



<b><u>Decision Ref:</u></b>	2022-0028
<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' principal private residence.

The loan amount is €340,000 and the term of the loan is 25 years. The particulars of the Letter of Approval dated **19 February 2008** detail that the loan type was a "Disc Tracker (LTV>60%<=80%/<500K) Homeloan".

**The Complainants' Case**

The Complainants detail that they drew down their mortgage loan account with the Provider in **2008** on an initial 1-year discounted tracker interest rate of ECB + 0.75%. They submit that the tracker rate at that time was ECB + 1.1%, meaning that a discount of 0.35% was applied.

The Complainants outline that "during the first 12 months" of their mortgage the Provider "raised" the tracker interest rate from ECB + 1.1% to ECB + 2.25%. They submit that when the discounted period ended, the Provider applied the tracker interest rate of ECB + 2.25% to their mortgage loan account.

The Complainants submit that they were not made aware at any point *“that this margin could be changed by the bank after 12 months”* at the sole discretion of the Provider. They submit that *“We accept the ECB rate can change. In fact the reason we decided to go with a tracker mortgage was so the bank could not decide to raise rates whenever they chose. When we met the broker this was a point made as to why the tracker option was a better option to variable.”*

The Complainants submit that their understanding was that the tracker rate to be applied on the expiry of the discounted period would be the tracker rate applicable *“when the mortgage began ... At drawdown March 2008”*. They state that if the *“current”* tracker rate was meant to refer to the tracker rate that would be applicable on the expiry of the discounted period in **March 2009**, *“why would [the Provider] not just put down “rate as of March 2009?””*. They state that the Provider *“should have made sure this was worded with no mistakes or ambiguity”* in **Special Condition 9** instead of *“the jungle of standard mortgage conditions included”*. They submit that the Provider *“tricked us into taking a “discounted” mortgage even though it cost us more, and I believe [the Provider] knew when they sold it to us that they would rise the margin.”*

In response to the Provider’s submission that it has regard to factors such as *“Wholesale lending”, “Bank deposits”* and the Provider’s *“Competitive position”* when setting interest rates, the Complainants submit that *“None of these should have any bearing whatsoever on our mortgage rates. We signed up for a TRACKER MORTGAGE in March 2008 ... We did **not** sign up for a tracker mortgage in March 2009. The performance etc of the Bank in March 2009 should have no bearing on the tracker mortgage we purchased in March 2008.”*

The Complainants submit that they *“have been mis sold a variable mortgage under the guise of a tracker mortgage. The bank inserting a poorly worded clause in the mortgage documents can not give them the right to increase our rates. This was never highlighted to us and the bank have no evidence of highlighting this to us. We have been unfairly treated.”*

The Complainants want the Provider *“to acknowledge [its] mistakes and exercise some fairness.”*

### **The Provider’s Case**

The Provider submits that the Complainants’ mortgage application was made through a broker. It states that the Provider *“was not a party to the discussion between the Complainants and their broker and is not aware of the nature of those discussions”*.

The Provider outlines that the Complainants drew down their mortgage loan for the amount of €340,000 over a term of 25 years, subject to an initial 12 month discounted tracker rate of 4.75% (ECB + 0.75%). It relies on **Special Condition 9** of the **Letter of Approval** to support this.

The Provider details the tracker interest rate of 4.35% (ECB + 2.25%) was applied to the mortgage loan account in **March 2009** in accordance with the terms and conditions of the **Letter of Approval** dated **19 February 2008**. It submits that the **Special Condition 9** *“clearly provided that, on the date of expiry, the applicable rate would be the then current tracker mortgage rate.”* The Provider states that there is no provision in the Complainants’ contract with the Provider which provides for the application of a tracker interest rate of ECB + 1.10% on the expiry of the discounted period in **March 2009**.

The Provider submits that it *“did not mis-sell a product to the Complainants”* and *“did not treat the Complainants unfairly, as alleged or at all”*. It states that the Provider *“offered the Complainants’ a mortgage loan which they accepted with the benefit of independent legal advice and having had the terms and conditions, including the relevant interest rates, fully explained to them”*.

The Provider submits that it *“is not correct to state that there was a “full” tracker rate referable to the Complainants’ loans at the time of draw down.”* It refers to its **lending rate sheet** in **March 2008** which it states outlines that *“each tracker rate offered by the Bank at this time were referable to the amount of the loan and the loan-to-value (LTV) ratio of the applicant. Significantly, it will also be noted that there was no full term tracker rate for the products which had a discount rate and vice versa.”* The Provider details that the Complainants could be offered *“a discount tracker rate or a full term tracker rate but not both types of rate.”*

The Provider outlines that the tracker rates available in **March 2008**, were as follows:

1. The tracker interest rate option for a new loan with a loan-to-value ratio under 80% and a loan amount under €500,000 was ECB + 0.75% for the first year of the loan. The Provider submits that there was no full-term tracker rate offering for such loans unless the LTV was under 60% and the amount of the loan was over €200,000.
2. The tracker interest rate option for a new loan with a loan-to-value ratio under 80% and a loan amount over €500,000 was ECB + 0.70% for the first year of the loan. The Provider details that there was no full-term tracker rate offering for such loans.

3. The tracker interest rate option for a new loan with a loan-to-value ratio over 80% but under 95% and a loan amount under €500,000 was ECB + 0.85% for the first year of the loan. The Provider submits that there was no full-term tracker rate offering for such loans.
4. The tracker interest rate option for a new loan with a loan-to-value ratio over 80% but under 95% and a loan amount of €500,000 to €1,000,000 was ECB + 0.85% for the first year of the loan. The Provider submits that there was no full-term tracker rate offering for such loans.
5. The tracker interest rate option for a new loan with a loan-to-value ratio over 80% but under 95% and a loan amount exceeding €1,000,000, was ECB + 0.70% for the first year of the loan. The Provider submits that there were no full-term tracker rate offering for such loans.
6. The tracker interest rate option for a new loan with a loan-to-value ratio under 60% and a loan amount over €200,000 was ECB+ 0.75% for the entire term of the loan. The Provider submits that there was no alternative rate available for the first year of the loan.
7. The tracker interest rate option for a new loan with a loan-to-value ratio over 95% and a loan amount under €500,000 was ECB + 1.30% for the term of the loan. The Provider submits that there was no alternative rate available for the first year of the loan.
8. The tracker interest rate option for a new loan with a loan-to-value ratio over 95% and a loan amount over €500,000 was ECB + 1.10% for the term of the loan. The Provider submits that there was no alternative rate available for the first year of the loan.

The Provider outlines that the Complainants applied for a mortgage in the amount of €340,000 with a Loan to Value ratio of 77%. The Provider submits that this meant that the only tracker rate that could be offered to the Complainants was the first one above; a tracker rate for a new loan with a loan-to-value ratio under 80% and a loan amount under €500,000. The Provider states that the tracker rate was ECB + 0.75% *“for the first year of the loan only”* and there *“was no full term tracker rate offering for such loans”*. The Provider submits that it *“did not offer tracker interest rate based on a “margin from which the discount was initially applied”*.

The Provider states that it did not offer a tracker interest rate based on a margin from which the discount was initially applied but offered an “*introductory low tracker rate*” for an initial 12-month period, described as a “discount” interest rate. It states that the rate to be applied at the end of this period was to be determined at the end of the 12 months. It further states that there was no specific price promise or referable rate regarding the rate to which the loan would mature at the end of the first year.

The Provider states that in **March 2009** “*the rate of ECB+2.25% was the current tracker mortgage rate relating to home loans*”. It details that the tracker rate of ECB+ 2.25% was calculated “*based on market conditions*” such as the following:

- “*Wholesale lending and borrowing rates*”
- “*Interest rates paid on the Bank’s deposits and*”
- “*The Bank’s competitive position*”

The Provider outlines that the mortgage loan account has remained on the tracker rate of ECB + 2.25% since **14 March 2009** in accordance with **Special Condition 9** of the **Letter of Approval** dated **19 February 2008**.

### **The Complaint for Adjudication**

The complaint for adjudication is that the Provider applied a tracker interest rate of ECB + 2.25% to the Complainants’ mortgage loan account on the expiry of the discounted period in **March 2009** instead of the original tracker interest rate of ECB + 1.1%.

### **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 April 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 parties made further submissions, copies of which were exchanged between the parties.

Having considered these additional submissions 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. The Complainants were informed of the parameters of the investigation by this Office, by letter dated the **17 November 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 the outset, it is also to be noted that the Complainants, in their post Preliminary Decision submissions, refer to legal proceeding currently before the High Court concerning parties who are not the subject of this complaint.

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The Complainants appear to be of the view that I should not issue my Legally Binding Decision in respect of this complaint pending the outcome of those High Court proceedings. While I have considered the Complainants' submission in this regard, together with details of the High Court case to which they refer, I do not consider it appropriate to delay the adjudication of this matter in circumstances where the dispute arising in the High Court proceedings does not relate to this complaint. I have considered this complaint on its own facts and merits.

The issue to be determined is whether the Provider incorrectly applied the incorrect tracker rate margin to the Complainants' mortgage loan account on the expiry of the discounted period in **March 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 evidence shows that the Complainants signed an **Application for Credit** on an unspecified date. I note that the section "*details of mortgage required*" was left blank.

The Provider has submitted into evidence a copy of a document titled "*Lending Interest Rates*" sheet which is noted as being effective from **18 February 2008**. This document outlines as follows;

***"Repayment Home Loans***

<b><i>Rates applicable to New Home Loans</i></b>	<b><i>Rate</i></b>
<b><i>1 Year Discounted Tracker LTV &lt;80%</i></b>	
<i>loan &lt;€500K</i>	4.75%
<i>loan €500K+</i>	4.70%
<b><i>1 Year Discounted Tracker LTV 80%- 95%</i></b>	
<i>loan &lt;€500K</i>	4.85%
<i>loan €500K - €1M</i>	4.85%
<i>loan €1M+</i>	4.70%
<i>Tracker Rate LTV &lt;80% loan&gt; €200K</i>	4.75%
<i>Tracker Rate LTV 95% + loan &lt;€500K</i>	5.3%
<i>Tracker Rate LTV 95% + loan €500K+</i>	5.10%
<i>1 Year Fixed Rate</i>	4.89%
<i>2 Year Fixed Rate</i>	4.89%
<i>3 Year Fixed Rate</i>	5.05%

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**Rates applicable to New & Existing Home Loans**

Standard Variable Rate	5.44%
4 Year Fixed Rate	5.25%
5 Year Fixed Rate	5.10%
7 Year Fixed Rate	5.25%
10 Year Fixed Rate	5.25%

I note that tracker interest rates were on offer generally by the Provider when the Complainants submitted their application for a mortgage loan in **February 2008**. The Provider has submitted that the ECB base rate applicable to the Complainants' mortgage loan application in **February 2008** was 4.75% (ECB + 0.75%). The Complainants availed of the services of a third-party broker during the application stage of the mortgage loan application. In circumstances where the Complainants were engaging with a Broker with respect to the mortgage application, there was no requirement for the Provider to communicate directly with the Complainants at that time.

Having considered the Provider's published **Lending Interest Rates** document, as quoted above, it is clear that the tracker interest rates which were then available, varied from 4.70% (ECB + 0.70%) to 5.10% (ECB + 1.10%), depending on loan to value or the amount borrowed. The evidence shows that a tracker interest rate of ECB + 1.10% was available from the Provider for loans with a loan-to-value ratio over 95% and a loan amount over €500,000, at the time the Complainants applied for their mortgage loan. The Complainants had applied for a mortgage loan of €340,000.

The Provider issued the Complainants a letter dated **19 February 2008**, which detailed as follows:

*"I have enclosed a copy of your amended loan approval. I have also sent a copy to your solicitor.*

*If you want to accept our offer, please sign the Acceptance of the Loan which has been sent with the mortgage documentation to your solicitor. You should sign the acceptance of loan in the presence of your solicitor who must witness your signature. Then return it to the Mortgage Processing Centre as soon as possible so we can process your loan.*

*I have also enclosed the "European Standardised Information Sheet" which further explains the details of the loan.*

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*If you require any further clarification on the content of the letter, please contact your financial advisor, who will be more than happy to deal with your query."*

A **Letter of Approval** dated **19 February 2008** has been provided in evidence.

The **Particulars of Mortgage Loan** detail as follows;

<i>"Loan Type:</i>	<i>Disc Tracker (LTV&gt;60%&lt;=80%/&lt;500K) Homeloan</i>
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<i>Purchase Price / Estimated Value:</i>	<i>€440,000.00</i>
<i>Loan Amount:</i>	<i>€340,000.00</i>
<i>Interest Rate:</i>	<i>4.75%</i>
<i>Term:</i>	<i>25 year(s)"</i>

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

***"Special Conditions***

*...*

- 4. 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.*
- 5. 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.*

*...*

- 9. The interest rate applicable to this tracker loan may be varied by [the Provider] provided it will not exceed 0.75% over the European Central Bank (the "ECB") refinancing rate (the "ECB rate") for the first 12 months (the discount period) from the date of loan issue. The ECB rate may be varied from time to time by the ECB. In the event of any variation of the ECB rate during the discount period, the interest rate will not be more than 0.75% over the ECB rate as varied by the ECB. [The Provider] reserves the right to alter the said percentage over the ECB rate at any time prior to drawdown.*

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*On expiry of the discount period, the interest rate will be the then current [Provider] tracker mortgage rate (comprising of a certain percentage over the ECB rate) appropriate to the loan as may be varied in accordance with variations to the ECB rate. In the event of any variation of the ECB rate the revised interest rate will apply not later than 1 calendar month from the effective date provided by the ECB."*

The **Acceptance of Loan Offer** was signed by the Complainants and witnessed by their solicitor on **27 February 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 + 0.75% and thereafter the Provider's "then current" tracker mortgage interest rate.

The Provider has submitted that it issued a **rate options letter** and **form** to the Complainants in **January 2009** prior to the expiry of the discounted tracker rate period in **March 2009**. It is disappointing that a copy of the rate options letter that issued to the Complainants has not been furnished in evidence to this office, nor has the Provider provided any explanation as to why this letter has not been furnished.

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

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

- a) a copy of all documents required for consumer identification and profile;*

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- 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;*
- g) copies of all original documents submitted by the consumer in support of an application for the provision of a service or product; and*
- h) all other relevant information [and documentation] concerning the consumer.*

*Details of individual transactions must be retained for 6 years after the date of the transaction. All other records required under a) to h), above, must be retained for 6 years from the date the relationship ends. Consumer records are not required to be kept in a single location but must be complete and readily accessible."*

The Complainants' mortgage loan was incepted for a term of **25 years** commencing from **March 2008** and the rate options letter purportedly issued in **March 2009**. There is no indication that the mortgage has been redeemed or disposed of in any way. The Provider is obliged to retain that documentation on file for six years from the date the relationship with the mortgage holder ends. It is therefore unclear to me, in the absence of any explanation, why this correspondence has not been furnished by the Provider. This is most disappointing.

Nonetheless it does not appear to be disputed between the parties that a **rate options letter** and **form** was issued to the Complainants in or around **January 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 which may or may not include a tracker option.*

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*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 [DATE], the interest rate on your mortgage will be the tracker variable rate.*

*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 **template rate options form** details as follows:

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

<i>--- Tracker variable rate (ECB + maximum 2.2500%)*</i>	<i>- Currently: [Redacted]%</i>
<i>--- LTV variable rate**</i>	<i>- Currently: [Redacted]%</i>
<i>--- 2 year fixed rate</i>	<i>- Currently: [Redacted]%</i>
<i>--- 5 year fixed rate</i>	<i>- Currently: [Redacted]%</i>
<i>--- 7 year fixed rate</i>	<i>- Currently: [Redacted]%</i>
<i>--- 10 year fixed rate</i>	<i>- Currently: [Redacted]%</i>

*Please fill in and return the attached form before the expiry date to: [address]*

*...*

*- \* 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.”*

It appears that the tracker interest rate of 4.25% (ECB + 2.25%) was automatically applied to the Complainants’ mortgage loan account on the expiry of the discounted period in **March 2009**.

The Complainants take issue with the application of the tracker interest rate of ECB + 2.25% to their mortgage loan on the expiry of the initial discounted tracker rate period.

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They outline that they had understood that the mortgage loan account would switch to the tracker rate of ECB + 1.10%.

I cannot accept the Complainants' submissions in this respect. The **Particulars of Mortgage Loan** set out that the tracker rate applicable to the mortgage loan for 12 months would be 4.75% (ECB + 0.75%). **Special Condition 9** sets out that the interest rate applicable at the end of the fixed rate period would be "*the then current [Provider] tracker mortgage rate (comprising of a certain percentage over the ECB rate) appropriate to the loan*". 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 fixed interest rate period. 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 + 1.10% would be applied to the Complainants' mortgage loan upon the expiry of the fixed interest rate 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 accepted the **Letter of Approval** on **27 February 2008**, having confirmed that the terms and conditions of the Loan Offer had been explained to them by their solicitor.

The Complainants, in their post Preliminary Decision submission dated **11 June 2021**, submit that I have not interpreted the **Consumer Protection Code**, correctly. Specifically, the Complainants submit as follows:

*"There is also further protection under the Consumer Protection Code which states:*

- *financial firms must make **sure that the name of a product or service does not give the wrong impression of its benefits***
- *advertising must be fair and not misleading..."*

The Complainants, in their post Preliminary Decision submission dated **11 June 2021**, also make reference to Provision 2.3 of the General Principles 3 of the **Consumer Protection Code 2012** which details as follows:

*"A regulated entity must ensure that in all its dealings with customers and within the context of its authorisation it:*

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*2.3 does not recklessly, negligently or deliberately mislead a customer as to the real or perceived advantages or disadvantages of any product or service”*

While it is to be noted that the **Consumer Protection Code 2012** did not come into effect until **01 January 2012, Chapter 1 – General Principles** of the **Consumer Protection Code 2006** which contains a similar provision was fully effective from **01 August 2006** and therefore was in effect at the time the Complainants entered into a mortgage loan agreement with the Provider. That said, I have not been provided with any evidence that the Complainants were in any way misled by the Provider that a tracker interest rate of ECB + 1.10% would be applied to their mortgage loan account at the end of the discount period. **Special Condition 9** of the Letter of Approval is clear that on expiry of the discount period, the interest rate applicable will be the Provider’s then current tracker mortgage rate comprising of a certain margin set by the Provider over the ECB rate. The terms of the **Letter of Approval** accepted by the Complainants on **27 February 2008** did not guarantee a specific margin over the ECB rate at the end of the discount period. The tracker interest rate available from the Provider at the end of the discount period was ECB +2.25% and that is what was offered to the Complainants in accordance with the terms of their mortgage loan agreement.

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 discount 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 **27 February 2008**, and in doing so, confirmed that their solicitor had fully explained the terms and conditions of the mortgage loan to them.

The Provider issued the Complainants a letter dated **13 March 2009** which details as follows:

*“I wish to advise you that in accordance with the terms of your loan, the rate of interest has been amended to a tracker rate currently 4.250% (ECB + max 2.250%).*

*Confirmation of your revised monthly payment calculated at the new rate of interest will be forwarded to you shortly.*

*I trust the above is to your satisfaction and should you have any query please contact [Provider] at [phone number].”*

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The Complainants were offered the “*then current*” tracker mortgage rate of 4.25% (ECB + 2.25%) in accordance with **Special Condition 9**. It was within the Provider’s commercial discretion to set this rate. Having considered the evidence before me, I do not accept that there is any basis on which the Complainants could reasonably have assumed that a tracker interest rate of ECB + 1.10% would be applied to the mortgage account at this time. In the interests of clarity, a tracker interest rate of ECB + 1.10% never applied to the mortgage account.

The Provider issued the Complainants letters on the following dates which detailed as follows;

<b>31 March 2009</b>	<i>“I am writing to inform you that due to a recent interest rate change, the monthly repayment on your loan has changed. The new interest rate is 4.25% and is applicable from March 13, 2009.</i> ”
<b>30 April 2009</b>	<i>“I am writing to inform you that due to a recent interest rate change, the monthly repayment on your loan has changed. The new interest rate is 3.75% and is applicable from April 3, 2009.”</i>
<b>02 August 2011</b>	<i>“I am writing to inform you that due to a recent interest rate change, the monthly repayment on your loan has changed. The new interest rate is 3.75% and is applicable from July 18 2011.”</i>
<b>30 November 2011</b>	<i>“I am writing to inform you that due to a recent interest rate change, the monthly repayment on your loan has changed. The new interest rate is 3.5% and is applicable from November 21, 2011.”</i>
<b>03 January 2012</b>	<i>“I am writing to inform you that due to a recent rate change and a change in your tax relief, the monthly repayment on your loan has changed. The new interest rate is 3.25% and is applicable from DECEMBER 29, 2011.”</i>
<b>13 July 2012</b>	<i>“I am writing to inform you that owing to a change in interest rates, the monthly repayment on your loan will now decrease. As a result of this change your current rate of 3.2% will now decrease to 3.00% and is applicable from 30/07/2012...”</i>
<b>31 July 2012</b>	<i>“I am writing to inform you that due to a recent interest rate change, the monthly repayment on your loan has changed. The new interest rate is 3% and is applicable from JULY 30, 2012...”</i>
<b>13 May 2013</b>	<i>“Owing to a change in interest rates, the monthly repayment on your loan will now decrease. As a result of this change your current</i>

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	<i>rate of 3.00% will now decrease to 2.75% and this rate is applicable from 31/05/2013..."</i>
<b>01 July 2013</b>	<i>"I am writing to inform you that due to a recent interest rate change, the monthly repayment on your loan has changed. The new interest rate is 2.75% and is applicable from MAY 31, 2013..."</i>
<b>02 December 2013</b>	<i>"I am writing to inform you that due to a recent interest rate change, the monthly repayment on your loan has changed. The new interest rate is 2.5% and is applicable from November 29, 2013..."</i>
<b>13 May 2013</b>	<i>"Owing to a change in interest rates, the monthly repayment on your loan will now decrease. As a result of this change your current rate of 2.50% will now decrease to 2.40% and this rate is applicable from 30/06/2014. ..."</i>
<b>31 July 2014</b>	<i>"I am writing to inform you that due to a recent rate change and a change in your tax relief, the monthly repayment on your loan has changed. The new interest rate is 2.4% and is applicable from JUNE 30, 2014..."</i>
<b>12 September 2014</b>	<i>"Owing to a change in interest rates, the monthly repayment on your loan will now decrease. As a result of this change your current rate of 2.40% will now decrease to 2.30% and this rate is applicable from 30/09/2014..."</i>

I do not accept, based on the evidence available, that the Complainants had a contractual or other entitlement to a tracker interest rate of ECB + 1.10% on the expiry of the fixed interest rate period in **March 2009**, or indeed at any other stage during the term of the mortgage. The Complainants had a right to the *"then current [Provider] tracker mortgage rate ... appropriate to the loan"* on the expiry of the fixed interest rate period in **March 2009**. The Provider offered the Complainants the rate of ECB + 2.25% (4.25%). I understand that the tracker interest rate of ECB + 2.25% continues to apply to the Complainants' mortgage loan.

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

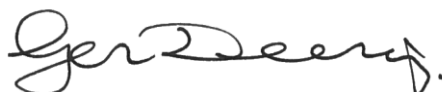
### **Conclusion**

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

/Cont'd...



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**

24 January 2022

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.