



<u>Decision Ref:</u>	2020-0225
<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

Background

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' then Principal Private Residence.

The loan amount was €360,000 and the term of the loan was 30 years. The particulars of the mortgage loan offer accepted by the Complainants on **1 November 2005** detailed that the loan type was a "1 Year Fixed Rate Home Loan".

The mortgage loan was redeemed in full on **23 July 2018**.

The Complainants' Case

The Complainants submit that *"we received Loan Approval for a 1yr Fixed Rate Mortgage from [the Provider]. On 2nd March 2006 we drew down the Mortgage."*

They state that *"It has recently come to our attention that prior to the expiry of our 1yr Fixed Rate (2nd March 2007) we should have received an options letter, detailing all rate options available to us. According to correspondence received from [the Provider], this Options Letter should have issued c.20 days prior to the expiry of our 1yr fixed rate to give*

us time to assess our options and avail of professional advice should we have wished to do so. We have been informed that our options at the time would have been any of the following rates: A standard variable rate; Tracker rate; Fixed rate.”

The Complainants submit that *“It is our contention that no such letter was issued to us. We requested that the Bank provide us with a copy of the Options Letter they allege they issued and they were unable to do so.”* They also state that it is *“disappointing”* that the Provider is unable to confirm the date on which it purportedly issued the options letter.

The Complainants state that *“Furthermore, it transpires that on expiry of our 1yr Fixed Rate, our loan defaulted to the then Tracker rate of 4.60% (ECB + 1.10%) ... We were never informed that our Mortgage had defaulted to a Tracker rate.”*

The Complainants outline *“It is the Banks contention that on 1st March 2007 (1 day prior to the expiry of our Fixed Rate) we contacted the Banks ‘Business Retention Unit’ to discuss our options. The Bank cannot provide any clarity as to what form this contact took, written, e-mail or telephone. On foot of this purported contact, [the Provider] issued correspondence to us, detailed Fixed Rate options ONLY. In the belief that these were the only options available to us, we opted for a 5yr Fixed Rate of 5.06%.”* The Complainants say that the *“Fixed Rate Options letter did not advise us to avail of any professional advice; it simply detailed ‘Fixed Rate Options’ to the exclusion of any other products and/or rates.”*

The Complainants say that they selected the five year fixed interest rate of 5.06% and returned the signed options form to the Provider in or around **12 March 2007**. They say that at this time they were unaware that their mortgage account had defaulted to the tracker interest rate of 4.60% (ECB + 1.10%) and *“no one in [the Provider] took the time to contact us and explain that our loan had defaulted to a tracker rate and outline the implications of converting from this (lesser rate) tracker to a 5yr fixed rate.”*

The Complainants detail that *“In 2012, prior to the expiry of our 5 year fixed rate, we did receive an ‘Options Letter’ detailing all rates we could avail of, however, at this time [the Provider] had discontinued its Tracker offering.”*

The Complainants submit that *“Due to the ongoing high mortgage repayments we have had to proceed with selling the property as it is much more economical to buy a new property of the same value with a new mortgage.”*

The Complainants are seeking a refund of the interest overcharged on their mortgage account.

The Provider's Case

The Provider details that the Complainants' **Letter of Approval** dated **13 October 2005** was accepted by the Complainants on **1 November 2005**. The Provider states that by the time the loan was drawn down on **2 March 2006** the interest rate of 2.55% had been amended to 3.08%, in accordance with **Condition 5.2** of the **General Mortgage Loan Approval Conditions**, which states that the interest rate specified in the Letter of Approval may vary before the date of completion of the mortgage. The Provider submits that the Letter of Approval did not contain an entitlement for a tracker rate of interest to be offered to the Complainants on the expiry of the fixed interest rate period in **March 2007** or at any time during the lifetime of the loan. It states that the contractual rate to be applied by the Provider on the expiry of the fixed rate period is a variable rate. The Provider relies on **Condition A** of the **Special Conditions** and **Condition 5** of the **General Mortgage Loan Approval Conditions** in support of this.

The Provider states it does not accept that the Complainants were not informed that a tracker interest rate was available to them, or that it was the default rate for the mortgage loan account on the expiry of the fixed interest rate period in **March 2007**. It states that notwithstanding that the Complainants had no contractual entitlement to a tracker rate, the Provider included a tracker rate in the options available to them on expiry of the fixed rate on **2 March 2007** and also outlined the tracker rate as its default rate applicable in the event that no rate option was chosen by the Complainants before **2 March 2007**.

The Provider states that the inclusion of a tracker interest rate option arose because there was a period from **mid-2006** to **mid-2009** when it was including a tracker rate as an option on options forms for certain customers whose accounts were expiring from a fixed or discount terms and whose mortgage loan contract did not contain an entitlement to a tracker rate option on expiry of a fixed or discount term. It states that this extension of the Provider's tracker rate offering arose as a result of its policy at the time and not on the basis of any contractual entitlement.

The Provider submits that in **2007** its automated mortgage processing system issued options letters 20 days before the date of fixed rate expiry, and in these letters it informed customers of the date on which their fixed rate was due to expire and attached a form which listed the available interest rates, on which the customers were to indicate a rate choice. It states that the letter confirmed the variable rate which the Provider would apply in the absence of selection by a customer. It states that in the case of the Complainants' fixed rate expiry, the default rate on **2 March 2007** was the tracker variable rate of 4.60% (ECB + 1.10%), and the other options available were the standard variable rate of 4.85%, and fixed rates for one, two, three, and four year terms.

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The Provider states that it has no record of receiving a notification of the Complainants' preferred interest rate on or before **2 March 2007** and therefore the interest rate on the mortgage account automatically defaulted to the tracker interest rate of 4.60% on **2 March 2007**.

The Provider submits that *"the records of the Bank retrieved to date show that there was a discussion on 1 March 2007 between the Bank's Business Retention Unit and the Complainants"*. It states that during this discussion the Complainants *"negotiated a 5-year reduced fixed rate of 5.06%"* and *"it is likely that the negotiations included reference to the various rate options then available to the Complainants"*. The Provider submits that it issued a fixed rate option form to the Complainants on **1 March 2007**, which included the negotiated 5 year fixed interest rate of 5.06%. The Provider states that the options form was provided to the Complainants so they could confirm in writing the reduced fixed rate agreed between them and the Provider by telephone, and did not advise the Complainants that they should seek professional advice. It submits that on receipt of the signed instruction form the Provider switched the Complainants' mortgage account to the five year fixed rate of 5.06% on **15 March 2007**.

The Provider states that it commenced the withdrawal of its tracker rate offering in **mid-2008** but continued until **mid-2009** its policy of offering a tracker 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. It states that after **2009** it continued to offer and/or apply tracker rates to maturing loans where customers had a contractual right to same.

The Provider states that the Complainants' 5 year fixed rate was due to expire on **15 March 2012** and an options letter and form which outlined the available interest rates was issued to the Complainants which informed them that in the absence of a rate selection the LTV variable rate would apply as the default rate. The Provider states that it has no record of receiving the Complainants' preferred rate selection and the mortgage account switched to the variable rate of 5.19% on **15 March 2012**.

The Provider states that the Complainants' mortgage loan account was redeemed on **23 July 2018**.

The Complaints for Adjudication

The complaints for adjudication are as follows;

- (a) The Provider failed to inform the Complainants about the available interest rate options on the expiry of the fixed interest rate period in **March 2007**;

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- (b) The Provider failed to inform the Complainants that their mortgage loan account had defaulted to a tracker interest rate (ECB + 1.1%) in **March 2007**; and
- (c) The Provider failed to offer the Complainants a tracker interest rate on the expiry of the five year fixed interest rate period in **2012**.

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 **27 May 2020** outlining the preliminary determination of this office 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, my final determination is set out below.

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 will be investigated and dealt with in this Decision. The Complainants were informed of the parameters of the investigation by this Office, by letter, which outlined as follows;

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“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 the interactions between the Provider and the Complainants in or around **March 2007**.

The **Letter of Approval** dated **13 October 2005** details as follows;

<i>“Loan Type:</i>	<i>1 Year Fixed Rate Home Loan</i>
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<i>Purchase Price / Estimated Value:</i>	<i>EUR 420,000.00</i>
<i>Loan Amount:</i>	<i>EUR 360,000.00</i>
<i>Interest Rate:</i>	<i>2.55%</i>
<i>Term:</i>	<i>30 year(s)”</i>

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

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

General Condition 5 of the **General Mortgage Loan Approval Conditions** outline;

“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

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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 **General Mortgage Loan Approval Conditions** also outline;

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 **1 November 2005**. 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."

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It is clear to me that the Letter of Approval envisaged a 1 year fixed interest rate of 2.55% and thereafter the option of a variable rate. 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. The Complainants accepted the **Letter of Approval** having confirmed that it had been explained to them by their solicitor in **November 2005**.

The mortgage loan was drawn down in **March 2006** on a fixed interest rate of 3.08%. **General Condition 5.2** allows for such a variation in the interest rate prior to draw down.

The Provider has submitted that it "*automatically*" issued a letter to the Complainants approximately 20 days prior to the expiry of the 1 year fixed interest rate period in **March 2007**. The Provider submits that the automated letters it issued to customers prior to the expiry of a fixed interest rate period "*informed customers of the date on which their fixed rate was due to expire and attached a form which listed available interest rates and which was to be completed and returned to indicate a rate choice.*"

I am disappointed to note that a copy of the letter and options form that purportedly issued to the Complainants in or around **February 2007**, have not been furnished in evidence to this office. The Provider has not offered any reason for not furnishing this office with a copy of that letter and options form. The Complainants take issue with the Provider's failure to retain a copy of this letter and options form and believe that they did not receive them.

On the basis of the evidence before me it is unclear whether the Complainants received the options letter and form that the Provider submits it issued to the Complainants in **February 2007**, however, it is not in fact central to the issue for determination whether these documents were or were not received at that time. The reason for this is that the Complainants did not have a contractual entitlement to be given the option of any rate other than a variable interest rate in accordance with **General Condition 5.4**. As detailed above, the variable rate was a variable rate which could be adjusted by the Provider and was not a tracker interest rate. There was no obligation on the Provider to offer alternative interest rate options on the expiry of the fixed interest rate period in **March 2007**, beyond the variable rate as set out in the mortgage loan contract.

The Provider has submitted that on **1 March 2007**, one day prior to the expiry of the initial 1 year fixed interest rate period, the Complainants contacted the Provider's Business Development and Retention Unit. The Complainants have submitted that "*The Bank cannot provide any clarity as to what form this contact took, written, e-mail or telephone.*"

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The Provider has stated that due to “IT restrictions and the passage of time” it is not in a position to retrieve telephone recordings prior to **2012**.

An email from an employee of the Provider’s Business Development and Retention department to another employee of the Provider dated **1 March 2007** has been furnished in evidence and details as follows;

*“Can you please send out **5yr fixed rate of 5.06%** as agreed with [Redacted].*

No €100 fee as client is currently on a fixed rate.”

I note that the copy of the above email provided in evidence has the words “5Yr”, “Broker” and “No fee fixed” handwritten on it.

The Provider submits that it is “likely that the negotiations included reference to the various rate options then available to the Complainants.” It is unclear to me the basis on which the Provider has suggested this, in the absence of any evidence relating to the discussion other than the email referred to above. In the absence of such evidence I am not in a position to comment on the discussion that is purported to have taken place between the parties in or around **1 March 2007** in relation to the interest rate options for the mortgage loan account on the expiry of the fixed interest rate period.

While it is disappointing that the Provider is unable to retrieve any telephone recordings or any other record of the discussion which it submits took place on this date, it appears to me from the above email that some form of discussion between the Provider and the Complainants in relation to interest rate options for the mortgage loan did take place on **1 March 2007**, which prompted the Provider’s employee to send the above internal email.

The Provider wrote to the Complainants by letter dated **1 March 2007**, which details as follows;

*“**Further to our recent communication**, I am attaching a list of our current fixed rate options. **You indicated that you are interested in availing of our five year fixed rate of 5.06%**. Please tick the rate you would like and return to:*

[Provider’s address] [my emphasis]”

The following options were made available to the Complainants in the **rate options form**:

"Approximate repayment		eur €
<i>Current Rate</i>	3.08%	€1,534.05
<i>1 Year fixed rate Mortgage currently</i>	4.99%	€1,920.90
<i>2 Year fixed rate Mortgage currently</i>	5.15%	€1,955.30
<i>3 Year fixed rate Mortgage currently</i>	5.10%	€1,944.52
<i>5 Year fixed rate Mortgage currently</i>	5.06%	€1,935.91
<i>7 Year fixed rate Mortgage currently</i>	5.15%	€1,955.30
<i>10 Year fixed rate Mortgage currently</i>	5.15%	€1,955.30

...

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

..."

The Complainants completed and signed the rate options form on **12 March 2007** and selected the five year fixed interest rate of 5.06%. The options form was stamped received by the Provider on **16 March 2007**. The fixed interest rate of 5.06% which the Complainants selected was the same rate that the Provider identified the Complainants were *"interested in availing of"* in the cover letter.

I also note from the evidence provided that this *"negotiated"* rate was not a rate that was available generally at the time. There was no 5 year fixed interest rate option available for *"existing home loans"*. The 5 year fixed interest rate option that was available to *"new home loans"* was 5.15%. The Provider has furnished a copy of its **Lending Interest Rates** stated to be effective from the start of business on **18 January 2007**, which outlines the interest rates that the Provider had available at the time.

"Repayment Home Loans	RATE	APR
Rates applicable to Existing Home Loans		
<i>Standard Variable Rate</i>	4.85%	5.0%
<i>1 Year Discounted Variable Rate</i>	4.19%	4.9%
<i>1 Year Discounted Variable Rate (when borrowing <50% of the property value)</i>	3.99%	4.9%
<i>2 Year Discounted Variable Rate</i>	4.49%	4.9%
<i>1 Year Fixed Rate</i>	4.99%	5.0%
<i>2 Year Fixed Rate</i>	5.15%	5.0%
<i>3 Year Fixed Rate</i>	5.10%	5.0%
<i>4 Year Fixed Rate</i>	5.15%	5.1%

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Rates applicable to New Home Loans

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5 Year Fixed Rate	5.15%	5.1%
7 Year Fixed Rate	5.15%	5.2%
10 Year Fixed Rate	5.15%	5.2%

Tracker Mortgage (Home Loan and Residential Investment Property)

Loan Amount of €0 – €99,999	4.85%	5.0%
Loan Amount of €100,000 - €249,999	4.75%	4.9%
Loan Amount of €250,000 - €749,999	4.60%	4.7%
Loan Amount of €750,000 or more	4.40%	4.5%

...”

No documentary evidence has been provided to show that the mortgage loan account defaulted to the tracker interest rate of 4.60% (ECB + 1.10%) on **2 March 2007**, however it does not appear to be in dispute between the parties that this is what occurred, although the Complainants contend that they were not informed of this at that time. By this time, contact had already been with the Provider with respect to the Complainants’ mortgage loan and a lower 5 year fixed interest rate of 5.06% had been negotiated with the Provider on **1 March 2007**. The Complainants then signed the options form on **12 March 2007** electing to apply the 5 year fixed interest rate. Consequently the Provider was implementing the Complainants’ instructions by applying the fixed interest rate to the mortgage loan.

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

“...on [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 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. Between [mid] 2006 and [mid] 2006 while the options letter included the offer of a tracker interest rate, in the absence of a customer selection, the variable rate was applied to the mortgage as the default interest rate. From [mid] 2006 until [mid] 2009, in the absence of a customer selection the tracker interest rate was applied to the mortgage as the default interest rate.

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While the Bank ceased offering the tracker mortgage interest rate in [mid] 2008 to new business, 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 rates to maturing loans where customers had a contractual right to same."

Having considered the mortgage loan documentation, I accept that the Complainants did not have a contractual entitlement to a tracker interest rate at the end of the fixed rate period which applied from **March 2006** to **March 2007**. It appears that the Provider, in line with its own policy at the time, applied the tracker interest rate as the default rate between **2 March 2007** and **16 March 2007**, while the option of a 5 year fixed interest rate, as selected by the Complainants, was put into effect.

The Complainants have also submitted that the *"Fixed Rate Options letter did not advise us to avail of any professional advice"* and that *"no one in [the Provider] took the time to contact us and explain that our loan had defaulted to a tracker rate and outline the implications of converting from this (lesser rate) tracker to a 5yr fixed rate"*. It would appear to me that the *"implications"* that the Complainants are referring to is the longer term comparison between an ECB tracker interest rate and the fixed rate option. It is a matter of fact that the ECB base rate ultimately began and continued to drop from **late 2008/early 2009** to **March 2016**, when it was reduced to 0%. There is no evidence that the Provider knew or could have known in **March 2007** that the ECB base interest rate was ultimately going to reduce to 0% some seven years later such that it could have advised the Complainants of the *"implications"* of not selecting a tracker interest at that time. Furthermore when the communication took place on **1 March 2007** in relation to fixed interest rate options the default tracker rate which the Complainants were not contractually entitled to had not yet been applied to the Complainants' mortgage loan account. This default application of the tracker interest rate occurred on **2 March 2007**.

There was no obligation on the Provider at that time to advise the Complainants to seek independent financial advice. I note that the Provider's letter to the Complainants dated **1 March 2007** invited them to contact the Provider if they had questions. There is no evidence to suggest that the Complainants contacted the Provider after **1 March 2007**, when they received the letter. If the Complainants were not happy with the rate options outlined by the Provider on **1 March 2007**, or if they required clarification on those rate options, it was open to them to seek clarification from the Provider or to seek independent advice, if they were of the view that they needed such advice. They did not appear to do so.

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At the end of the 5 year fixed interest rate the Complainants' mortgage loan defaulted to an LTV variable rate, in accordance with **General Condition 5.4**. I have not been furnished with the rate options letter that was issued to the Complainants in **March 2012**.

Provision 11.5 and 11.6, Chapter 11 of the Consumer Protection Code 2012 (which was effective from **01 January 2012**) outlines as follows;

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

- a) a copy of all documents required for consumer identification and profile;*
- b) the consumer's contact details;*
- c) all information and documents prepared in compliance with this Code;*
- d) details of products and services provided to the consumer;*
- e) all correspondence with the consumer and details of any other information provided to the consumer in relation to the product or service;*
- f) all documents or applications completed or signed by the consumer;*
- 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.*

11.6 A regulated entity must retain details of individual transactions for six years after the date on which the particular transaction is discontinued or completed. A regulated entity must retain all other records for six years from the date on which the regulated entity ceased to provide any product or service to the consumer concerned.

The Complainants' mortgage loan was incepted for a term of **30 years** commencing in **November 2005** and the letter purportedly issued in **March 2012**. The mortgage loan was redeemed in full on **23 July 2018**. 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 unclear to me, in the absence of any explanation, why this documentation has not been furnished by the Provider. This is most disappointing.

Nonetheless I note that it is not in dispute between the parties that the Complainants were not offered a tracker interest rate option at that time. I accept that the Complainants were not contractually or otherwise entitled to a tracker interest rate on the mortgage loan in **March 2012** or at any other time.

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Having considered the evidence in this matter, it is clear to me that the Complainants did not have a contractual entitlement to a tracker interest rate on their mortgage loan either at the end of the fixed interest rate periods that expired in **March 2007** or **March 2012**. The tracker interest rate of ECB + 1.1% was applied to the mortgage loan between **02 March 2007** and **16 March 2007**, while the formalities for the application of the Complainants' negotiated and selected rate choice of a 5 year fixed interest rate were being carried out. The Complainants chose the 5 year fixed interest rate and this was the rate that was applied to their mortgage loan account by the Provider in accordance with their instructions.

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

Conclusion

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

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

19 June 2020

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.