



<b><u>Decision Ref:</u></b>	2020-0196
<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**

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 house.

The loan amount was €128,497.49 and the term was 20 years. The Letter of Approval which was signed on **29 January 2002** outlined the Loan Type as *"3 Year Fixed Rate Home Loan"*.

The mortgage loan was redeemed in full on **25 November 2005**.

**The Complainant's Case**

The Complainant submits *"I opened a mortgage account with [the Provider] in 2002. I had a fixed rate mortgage initially for three years."*

The Complainant details that *"When the fixed rate expired in 2005 I automatically moved to the variable rate."*

The Complainant states *"Tracker rates were offered to existing customers from [mid] 2006 so I believe that I should have been offered the option of a tracker mortgage rate. [The Provider] have reviewed and said no."*

The Complainant details that *“There was quite a lot of hardship at the time as I lost my job so I am sure that if the mortgage payments had been lower then it would have been a big help”*. She details that she *“had difficulty paying the mortgage which ran into arrears. I subsequently remortgaged but at a much higher rate”*.

### **The Provider’s Case**

The Provider submits that the Complainant was not offered a tracker interest rate on the expiry of the three year fixed interest rate period in **February 2005** because she did not have a contractual entitlement to be offered a tracker rate on the expiry of any fixed rate period.

The Provider details that the Complainant’s mortgage loan drew down on a 3 year fixed rate of 4.99% on **7 February 2002**. It states that the **Letter of Approval** outlined that on the expiry of the fixed interest rate period, the interest rate applicable to the mortgage loan would be a *“variable rate”*. The Provider relies on **Special Condition A** of the Complainant’s **Letter of Approval** and **Condition 5** of the **General Mortgage Loan Approval Conditions** in support of this. It states that the **General Mortgage Loan Approval Conditions** also provide that *“If the loan is a variable rate loan, the following applies: the payment rates on this housing loan may be adjusted by the Provider from time to time”*.

The Provider outlines that tracker interest rates for new mortgage loans were launched by the Provider in **early 2004**, however this rate was not available as a fixed rate expiry option and was a rate offered in respect of new loans only. It details that from **mid-2006**, in certain circumstances, the option of a tracker interest rate was offered to customers whose fixed rate period was due to expire, and from **late 2006** tracker rates became the default rate on expiry of such fixed rate periods.

The Provider submits that the Complainant’s three year fixed rate period was due to expire on **7 February 2005**. It outlines that the available interest rates in respect of existing home loans at that point in time were *“a variable rate of 3.55% and a series of fixed rates ranging from a 1 Year fixed rate of 3.60% and a 10 Year fixed rate of 5.35%. Tracker interest rates were available for new home loans only at that time.”*

The Provider submits that it has no record of receiving a returned options form from the Complainant on or before **7 February 2005**, and therefore in accordance with **General Condition 5** of the mortgage loan agreement, it applied the then current variable rate of 3.55% to the mortgage account on **7 February 2005**.

The Provider states that the variable interest rate of 3.55% applied to the mortgage account from **7 February 2005** until the mortgage loan was redeemed in full by the Complainant on **25 November 2005**.

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The Provider submits that it is satisfied that the rates offered to the Complainant were correct. It states *“There was no event in the lifetime of the Complainant’s mortgage loan account when a tracker interest rate was available to the Complainant.”*

### **The Complaint for Adjudication**

The complaint for adjudication is that the Provider wrongfully failed to offer the Complainant a tracker interest rate on her mortgage loan account on the expiry of the fixed interest rate period in **February 2005**.

### **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 on **6 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 Complainant 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 Complainant was 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.”*

Therefore, the conduct of the third party Broker engaged by the Complainant, does not form part of this investigation and decision for the reasons set out above.

The issue to be determined is whether the Provider failed to offer the Complainant a tracker interest rate on the expiry of a fixed rate period in **February 2005**. In order to determine this complaint, it is necessary to review and set out the relevant provisions of the Complainant’s loan documentation. It is also necessary to set out any interactions between the Complainant and the Provider in or around **February 2005** prior to expiry of the initial fixed rate period.

The **Letter of Approval** dated **28 January 2002** details as follows;

<i>“Loan Type:</i>	<i>3 Year Fixed Rate Home Loan</i>
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...

<i>Purchase Price/Estimated Value:</i>	<i>EUR 139,671.19</i>	<i>/ IRE 110,000.00</i>
<i>Loan Amount:</i>	<i>EUR 128,497.49</i>	<i>/ IRE 101,200.00</i>
<i>Interest Rate:</i>	<i>4.99%</i>	
<i>Term:</i>	<i>20 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***

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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 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 one hand the total amount of interest (calculated on a reducing basis) which the applicant would have paid on the principal sum 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** outlined;

*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 Complainant and witnessed by a Solicitor on **29 January 2002**. The Acceptance of Loan Offer states as follows:

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- “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 Condition*
  - 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.”*

It is clear to me that the **Letter of Approval** envisaged a three year fixed rate of 4.99% and thereafter the option of conversion to a variable rate. The variable rate, in the Complainant’s mortgage loan documentation, 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 Complainant accepted the Letter of Offer, having confirmed that the Loan Offer had been explained to her by her solicitor.

The Provider has submitted that prior to the expiry of the fixed rate period in **February 2005** it automatically issued a **rate options letter** to the Complainant containing the then available rate options. It is disappointing that a copy of the rate options letter that purportedly issued to the Complainant has not been furnished in evidence to this office, nor has the Provider offered any explanation as to why this letter has not been furnished. Notwithstanding this, I note that it is not in dispute between the parties that the Complainant was not offered the option of a tracker interest rate at that time and the mortgage loan account was switched to the variable interest rate of 3.55% on the expiry of the initial 3-year fixed interest rate period in **February 2005**.

The Provider has furnished a copy of its **Lending Interest Rates** document stated to be effect from the start of business on **27 January 2005**, which details as follows;

<b><i>“Repayment Home Loans</i></b>	<b><i>RATE</i></b>	<b><i>APR</i></b>
<i>Variable Rate</i>	<i>3.55%</i>	<i>3.6%</i>
<i>1 Year Fixed Rate</i>	<i>3.60%</i>	<i>3.6%</i>
<i>2 Year Fixed Rate</i>	<i>3.74%</i>	<i>3.7%</i>
<i>3 Year Fixed Rate</i>	<i>3.95%</i>	<i>3.7%</i>
<i>4 Year Fixed Rate</i>	<i>4.20%</i>	<i>3.9%</i>
<i>5 Year Fixed Rate</i>	<i>4.44%</i>	<i>4.1%</i>
<i>7 Year Fixed Rate</i>	<i>4.99%</i>	<i>4.5%</i>
<i>10 Year Fixed Rate</i>	<i>5.35%</i>	<i>5.1%</i>
<b><i>Rates applicable to new Home Loans</i></b>		

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*Tracker Mortgage (Home Loan and Residential Investment Property)*

<i>Loan Amount of €100,000 - €249,999</i>	<i>3.40%</i>	<i>3.5%</i>
<i>Loan Amount of €250,000 or more</i>	<i>3.10%</i>	<i>3.1%”</i>

Having considered the mortgage loan documentation, I accept that the Complainant did not have a contractual entitlement to a tracker interest rate at the end of the fixed rate period which applied from **February 2002** to **February 2005**.

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

*“...on [mid] 2006, the Bank introduced a policy 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 [late] 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.”*

It appears that the Complainant did not make a rate selection and the variable rate of 3.55% was applied to her mortgage loan account in or around **February 2005**. This was in accordance with **General Condition 5.4** of the **General Mortgage Loan Approval Conditions**.

The Provider did not introduce its policy of offering tracker rates to customers whose contracts did not specify an entitlement to be offered a tracker rate on the expiry of a fixed rate period until **mid-2006**. The Complainant has submitted that as tracker rates were offered by the Provider from **mid-2006** she should have been offered the option of a tracker rate. The Complainant has not specified why she believes she should have been entitled to the tracker rate in circumstances where she appears to recognise that they were on offer from the Provider at a later point in time than when her specific fixed interest rate period ended in **February 2005**. Furthermore the Complainant’s mortgage loan had already been redeemed by her by the time this policy took effect in **mid-2006**. The Complainant redeemed her mortgage loan in full on **25 November 2005**.

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As set out above, having considered the Complainant's mortgage loan documentation, I find the Complainant did not have any contractual or other entitlement to be offered a tracker interest rate with respect to her mortgage loan. If the Complainant wished to pursue the potential option of applying a tracker interest rate on the mortgage loan, she could have contacted the Provider to request it. It does not appear to me that the Complainant made any such request. However even if a request was made, it would then have been a matter of commercial discretion for the Provider as to whether it wished to accede to any such request made by the Complainant to apply a tracker interest rate to the mortgage loan. It was entirely within the Provider's rights not to accede to such a request, if it was made.

The Complainant did not have a contractual or other entitlement to a tracker interest rate at the end of the fixed rate period which applied from **February 2002** to **February 2005**.

For the above reasons, 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**

28 May 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.