



<u>Decision Ref:</u>	2020-0240
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Tracker Mortgage
<u>Conduct(s) complained of:</u>	Refusal to move existing tracker to a new mortgage product 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 two mortgage loan accounts ending **2753** and ending **1759** held by the Complainants with the Provider. The mortgage loan accounts were secured on the Complainants' private dwelling house.

The loan amount for mortgage loan account ending **2753** was €195,000 and the term of the loan was 25 years. The Letter of Approval which was signed by the Complainants on **12 September 2003** outlined the Loan Type as a "*1 Year Fixed Rate Home Loan*". This mortgage loan was redeemed in full on **15 November 2005**.

The loan amount for mortgage loan account ending **1759** was €225,000 and the term of the loan was 30 years. The Letter of Approval which was signed by the Complainants on **01 November 2005** outlined the Loan Type as an "*Equity Release Variable Rate Secured Personal Loan*". This mortgage loan was redeemed in full on **10 November 2011**.

The Complainants' Case

The Complainants submit that their first mortgage loan account ending **2062** with the Provider was drawn down in **1993**. They detail that in **2003** they sold the property which was the subject of this mortgage loan and moved to a new property.

The Complainants submit that they believed their original mortgage loan account ending **2062** was redeemed in **2003** and that they entered into an agreement for a new mortgage loan with the Provider at this time.

The Complainants submit that their second mortgage loan account ending **2763** was drawn down in **September 2003** on an interest rate of 2.59%. They state that the Provider did not offer them a tracker interest rate when mortgage loan account ending **2763** was applied for and drawn down in **2003**.

The Complainants submit that *"[The Provider] told me that when we moved in 2003 we re-mortgaged but this is not so. We thought we paid off our first mortgage and started a new one, because I always thought that you can't bring a mortgage with you"*. They state that the Provider has not furnished them with *"any details of our 2003 new mortgage"*.

The Complainants submit that in **2005**, they sought and secured a top up on their mortgage loan in order to fund an extension to the family home. They drew down mortgage loan account ending **1759** on **15 November 2005**.

The Complainants submit that when they queried why they were not offered a tracker rate on mortgage loan account ending **1759**, the Provider stated that this mortgage loan was not eligible for a tracker interest rate on the basis that it is an equity release product.

The Complainants state *"we were given a '[Named Product] Equity Release Loan', and our term went from 25 to 30 years, but in the [Named Product] Terms it states that it lasts for 5 – 25 years or before the age of 65. My Husband will be 70 years old and I will be 68. We both feel we were never given the opportunity to receive a Tracker Mortgage and given bad advice."*

The Complainants feel that they have not been dealt with fairly by the Provider, on the basis that the Provider made a *"commercial decision"* not to offer them a tracker interest rate.

The Complainants submit that *"we still feel our case wasn't dealt with fairly because in [the Provider's] own admission they were not offering us a tracker rate because of the commercial decision the bank made, but our circumstances changed and they were made*

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aware that we were selling our first home and using the proceeds from the sale to purchase the new home”.

The Provider's Case

The Provider submits that the Complainants held three mortgage loan accounts with the Provider, as follows;

1. Mortgage loan account ending 2062

The Provider submits that the Complainants signed and accepted a **Letter of Approval** for their original mortgage loan account ending **2062** dated **24 September 1993** which provided for a loan amount of £32,850.00 and a loan term of 20 years. The interest rate applicable was a 3 year fixed interest rate of 8.75%. The mortgage loan account drew down on **24 October 1993**.

The Provider states that on **12 September 2003** it received a letter from the Complainants' solicitor advising that the Complainants had agreed to sell the mortgaged property. It states that the mortgage loan account ending **2062** was redeemed on **30 September 2003** following the sale of the property.

2. Mortgage loan account ending 2763

The Provider submits that the Complainants contacted it in **January 2003** and explained that they were considering purchasing a site and building a new property. It submits that the Provider provided quotes for a loan but the Complainants did not proceed with this proposal.

The Provider submits that it was noted in its application system that on **20 May 2003** the Complainants were viewing a new home which they hoped to purchase for €250,000. It states that on **27 May 2003** the Complainants informed the Provider that they were seeking to purchase a new property and were considering selling the property which was the subject of mortgage loan account ending **2062**. It states that it continued to liaise with the Complainants regarding their loan application, and on **10 June 2003** the Complainants confirmed they had placed an offer on a property. The Provider outlines that at that time the Complainants were considering keeping the property which was security for the mortgage account ending **2062** and cross-charging the properties.

The Provider states that its records indicate that the Complainants signed an **Application for Credit** in which they applied for a loan of €195,000 repayable over 25 years with a fixed rate of interest in the first year of 2.59%.

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The Provider details that on **11 September 2003** it issued a **Letter of Approval** to the Complainants for the mortgage loan account ending **2763** which they accepted on **12 September 2003**. It submits that the loan amount was for €195,000.00, the term of the loan was 25 years and the rate of interest was fixed for the first year of the loan at 2.59%, after which it was variable.

The Provider submits that when signing the **Acceptance of Loan Offer** the Complainants confirmed that they had accepted the terms and conditions set out in the **Letter of Approval**, the **General Mortgage Loan Approval conditions** and the Provider's **Mortgage Conditions**, and they also confirmed that their solicitor had fully explained to them the terms and conditions of the Provider's Offer. The proceeds of the loan drew down in **September 2003**.

The Provider outlines that it launched tracker rates for new business customers in **early 2004** and the Complainants' loan issued prior to this, in **2003**.

The Provider states that this mortgage loan account was redeemed on **15 November 2005**.

3. Mortgage loan account ending 1759

The Provider states that on **24 October 2005** it was noted on its application system that the Complainants were going to avail of an equity release loan to complete home improvements.

The Provider states that the equity release lending product was launched by it in **2002**. It explains that the amount of the loan which can be advanced is based on the equity or value of a property mortgaged to the Provider. The product allows a customer to borrow an amount up to a certain percentage of the then current market value of their property, less an amount owed on the property. The Provider outlines that an equity release loan is secured by an existing legal mortgage and does not require a further deed of mortgage or charge to be put in place, and may be for a period longer than the prior loan(s) for which the mortgage or charge was put in place, thus enabling affordability which may not be available if repayment were over a shorter period. It states that another feature of this product is that it may be expended over time at the borrowers' discretion provided it is not applied for a commercial or business purpose.

The Provider details that on the introduction of tracker interest rates by the Provider in **early 2004**, a commercial decision was made by the Provider not to offer tracker rates on equity release loans. It states that therefore when the Complainants applied for an equity

release loan in **2005**, they would not have been offered the option of a tracker rate for their loan.

The Provider submits that during the mortgage application process it is standard practice that all available product options related to the customers' proposed borrowings are discussed with the customers. It states that this allows them the opportunity to examine various options and decide which product option to select for their application. It states that on this basis, the Provider informed the Complainants in **2005** that by opting for an equity release product they would not be able to avail of a tracker interest rate for mortgage loan account ending **1759**.

The Provider states that it issued a **Letter of Approval** dated **26 October 2005** to the Complainants which they signed and accepted. The loan amount was €225,000 and the term of the loan was 30 years. The Provider details that the interest rate applicable when the mortgage loan account drew down on **15 November 2005** was a variable rate of 3.55%.

The Provider states that the proceeds of the loan were applied as follows:

- The Complainants' mortgage loan account ending **2763** was redeemed on **15 November 2005** in the amount of €184,126.49 and the remaining funds were available to the Complainants.
- A sum of €40,873.51 was deposited to the Complainants' current account ending **2061** on **15 November 2005**.

The Provider submits that the mortgage loan account ending **1759** was redeemed on **10 November 2011**.

The Provider states that it "*rejects entirely*" the Complainants' assertion they have received "*very bad advice*" from the Provider and regrets that its customers would make such an assertion. It submits that the staff of the Provider who furnished information on its mortgage products are skilled in this field and are trained in all aspects of mortgages. The Provider submits that all available options are discussed with customers and the decision as to whether to accept a Loan Offer is solely up to the customers to make.

The Complaint for Adjudication

The complaints for adjudication are as follows;

- (a) The Provider wrongly failed to offer the Complainants a tracker interest rate for the mortgage loan account ending **2763** in **2003**, and
- (b) The Provider wrongly failed to offer the Complainants a tracker interest rate for the mortgage loan account ending **1759** in **2005**.

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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 **17 June 2020**, outlining my preliminary determination 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.

The issue to be determined is whether the Provider failed to offer the Complainants a tracker interest rate mortgage for the mortgage account ending **2763** in **2003** and for mortgage account ending **1759** in **2005**. In order to determine this, it is necessary to review and set out the relevant documents relating to the Complainants' mortgage loans. It is also necessary to consider the details of certain interactions between the Complainants and the Provider in **2003** and in **2005**.

Mortgage loan account ending 2062

The **Schedule** of the **Letter of Approval** dated **24 September 2003** detailed as follows;

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"Purchase Price:	£36,500.00
Amount of Loan:	£32850 – 00
Type of Loan:	Fixed Rate Annuity Loan
Purpose of Loan:	House Purchase
Term of Loan:	20 Years
...	
*Interest rate applicable at time of offer:	8.75%p.a 8.5%APR
Initial Fixed Period:	Three Years"

Condition 5 of the **General Conditions** detailed as follows;

"Interest and Repayment

The interest and repayment provisions applicable to the Loan depend on the type of the Loan as shown in the Schedule. The provisions applicable to the different types of loans are as follows:-

(a) Variable Rate Annuity Loan

If the Loan is a variable rate annuity loan:-

*the rate of interest applicable to the Loan will be our variable annuity rate applicable to the facility of this nature **as varied from time to time at our absolute discretion....***

(b) Fixed Rate Annuity Loan

If the Loan is a fixed rate annuity loan:-

*the rate of interest applicable to the Loan for the initial fixed period specified in the Schedule will be the appropriate fixed rate applicable to a facility of this nature prevailing at the date of drawdown of the Loan and **thereafter shall be such rate as shall from time to time be agreed by us or in absence of agreement shall be such variable rate as is then and from time to time thereafter applicable to a facility of this nature.** You will repay the Loan together with interest thereon by periodic instalments at the intervals specified in the Schedule (or, if no such interval is specified, monthly) in amounts which, over the Term of the Loan, will be sufficient to discharge in full the Loan together with such interest. You will commence payment of such instalments at the end of the first such period." [my emphasis]*

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The Letter of Approval for mortgage loan account ending **2062** envisaged a three-year fixed rate and thereafter a variable rate. The variable rate in this case was a variable rate which could be adjusted by the Provider from time to time.

I note that the Letter of Approval furnished in evidence was not signed by the Complainants. However this is not a matter that is material to the conduct being complained of by the Complainants.

The Complainants' solicitor wrote to the Provider by letter dated **11 September 2003** which detailed as follows;

"Account No [ending] 2062

Dear Sirs,

We act for the above-named borrowers who have agreed to sell their property at the above address. We expect to be in a position to complete the sale shortly and accordingly would be glad if you could let us have details of the amount due to you as of the 18th day of September 2003 under the above account (or any other account or accounts that may be relevant) to enable you to release or vacate all mortgages which either directly or indirectly affect the above property. When sending the figures to us, please also let us have a note of the daily rate of interest accruing."

The Complainants have submitted that they "thought we paid off our first mortgage" in **2003**. In the interests of clarity, the evidence shows that the Complainants' mortgage loan account ending **2062** was paid off at their request, on **30 September 2003**.

Mortgage loan account ending 2763

I have considered the Provider's internal system notes, a number of which were furnished in evidence and details of which are set out below.

The Provider's internal note dated **28 January 2003** details as follows;

"[THE COMPLAINANTS] ARE FORMER [PROVIDER] CUSTOMERS [ACCOUNTS ENDING] 2062 & 2061 THEY HAVE A SMALL MTG LEFT IN [PROPERTY SECURING ACCOUNT ENDING 2062] AND ARE CONSIDERING BUYING A SITE AND BUILDING I HAVE DONE QUOTES ON VARIOUS OPTIONS, WE LOOKED AT [NAME OF EQUITY RELEASE PRODUCT] AND BECAUSE THE SITE IS COSTING 155000.00 THERE IS NOT ENOUGH EQUITY THERE TO DO THAT, SO IT WOULD BE A NEW MORTGAGE FROM

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SCRATCH. THEY ARE GOING TO THINK THE WHOLE THING THROUGH AND SEE AS THEY ALSO HAVE A CAR LOAN WHICH IS 347.00 PER MONTH, I TOLD THEM TO RING ME WITH ANY QUERIES THEY HAD^^PLEASE FOLLOW-UP BY CONTACTING THE CUSTOMER ^^^ DIARISED FORWARD BY 14 DAYS^ UPDATED BY [PROVIDER EMPLOYEE] ON DATE: 28.01.2003 AT 15:52:48”

A further internal note dated **19 February 2003** details as follows;

“CLIENTS DO NOT KNOW WHAT THEY ARE DOING AND SAID THEY WOULD CONTACT US IF THEY DECIDED TO GO AHEAD^ DIARISED FORWARD BY 1 DAY^ UPDATED BY [PROVIDER EMPLOYEE] ON DATE: 19.02.2003 AT 18:05:04”

The Provider’s internal note dated **20 May 2003** details as follows;

“[COMPLAINANTS] NOW LOOKING AT A HOUSE THAT IS COSTING IN THE REGION OF 300K BUT THEY HOPE TO GET IT FOR 250K AS THERE IS A GOOD BIT OF WORK TO BE DONE ON IT, ^I HAVE DONE NETTS IF THEY KEEP [PROPERTY SECURING ACCOUNT ENDING **2062**] AND RENT IT, ITS A BIT TIGHT AND I NEED TO SEE THE ACTUAL SAL[A]RY CERTS AS [THE SECOND COMPLAINANT] HAS A LOT OF ALLOWANCES AND SHIFT RATES ETC. WE CAN CROSS CHARGE [NAMED PROPERTY], AND US[E] RENTAL SURPLUS RENTAL INCOME, ^^PLEASE FOLLOW-UP BY CONTACTING THE CUSTOMER. ^^DIARISED FORWARD BY 10 DAYS^ UPDATED BY [PROVIDER EMPLOYEE] ON DATE: 20.05.2003 AT 15:20:42”

A further internal note dated **27 May 2003** outlines;

“[THE COMPLAINANTS] ARE LOOKING AT B[U]YING A SECOND HAND PROPERTY WHICH REQUIRES WORK OF APPROX 40K, INITIALLY THEY WERE LOOKING AT KEEPING [PROPERTY SECURING ACCOUNT ENDING **2062**] BUT REALISTICALLY ITS NOT FEASIBLE AS THEIR MONTHLY OUTGOINGS WOULD BE 2250 AND NETTS ARE TOO HIGH. [THE SECOND COMPLAINANT] SAID THAT THEY HAD MORE OR LESS DECIDED TO SELL [PROPERTY SECURING ACCOUNT ENDING **2062**] ANYWAY AS THEY FELT IT WOULD BE TOO MUCH, ^[THE SECOND COMPLAINANT] IS A[N] EMERGENCY MEDICAL TECHNICIAN WITH [LOCATION] AMBULANCE AND HAS POTENTIAL OVERTIME OF BETWEEN 20K – 30K I TOOK 15K INTO MY CALCULATION^ BASED ON P.60’S. NETTS SHEETS ON FILE, THEY WILL PAY OFF TERM LOAN FROM PROCEEDS OF SALE OF [NAMED PROPERTY], I TOLD THEM THEY CAN GO AHEAD AND MAKE A BID AND THEN COME BACK TO US FOR CHECKLIST ETC. ^^ PLEASE FOLLOW-UP BY CONTACTING THE CUSTOMER. ^^DIARISED FORWARD BY 14 DAYS^ UPDATED BY [PROVIDER EMPLOYEE] ON DATE: 27.05.2003 AT 12:03:35”

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A further internal note dated **12 June 2003** details as follows;

"HAS PUT AN OFFER ON PROPERTY. JUST WAITING TOGET WORD BACK TO SEE IF THEY ARE SUCCESSFUL. HE WILL CONTACT US TO LET US KNOW^ DIARISED FORWARD BY 10 DAYS^ UPDATED BY [PROVIDER EMPLOYEE] ON DATE: 12.06.2003 AT 11:36:55"

The Provider's internal note of **23 June 2003** outlines;

"SPOKE TO [SECOND COMPLAINANT] AND THEY ARE STILL IN NEGOTIATIONS WITH SELLERS WOULD EXPECT EVERYTHING TO BE SORTED IN 2/3 WEEKS AND WILL GET BACK TO ME. THEY ARE EXISTING CLIENTS SO I KNOW THEY WILL DO MORTGAGE THROUGH OURSELVES. ^DIARISED FORWARD BY 21 DAYS^ UPDATED BY [PROVIDER EMPLOYEE] ON DATE: 23.06.2003 AT 15:02:15"

The Provider's internal notes dated **2 July 2003** and **3 July 2003** both state "QUOTATION PROVIDED TO THE CUSTOMER".

The Provider's internal notes between **19 August 2003** and **28 August 2003** outline as follows;

[SECOND COMPLAINANT] IS GOING TO CALL IN THURSDAY NEED TO GET THEM TO SIGN D.D, APPL FOR CREDIT AND SORT OUT INSURANCES. ^DIARISED FORWARD BY 1 DAY^ UPDATED BY [PROVIDER EMPLOYEE] ON DATE: 19.08.2003 AT 13:00:44^^^

[SECOND COMPLAINANT HAS RANG TO CANCEL APPOINTMENT WILL RING AGAIN. ^^ DIARISED FORWARD BY 5 DAYS^ UPDATED BY [PROVIDER EMPLOYEE] ON DATE: 21.08.2003 AT 11:59:30^^^

I HAVE APPLIED FOR AN OVERDRAFT FOR CLIENTS OF 21,000. IF THIS IS APPROVED I NEED TO PUT A CONDITION IN LOAN RE SAME SO I WILL WAIT TO GET A RESPONSE ON THIS BEFORE LOAN IS APPROVED. ^DIARISED FORWARD BY 1 DAY^ UPDATED BY [PROVIDER EMPLOYEE] ON DATE: 28.08.2003 AT 10:01:54"

I have considered the **Application for Credit** that was signed by the Complainants, which details as follows;

"2. Details of Mortgage Required

Type of Loan:

<i>Amount of Loan required</i>	<i>EUR 195,000.00</i>
<i>Purchase price/Value of property</i>	<i>EUR 265,000.00</i>

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Loan type 1 Year Fixed Rate Home Loan
Repayment Term required 25 Years"

The Provider has submitted into evidence a copy of a published marketing document entitled **Lending Interest Rates**, which is noted as being "effective from the start of business on the 21st August 2003".

This document outlines as follows;

"Rates applicable to new Home Loans			
		2.69%	3.5%
	1 Year Discounted Variable Rate		
	1 Year Discounted Variable Rate (when borrowing <50% of the property value)		
2.49%	3.5%		
	1 Year Fixed Rate	2.59%	3.5%
	2 Year Fixed Rate	3.49%	3.6%

I note that tracker interest rates were not yet on offer by the Provider when the Complainants applied for the mortgage loan in **September 2003**. There is no documentary or other evidence available from either party that shows the specific discussions that took place between the Provider and the Complainants about the interest rates that were generally available at that time. The **Lending Interest Rates** document was published by the Provider at the time and it clearly outlined the types of interest rates that were available for new loans, including discounted variable rates and fixed rates. I note that the one year fixed interest rate, was the Complainants' selected preference in the **Application for Credit**.

It appears from the evidence that, in **2003**, the Complainants were seeking a further advance of funds from the Provider to purchase a new property. 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 a new mortgage loan at the time and secondly, how that offer would be structured.

The **Letter of Approval** dated **11 September 2003** details as follows;

<i>Loan Type:</i>	<i>1 Year Fixed Rate Home Loan</i>
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<i>"Purchase Price/Estimated Value:</i>	<i>EUR 265,000.00</i>
<i>Loan Amount</i>	<i>EUR 195,000.00</i>
<i>Interest Rate:</i>	<i>2.59%</i>
<i>Term:</i>	<i>25 year(s)"</i>

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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 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.

5.3 Whenever repayment of a loan in full or in part is made before the time agreed the applicant shall, in addition, pay a sum equivalent to one half of the amount of interest which would have been payable on the principal sum repaid, for the remainder of the fixed rate period, or

[The Provider’s] estimate of the loss (if any) occasioned by such early repayment, calculated as the difference between the interest which would have been payable on the principal sum repaid for the remainder of the fixed rate period and the gross redemption yield (semi-annual basis) obtaining on the principal sum repaid, from a marketable Government security, in the currency of the loan, with a maturity date next nearest the end of the fixed rate period, whichever is the lesser.

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.””

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The **Acceptance of Loan Offer** was signed by the Complainants and witnessed by a solicitor on **12 September 2003**. The Acceptance of Loan Offer states as follows:

“.. 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.

...

My/our Solicitor has fully explained the said terms and conditions to me/us.”

It is clear that the Letter of Approval envisaged a one-year fixed rate of 2.49% and thereafter the option of a variable rate. The variable rate in this case was a variable rate which could be adjusted by the Provider.

As tracker interest rates were not part of the Provider’s suite of products in **2003**, it was not possible for the mortgage loan documentation which issued at that time to include a contractual entitlement to a tracker interest rate. It is unclear to me how the Complainants could expect to be offered a product that the Provider did not have available generally until a later point in time.

The Complainants applied for a mortgage loan on a fixed interest rate and the Provider offered the Complainants a fixed rate, which was accepted by the Complainants, having acknowledged that the terms and conditions of the mortgage loan were explained to them. The evidence shows that this mortgage loan account was redeemed on **15 November 2005**.

Mortgage loan account ending 1759

I have considered the **Application for Credit** that was signed by the Complainants on **6 October 2005**, which details as follows;

“2. Details of Mortgage Required

Type of Loan:

<i>Amount of Loan required</i>	<i>EUR 225,000.00</i>
<i>Purchase price/Value of property</i>	<i>EUR 360,000.00</i>
<i>Loan type</i>	<i>Equity Release Variable Rate Secured Personal</i>

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Repayment Term required *Loan*
30 Years"

The Provider’s **Lending Interest Rates** document, stated to be effective from the start of business on **24 October 2005**, outlined as follows;

"Lending Interest Rates

...

Equity Release / Secured Personal Loans	Rate	APR
<i>[Name of Product] Variable Rate</i>	<i>3.55%</i>	<i>3.6%</i>
<i>Secured Personal Loan Variable Rate</i>	<i>5.05%</i>	<i>5.2%</i>
<i>Secured Personal Loan 1 Year Fixed Rate</i>	<i>4.75%</i>	<i>5.1%</i>
<i>Secured Personal Loan 5 Year Fixed Rate</i>	<i>5.29%</i>	<i>5.4%</i>
<i>Secured Personal Loan 10 Year Fixed Rate</i>	<i>5.89%</i>	<i>6.1%</i>

The Complainants have queried the basis for the Provider’s *"commercial decision"* not to offer a tracker rate on the equity release product. In this regard I accept that the Provider operates as a business and is entitled to offer products and set interest rate options at its absolute discretion. The Provider was not offering tracker interest rates on equity release products in **October 2005** or at any other time. It is clear from the **Lending Interest Rates** set out above that the interest rates available for equity release loans were variable or fixed rates. Therefore the Provider was not under any obligation to offer the Complainants a tracker interest rate option on the equity release product option.

The Provider’s internal note dated **24 October 2005** details as follows;

"EXISTING CLIENTS DOING [NAME OF EQUITY RELEASE PRODUCT] TO DO HOUSE IMPROVEMENTS"

The **Letter of Approval** dated **26 October 2005** details as follows;

<i>Loan Type:</i>	<i>Equity Release Variable Rate Secured Personal Loan</i>
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<i>"Purchase Price/Estimated Value:</i>	<i>EUR 360,000.00</i>
<i>Loan Amount</i>	<i>EUR 225,000.00</i>
<i>Interest Rate:</i>	<i>3.55%</i>
<i>Term:</i>	<i>30 year(s)"</i>

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

“C. PLEASE NOTE THE EQUITY RELEASE LOAN CONDITIONS CONTAINED IN THE GENERAL MORTGAGAE LOAN APPROVAL CONDITIONS.”

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** 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 Offer** was signed by the Complainants on **01 November 2005**. 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 Condition*
- iii. [the Provider’s] Mortgage Conditions.*

...

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

It is clear that the Letter of Approval envisaged a variable interest rate loan which could be adjusted by the Provider. As the Provider had made a commercial decision not to include tracker interest rates as an option for equity release loans, it did not include an offer of a tracker interest rate.

The Letter of Approval provided for an equity release variable rate product. If the Complainants did not want to pursue this option because they were unhappy with the rate applicable to the equity release mortgage, they could have declined to accept the Provider’s offer. Instead the Complainants accepted the Provider’s offer by signing the **Acceptance of Offer of an Additional Loan on 01 November 2005**. The Complainants also confirmed that they had the option to seek advice if they so wished and confirmed that they had obtained or been given the option of obtaining independent legal advice prior to accepting the offer. The Complainants have suggested that they received *“bad advice”* from the Provider on the basis that they paid more in interest on the mortgage loan **1759**,

/Cont’d...

than they would have had a tracker interest rate applied to the mortgage loan account. Whilst it may be the case that with hindsight the Complainants are of the view that a tracker interest rate option would have been preferable and in the long term may have proven to be less costly, there is no evidence that the Provider could have known at that this would be the case in **2005**. The Complainants sought an equity release loan and that is what they were offered by the Provider. There is no evidence of “*bad advice*” on the Provider’s part. The Complainants also refer to the maturity of the Complainants’ mortgage loan which was scheduled for **2035** (30 year term). The Complainants outline that at that point in time “*My Husband will be 70 years old and I will be 68*”. However I note from the evidence that the Complainants’ mortgage account ending **1759** was redeemed on **10 November 2011**, some 6 years after it was taken out.

The Complainants did not have a contractual or other entitlement to a tracker interest rate on mortgage loan accounts ending **2763** or **1759**. The evidence shows that tracker interest rates were not an available interest rate option from the Provider in **September 2003** when they applied for and drew down mortgage loan account ending **2763**. With respect to mortgage account ending **1759**, the Complainants sought and applied for an equity release mortgage loan and that was the mortgage loan they were offered by the Provider in **2005**. The evidence shows that the choice to take out the mortgage loans on the terms and conditions offered by the Provider was a choice that was freely made by the Complainants.

For the reasons outlined above, I do not uphold this 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

9 July 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.

