



<u>Decision Ref:</u>	2020-0151
<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 Failure to offer a tracker rate at point of sale
<u>Outcome:</u>	Partially upheld

**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 is €425,000 and the term of the loan is 35 years. The Loan Offer signed on **14 February 2007** detailed that the interest rate applicable was 5.00% fixed until **31 March 2009**.

The Complainants' Case

The Complainants' mortgage loan account was drawn down in **April 2007** on a two year fixed interest rate of 5%.

The Complainants say that *"When taking out the mortgage we chose a fixed rate, interest only option for the first two years. Our understanding at the time was that when the fixed rate period was over we would move to a tracker rate paying capital and interest for the remaining 33 years."*

The Complainants submit that on the expiry of the fixed interest rate period in **March 2009** they were not offered the tracker interest rate option, *“instead only receiving a choice of fixed or variable as trackers were supposedly no longer available.”*

The Complainants outline that *“Our loan offer of the time simply states the APR at the time of offer, 5% for the fixed term interest only period, and nowhere states the interest rate that the mortgage will revert to. As stated it was our consideration that a tracker would be offered when the fixed period finished. There is no mention of having to revert to a variable rate or having to fix again anywhere in the loan offer. However as per our understanding when we elected to take a mortgage with [the Provider] there is a mention of the Tracker Mortgage in the loan offer under the section ‘Loan Acceptance’.”*

The Complainants say that the Provider’s assertion that the reference to ‘Tracker Mortgage’ in the **Loan Acceptance** document is a typographical error, *“dumbfounds”* them. They submit *“This would seem an implausible way of explaining away the clear reference to a ‘Tracker Mortgage’ on the signed page of the Loan Offer.”* They further submit that *“A typographical error from the consumer would not be an excuse considered if the roles were reversed.”*

The Complainants submit that the Provider relies on **General Condition 14(c) (ii)** in the **General Terms and Conditions** of the loan offer. They say *“the signed Loan Offer that we have in our possession from the time of drawdown of the mortgage does not include section 14 (c) (ii) ... It would seem that [the Provider] are referring to a loan condition that is in neither their paperwork or ours.”*

The Complainants further state that the Provider is seeking to rely on the **European Standardised Information Sheet**. They say **page 1** of this document provides that it is not a legally binding document and that in the event of any conflict or inconsistency, the **Specific Loan Offer Conditions** shall apply.

The Complainants say that *“there is a high level of ambiguity relating to the wording and terminology, in particular in the Loan Offer Letter ... and in this case a situation arose where there was no clarity in the Loan Offer Letter as to what the mortgage rate would be after the 2 year fixed period.”* They state that *“the Loan Offer Letter does not mention a variable rate, however it does though clearly reference a tracker mortgage.”*

The Complainants are seeking the following;

- a) A tracker interest rate applied to their mortgage loan account;
- b) Reimbursement of any interest they have overpaid on the mortgage loan account since the end of the fixed interest rate period in **March 2009**.

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The Provider's Case

The Provider submits that during the application stage, the Complainants chose to avail of the services of a third party mortgage Broker, and in accordance with the Provider's agreement with brokers, it was prohibited from contacting broker customers directly until the mortgage loan funds were drawn down. The Provider states that it cannot comment on any advice that the Complainants were given by the Broker at the application stage of their mortgage, in particular the information provided regarding the loan type and what would transpire at the end of the fixed rate period.

The Provider states that the original **Loan Offer Letter** issued to the Complainants on **18 December 2006**. The loan amount was €425,000 and the term of the loan was 35 years. The Loan Offer detailed that the initial rate of interest was fixed at 4.49% until **30 November 2008**.

The Provider details that prior to drawdown in **April 2007** a revised Loan Offer Letter issued to the Complainants on **4 April 2007** which amended the initial rate of interest to 5.00% fixed until **31 March 2009**. The Provider relies on the **Specific Loan Offer Conditions** which allows it to vary the fixed rate prior to drawdown "*in accordance with any variations in the fixed rate offered*" by the Provider.

The Provider outlines that the default rate applicable to the Complainants' fixed rate product was a standard variable rate and as such there was no entitlement to default to a tracker interest rate on the expiry of the fixed interest rate period in **April 2009**. The Provider relies on **Section 14 (c)** of its **Standard Mortgage Terms and Conditions**. The Provider submits that the standard variable rate is a "*variable interest rate which may be increased or decreased by the Lender at any time*" whereas a tracker interest rate is linked to the European Central Bank (ECB) base rate and so will rise and fall in line with movements in the ECB base rate only. The ECB base rate cannot be changed by the Provider. The Provider outlines that the Complainants confirmed that they had acknowledged receipt of the conditions applicable to the mortgage loan, that they had been explained to them by their solicitor and that they understood them. The Provider outlines that the conditions accepted by the Complainants were "*clear*" and "*unambiguous*" that the Complainants were not entitled to a tracker interest rate on their mortgage loan account.

The Provider states that a **European Standardised Information Sheet** was also provided to the Complainants which outlined a summary of the product offered to the Complainants. It states that **Section 3** of this document confirmed that the interest rate applicable on the expiry of the fixed rate period would be a further fixed rate or a variable rate of interest which may be increased or decreased by the Provider at any time.

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The Provider acknowledges that the **Loan Offer Acceptance** contains an “*erroneous*” reference to “*Tracker Mortgage*”. The Provider submits that the purpose of this paragraph was for the Complainants to acknowledge that they fully understood the specific nature of the mortgage, that the debt owed to the Provider was secured on the mortgaged property and must be repaid in full before the title deeds will be returned or the security released. The Provider outlines that the reference to “*Tracker Mortgage*” was a typographical error which “*was not capable of transforming the entire basis of the loan to a tracker facility, when there was no other reference to a tracker rate*” in other documentation evidencing the agreement.

The Provider states that when read in its entirety, the Complainants’ **Loan Offer Letter**, the **General Terms and Conditions**, the Provider’s **Standard Mortgage General Terms and Conditions**, the **European Standardised Information Sheet**, the revised **Loan Offer Letter** and the **Loan Offer Acceptance**, confirm the details of the mortgage product pertaining to the loan account.

The Provider details that tracker interest rates had been withdrawn from the market in **mid-2008** and therefore a tracker interest rate was not available for selection in **April 2009** when the initial fixed rate period on the Complainants’ mortgage account expired. It states that there was no entitlement for this mortgage account to automatically default to a tracker interest rate and the Provider has never offered a tracker interest rate as a default rate upon the expiry of a fixed rate.

The Provider states that in **April 2009** the Complainants wrote to the Provider requesting that the mortgage “*be changed to capital and interest repayments at standard variable rate with immediate effect.*” The Provider states that it subsequently replied to the Complainants by letter dated **30 April 2009** confirming that the repayment type had been changed to “*Capital and Interest*”, the product was “*SVR 3.85%*” and their new repayment amount was €1,618.15 effective from **04 May 2009**.

The Provider outlines that, based on a full review of the Complainants’ mortgage loan documentation and journey, it does not consider that the Complainants could have formed any reasonable expectation of defaulting to a tracker rate at the end of the fixed rate period.

The Complaint for Adjudication

The complaint for adjudication is that the Provider failed to offer the Complainants a tracker interest rate on their mortgage loan account on the expiry of the 2-year fixed interest rate period in **March 2009**.

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 **06 April 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, the final determination of this office 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;

"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."

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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 determine this complaint, it is necessary to review and set out the relevant provisions of the Complainants' mortgage loan documentation. It is also necessary to consider the details of certain interactions between the Complainants and the Provider between **2007** and **2009**.

The Complainants applied for a mortgage loan through a third party Broker. I note that two Broker branded mortgage application forms have been submitted in evidence. The first application form was signed by the First and Second Complainants on **20 November 2006** and **14 November 2006** respectively. In the **"Mortgage Type, Rate and Term Details"** section, in response to the question **"Amount of loan required €"** the Complainants/the Broker have handwritten a figure that is not legible. In response to the question **"Please tick your choice of interest rate"** they have not ticked any of the options of Variable, Fixed or Discount.

The second application form was signed by the Third Complainant on **20 November 2006**. In the **"Mortgage Type, Rate and Term Details"** section, in response to the question **"Amount of loan required €"** the Third Complainant/the Broker has written **"425,000"** and next to **"LTV"** they have written **"96"**. In response to the question **"Mortgage term (years)"** they have ticked **"35"** and in response to the question **"Please tick your choice of interest rate"** they have not ticked any of the options of Variable, Fixed or Discount.

A document addressed to the Provider's branch from its Retail Lending Unit has been furnished in evidence, which details as follows;

"Subject: HOUSE MORTGAGE APPLICATION

<i>Customer</i>	[Complainant names]		
<i>Amount</i>	€425,000	<i>Term: 35 years</i>	<i>Our Ref:</i> [Redacted]
<i>Interest Rate</i>	%	<i>Variable: 96% LTV</i>	<i>Direct Line:</i>
<i>DECISION:</i>	Agreed in Principle		

....
Date: 22/11/06
..."

I note that **"2 year fixed/interest 425,000"** has been handwritten at the top of this document.

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A further document addressed to the Provider’s Intermediary Unit from its Retail Lending Unit has been furnished in evidence, which details as follows;

“Subject: HOUSE MORTGAGE APPLICATION

Customer	[Complainant names]		
Amount	€425,000	Term: 35 years	Our Ref: [Redacted]
Interest Rate	%	Variable: FTB	Direct Line:
DECISION:	Agreed Subject to the Usual Terms and Conditions		

....
Date: 04/12/06
...”

A document titled “CASES GOING TO LOAN OFFER” has also been furnished in evidence by the Provider, which details as follows;

“Name of applicant(s)	[Complainant names]		
...			
Loan Amount	425,000		
Purchase Price	440,000		
Term	35		
LTV (%)	97%		
Mortgage Type	House purchase (PDH)	Remortgage	Switcher
	Investment	Top up	
Rate	2 yrs fixed		
...			
Interest only	Yes ✓ 2 #years	No	
...”			

Having considered the evidence before me, it appears that the Complainants elected to apply for a mortgage loan on an initial 2 year fixed interest rate period with payments of interest only and the mortgage application proceeded on that basis.

The Complainants submit that they had “understood” that the mortgage loan would move onto a tracker interest rate at the end of the fixed interest rate period. The Complainants have not informed this office how or why they formed this understanding. In this regard, I note that the Complainants’ mortgage loan was applied for through a third party mortgage

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Broker and the Provider did not have any direct interaction with the Complainants between the time that the mortgage loan application was made in **November 2006** and the time that the mortgage loan was drawn down in **April 2007**. As such it appears to me that this understanding could not have been formed on the basis of any verbal representations or assurances given by the Provider to the Complainants in advance of the Complainants entering into the mortgage loan contract by signing the Loan Acceptance on **14 February 2007** and drawing down the funds in **April 2007**.

The initial **Loan Offer Letter** dated **18 December 2006** details as follows;

*“Loan Type : Fixed Rate 4.49% until 30/11/08 100%
Interest Only
Loan Amount : €425,000.00
Interest Rate : 4.49%
Interest Type : Fixed
Term : 35 Years”*

The **Important Information** section of the Loan Offer Letter details:

“THE PAYMENT RATES ON THIS HOUSING LOAN MAY BE ADJUSTED BY THE LENDER FROM TIME TO TIME”

The **Specific Loan Offer Conditions** details as follows;

“The fixed rate quoted shall be subject to variation prior to drawdown in accordance with any variations in the fixed rate offered by the company

...

Interest only repayments will be collected on this mortgage for the first 24 Months after which it will revert to capital and interest.

...”

Two sets of General Terms and Conditions have been furnished in evidence by the Provider: The **General Terms and Conditions** and the **Standard Mortgage General Terms and Conditions**.

The set titled **Standard Mortgage General Terms and Conditions** are stated to be effective from *“01/06/2006”* and detail as follows;

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“1. Introduction

(a) These General Mortgage Terms and Conditions apply in all circumstances to the Lender’s Standard Mortgage/Tracker Mortgage. These General Terms and Conditions are supplemental to and form part of the Loan Offer which comprises Specific Loan Offer Conditions and General Terms and Conditions. In the event of any conflict or inconsistency, the Specific Loan Offer Conditions shall apply.”

Therefore I accept that the Standard Mortgage General Terms and Conditions are supplemental to the **Specific Loan Offer Conditions** and the **General Terms and Conditions** comprised in the Complainants’ Loan Offer.

Condition 14 of the **Standard Mortgage General Terms and Conditions** details as follows;

“14. Interest Rate

(a) Subject to Sub-Clause 14(b), all Loans are subject to the Bank’s Mortgage Rate at the date the Loan is drawn down.

(b) In the case of a Tracker Mortgage the conditions of this Sub-Clause shall apply:

(i) The Loan is subject to the Tracker Mortgage variable interest rate at the date of payment of the Loan. This rate will depend on the Loan to Value set out in the Specific Loan Offer Conditions. In the event of a movement in the European Central Bank (“ECB”) rate the Lender will adjust the Tracker Mortgage variable interest rate within 30 days of the ECB rate movement.

(ii) There will be no reduction in the Tracker Mortgage interest rate as a result of the Loan to Value reducing during the term of the Loan.

(c) In the case of a fixed interest rate Mortgage, the following conditions will apply;

(i) The rate of interest applicable to the Loan will be fixed at the rate and for the period specified in the Loan Offer.

(ii) The Borrower upon expiry of the Fixed Rate Period may, by prior notice in writing to the Lender, opt to choose a fixed interest rate for a further Fixed Rate Period if such an option is made available by the Lender and on terms and conditions as may be specified by the Lender. Where such an option is not made available by the Lender, or if available, where the borrower fails to exercise the option, the interest rate applicable will be a variable interest rate which may be increased or decreased by the Lender at any time and in this respect the decision of the Lender will be final and conclusively binding on the Borrower”.

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Page 1 of the European Standardised Information Sheet details as follows;

“This document does not constitute a legally binding offer.

The figures are provided in good faith and are an accurate representation of the offer that the lender would make under current market conditions based on the information that has been provided. It should be noted, however, that the figures could fluctuate with market conditions.

...

SUMMARY	
ITEM	DESCRIPTION
1. Lender	[The Provider]
2. Description of product	Purpose of Loan: House Purchase Loan Type: Interest Only
3. Interest rate	<p>Security Details: The loan is secured by a legal mortgage on a property. See loan offer of details.</p> <p>Interest rate: 4.49%</p> <p>Interest Type: FIXED and variable thereafter</p> <p>“(a) In the case of a fixed interest rate Mortgage, the following conditions will apply:-</p> <p>(i) The rate of interest applicable to the loan will be fixed at the rate and for the period specified in the Loan Offer;</p> <p>(ii) The Borrower on the expiry of the Fixed Rate Period may, by prior notice in writing to [the Provider], opt to choose a further fixed rate of interest for a certain period if such an option is made available by [the Provider] and on terms and conditions as may be specified by [the Provider]. Where such an option is not made available by [the Provider] or, if available, where the Borrower fails to exercise the option, the interest rate applicable will be a variable rate of interest which may be increased or decreased by [the Provider] at any time, and in this respect, the decision of [the Provider] will be final and conclusively binding on the Borrower.</p> <p>(iii) ...”</p>

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Page 6 of this document outlines as follows;

“IN THE EVENT OF INCONSISTENCIES BETWEEN THE INFORMATION PROVIDED IN THIS INFORMATION SHEET AND THE TERMS OF THE LOAN OFFER, THE TERMS OF THE LOAN OFFER SHALL PREVAIL.

WARNING

...

THE PAYMENT RATES ON THIS HOUSING LOAN MAY BE ADJUSTED BY THE LENDER FROM TIME TO TIME.”

The **Loan Acceptance** which was signed by the Complainants on **14 February 2007** outlines as follows;

“I/We acknowledge receipt of the General Terms and Conditions and Specific Conditions attached to the Loan Offer. I/We have had the Loan Offer, the Specific Loan Offer Conditions and the General Terms and Conditions explained to me/us by my/our solicitor and I/we fully understand them. I/We hereby accept the Loan Offer on the terms and conditions specified. I/We undertake to complete the Mortgage Deed as soon as possible.

I/We fully understand and accept the specific nature of this Purchase Mortgage. I/We further understand that any outstanding debt owing (whether owing now or in the future) to [the Provider] by me/us at any given time is secured on the Property the subject of the Tracker Mortgage and must be repaid in full before the relevant title deeds can be returned or the relevant mortgage deed released.”

A further **Loan Offer Letter** dated **4 April 2007**, issued to the Complainants to reflect the increased 5.00% interest rate (as outlined below). The terms and conditions of the mortgage loan were otherwise unchanged. This **Loan Offer Letter** was unsigned.

<i>“Loan Type</i>	<i>: Fixed Rate 5.00% until 31/03/09 100% Interest Only</i>
<i>Loan Amount</i>	<i>: €425,000.00</i>
<i>Interest Rate</i>	<i>: 5%</i>
<i>Interest Type</i>	<i>: Fixed</i>
<i>Term</i>	<i>: 35 Years”</i>

It appears that the purpose of issuing the revised Loan Offer Letter was to provide for a variance to the fixed rate of interest applicable on drawdown, in accordance with the **Specific Loan Offer Conditions**.

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I have considered the Complainants' mortgage loan documentation in its entirety and it appears to me that there was no reasonable basis for the Complainants to form the understanding that the mortgage loan would move to a tracker interest rate at the end of the initial 2 year fixed interest rate period. It is clear from **Condition 14 (c)** that, on the expiry of the fixed interest rate period on the mortgage loan account, a variable interest rate would apply, or a further fixed rate if it was made available by the Provider and selected by the Complainants. The variable interest rate set out in Condition 14(c) was clearly one which may be increased or decreased by the Provider at any time. Condition 14 (c) does not mention the application of a tracker interest rate to the Complainants' mortgage loan.

If it was intended that the loan would be a Tracker Mortgage then, the Loan Offer conditions applicable to the loan would have contained details of the loan to value applicable to the tracker interest rate, in accordance with **Condition 14(b)**. However, there was no reference to a fixed margin or an ECB rate in the Complainants' Loan Offer Letter. Further there is no reference to a fixed interest rate period or the end of a fixed interest rate period, in Condition 14(b), rather the condition relates to the "*date of payment of the Loan*".

I note that there is a reference to "*Tracker Mortgage*" in the **Loan Acceptance**, as quoted above. In the circumstances, I accept that the reference to "*Tracker Mortgage*" in the **Loan Acceptance** was a "*typographical error*" on the part of the Provider. Whilst this error on the part of the Provider is entirely unsatisfactory, it is my view that it would not be reasonable to conclude that this reference to the term "*Tracker Mortgage*" in the **Loan Acceptance** section of the Complainants' mortgage loan documentation could have led the Complainants to reasonably form the understanding that the loan would move to a tracker interest rate at the end of the fixed interest rate period. The sentence that contains this erroneous reference to "*Tracker Mortgage*" is in relation to potential outstanding debt being secured on the property which was the subject of the mortgage loan and confirming that the Complainants understood this had to be repaid before the deeds of the property could be released and returned. This sentence was clearly not in relation to the interest rate applicable at the end of the initial fixed interest rate period.

The Provider has also sought to rely on the **European Standardised Information Sheet** provided to the Complainants, which it states outlined a summary of the product offered to the customers. Under the **European Voluntary Code of Conduct on Pre-Contractual Information for Home Loans**, the Provider must provide certain standard pre-contractual information to borrowers by means of a personalised European Standardised Information Sheet. The purpose of a European Standardised Information Sheet, is to enable a borrower to make an informed decision on whether or not to accept a loan offer from the Provider, by comparing the credit available from the Provider to what is available in the market.

As the Provider is no doubt aware and as is specifically detailed on **page 1** of the European Standardised Information Sheet, the document is not legally binding. Furthermore it is set

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out clearly that the figures have been provided based on current “*market conditions*”, but that those figures could “*fluctuate*”. The information contained in this document was for illustrative purposes only and was prepared on the basis of the rates applicable at the time the original mortgage loan offer issued in **December 2006**. In any event, I am of the view that the Complainants do not have a contractual entitlement to a tracker interest rate on the basis of the information contained in the European Standardised Information Sheet.

Having considered the mortgage loan documentation in its entirety, it is my view that the Complainants did not have a contractual or other entitlement to a tracker interest rate at the end of the fixed rate period which applied from **April 2007 to 31 March 2009**. If the Complainants were of the view that the **Loan Offer** was ambiguous as to the type of interest rate that the loan would roll over to at the end of the fixed interest rate period, the Complainants could have decided not to accept the offer made by the Provider or sought to clarify the type of interest rate that would apply at the end of the fixed interest rate period. Instead the Complainants signed the **Loan Acceptance** on **14 February 2007** in the presence of their solicitor and confirmed that they accepted the Offer of Advance on the terms and conditions set out therein.

I note that the Complainants have submitted that the signed Loan Offer that they hold “*does not have a condition 14(c)(ii). It would seem then that [the Provider] are referring to a loan condition that is in neither their paperwork or ours.*” As outlined above I accept that the **Standard Mortgage General Terms and Conditions** are supplemental to the **Specific Loan Offer Conditions** and the **General Terms and Conditions** comprised in the Complainants’ Loan Offer. Having considered the evidence, there does not appear to me to be any reason why the Provider would not have issued the set of **Standard Mortgage General Terms and Conditions** to the Complainants in **December 2006** or why the Complainants would not have received it. I note that the Complainants appear to have received the Loan Offer Letters that issued on **18 December 2006** and **4 April 2007** respectively and in those circumstances I have no reason to doubt that the **Standard Mortgage General Terms and Conditions** were issued to the Complainants. The evidence also demonstrates that the Complainants signed the **Loan Acceptance** acknowledging receipt of the **General Terms and Conditions** and Specific Conditions attached to the Loan Offer and that they had the **Loan Offer, the Specific Loan Offer Conditions and the General Terms and Conditions** explained to them by their solicitor and they understood them.

The Complainants wrote to the Provider by letter stamped received on **23 April 2009** which detailed as follows;

“We have contacted [the Provider] in early March of this year as the two years of our interest only fixed rate mortgage was about to expire. We requested that our mortgage be changed to capital and interest payments and were informed that this could be done over the phone with effect from April '09.

Since contacting [the Provider] to arrange this, we were subsequently informed that we needed to request this change in writing. Therefore we request that our mortgage be changed to capital and interest only repayments at standard variable rate with immediate effect.”

The Provider wrote to the Complainants by letter dated **30 April 2009** detailing as follows;

“The interest only option on your mortgage has expired. The following table details your repayment amount(s) and the Date(s) it will be effective from.

<i>Loan Account No.</i>	<i>New Payment</i>	<i>Payment Date</i>	<i>Product</i>	<i>Repayment Type</i>
<i>Loan A.c 1</i>	<i>€1,618.15</i>	<i>04/05/2009</i>	<i>SVR 3.85%</i>	<i>Capital and Interest</i>

...”

I note that tracker mortgages had been withdrawn from the market by the Provider from **mid-2008** and therefore the Complainants could not have been offered a tracker interest rate when the fixed rate expired in **March 2009**. Furthermore, for the avoidance of doubt I am of the view that the Complainants had no contractual entitlement to a tracker interest rate to be applied to the mortgage loan account when the fixed interest rate period concluded in **March 2009**.

Whilst I am of the view that there was no contractual entitlement to a tracker interest rate on the Complainant’s mortgage loan account at the end of the fixed interest rate period on **31 March 2009**, I am also of the view that the information provided to the Complainants in the **Loan Acceptance** was somewhat confusing. The **Consumer Protection Code 2006**, outlines that;

“A regulated entity must ensure that in all its dealings with customers and within the context of its authorisation it acts with due skill, care and diligence in the best interests of its customers”

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I am of the view that the Provider did not act with due skill, care and diligence in its dealings with the Complainant. Whilst I accept that “*typographical*” errors can occur and in this circumstance that error did not affect the Complainants’ underlying contractual entitlements, I am of the view that the Provider should have been proactive and brought this “*typographical*” error to the Complainants’ attention and highlighted how the error occurred, in advance of the Complainants making their complaint to this office.

For the reasons set out above, I am of the view that this complaint is partially upheld. To mark the Provider’s shortcomings under the **Consumer Protection Code 2006**, I direct that the Provider pay to the Complainants a sum of €1,250 compensation.



Conclusion

My Decision is that this complaint is partially upheld, pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, on the grounds prescribed in **Section 60(2)(g)**.

I direct, pursuant to **Section 60(4)** of the **Financial Services and Pensions Ombudsman Act 2017**, that the Respondent Provider pay to the Complainants a sum of €1,250 compensation to an account of the Complainants' choosing, within a period of 35 days of the nomination of account details by the Complainants to the Provider.

I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in **Section 22** of the **Courts Act 1981**, if the amount is not paid to the said account, within that period.

The Provider is also required to comply with **Section 60(8)(b)** 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

30 April 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.