



<u>Decision Ref:</u>	2020-0096
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Tracker Mortgage
<u>Conduct(s) complained of:</u>	Failure to offer a tracker rate at point of sale
<u>Outcome:</u>	Rejected

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

Background

The complaint relates to a mortgage loan account that the Complainants hold with the Provider. The mortgage loan that is the subject of this complaint was secured on the Complainants' private dwelling house. The purpose of the mortgage loan was to purchase a holiday home abroad.

The loan amount was €120,000 and the term of the loan was 17 years. The particulars of the mortgage loan offer accepted by the Complainants on **5 April 2007** detailed that the loan type was an *"Equity Release 2 Year Fixed Rate SPL"*.

The Complainants' Case

The Complainants submit that they had an existing mortgage loan with the Provider which was secured against their family home. They state that they approached the Provider in **2007** seeking to *"re-mortgage [their] home in order to finance a property purchase abroad"*.

The Complainants state *"we had heard that a Tracker mortgage was good value and generally low risk, so we planned to specifically enquire about a Tracker mortgage."* They submit that they met with an employee of the Provider to discuss their options and were

advised that the *“equity release option”* was the *“best option”* for them. They state *“When we asked about the Tracker rate this was dismissed as not being suitable for our needs.”*

The Complainants submit that based on the Provider’s *“advice”* they decided to opt for a two year fixed interest rate. They submitted their loan application to the Provider in **March 2007** and accepted a Loan Offer in **April 2007** for an Equity Release 2 Year Fixed Rate Secured Personal Loan at a rate of 5.15%.

The Complainants submit that they have since learned *“that a tracker mortgage would have been a much cheaper option for this type of mortgage over that time period.”*

The Complainants submit that the Provider, in responding to their complaint, *“make it seem that [the] full range of options were discussed openly and equally during the meeting however this is not the case.”* They state that other interest rate options available to them were *“certainly not discussed in detail”*. They further submit that they have *“no recollection”* of receiving two Mortgage Quotations from the Provider outlining the interest rate options available to them and they do not *“believe”* they received copies to bring home.

The Complainants submit that in **2007** *“when we entered the bank we enquired about a remortgage with a tracker rate and we were advised to take an alternative product which turned out to be significantly more costly to us.”*

The Complainants are seeking to be reimbursed for the loss they believe they have incurred.

The Provider’s Case

The Provider states that the Complainants had drawn down their initial home loan in **1996** for a term of 20 years. It outlines that the estimated value of the Complainants’ property was €500,000 in **March 2007**. The Provider submits that in **March 2007** the Complainants sought an additional loan for personal expenditure, including the acquisition of a property abroad.

The Provider states that on **15 March 2007** it provided two **Mortgage Quotations** to the Complainants and discussed all available options for the additional loan they required and the key features of each option with them. It states that the options provided were *“a new mortgage loan (refinancing), a further advance and an equity release loan”*. The Provider details that in presenting these options the Provider *“compared and contrasted”* their key features, including, in particular, interest rates. It states that it was explained to the Complainants that the Provider’s full range of interest rates was available if they were to choose either refinancing or a further advance. In respect of the equity release option, the Provider states that it explained that the rate options would be a variable rate or one of a range of fixed rates. It further states that the Mortgage Quotations described in detail how

the various rate options would apply to the Complainants' required loan amount of €120,000.

The Provider submits that it is clear that the Complainants were provided with alternative loan options and interest rates, including a tracker interest rate option of 4.75% (ECB + 1.25%). It does not accept that the Complainants were advised that a tracker interest rate was not suitable for them and states that there is no reason why the Provider would have provided this advice.

The Provider submits that from the options outlined, the Complainants completed an **Application for Credit** for an Equity Release 2 Year Fixed Rate Secured Personal Loan for €120,000 repayable over 17 years. The Provider issued a **Letter of Approval** to the Complainants on **26 March 2007** which was accepted by the Complainants on **5 April 2007**.

The Provider submits that it introduced equity release loans in **2002** which were designed to enable customers to release equity available to them in their home which was the subject of a mortgage with the Provider, and to apply the proceeds at their discretion, provided the proceeds were not used for commercial or business purposes. It submits that the security for the loan is the previous mortgage between the Provider and the loan applicant(s). In **2007** a customer could borrow a minimum amount up to a certain percentage of the then current market value of their home, less an amount owed by them on the property. It was possible to repay the additional loan over a different period to the original loan.

The Provider states that the equity release loan product has been part of its suite of lending products since **2002** and predates the offering of tracker mortgage facilities in **January 2004**. The Provider submits that when including tracker rates/products in its suite of existing products, it made a commercial decision not to make a tracker rate available on existing or future equity release loans. It states that at no time did it apply, or offer to apply a tracker rate to an equity release loan.

The Complaint for Adjudication

The complaint for adjudication is that the Provider advised the Complainants against selecting a tracker interest rate for their additional mortgage loan in **2007**.

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 **11 February 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 advised the Complainants against opting for a tracker interest rate mortgage in **2007**. In order to determine this, it is necessary to review and set out the relevant documents relating to the Complainants' mortgage loan. It is also necessary to consider the details of certain interactions between the Complainants and the Provider in **March 2007**.

The Provider has furnished in evidence two **Mortgage Quotations**, both dated **15 March 2007**. The Mortgage Quotations demonstrate particular details, with respect to each interest rate option. In the extracts below, I have outlined the details with respect to the interest rate options at issue in this complaint.

/Cont'd...

The first **Mortgage Quotation** details the following rate options;

"4.85% Variable Rate Home Loan

...

4.75% Tracker Mortgage (ECB + max 1.25%) – Home Loan.

Property price/value	EUR 500,000.00	
Loan amount	EUR 120,000.00	
Gross monthly payment	EUR 933.39	
Less tax relief	(EUR 95.00)	
Net monthly amount	EUR 838.39	Additional Costs
Term (years)	15	Stamp duty* EUR37,500.00
Interest rate %	4.75	Solicitor fee** EUR6,050.00
Typical APR%	4.90	Valuation fee EUR130.00
Tax	Married Non-First Time Buyer	

*Stamp duty is payable to the Revenue Commissioners. See paragraph 3(e) overleaf

**These fees are payable to your Solicitor and are an estimate only. See paragraph 3(b) overleaf

3.99% 1 Year Special Discount Tracker (ECB + MAX 0.49%) Home Loan

Property price/value	EUR 500,000.00	
Loan amount	EUR 120,000.00	
Gross monthly payment	EUR 887.02	
Less tax relief	(EUR 79.80)	
Net monthly amount	EUR 807.22	Additional Costs
Term (years)	15	Stamp duty* EUR37,500.00
Interest rate %	3.99	Solicitor fee** EUR6,050.00
Typical APR%	4.90	Valuation fee EUR130.00
Tax	Married Non-First Time Buyer	

*Stamp duty is payable to the Revenue Commissioners. See paragraph 3(e) overleaf

**These fees are payable to your Solicitor and are an estimate only. See paragraph 3(b) overleaf

4.49% 2 Year Discount Tracker (ECB + MAX 0.99%) Home Loan

Property price/value	EUR 500,000.00	
Loan amount	EUR 120,000.00	
Gross monthly payment	EUR 917.37	
Less tax relief	(EUR 89.80)	
Net monthly amount	EUR 827.57	Additional Costs

/Cont'd...

Term (years)	15	Stamp duty* EUR37,500.00
Interest rate %	4.49	Solicitor fee** EUR6,050.00
Typical APR%	4.90	Valuation fee EUR130.00
Tax	Married Non-First Time Buyer	

*Stamp duty is payable to the Revenue Commissioners. See paragraph 3(e) overleaf

**These fees are payable to your Solicitor and are an estimate only. See paragraph 3(b) overleaf

...

4.39% 1 Year Fixed Rate Home Loan

...

4.75% 2 Year Fixed Rate Home Loan

...

4.99% 3 Year Fixed Rate Home Loan"

The second **Mortgage Quotation** details the following rate options;

"4.85% Variable Rate Home Loan

...

4.99% Equity Release 1 Year Fixed Rate SPL

...

5.15% Equity Release 2 Year Fixed Rate SPL

...

5.10% Equity Release 3 Year Fixed Rate SPL

...

5.15% Equity Release 2 Year Fixed Rate SPL

Property price/value EUR 500,000.00

Loan amount EUR 120,000.00

Monthly payment EUR 884.02

Term (years) 17 **Additional Costs**

Interest rate % 5.15 Valuation fee EUR130.00

Typical APR% 5.00

4.85% Equity Release Variable Rate Secured Personal Loan"

The Provider has also furnished in evidence a chart handwritten on Provider headed paper, which outlines as follows;

<i>"Refinance</i>	<i>Further advance</i>	<i>[Equity release product name]</i>
<i>One mtg, one repayment</i>	<i>2nd mortgage</i>	
<i>Full range of rates</i>	<i>"</i>	<i>variable rate</i>
		<i>range of fixed rates</i>
<i>Solicitor</i>	<i>"</i>	<i>No Solicitor. €22</i>
<i>Full valuation €130</i>	<i>€130</i>	<i>€65 Drive By.</i>
<i>Tax Relief At Source</i>		<i>No Tax Relief at Source"</i>

It is clear that, in **March 2007**, the Complainants were seeking a further advance of funds from the Provider and that advance of funds would be secured against the equity in the Complainants' private dwelling house. It is important for the Complainants to be aware that the Provider was under no obligation to offer them any mortgage or any particular type of mortgage at the time. It was a matter for the Provider to decide firstly, if it was willing to offer the Complainants any additional borrowing at the time and secondly, how that offer would be structured.

It appears from the documentary evidence, quoted above, that the Provider outlined to the Complainants that there were three options available in terms of structuring the finance; either refinancing the existing mortgage loan, applying for a further advance, or applying for an equity release loan. The **handwritten chart** shows that these structures were compared as against each other by the Provider's representative at the meeting on **15 March 2007**. In particular, I note that the handwritten chart shows, that the full range of interest rate options, which would have included the tracker interest rate, were available with the refinancing and restructuring options, but that the rates options were limited to fixed and variable with the equity release option.

The Complainants are of the view that the Provider "*dismissed*" the tracker interest rate option as being "*unsuitable*" for them and advised that the equity release loan was the most suitable. The Provider submits that it does not accept that the Complainants were advised that the product was unsuitable and that the decision as to which product to choose is for each individual customer.

Having considered the **handwritten chart** and the **Mortgage Quotations** it appears to me that the options available to the Complainants at the time were firstly to select the structure of the finance, and then once the structure was selected to consider the rate options under that structure. It appears to me that this information was outlined clearly to the Complainants at the time.

I note that the Complainants have submitted that they have *“no recollection of these quotations from the time, they were not discussed in detail and we don’t believe we received copies to bring home.”* While I accept that the Complainants may not recall receiving the Mortgage Quotations, given the elapse of time since the application was made, the Provider has furnished this documentation in evidence which is date-marked **15 March 2007** and is addressed to the Complainants at their address. I have no reason to doubt that these were furnished to the Complainants at the time.

In these circumstances it appears to me that the Complainants were advised of all of the structures that the lending could take and decided to proceed with the equity release structure. The Provider was not offering tracker interest rates on equity release products in **March 2007** or at any other time. The **Equity Release Brochure** confirms that the standard variable interest rate and fixed interest rates were the only interest rate options available with this product. Therefore the Provider was not under any obligation to offer the Complainants a tracker interest rate option on the equity release product option.

I accept that in hindsight the Complainants may feel that the tracker interest rate option was *“dismissed”* by the Provider, but the Complainants are failing to appreciate that by pursuing the equity release structure, the tracker interest rate was not an available rate option. The evidence shows that if the Complainants had elected to pursue either of the alternative lending structures (refinance or further advance) then the tracker interest rate options would have been available to them to consider. However they did not pursue either of these lending structure options, which as outlined in the Mortgage Quotations would have incurred additional costs.

An **Application for Credit** was signed by the Complainants on **15 March 2007**, which details as follows;

“2. Details of Mortgage Required

Type of Loan:

<i>Amount of Loan required</i>	<i>EUR 120,000.00</i>
<i>Purchase price / Value of property</i>	<i>EUR 500,000.00</i>
<i>Loan type</i>	<i>Equity Release 2 Year Fixed Rate SPL</i>
<i>Repayment Term required</i>	<i>17 Years”</i>

/Cont’d...

The **Letter of Approval** dated **26 March 2007** details as follows;

<i>Loan Type:</i>	<i>Equity Release 2 Year Fixed Rate SPL</i>
-------------------	---

<i>“Purchase Price/Estimated Value:</i>	<i>EUR 500,000.00</i>
<i>Loan Amount</i>	<i>EUR 120,000.00</i>
<i>Interest Rate:</i>	<i>5.15%</i>
<i>Term:</i>	<i>17 year(s)”</i>

The **Special Conditions** to the Letter of Approval details 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** outlines;

“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.

...

5.4 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.”

General Condition 11 of the **General Mortgage Loan Approval Conditions** outlines the **Conditions relating to “[Name of Product]” Equity Release Loans**. There was no specific condition in the **Conditions relating to “[Name of Product]” Equity Release Loans** in relation to the interest rate applicable to the loan.

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.”

/Cont’d...

The **Acceptance of Offer of an Additional Loan** which was signed by the Complainants on **5 April 2007**, states as follows;

“1. I/we the undersigned accept the above offer of an additional loan on the terms and conditions set out in

- (i) the above Letter of Approval;*
- (ii) the General Mortgage Loan Approval Conditions sent to me/us with the above Letter of Approval, a copy of which I/we have received; and*
- (iii) where my/our existing loan is secured by an [Provider] or [Provider] form of mortgage (as opposed to a [Provider] form of Mortgage), the mortgage conditions applicable to that mortgage as amended by the General Mortgage Loan Approval Conditions referred to at (i) above.*

...

- 5. I/We confirm that I/we have obtained or been given an opportunity to obtain independent legal advice prior to accepting this offer of an additional loan.”*

The equity release mortgage loan was drawn down by the Complainants on **19 April 2007**.

It is clear to me that the **Letter of Approval** envisaged a 2 year fixed interest rate of 5.15% 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 mortgage loan documentation issued to the Complainants on **26 March 2007** provided for an equity release product on a two year fixed rate. If the Complainants did not want to pursue this option as they were unhappy with the rate applicable to the equity release mortgage, they could have declined to accept the Provider’s offer of the equity release product. Instead the Complainants accepted the Provider’s offer by signing the **Acceptance of Offer of an Additional Loan on 5 April 2007**.

It is apparent that the Complainants in hindsight believe that the tracker interest rate turned out to be more advantageous than the interest rate selected, however the evidence shows that the choice to take out the mortgage loan on the terms and conditions offered by the Provider was a choice that was freely made by the Complainants.

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**

04 March 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.