



<b><u>Decision Ref:</u></b>	2022-0209
<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 appropriate compensation or redress CBI Examination
<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 €297,000.00 and the term of the loan was for 25 years. The Letter of Approval dated **27 April 2007** provided for a 3-year fixed interest rate of 4.99%, with an ECB tracker interest rate to apply thereafter.

The mortgage loan was redeemed by the Complainants on **21 April 2010**.

The Complainants' mortgage loan account that is the subject of this complaint was considered by the Provider as part of the Central Bank of Ireland directed Tracker Mortgage Examination (the "Examination"). The Provider identified that a failure had occurred on the mortgage loan account, and it was deemed to be impacted as part of the Examination.

The Provider wrote to the Complainants on **11 August 2015** advising them of the failure that had occurred in respect of their mortgage loan account.

It detailed how it “*identified a failure*” as follows:

*“In breaking from your fixed interest rate period early, you lost a contractual right to avail of a tracker rate mortgage at the scheduled maturity date of the fixed interest rate period.*

***However at the time that you broke from your fixed interest rate period, we did not inform you that you would be unable to avail of a tracker rate mortgage at the scheduled maturity date of the fixed interest rate period. We sincerely apologise for this failure.”***

With respect to the effect of the failure on the mortgage loan account the Provider outlined as follows:

*“In respect of your mortgage account, we note that the account was closed on 21/04/2010. As this date was before the scheduled maturity date of the fixed rate period on which your mortgage was on (16/07/2010), it does not appear as if you were financially impacted by this failure.”*

The Provider made an offer of redress and compensation to the Complainants in its letter dated **11 August 2015**. The offer of €1,400.00 was made by the Provider to the Complainants and comprised the following:

1. Compensation of €1,000.00 for the Provider’s failure; and
2. Independent Professional Advice payment of €400.00

In **August 2016**, the Complainants submitted an appeal to the Provider’s Customer Appeals Panel.

On **28 February 2017**, the Appeals Panel decided that the Complainants’ appeal was partially successful. The key factors in determining the decision by the Appeals Panel were as follows:

*“• It had been shown that part of the financial damages claimed were caused by the Provider’s failure(s) and/or would not have occurred but for the Provider’s failures;*

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- *It had not been shown that non-financial damages claimed by the Complainants were caused by the Provider's failure(s) and/or would not have occurred but for the Provider's failure(s); and*
- *It had not been shown that it was foreseeable or could be anticipated that the Complainants would suffer the non-financial losses claimed as a result of the Provider's failure(s)."*

The Customer Appeals Panel noted that the Complainants did not comply with a request for information by the Customer Appeals Panel to enable it to quantify what potential redress the Complainants may be entitled to. The Customer Appeals Panel further noted in its decision that the Complainants were not prepared to disclose the requested information.

The Appeals Panel awarded the Complainants an additional compensation amount of €2,500.00 plus the amount of €713.50 in respect of legal costs which the Complainants incurred when redeeming their mortgage with the Provider and taking out a new mortgage loan with another financial services provider.

The Complainants rejected the decision of the Customer Appeals Panel.

As the Complainants completed the Provider's internal appeals process and did not accept the decision of the Customer Appeals Panel, this office was in a position to progress the investigation and adjudication of the complaint.

### **The Complainants' Case**

The Complainants submit that the decision of the Provider's Customer Appeals Panel is *"biased, vague, and casual with the facts and fails to address the main issue which is to reinstate our Tracker Mortgage"*.

The Complainants submit that the Provider *"appears to be suggesting that an application from us to reinstate the loan will be treated as a new business application rather than an application to reinstate the original loan as part of their redress programme"*. The Complainants further state that the Provider stated in writing that their loan application would be subject to its standard lending criteria and terms and conditions and that their *"application would fall at the first hurdle"* if it was subject to the standard criteria.

The Complainants submit that *“the LTV was in excess of 200% when the loan was refinanced from [the Provider] to [another financial entity] in 2010”* and *“the only reason we refinanced the loan was because of [the Provider’s] now admitted failure”*.

The Complainants state that they *“do not believe that our application should be treated like a refinance / new business application and believe the Bank should redress the case by putting us back in the position we would have been had the failure not occurred”*.

The Complainants submit that *“[the Provider] and the [Provider’s Appeals Panel] have shown no willingness to do this and is treating us like new mortgage customers by insisting that standard lending criteria applies”* and *“nor has the Bank offered any explanation as to why they are not willing to redress the position correctly”*.

The Complainants state that the Customer Appeals Panel decision failed to address several issues such as the Complainants’ request for *“a Sanction in Principle (SIP) before engaging in a full application process”* which the Provider refused to provide. Furthermore, the Complainants submit that the Provider’s Customer Appeals Panel decision failed to explain how the award of €2,500.00 was arrived at which *“is further evidence of the lack of transparency in [the Provider’s] so called redress programme”*.

The Complainants detail that they could not locate the word *“margin”* in the **Letter of Approval** dated **27 April 2007** by reference to the tracker interest rate and that *“there is nothing that clearly states that the margin charged by [the Provider] was subject to change (either increase or decrease) as this was not the nature of the tracker product”*. The Complainants further submit that *“it is difficult to understand from a customer’s perspective how the Bank’s margin could be increased by c.300% from what was discussed at the point of sale and reflected in the ESIS [European Standardised Information Sheet].”* The Complainants question *“what was stopping [the Provider] increasing the margin to 5% or 10%?”*

The Complainants state that they *“believe that [the Provider] is taking the opportunity to increase our margin from the lack of clarity and transparency in their own processes and documentation together with the glaring omission of a tracker margin from our offer letter and is interpreting the language in the offer letter to the Bank’s benefit...”*

With respect to **Special Condition F** of the **Letter of Approval**, the Complainants state that *“At no point prior to the loan being drawn down and during the application process was it outlined in an open and clear manner (in writing or otherwise) by the Bank that by opting for a fixed rate, [they] were jeopardising the tracker margin quoted of 1.1%”*. The

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Complainants further submit that they “*don’t propose responding to the content of [the Provider’s] letter relating to “Condition F” of the letter of approval dated 27 April 2007 as [they] would be repeating [their] position with regard to the ambiguous and non-transparent language contained therein which was not consistent with what was outlined by [the Provider’s] staff prior to loan drawdown*”.

The Complainants state that they “*are really appalled at our treatment by [the Provider] and it is extremely disappointing that the Bank is not being transparent or interest[ed] in proactively finding a realistic and fair solution*”. The Complainants further submit that “*in reality...we, the injured party are the ones seeking the solutions*”.

The Complainants maintain that “*this is not a complex issue and [they] believe there is a simple solution that includes, redress by way of reinstating our tracker mortgage, refund of interest and appropriate compensation*”.

The Complainants are seeking the following:

- (a) The interest charged on their mortgage loan account to be recalculated at a tracker interest rate of ECB + 1.1%, backdated to **April 2010**:
- (b) Compensation for losses allegedly suffered as follows:
  - i. Financial loss to date as a result of the loss of the tracker interest rate: €61,345.00
  - ii. Time Value of Money: €4,685.00
  - iii. Compensation for aggravation, stress and upset; and
  - iv. Compensation for time spent writing letters and meeting with advisors.
- (c) A tracker facility with the Provider at the rate of ECB + 1.1% as per the original mortgage loan agreement or a refund of all future interest costs over the remaining term with the current financial services provider which equates to approximately €189,000.00.

### **The Provider’s Case**

The Provider submits that the Complainants applied for a mortgage loan facility in **April 2007** in respect of a residential investment property. The Provider states that it offered the Complainants a mortgage loan of €297,000.00 on an initial 3-year fixed interest rate of 4.99% repayable over 25 years, which the Complainants accepted on **14 June 2007**.

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The Provider states that in accordance with **Special Condition F** of the Letter of Approval dated **27 April 2007**, the Complainants were entitled to a tracker interest rate *“appropriate to the balance outstanding on the loan at the date of expiry of the fixed rate period”*.

On **22 December 2008**, the Provider submits that the Complainants requested to switch their mortgage loan account from the 3-year fixed interest rate to a variable interest rate of 4.65%. The Provider submits that it wrote to the Complainants on **6 January 2009** to confirm the interest rate change and to outline the new repayment amount.

The Provider states that the First Complainant contacted the Provider on **3 June 2009** to request to switch to a tracker interest rate. The Provider submits that it replied to the Complainants on **22 June 2009** to inform them that it could not offer a tracker interest rate to them at this time.

The Provider rejects the Complainants’ submission that a tracker rate of interest should have applied to their mortgage loan account when they broke early from the 3-year fixed interest rate period in **January 2009**.

The Provider submits the Complainants’ mortgage loan account was subsequently redeemed on **21 April 2010**.

The Provider details that as a result of the Examination, it *“identified a failure it had made in respect of certain mortgage accounts including [the Complainants’ mortgage loan account]”*. It states that it issued a letter to the Complainants dated **11 August 2015** to inform them that they were entitled to compensation and to provide information on the Provider’s failure. The Provider submits that it explained in the letter that *“on 1 January 2009, in breaking from their fixed rate period early, the Complainants had lost a contractual right to avail of a tracker rate mortgage at the scheduled maturity date of the fixed interest rate period in July 2010”* and at that time it *“did not inform [the Complainants] that they would be unable to avail of a tracker rate mortgage at the scheduled maturity date of the fixed interest rate period”*.

The Provider submits that as the Complainants’ closed their mortgage loan account in **April 2010**, prior to the scheduled fixed interest rate expiry date in **July 2010**, *“there was no financial impact to the Complainants arising from its failure”*. The Provider states that it therefore offered the Complainants compensation in the amount of €1000.00 *“in recognition of its failure to inform them when breaking the fixed rate that they would be unable to avail of a tracker rate mortgage at the scheduled maturity date”*. The Provider

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states that it also offered the Complainants €400.00 to be used at their discretion to pay for independent advice if they so wished.

The Provider submits that the Complainants were *“dissatisfied with this offer and appealed to the Independent Customer Appeals Panel”*. The Provider submits that following the Complainants’ appeal, the Customer Appeals Panel partially upheld the appeal and awarded the Complainants additional compensation of €2,500.00.00 plus €713.50 in respect of legal costs. The Provider details that the Complainants were *“dissatisfied”* with the decision of the Customer Appeals Panel.

The Provider submits that it issued a letter to the Complainants on **28 March 2019** offering them *“the opportunity to return their mortgage to the Bank at a tracker rate of ECB + 3.25%”*. The Provider explains that this letter detailed that if the Complainants chose to decline this offer and stay with the other financial provider, it would offer a sum of €3,959.54 in full and final settlement of the complaint. The Provider states that this sum included *“€1,829.54 representing the additional redress...reimbursement of a valuation fee in the amount of €130.00”* and *“a payment of €2000.00 to cover the cost of legal fees incurred”*.

The Provider submits that it *“believed that its final offer as outlined above is adequate to compensate the Complainants for failure identified in respect of their mortgage loan account in not informing them when they broke from their fixed rate period that they would be unable to avail of a tracker rate mortgage at the scheduled maturity date”*. The Provider further states that its offer to return the Complainants’ mortgage loan to the Provider *“puts the Complainants back in the position they would have been in, had they not left the Bank”* and *“this offer remains open to the Complainants”*.

The Provider does not accept the Complainants’ submission that the appropriate rate of interest that ought to be applied to their mortgage loan account is ECB + 1.1%. The Provider submits that the *“only tracker rate to which the Complainants were entitled was the tracker rate provided by Special Condition F of the Letter of Approval”* and that the tracker rate applicable to Complainants’ mortgage loan on was ECB + 3.25% at the scheduled maturity date of the fixed interest rate.

### **The Complaint for Adjudication**

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The complaint is that the Provider has failed to offer the Complainants adequate redress and compensation for its failure on their mortgage loan account.

### 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 do 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 are sufficient to enable a Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties on **29 March 2022**, outlining the 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 the Preliminary Decision, the Complainants made a further submission to this Office, copy of which was exchanged with the Provider. The Provider confirmed that it had no further submissions to make.

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

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The Provider has detailed that the redress and compensation offered to the Complainants is in line with the Central Bank's principles for redress. The Provider offered the Complainants compensation of €1,000.00 and €400.00 for the purposes of seeking legal advice. The Provider submits that the redress and compensation payment is fair and reasonable.

The Customer Appeals Panel awarded the Complainants an additional compensation amount of €2,500.00 plus the amount of €713.50 in respect of legal costs which the Complainants incurred when transferring their mortgage to another financial services provider. The Complainants rejected this. A further offer of redress was made by the Provider on **28 March 2019**, which was also rejected by the Complainants.

I will now consider if this redress and compensation offering is sufficient given the individual circumstances of the Complainants.

The Provider issued a **Letter of Approval** dated **27 April 2007** to the Complainants which detailed as follows:

<i>"Loan Type:</i>	<i>Three Year Fixed Residential Investment Loan (Interest Only)</i>
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<i>Purchase Price / Estimated Value :</i>	<i>EUR 330,000.00</i>
<i>Loan Amount :</i>	<i>EUR 297,000.00</i>
<i>Interest Rate :</i>	<i>4.99%</i>
<i>Term :</i>	<i>25 year(s)"</i>

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

"A. [The Provider] WILL ACCEPT MONTHLY REPAYMENTS, AS SET OUT IN THE LETTER OF APPROVAL, REPRESENTING REPAYMENT OF INTEREST ONLY (AS MAY BE VARIED FROM TIME TO TIME AND INCLUDING INSURANCE PREMIUMS WHERE APPLICABLE) FOR THE FIRST FIVE YEARS FROM THE DATE OF CHEQUE ISSUE OR SUCH OTHER PERIOD AS [the Provider] MAY DECIDE...

F. 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 ISSUE OF THE LOAN. ON EXPIRY OF THE FIXED RATE PERIOD AND WHERE THE APPLICANT CHOOSES THE OPTION OF A TRACKER MORTGAGE INTEREST RATE, THE INTEREST RATE APPLICABLE TO THE

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**LOAN WILL BE THE TRACKER MORTGAGE RATE APPROPRIATE TO THE BALANCE OUTSTANDING ON THE LOAN AT THE DATE OF EXPIRY OF THE FIXED RATE PERIOD.** IN THE ABSENCE OF INSTRUCTIONS FROM THE APPLICANT AT THE EXPIRY OF THE FIXED RATE PERIOD, THE INTEREST RATE FOR THE LOAN WILL BE THE TRACKER MORTGAGE RATE APPLICABLE TO THE BALANCE OUTSTANDING ON THE LOAN, AT THE DATE OF EXPIRY OF THE FIXED RATE PERIOD AND AS MAY BE VARIED IN ACCORDANCE WITH VARIATIONS TO THE EUROPEAN CENTRAL BANK REFINANCING RATE.” **[my emphasis]**

The Complainants signed the **Acceptance of Loan Offer** dated **14 June 2007**, on the following terms:

*“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 of the mortgage loan.*

*...*

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

It is clear to me that the **Letter of Approval** envisaged a three-year fixed interest rate of 4.99%. **Special Condition F** of the **Special Conditions** outlines what was to occur after the expiration of the fixed interest rate period. It provides that on expiry of the fixed interest rate period, the Complainants would be offered a tracker interest rate appropriate to the balance outstanding on the loan at the date of expiry of the fixed rate period. There was no guarantee in the Special Conditions or any other conditions applicable to the Complainants’ mortgage loan that a specific tracker interest rate margin would be made available to the Complainants at the end of the fixed period. **Special Condition A** also indicates that the mortgage loan would operate on an interest only repayment schedule for the first 5 years of the term of the loan.

The mortgage loan statements provided in evidence indicate that the mortgage loan drew down on **18 July 2007**.

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The Complainants wrote a letter to the Provider dated **22 December 2008**, requesting to switch from a “3 year fixed rate of 4.99% to a variable rate”. The mortgage loan statements provided in evidence indicate that the interest rate on the mortgage loan account was changed in accordance with the Complainants’ request on **1 January 2009**. The Provider confirmed the switch in interest rates to the Complainants by way of letter dated **6 January 2009**.

The Complainants wrote a letter to the Provider dated **3 June 2009** which details which follows:

*“As mentioned during our meeting I opted to break the fixed term in January of this year at which point the loan account reverted to a variable rate. I opted for the variable rate in good faith on the basis of falling interest rates however since then a total of 1% in ECB rate reductions have not been passed on by [the Provider]. I subsequently reviewed the original loan approval letter which clearly indicates that a tracker rate is available on expiry of the fixed rate term. Please note that it was not made clear to me by the Bank at the time of exiting the fixed rate that I was waiving my right under the loan agreement to a tracker rate option on expiry of the fixed rate term.*”

*The value of the property has fallen significantly since it was purchased. The property is now in negative equity which is not ideal for me (or the Bank) however I am committed to tackling this position by making capital contributions.*

*I am now requesting that [the Provider] honour the original loan agreement and switch the loan to a suitable tracker rate to enable me to take advantage of the low interest rate environment and commence capital repayments.”*

The Provider responded with a letter to the Complainants dated **22 June 2009**, which detailed which follows:

*“You drew down your investment loan mortgage on 18<sup>th</sup> July 2007 on a 3 year fixed rate of 4.99%. As per your mortgage terms and conditions it states the following:*

***On expiry of the fixed rate period (18/07/2010), and where the application chooses the option of a tracker mortgage interest rate, the interest rate applicable to the loan will be the tracker mortgage rate appropriate to the balance outstanding on the loan at the date of expiry of the fixed rate period...***

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*On the 22<sup>nd</sup> December 2008 we received written request from you to break your 3 year fixed rate of 4.99% and to be put onto the variable rate of 4.65%. This request was completed on 01<sup>st</sup> January 2009...*

*It is clearly stated on your terms and conditions that the tracker rate does apply to your loan account on expiry of your fixed rate period. As you broke this condition and came out of your fixed rate early this condition of the mortgage does not apply.*

*We currently do not offer tracker mortgages to customers unless the account is kept with their terms and conditions and unfortunately can not offer same to you."*

The Complainants emailed the Provider dated **23 August 2010**, as follows:

*"In December 2008 as ECB rates were falling we made enquiries through your branch network & through the mortgage centre about the possibility of breaking the 3 year fixed rate that we were on. We were advised as follows:*

- 1. That the tracker rate was no longer available.*
- 2. That the account would revert to the variable rate on expiry of the fixed rate.*
- 3. There would be no penalty in switching to the variable rate of that point.*

*It is now clear that this information was both incorrect and misleading. However based on the information given we then made the decision to break the fixed rate and instructed the Bank to switch the account to the variable rate.*

*All this was based on the information provided by [the Provider's] staff. On subsequent review of the original loan agreement we discovered that the loan account would have in fact reverted to a tracker rate on expiry of the fixed rate. This vital information was not outlined or disclosed to us at the time we made our enquires about breaking the fixed rate and is the cause of this complaint..."*

The Provider responded to the Complainants by letter dated **3 September 2010** which details which follows:

*"....*

*As you decided to break your Fixed Rate contract early in January 2009, your Fixed Rate contract did not mature to the expiry of the term and therefore the Tracker*

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*Rate is no longer an option to you. I note also that the Bank allowed you to break the Fixed contract without penalty.*

...

*I regret that you feel that you were misinformed in relation to the Interest rate applied to your mortgage. The Bank did not solicit any calls to you in relation to switching mortgage products and changes to the interest rate were effected solely at your own request."*

I note that the Complainants redeemed their mortgage loan account with the Provider on **21 April 2010** and chose to refinance with an alternative financial services provider.

The Complainants submit that it was the Provider's failure to offer them a tracker interest rate in **June 2009**, on foot of their request by way of letter dated **3 June 2009**, that led them to redeem their mortgage loan and move to an alternative financial service provider in **April 2010**. However, it is important to note that the Complainants did not have a contractual entitlement to a tracker interest rate in **June 2009**, having broken away early from the 3-year fixed interest rate period in **January 2009**. The tracker interest rate was due to apply at the end of the fixed interest rate period in **July 2010** and not in **January** or **June 2009**.

I note from the evidence submitted by the Complainants that they drew down a new mortgage loan in the amount of €130,000.00 with an alternative financial services provider on **20 April 2010**. The nature of the interest rate applicable to the new mortgage loan is unclear.

However, this Office has been provided with a mortgage loan account statement dated **31 December 2010** in respect of the new mortgage loan which states that the initial interest rate which applied to the mortgage loan on **20 April 2010** was 2.99%. This interest rate was considerably lower than the interest rate of 4.45% that applied to the Complainants' mortgage loan with the Respondent Provider before it was redeemed. This interest rate was also lower than the tracker interest rate which would have been made available from the Provider on the scheduled expiry of the fixed interest rate period in **July 2010**, which was ECB + 3.25% (4.25%).

The Provider wrote a letter to the Complainants dated **11 August 2015** which details follows:

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*“As a result of an investigation by the Central Bank of Ireland, [the Provider] has identified a failure which it made in connection with the management of certain mortgage accounts including the account identified above.*

*In breaking from your fixed interest rate period early, you lost a contractual right to avail of a tracker rate mortgage at the scheduled maturity date of the fixed interest rate period. However at the time that you broke from your fixed interest rate period, we did not inform you that you would be unable to avail of a tracker rate mortgage at the scheduled maturity date of the fixed interest rate period. We sincerely apologise for this failure.*

...

*This compensation payment will include a payment of €1000 in recognition of our failure in this matter together with €400 (including VAT) which you may use to pay for independent advice if you choose to seek advice in respect of this letter...”*

The Complainants subsequently appealed the Provider’s redress and compensation offering to the Provider’s Customer Appeals Panel in **August 2016**. The Customer Appeals Panel decided on **28 February 2017** that the Complainants’ appeal was partially successful. The Complainants rejected the Appeals Panel decision.

The Provider wrote a follow up letter to the Complainants dated **28 March 2019** offering additional redress and compensation, which detailed as follows:

*“In acknowledgement of this failure, the Bank offered you redress in the amount of €1,400.00 on 11 August 2015.*

*As you remained dissatisfied with this offer, you appealed the decision to the [Customer Appeals Panel]. Having reviewed your case in full, the [Customer Appeals Panel] upheld your appeal and awarded you additional compensation in the amount of €3,213.50 (including legal fees refund of €713.50) on 07 March 2017.*

*It is noted that you have not yet accepted the above offers to date, however these remain open to you. I also wish to advise you that accepting the above offers does not interfere with your right to refer this matter to the Financial Services & Pensions Ombudsman for adjudication.*

*The Bank has further reviewed your complaint and would like to offer you the opportunity to return your mortgage to [the Provider] at a tracker rate of ECB+3.25% in an effort to resolve this complaint at this time. To clarify, the amount*

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*of the mortgage, if granted, will be limited to the closing balance of the loan, which was €298,035.50 at the time you moved to [alternative financial provider], less the normal payments made to the account in the intervening period i.e. the loan amount will be that which would have remained outstanding at the date of application, had you remained with [the Provider].*

*Should you decline this offer and cho[ose] to remain with [alternative financial provider], as an alternative, and in addition to the redress offered and the award of the [Customer Appeals Panel], the Bank would like to offer you the following in full and final settlement of your complaint:*

- *A payment of €1,829.54 representing the additional redress you would have received had your loan remained with [the Provider] from the maturity of the fixed rate period (July 2010) to 28 December 2017.*
- *Reimbursement of a Valuation Fee in the amount of €130.00.*
- *A payment of €2,000.00 to cover the cost of legal fees incurred.*

*This amounts to an additional €3,959.54 which the Bank would now like to offer you in full and final settlement of this complaint..."*

The Provider clearly offered the Complainants the option to return their mortgage to the Provider at a tracker interest rate of ECB + 3.25% or in the alternative, additional redress, and a contribution towards legal costs. The Provider is of the view that the offer to return the Complainants' mortgage to the Provider puts the Complainants back in the position that they would have been in, had they not taken out a new loan with another financial services provider.

The Provider is also of the view that the alternative offer of additional redress, a refund of the property valuation fee and a contribution towards legal costs is adequate to compensate the Complainants for its failure to inform them that they would not be able to avail of a tracker interest rate at the scheduled maturity date of the fixed interest rate period when they broke away early from the fixed rate period. The Complainants however did not accept either of the Provider's full and final settlement offers, as detailed above.

The Complainants maintain that they are entitled to a tracker interest rate of ECB + 1.1% as opposed to ECB + 3.25%. In this regard the Complainants are relying on tracker interest rates that were available at the time their mortgage loan was taken out in **April 2007**. The Provider furnished this Office with its applicable tracker interest rates and margins from **July 2007**, which details which follows:

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Date	ECB	+	Margin	Tracker Rate
02 July 2007	4.00%	+	1.10%	5.10%
10 December 2007	4.00%	+	1.25%	5.25%
03 June 2008	4.00%	+	1.50%	5.50%
14 July 2008	4.25%	+	1.50%	5.75%
05 August 2008	4.25%	+	1.68%	5.93%
07 November 2008	3.75%	+	1.68%	5.43%
05 December 2008	3.25%	+	1.68%	4.93%
19 December 2008	3.25%	+	2.25%	5.50%
02 January 2009	2.50%	+	2.25%	4.75%
13 February 2009	2.00%	+	2.25%	4.25%
03 April 2009	1.50%	+	2.25%	3.75%
30 April 2009	1.25%	+	2.25%	3.50%
05 June 2009	1.00%	+	2.25%	3.25%
31 August 2009	1.00%	+	3.25%	4.25%

The Complainants are seeking that a tracker interest rate of ECB+1.10% be “backdated” to **April 2010**. However, it is important to note that terms and conditions of the Letter of Approval dated **27 April 2007** specifically provided for a 3-year fixed interest rate of 4.99%, with a tracker mortgage rate appropriate to the balance outstanding on the loan to apply at the end of the fixed rate period. Therefore, the contractual entitlement to a tracker interest rate was due to come into effect at the end of the fixed interest rate period in **July 2010**.

The Provider has submitted a copy of its “Lending interest rates effective from the start of the business on the 8<sup>th</sup> June 2010” into evidence which details the tracker interest rates available from **June 2010** and at the end of the 3-year fixed interest rate period.

The tracker interest rates detailed in the document are as follows:

**“LTV Variable applicable to existing Home Loans since 01/02/2010. LTV Tracker Maturity Rates applicable to existing Home Loans since 31/08/03 Rate APR**

[...]

Tracker Rate LTV <80%	4.25%	4.3%
Tracker Rate LTV >80%	4.25%	4.3%”

The lending interest rates detailed above show that the tracker interest rate available from the Provider at the end of the scheduled 3-year fixed interest rate period was 4.25%, comprising the ECB refinancing rate of 1% and a margin of 3.25%. Consequently, if the Complainants had not broken away early from the 3 -year fixed interest rate period in **December 2008** and redeemed the mortgage loan in **April 2010**, the mortgage loan account would have switched to a tracker interest rate of ECB + 3.25% in **July 2010**.

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In my Preliminary Decision dated **29 March 2022**, it was noted that the Provider has accepted that a failure occurred on the Complainants' mortgage loan account, and compensation of €1,000.00 has been paid to the Complainants together with the sum of €400.00 for legal advice. However, the Complainants, in their post Preliminary Decision submission dated **29 March 2022**, have clarified that they *"have not accepted any offers of payment in respect of compensation from [the Provider] to date, including the initial offer of €1,400"*.

The Complainants were also awarded €2,500.00 in compensation together with €713.50 for legal costs incurred when the Complainants transferred their mortgage to another financial services provider, from the Customer Appeals Panel.

However, it appears that the Complainants have not accepted this award to date. This Office understands that this offer remains open to the Complainants to accept.

By way of letter dated **28 March 2019**, the Provider offered the Complainants the opportunity to either return their mortgage to the Provider with an applicable tracker interest rate of ECB + 3.25% subject to certain lending limits or in the alternative, to accept an additional payment of €3,959.54 comprising a redress payment of €1,829.54, reimbursement of the cost of the property valuation fee of €130.00 and a payment of €2,000.00 to cover legal fees. I understand that this offer also remains open to the Complainants to accept, in addition to that awarded by the Customer Appeals Panel.

Having considered the evidence and the circumstances of this complaint, I accept that the level of compensation offered by the Provider to date together with the additional offers of redress and compensation as detailed in the Provider's letter to the Complainants dated **28 March 2019**, is a reasonable attempt to resolve this complaint in the context of the Provider's admitted error. The Provider has offered to place the Complainants in the position they would have been in had the error not occurred. The Complainants were not entitled to a tracker interest rate of ECB + 1.1% as they have submitted to this Office.

The Complainants, in their post Preliminary Decision submission dated **29 March 2022**, note that they *"will make contact with the bank with the view to progressing full payment of all compensation previously offered."*

The Provider, in its letter to this Office dated **05 May 2022**, has stated that it will *"contact the Complainants directly with regard to the payment to be made by the Bank to them and completion of their acknowledgement"*.

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For the reasons outlined 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.**



Handwritten signature of Jacqueline O'Malley in black ink.

**JACQUELINE O'MALLEY**  
**HEAD OF LEGAL SERVICES**

22 June 2022

### **PUBLICATION**

#### **Complaints about the conduct of financial service providers**

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

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(b) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.

**Complaints about the conduct of pension providers**

Pursuant to *Section 62* of the *Financial Services and Pensions Ombudsman Act 2017*, the Financial Services and Pensions Ombudsman will **publish case studies** in relation to complaints concerning pension 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.