



<b><u>Decision Ref:</u></b>	2020-0246
<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 at point of sale 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 Complainants with the Provider. The mortgage loan that is the subject of this complaint is secured on the Complainants' Principal Private Residence.

The loan amount was €80,000 and the term of the loan was 15 years. The particulars of the Letter of Approval dated **21 July 2005** detailed that the loan type was an *"Equity Release Variable Rate Loan"*.

##### **The Complainants' Case**

In **2005** when the Complainants were applying for their mortgage with the Provider, they submit that they *"specifically requested"* a tracker mortgage in one of the Provider's Branches. The Complainants submit that their request was denied by the Provider on the basis that the Provider was no longer offering tracker mortgages. The Complainants submit that as a result of the Provider's misinformation, they were *"trapped"* into accepting a variable interest rate loan.

The Complainants submit that they later discovered that the information given to them in relation to the availability of tracker mortgages was “*untrue*” and that the Provider had misinformed them about the availability of tracker mortgages in **July 2005**.

The Complainants submit that they verbally requested a tracker interest rate on many occasions after the drawdown of their mortgage. The Complainants assert that they were entitled to avail of a tracker interest rate and that the Provider has no valid reason for refusing them such a rate.

The Complainants submit that “*as a result of missing out on the tracker mortgage we have endured considered (sic) financial hardships, we indeed had on occasion to restructure our loan due to our financial losses.*”

The Complainants are seeking the following:

- (a) Financial compensation for losses incurred as a result of being on a variable interest rate mortgage since **2005** instead of a tracker interest rate.
- (b) Compensation for “*stress and anxiety*” they assert they have suffered as a result of the Provider’s failure.

### **The Provider’s Case**

The Provider details that the Complainants proposed to borrow €80,000 for various items of personal expenditure including redemption of various short and long term loans in other institutions and provision of a fund of €20,000 for personal use. The Provider submits that following the provision of a quotation by the Provider, the Complainants completed an Application for Credit on **11 July 2005** for an Equity Release Variable Rate Loan in the amount of €80,000.

The Provider submits that following full consideration of the Complainants’ application, the Provider issued a Letter of Approval on **21 July 2005** for an Equity Release Variable Rate Loan at a rate of 3.55% and the loan offer was accepted on **27 July 2005**. The Provider submits that the decision to accept the loan offer is solely the decision of the customers and in accepting the loan, the Complainants indicated that their solicitor had fully explained the terms and conditions of the loan to them.

The Provider outlines that it “*does not accept*” that it informed the Complainants that tracker mortgages were “*no longer*” available, rather it states that it informed them that it was the case that a tracker rate was not available for the Complainants’ application. The Provider details that tracker interest rates were not available for equity release loans. It submits that equity release loans were introduced by the Provider in **2002** and when

/Cont’d...

tracker interest rates were introduced in **2004** the Provider made the commercial decision that tracker rates would not be applied to those types of loans. The Provider details that that tracker interest rates were only available to new business customers availing of mortgage loans exceeding €150,000. The Provider outlines that this is evidenced in the Provider's lending interest rate sheet.

The Provider submits that the equity release loan allowed customers to borrow an amount based on the equity or value in their property and use the borrowed funds for any purpose (other than for business or commercial purposes). The Provider details that the interest rates on their equity release loans were comparable to mortgage interest rates, and significantly lower than other personal loan interest rates.

The Provider rejects the Complainants' submission that they were "*trapped*" into accepting a variable rate mortgage loan. The Provider asserts that the Complainants applied for and obtained a loan which suited their needs in **2005** as they were seeking to borrow €80,000 for various personal uses. The Provider outlines that when the Complainants drew down the loan, the Provider transferred €60,000 to the solicitor acting for the Complainants from which four loans were to be redeemed and transferred €20,000 to a holding account for the Complainants, which was drawn down by the Complainants at various dates from 2005 to 2007.

The Provider submits that the Complainants did request a tracker interest rate in **2007** and again in **2008**. It states that the Complainants were informed on both occasions that the tracker rate was not available on equity release loans. The Provider submits that the Complainants indicated in **March 2008** that they were moving their loan to another financial service provider and as a result, the Complainants were offered an interest rate reduction of 0.25% on the variable rate which applied to their loan and the Complainants accepted that offer.

### **The Complaint for Adjudication**

The complaint for adjudication is that the Provider misinformed the Complainants in relation to the availability of tracker interest rate mortgages in **July 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 Complainants were given the opportunity to see the Provider's

/Cont'd...

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 **1 July 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, I set out below my final determination.

In order to adjudicate on this complaint, it is necessary to review and set out relevant provisions of the Complainants' loan documentation and to consider the interactions between the Complainants and the Provider between **2005** and **2008**.

I have considered the **Personal Loan Application** and the **Application for Credit** which were signed by the Complainants respectively on **11 July 2005** and **12 July 2005**, together with the supporting documentation that was submitted by the Complainants to support their application. I note the **Application for Credit** details as follows;

**"2. Details of Mortgage Required**

**Type of Loan:**

<i>Amount of Loan required</i>	<i>EUR 80,000.00</i>
<i>Purchase price/Value of property</i>	<i>EUR 250,000.00</i>
<i>Loan type</i>	<i>Equity Release Variable Rate Loan</i>
<i>Repayment Term required</i>	<i>15 Years"</i>

A **Letter of Approval** dated **21 July 2005** was issued to the Complainants which details as follows;

<i>“Loan Type:</i>	<i>Equity Release Variable Rate Loan</i>
--------------------	--

<i>Purchase Price / Estimated Value:</i>	<i>EUR 250,000.00</i>
<i>Loan Amount:</i>	<i>EUR 80,000.00</i>
<i>Interest Rate:</i>	<i>3.55%</i>
<i>Term:</i>	<i>15 year(s)”</i>

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

***“Special Conditions***

- D. PLEASE NOTE THE EQUITY RELEASE LOAN ACONDITIONS CONTAINED IN THE GENERAL MORTGAGE LOAN APPROVAL CONDITIONS.*
  
- E. THE LOAN WILL BE ADVANCED BY WAY OF LOAN CHEQUE AND WILL BE FORWARDED TO THE APPLICANT’S SOLICITOR AS TO EUR60000.00 AND BY WAY OF TRANSFER TO A [PROVIDER] HOLDING ACCOUNT IN THE APPLICANT’S NAME(S) AS TO EUR20000.00. THE APPLICANT(S) WILL HAVE ACCESS TO THE LOAN AMOUNT IN THE HOLDING ACCOUNT ON PRODUCTION TO [THE PROVIDER] OF A CONFIRMATION OF CLOSING OF LOAN DULY SIGNED BY THE APPLICANT’S SOLICITOR.*
  
- F. THE FOLLOWING LOANS WILL BE CLEARED IN FULL FROM THE PROCEEDS OF THIS ADVANCE.  
[PROVIDER (ACCOUNT NUMBER)]  
[THIRD PARTY PROVIDER (ACCOUNT NUMBERS)]  
[THIRD PARTY PROVIDER (ACCOUNT NUMBER)]  
[THIRD PARTY PROVIDER (ACCOUNT NUMBER)]”*

**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;

/Cont’d...

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 **9 December 2002**.

The **Acceptance of Loan Offer** was signed by the Complainant and witnessed by a solicitor on **27 July 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.

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."

The Complainants submit that their request for a tracker interest rate in **July 2005** was declined by the Provider because it was not "providing tracker mortgages at that time".

The Provider furnished into evidence a copy of its lending interest rates effective from **01 July 2005** which details as follows:

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

Loan Amount €150,000 - €249,999	3.40%
Loan Amount of €250,000 or more	3.10%

**Equity Release / Secured Personal Loans**

"Product Name" Variable Rate	3.55%
Secured Personal Loan Variable Rate	5.05%
Secured Personal Loan 1 Year Fixed Rate	5.05%
Secured Personal Loan 5 Year Fixed Rate	5.05%
Secured Personal Loan 10 Year Fixed Rate	5.05%"

It is clear from that document that tracker interest rate mortgages were a product type available from the Provider in **July 2005** when the Complainants were seeking a loan from the Provider. However the Complainants were not seeking a mortgage loan of the requisite value to be in a position to apply for a "tracker mortgage". Further it is important for the Complainants to be aware that they were not seeking a mortgage loan for the

/Cont'd...

purchase or development of their property, rather what they were seeking was personal loan for the purposes of consolidating personal lending held with the Provider and other financial service providers to the sum of €60,000 and €20,000 for other purposes. In these circumstances the Provider offered the Complainants' the equity release variable rate loan.

The Provider made the commercial decision not to include a tracker interest rate offering on their equity release product. In this regard, I accept that the Provider operates as a business and is entitled to set interest rate options for products at its discretion. The Provider was not offering tracker interest rates on equity release products in **July 2005** or at any other time. This was a commercial decision it was legitimately entitled to make.

It is clear that the Letter of Approval envisaged a variable interest rate loan of 3.55% which could be adjusted by the Provider. 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. If the Complainants did not want to pursue this option because they were unhappy with the interest rate applicable to the equity release mortgage, they could have decided not to accept the Provider's offer of the equity release product. Instead the Complainants accepted the Provider's offer by signing the **Acceptance of Loan Offer on 27 July 2005**. I have been provided with no evidence that the Complainants were "trapped" into accepting a variable interest loan in **2005**.

The Complainants also submit that they requested a tracker interest rate on the loan at different points in time throughout the life of the loan and that these requests were also refused by the Provider.

A letter from the Complainants to the Provider dated **08 October 2007** was furnished in evidence and detailed as follows:

*"Please adjust the rate on our above mortgage account to tracker rate (currently 4.8%). Our home is currently valued at €260,000 approx and has sufficient Loan to Value to qualify."*

The Provider responded to the Complainants on **09 October 2007** as follows:

*"I refer to your recent query referring the above mortgage account. Unfortunately the tracker rate 4.8 is not available in Equity Release Loans so we won't be able to change it to that rate."*

An internal email exchange, furnished in evidence from **19 March 2008** outlines as follows:

/Cont'd...

*“IS IT POSSIBLE TO CHANGE THIS TO A TRACKER [mortgage] FOR VERY GOOD CUSTOMERS?”*

A reply from *Mortgage Query* dated **20 March 2008** states:

*“This is an equity release loan they can not avail of the tracker rate.”*

I accept that it was within the Provider’s commercial discretion to refuse these requests as the Provider was not offering tracker interest rates on equity release products. The evidence shows that the Complainants were given a 0.25% reduction on the variable interest rate from 5.44% to 5.19% in **March 2008**.

I have been provided with no evidence that the Complainants had a contractual or other entitlement to a tracker interest rate on their equity release mortgage loan. 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. The Provider was not offering tracker interest rates on equity release products.

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

### **Conclusion**

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

**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**

23 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—**

/Cont’d...



- (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.**

