] 2009, the Bank continued to offer and / or apply tracker interest rates to maturing loans where customers had a contractual right to same.”*

It is important to note that the Provider was under no obligation to offer the Complainants a tracker interest rate on their mortgage loan account when the Provider first introduced tracker interest rates in **early 2004** given the Complainants drew down a variable interest rate mortgage loan in **2002** which made no reference whatsoever to a tracker interest rate. However, the Complainants were free to explore potential applicable tracker interest rates with the Provider from **2004**. I have not been provided with any evidence to suggest that any enquiries of this nature were made by the Complainants.

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While the Complainants did not have a specific contractual entitlement to be offered a tracker interest rate in **2007**, it appears that the Provider offered a tracker interest rate to the Complainants based on its own commercial discretion at that time. However, it is clear from the two options forms submitted in evidence that the Complainants did not opt for the tracker interest rate offered but instead chose a 2-year fixed interest rate of 4.85%.

I note from the **mortgage statements** provided in evidence, that a fixed interest rate of 4.850% was applied to the mortgage loan account on **11 January 2007**.

The Complainants take issue with the fact that there is *“no official or legal document available”* outlining the Provider’s tracker interest rate policy. However, there was no obligation on the Provider to hold any such document and I accept that the summary outlined above is an accurate representation of the Provider’s tracker interest rate policy.

Prior to the expiry of the 2-year fixed interest rate period, the Provider issued an **options letter and form** to the Complainants on **19 December 2008**. The letter details as follows:

“I am writing to remind you that the current rate option on your mortgage will end on 11 Jan 2009.

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 product options available to you which may or may not include a tracker option. Our rates at that time could be higher or lower than our current rates depending on market factors and as a consequence you may incur higher interest over the term of the loan.

If we do not receive a written instruction from you in relation to the above on or before the 11 Jan 2009, the interest rate on your mortgage will be the tracker variable rate.”

The **options form** which was enclosed with options letter details as follows:

“Current options available:

You may only select one option.

Account Number: [XXXXXXXXXX]7950

Monthly repayment

EUR

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Tracker variable rate (ECB + maximum 2.2500%)*	- Currently:	5.50%	995.69
LTV variable rate**	- Currently:	5.30%	977.13
2 year fixed rate	- Currently:	5.75%	1019.14
5 year fixed rate	- Currently:	5.75%	1019.14
7 year fixed rate	- Currently:	6.10%	1052.42
10 year fixed rate	- Currently:	6.10%	1052.42

...

- Please note, if you choose a fixed rate, the standard fixed-rate conditions will apply (see over the page).
- *The interest rate that applies to this Tracker Mortgage Loan will never be more than 2.2500% 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** under the heading "**TRACKER MORTGAGE LOANS**" details as follows:

- "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."

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In accordance with **General Condition 5**, the Complainants had the option to convert to a variable interest rate at the end of the fixed interest rate period. The Provider offered the Complainants a variable interest rate option, in line with the terms and conditions of the Letter of Approval. However, the Provider, in line with its own policy at the time, also offered the Complainants a tracker interest rate option of ECB +2.25%.

The Complainants did not actively select any interest rate option at the time and in the absence of any selection by the Complainants, a tracker interest rate of ECB+ 2.25% was applied to the Complainants' mortgage loan account on **9 January 2009**.

I note that the Provider submits that it was entitled to do this and relies on **General Condition 5.4**. The Provider says that *"The mortgage loan agreement provided that the Bank could choose to apply a variable rate to the account at the end of the fixed rate period."* I accept that the Provider also had the option to convert to a *"variable rate loan agreement"*, however having regard to the entirety of the content of the mortgage loan agreement, I do not accept that the *"variable rate loan"* referenced in the agreement was a tracker interest rate. While I accept that a tracker interest rate has a variable element to it, in that, the ECB rate can vary and thus when added to the fixed margin, the overall rate applicable can vary, however when the mortgage loan which was the subject of this complaint was taken out in **2002**, tracker interest rate products were not an offering made available by the Provider at that time. It appears to me to be a stretch of **General Condition 5.4** to apply the meaning as suggested by the Provider. There is some ambiguity with the **General Condition 5.4**, in that, it gave both the Provider and the Complainants 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"*, however it does not say what interest rate would apply if neither party exercised that specific option.

That said, I note that the Provider had a policy in place at that time to apply the tracker interest rate in these circumstances and the Provider implemented this policy.

The communications issued by the Provider to the Complainant since **December 2008** and the letter dated **19 December 2008** are very clear that if the Provider did not receive a written instruction from the Complainants in relation to the interest rate options on or before the **11 January 2009**, the interest rate on the mortgage would be the tracker variable rate. The Complainants did not take any action at the time. I note that on **10 January 2009**, the Provider again wrote to the Complainants and detailed that the rate of interest had been amended to a tracker rate currently 4.75% (ECB + max 2.25%). The letter further outlined that *"I trust the above is to your satisfaction and should you have any query please contact [name] Mortgage Services..."*.

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On **14 January 2010** the Provider wrote to the Complainants and enclosed the mortgage statement and certificate of interest for the year ended **31 December 2009**. The letter detailed that the type of mortgage was a “*Residential Tracker Rate Loan*”. I am satisfied that the Provider made it very clear to the Complainants that a tracker interest rate was being applied to the mortgage loan at the time in **January 2009** in default of an alternative selection by the Complainants and that all communications since that date up to the date of the redemption of the mortgage loan in **October 2010** made this clear to the Complainants. I note that the Complainants were invited to contact the Provider if they had any queries in relation to the amendment to the tracker interest rate, but they did not do so at the time or at any time during the redemption of the mortgage in **October 2010**.

I accept that the Complainants did not consent in writing to the application of the tracker interest rate at the time, however in the circumstances of this matter I am satisfied that the Complainants were on sufficient notice of the application of the tracker interest rate to the mortgage loan at the time in **January 2009**.

The Complainants submit that:

“Without going into the details of our own journey over the period of this mortgage, we decided to dispose of the property in 2010. Needless to say, the cost of the over charged mortgage repayments were a contributory factor in making that decision.”

The Provider in response to this complaint to this office has submitted a table which shows a comparison between the tracker interest rate and the LTV variable between **09 January 2009** to **07 December 2010**, as follows:

Date (ECB + 2.25%)	Tracker Variable rate	Date (<80%LTV)	LTV Variable rate
09 January 2009	4.75%	09 January 2009	4.55%
13 February 2009	4.25%	13 February 2009	4.05%
03 April 2009	3.75%	03 April 2009	3.55%
30 April 2009	3.50%	30 April 2009	3.30%
05 June 2009*	3.25%	05 June 2009	3.05%
		27 July 2009	3.55%
		01 February 2010	4.05%
		03 August 2010**	4.55%

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“Notes:

**There were no changes in the tracker rate from 05 June 2009 to the date of account closure on 07 October 2010.*

***There were no changes in the LTV variable rate from 03 August 2010 to the date of the account closure on 07 October 2010.”*

In this regard, the Provider submits that it “*acknowledges that the tracker rate of 4.75% (ECB + 2.25%) applied to their mortgage loan account in January 2009 was more expensive than the LTV variable rate at that time.*” On the basis of the evidence submitted, it appears that this was the case for the seven months between **January 2009 and July 2009**, with the tracker rate 0.2% higher than the variable rate.

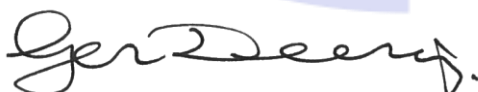
However, it appears that in the subsequent 14-month period leading up to the redemption of the mortgage loan on **07 October 2010**, the tracker interest rate was lower by differences of 0.3%, 0.8% and 1.3%. The evidence submitted in relation to the interest rates applied to the mortgage loan does not support the Complainants’ assertion that over-charges led to the redemption of the mortgage loan. In fact, it is probably the case that if the variable interest rate had been applied to the mortgage loan between **January 2009 and October 2010**, the Complainants would have paid more interest than they did in the LTV variable rate.

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

Conclusion

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

The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.



GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

15 December 2021

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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.

