



<b><u>Decision Ref:</u></b>	2020-0053
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Tracker Mortgage
<b><u>Conduct(s) complained of:</u></b>	Failure to offer a tracker rate throughout the life of the mortgage
<b><u>Outcome:</u></b>	Rejected

**LEGALLY BINDING DECISION  
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

**Background**

The complaint relates to a mortgage loan account held by the Complainants with the Provider. The mortgage loan was secured on the Complainants' private dwelling house.

The loan amount was €195,000 and the term of the loan was 35 years. The particulars of the mortgage loan offer accepted by the Complainants on **18 May 2006** detailed that the loan type was a "7 Year Fixed Rate Home Loan".

**The Complainants' Case**

The Complainants submit that when they applied for a mortgage with the Provider in **2006** the Provider offered them the option to draw down their mortgage on a tracker interest rate. They submit that they opted to avail of the fixed rate instead as it was "a better rate" at the time.

The Complainants submit that when the seven year fixed interest rate period on the mortgage loan account expired in **2013**, they were not offered the option of a tracker interest rate by the Provider "despite being offered it when we took out the mortgage".

The Complainants submit that they should have been offered a tracker interest rate in 2013. They state that the Provider has advised them that the terms and conditions of their mortgage loan agreement do not provide for a tracker interest rate entitlement "*but [the Complainants] are disputing that it should have*".

The Complainants are seeking a refund of interest overpaid on the mortgage loan account since **2013**.

### **The Provider's Case**

The Provider submits that following a loan application by the Complainants, a Loan Offer issued to them on **9 March 2006** for a 7 Year Fixed Rate Home Loan. The Provider details that the Complainants signed their Acceptance of Loan Offer on **18 May 2006** and confirmed that their solicitor had explained the terms and conditions of the loan to them. The loan amount was drawn down on **25 May 2006**.

The Provider states that the Loan Offer did not contain a contractual entitlement to a tracker rate at the end of the initial fixed rate period, or at any subsequent time during the term of the loan, but provided that at the end of the fixed rate period the Provider or the Complainants could select a variable rate to be applied. The Provider relies on **Special Condition A** of the Complainants' **Letter of Approval** and **Condition 5** of the **General Mortgage Loan Approval Conditions** to support this. The Provider further submits that the term "*variable rate*" is defined in the Complainants' Loan Offer and on **page 2** of the **General Mortgage Loan Conditions**.

Prior to the expiry date of the Complainants' initial seven-year fixed rate period the Provider issued an options letter and form to the Complainants on **24 April 2013**, with a list of the then current available interest rates, which included the LTV variable rate of 4.34% and fixed rates for periods of 2 and 5 years. The Provider states that as it did not receive the Complainants' completed rate options form, the interest rate on the mortgage loan account defaulted to the LTV variable rate of 4.34% on **25 May 2013**.

The Provider states that it introduces and withdraws loan products and interest rates from time to time and would not be in a position to know in advance what interest rates or lending products it would be offering at a future date to a customer maturing from a fixed rate of interest. The Provider details that normal practice at the time was to discuss with the loan applicants all rate options available at the time of the application, and if an applicant chose a fixed rate it was normal practice to inform applicants that they would receive a list of rate options which would be available at the end of the fixed period and if they did not act on those options the mortgage would default to a particular rate which would be outlined in a letter accompanying a rate options form. The Provider submits that it was also normal

practice in or around **March 2006** to point out that there was no guarantee that the products offered and not selected by the applicants would continue to be available in the future and/or that available products changed continually. The Provider submits that the decision as to which rate option to choose at the application stage would be for the customer alone to make based on his/her personal circumstances.

The Provider submits that the Complainants were offered a tracker interest rate as one option during the loan application process and they chose another interest rate option and declined the tracker rate option. It states that the Complainants confirmed in an email to the Provider dated **22 March 2018** that they chose the seven year fixed rate as the interest rate on the fixed rate was "*better*" than the tracker rate at the time. It states that it was not open to the Complainants to avail of a tracker interest rate which they had previously declined at some later date, simply because it had been an interest rate option available during their loan application process

### **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 seven year fixed interest rate period in **May 2013**.

### **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 **21 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.

The issue to be determined is whether the Provider failed to offer the Complainants a tracker interest rate on their mortgage loan account on the expiry of the fixed rate period in **May 2013**. In order to determine this, it is necessary to review and set out the relevant provisions of the Complainants' loan documentation. It is also necessary to consider the details of certain interactions between the Complainants and the Provider in **2006** and **2013**.

The **Letter of Approval** dated **9 March 2006** details as follows;

<i>"Loan Type:</i>	<i>7 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 195,000.00</i>
<i>Interest Rate:</i>	<i>4.55%</i>
<i>Term:</i>	<i>35 year(s)"</i>

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

***"Special Conditions***

- 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.*

/Cont'd...

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 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 **18 May 2006**. 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.*

...

/Cont'd...

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 7 year fixed rate interest of 4.55% 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.

Having considered the mortgage loan documentation, it is my view that that the Complainants did not have a contractual or other entitlement to a tracker interest rate at the end of any fixed rate period, including the end of the fixed rate period which ended in **May 2013**. The Complainants, by their own admission, were offered a tracker rate in **2006** "*but decided to fix for 7 years instead*". The fact that the Provider had outlined the option of taking out a mortgage loan on a tracker interest rate in **2006**, when the Complainants were submitting their application for a mortgage loan, which the Complainants did not accept, did not oblige the Provider to offer a tracker interest rate at a later point in time.

I note from the evidence on the file that a representative of the Provider emailed the Complainants on **14 March 2006** and outlined as follows;

*"just emailing you in connection with your Home Loan, just a few questions...did you receive your loan pack and are you happy with the t and c's? and have you got an expected closing date? If you could email me back when you get a chance it would be greatly appreciated."*

The Complainants responded on **14 May 2006** and outlined "*I received the loan pack and everything is fine closing date should be May.*"

If the Complainants did not fully understand or were not happy with the terms of the of the Letter of Approval dated **9 March 2006**, including the type of interest rate, they could have sought clarification on the interest rate that would apply at the end of the fixed rate period, or they could have decided not to accept the offer made by the Provider. Instead the Complainants signed the **Acceptance of Loan Offer** on **18 May 2006**, having confirmed that the Loan Offer had been explained to them by their solicitor.

The Provider issued a **letter and rate options form** dated **24 April 2013** to the Complainants prior to the expiry of the fixed interest rate period on **25 May 2013**. The Provider's letter detailed as follows;

*"If we do not receive a written instruction from you in relation to the above on or before the 25 May 2013 the interest rate on your mortgage will be the LTV Variable Rate"*

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The **rate options form** outlined as follows;

“...

Please tick the option you want below. You may only pick one option and everyone signed up to the mortgage must sign.

...

Option	Monthly Repayment
LTV variable rate ** CURRENTLY	4.34% 960.08
2 year fixed rate CURRENTLY	7.25% 1,300.18
5 year fixed rate CURRENTLY	8.75% 1,492.37

...”

I note from the evidence submitted that the Complainants did not return the completed options form and LTV variable rate of 4.34% was applied to the mortgage loan on **24 May 2013**.

As outlined above the Complainants did not have a contractual entitlement to a tracker interest rate on their mortgage loan account and accordingly there was no contractual or other obligation on the Provider to offer the Complainants a tracker interest rate on their mortgage loan account at the end of the seven year fixed interest rate period in **May 2013**. The Complainants had been given the option of taking out a mortgage loan on tracker interest rate in **2006**, when the Complainants were submitting their application for a mortgage loan, but the Complainants did not pursue this option, because they were of the view the fixed interest rate was a “better rate”.

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**

12 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

ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.