



<u>Decision Ref:</u>	2020-0036
<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 Complainant with the Provider. The mortgage loan that is the subject of this complaint was secured on the Complainant's private dwelling home.

The particulars of the loan offer letter detailed that the loan amount was £65,000 and the term was 25 years. The mortgage loan account was drawn down on an interest rate of 6.79% fixed for 36 months.

The Complainant's Case

When the 3 year fixed interest rate period expired in **September 2003**, the Provider offered the Complainant the option to "*transfer [her] mortgage to a variable rate or a new fixed rate term*". The Complainant elected to apply a 2 year fixed interest rate of 3.79% to the mortgage loan account.

The Complainant submits that she "*should have been offered a tracker mortgage in September 2003. The six options listed to me on that date did not include a tracker mortgage. I was not aware it was a possibility for me.*"

The Provider's Case

The Provider submits that the Complainant was not offered a tracker interest rate on the expiry of the initial fixed interest period in **September 2003**, because the Provider introduced tracker interest rate products on **01 January 2004** which means that when the fixed interest rate period on the Complainant's mortgage expired, tracker interest rate products were not yet available.

The Provider submits that the Complainant's loan offer dated **11 August 2000** was issued prior to the introduction of tracker interest rates and therefore did not state, and could not have stated, that a tracker interest rate would be available to the customer on either the expiry of the initial fixed interest rate period or at any later date. It states that what would transpire at the end of the initial fixed interest rate period is outlined in **General Condition 10(b)** of the loan offer. It details that the variable interest rate as described in **General Condition 10(b)** was the Provider's standard variable rate, which is a variable interest rate which can be increased or reduced by the Provider from time to time, at any time. It submits that by comparison, a tracker interest rate is linked to the European Central Bank ("ECB") base rate and so will only rise and fall in line with movements in the ECB base rate, which cannot be changed by the Provider.

The Provider states that the Complainant accepted this offer by signing the Loan Acceptance Form on **12 September 2000**.

The Provider submits that prior to the drawdown of the Complainant's funds, the fixed interest rate contained in her original loan offer dated **11 August 2000** was amended by the Provider, from 6.49 % fixed for 36 months to 6.79% also fixed for 36 months. The Provider states that notice of the possibility of this occurring was outlined in the **Specific Loan Offer Conditions** of the original loan offer. It submits that although a new loan offer was issued to the Complainant, this change to the initial fixed rate did not alter the **General Terms and Conditions** set out in the original loan offer dated **11 August 2000**.

The Provider states that there was no reference to a tracker interest rate in the original loan offer dated **11 August 2000** or in the revised loan offer dated **11 September 2000**, and such a reference would have been necessary for a tracker interest rate to apply.

The Provider submits that prior to the expiry of the Complainant's fixed rate period, the Provider wrote to her on **9 September 2003**. It states that this letter is known as a "*Product Expiry Letter*" and confirmed the expiry date of the fixed interest rate period and advised the Complainant that she may "*Choose to transfer your mortgage to either a variable rate or a new fixed rate term*". It states that this letter also outlined that in the event that the Complainant chose the variable rate option, there was no requirement for her to contact

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the Provider as her mortgage loan would automatically revert to a variable rate, which was 3.53% at that time. The Provider states that the Complainant chose a further fixed interest rate of 3.79%, for a period of 2 years. It details that the Product Expiry Letter does not refer to a tracker rate, as tracker rates were not available from the Provider until **January 2004**.

The Complaint for Adjudication

The complaint for adjudication is that the Provider failed to offer the Complainant a tracker interest rate for her mortgage loan account upon the expiry of the initial fixed interest rate period in **September 2003**.

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 Complainant was 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 **08 January 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.

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The issue to be determined is whether the Complainant should have been offered a tracker rate upon the expiry of the fixed interest rate period in **September 2003**. In order to ascertain if the Provider did incorrectly fail to offer the Complainant a tracker interest rate on her mortgage loan account in **September 2003**, it is necessary to review and set out the relevant provisions of the Complainant's loan documentation.

The **Loan Offer Letter** signed by the Complainant on **12 September 2000** details as follows;

*"Loan Type: ANNUITY
...
Interest Rate: 6.49%
Interest Type: FIXED FOR 36 MONTHS"*

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

"4. The rate of interest applicable to this loan will be fixed for the fixed rate term specified in the loan offer letter.

5. The fixed rate quoted shall be subject to variation prior to drawdown in accordance with any variation in the fixed rate offered by the [Provider] to new applicants for similar loans."

Condition 10 of the **Mortgage General Terms and Conditions** details as follows;

"Interest Rate

...

(b) In the case of a fixed rate loan the following conditions will apply:-

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

(ii) The applicant(s) on the expiry of the fixed term, 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].

*Where such option is not available or, if available, the applicant(s) fail to exercise the option, the **interest rate applicable will be a rate of interest which may be increased or reduced by [the Provider] from time to time and at any time (the variable interest rate)**, and in this respect, the decision of [the Provider] will be final and conclusively binding on the Borrower." [my emphasis]*

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The Complainant signed this Letter of Offer on **12 September 2000** on the following terms;

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

It is clear from the above that, on 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 Complainant. The variable rate, in this case, was clearly set to be one which may be increased or decreased by the Provider at any time. It made no reference to a tracker or the ECB rate. The Complainant accepted the Letter of Offer, having confirmed that the Loan Offer had been explained to her by her solicitor and she understood the Loan Offer. If the Complainant was not happy with the terms of the Letter of Offer, including the type of interest rate, the Complainant could have decided not to accept the offer made by the Provider.

I note that a **revised Loan Offer** was issued to the Complainant on **18 September 2000** which details as follows;

*"Loan Type: STANDARD ANNUITY
...
Interest Rate: 6.79%
Interest Type: FIXED FOR 36 MONTHS"*

In accordance with **Condition 4** of the **Specific Loan Offer Conditions** the Provider was entitled to vary the fixed interest rate. I note from the Complainant's mortgage loan statements furnished in evidence that the amended fixed interest rate of 6.79% was applied to the mortgage loan account from the date of drawdown on **18 September 2000**.

I note that an acceptance of the revised loan offer signed by the Complainant has not been furnished in evidence. Furthermore, this office has been supplied with the first page of the revised loan offer letter only. The Provider's letter to the Complainant's representative enclosing the revised loan offer dated **18 September 2000**, details that **"IT IS IMPERATIVE THAT THE LOAN CHEQUE IS NOT RELEASED UNTIL THE ENCLOSED AMENDED LOAN OFFER IS ACCEPTED BY OUR CUSTOMERS"**. I note that the Provider has submitted that the revised loan offer *"did not alter the General Terms and Conditions set out in the original Loan Offer dated 11 August 2000, which was signed and accepted by the customer on 12 September 2000"*. This suggests to me that the Provider is relying on the original acceptance signed by the Complainant on **12 September 2000** in respect of the revised loan offer that was

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subsequently issued on **18 September 2000**. It is unclear to me whether or not the Complainant signed the revised loan offer dated **18 September 2000**. It is most disappointing that a complete copy of the revised loan offer dated **18 September 2000** accepted by the Complainant has not been furnished by the Provider. It is also disappointing that no explanation has been given as to why it has not been furnished.

Notwithstanding the above, it appears to me that the purpose of issuing the revised loan offer in **September 2000** was to amend the fixed interest rate quoted in the original mortgage loan. It does not appear, on the basis of the evidence before me, that the **General Terms and Conditions** set out in the original loan offer were altered when the revised loan offer was issued.

I note that the Complainant submits that she should have been offered a tracker interest rate when the fixed interest rate period on her mortgage loan account expired in **September 2003**.

The Provider issued a letter to the Complainant dated **9 September 2003** in relation to the expiry of the fixed interest rate period on **19 September 2003**. The Complainant was offered a selection of fixed interest rates (2 years, 3 years, 5 years and 10 years), and a variable interest rate (3.53%). While a **Letter of Authority/Acknowledgement** signed by the Complainant in relation to the rate options has not been furnished in evidence, I note from the mortgage loan statements that the 2 year fixed rate of 3.79% was applied to the Complainant's mortgage loan account in **October 2003**.

I have considered the Terms and Conditions of the Complainant's mortgage loan account and **Condition 10** of the **Mortgage General Terms and Conditions** clearly set out what would happen with respect to the interest rate on the mortgage loan account on the expiry of the fixed interest rate period. That is, the Complainant may choose a further fixed rate, if such an option is available and where such an option is not made available, or in circumstances where the Complainant failed to exercise the option, the applicable rate would be the Provider's variable rate. The Provider acted in accordance with **Condition 10** of the Mortgage General Terms and Conditions in **2003**, in its offering to the Complainant when the fixed interest rate period expired. There was no contractual or other obligation on the Provider to offer the Complainant a tracker interest rate on the mortgage loan account when the fixed interest rate period expired.

The Provider submits that its policy with respect tracker interest rate offerings was as follows;

*"Tracker interest rate products were available from [the Provider] from **January 2004** until **mid-2008** when they were withdrawn from the market"*

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In circumstances where the introduction of the tracker product by the Provider, post-dated the expiry of the fixed interest rate period applicable to the Complainant's mortgage loan account in **September 2003** it was not possible for the Provider to offer the Complainant a tracker interest rate on the mortgage loan.

The Provider was under no obligation, contractual or otherwise to offer the Complainant a tracker interest rate on the mortgage loan at the time the fixed rate expired in **September 2003**, nor indeed could it offer a product that it did not actually have available.

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

Conclusion

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

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

**GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

7 February 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.**