



<u>Decision Ref:</u>	2020-0308
<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 loan account the Complainants' hold with the Provider. The mortgage loan is secured on the Complainants' Principal Private Residence.

The loan amount was €70,000 and the term of the loan was 25 years. The particulars of the Letter of Approval dated **26 September 2007** detailed that the loan type was an *"Equity Release Variable Rate Secured Personal Loan"*.

The Complainants' Case

The Complainants accepted a Letter of Approval dated **26 September 2007** by signing an Acceptance of Loan Offer on **7 October 2007**. The particulars of the mortgage loan offer detailed that the interest rate applicable was for an *'Equity Release Variable Rate Secured Personal Loan'* at a rate of 5.35%.

The Complainants submit that when they applied for the mortgage loan that they were only offered a variable interest rate by the Provider. They outline that they believe that the Provider *"had the availability to offer us a tracker mortgage on this account at the time but failed to do so"*. The Complainants detail that *"If tracker option was available we would surely have taken that option"*.

The Complainants submit that at the time of the loan offer they could only choose a loan that was provided on offer to them and the Provider *“selectively chose what to offer”* them.

The Complainants detail that they *“only realised the wrong doing after looking into it following the media announcement”*.

The Complainants submit that the Provider’s response to this complaint *“outlines the loan is the one that we chose at the time”* and the Provider has furnished paperwork of the *“process that happened instead of explaining why the tracker was not an option for us”*. They feel that the Provider is being *“disingenuous”* in this matter.

The conduct complained of is that the Provider failed to offer the Complainants a tracker interest rate on the mortgage loan in **2007**.

The Complainants are seeking that the Provider;

- (a) Apply a tracker interest rate to the mortgage loan account,
- (b) Reimburse the Complainants for the mortgage interest they have overpaid on the variable interest rate, and
- (c) Compensation.

The Provider’s Case

The Provider submits that the Complainants drew down a home loan from the Provider on **14 July 2004**, in the amount of €299,000 which was secured with a legal mortgage on the Complainants’ property.

The Provider details that on **04 September 2007** the Complainants completed an Application for Credit for an Equity Release Variable Rate Loan in the amount of €70,000 for a period of 25 years. It outlines that the purpose of the loan was to complete home improvements. The Provider outlines that the balance due on the original home loan was €278,416.46 when the Complainants applied for the additional loan in **September 2007** and the value of the property was estimated at €450,000.

The Provider outlines that the Provider’s equity release lending allowed customers to use their existing equity in their property to obtain a personal loan to be used at their discretion, provided the use was not commercial. The Provider submits that the interest rates on equity release loans were lower when compared to other personal loan rates.

The Provider submits that it introduced equity release loans to its suite of products in **2002** and fixed and variable rates were available for this product. The Provider outlines that when it introduced tracker interest rates to its product offering in **2004**, it made the commercial decision not to offer tracker interest rates on equity release loans.

The Provider submits that during a mortgage application process, it is normal practice to discuss all available loan products relevant to a customer's requirements. This allows customers the opportunity to examine the various options and ultimately choose a loan type suitable to their needs. The Provider submits that "*an equity release personal loan was a suitable product*" for the Complainants' lending requirement in **2007**. In this regard, the Provider details that the Complainants were in a position to provide security for the lending and the legal mortgage was in place, therefore the Complainants didn't have to incur any delay or expense in providing security for the loan. The Provider also reiterates that the interest rates were more favourable than standard personal rates.

The Provider outlines that a **Letter of Approval** issued to them on **26 September 2007** for an Equity Release Variable Rate Secured Personal Loan. It states that the loan amount was €70,000.00 at a variable rate of 5.35% and the loan was repayable over a period of 25 years. It submits that the **Letter of Acceptance** was signed by the Complainants on **7 October 2007** and returned to the Provider by the Complainants confirming they had accepted the offer on the terms and conditions.

The Provider submits that it is satisfied that the documentation relating to the mortgage loan was sufficiently clear and transparent as to the Complainants' entitlements with respect to a tracker interest in the mortgage loan agreement. The Provider further submits that the Complainants did not have any entitlements with respect to a tracker interest rate on the loan that is the subject of this complaint.

The Complaint for Adjudication

The complaint for adjudication is that the Provider failed to offer the Complainants the option of a tracker interest rate on their mortgage loan account in **September 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 **26 August 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.

In order to determine this complaint, it is necessary to review and set out the relevant provisions of the Complainants' mortgage loan documentation. It is also necessary to consider the details of certain interactions between the Complainants and the Provider in **August** and **September 2007**.

The Provider has furnished copies of Internal Notes in evidence which outline as follows:

- **10 August 2007**

"PACK SENT TO [THE COMPLAINANTS] FOR 70K [Product] OVER 25YEARS TO CARRY OUT HOME IMPROVEMENTS. ^NO OUTSTANDING LOANS^"

- **31 August 2007**

"[FIRST COMPLAINANT] PHONES AS SHE HAD A FEW QUESTIONS ABOUT THE APPLICATION. ^SHE WILL RETURN THE PACK TO ME ASAP^"

/Cont'd...

- 10 September 2007

“PACK BACK”

The **Application for Credit** that was signed by the Complainants on **04 September 2007**, which details as follows;

“2. Details of Mortgage Required

Type of Loan:

<i>Amount of Loan required</i>	<i>EUR 70,000.00</i>
<i>Purchase price/Value of property</i>	<i>EUR 500,000.00</i>
<i>Loan type</i>	<i>Equity Release Variable Rate Secured Personal Loan</i>
<i>Repayment Term required</i>	<i>25 Years”</i>

A **Letter of Approval** dated **26 September 2007** was issued to the Complainants which details as follows;

“

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

<i>Purchase Price/Estimated Value:</i>	<i>EUR 450,000.00</i>
<i>Loan Amount</i>	<i>EUR 70,000.00</i>
<i>Interest Rate:</i>	<i>5.35%</i>
<i>Term:</i>	<i>25 year(s)”</i>

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

“Special Conditions

C. PLEASE NOTE THE EQUITY RELEASE LOAN ACONDITIONS CONTAINED IN THE GENERAL MORTGAGE LOAN APPROVAL CONDITIONS.

...

E. THIS ADDITIONAL LOAN WILL BE SECURED BY WAY OF AN EXTENSION OF THE BANK’S EXISTING LEGAL MORTGAGE OVER THE SECURITY REFERRED TO IN THE LETTER OF APPROVAL AND NO SEPARATE MORTGAGE DEED IS REQUIRED TO BE EXECUTED IN RESPECT OF THIS ADDITIONAL LOAN.”

/Cont’d...

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** outline;

*“IF THE LOAN IS A VARIABLE 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 of an Additional Loan** was signed by the Complainants on **7 October 2007**, on the following terms;

“(2) I/We agree that the existing mortgage over the property will secure this additional loan.

....

(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 Provider has furnished into evidence a copy of its **Lending Interest Rates** effective from **10 September 2007** which shows the rates available from the Provider at the time. The Lending Interest Rate sheet shows that there were a variety of tracker interest rate options available for New Home Loans and Existing Home Loans. It also details as follows:

“Rates applicable to New & Existing Home Loans

	Rate	APR
<i>4 Year Fixed Rate*</i>	5.50%	5.4%
<i>5 Year Fixed Rate*</i>	5.60%	5.5%
<i>10 Year Fixed Rate*</i>	5.60%	5.6%

Equity Release / Secured Personal Loans

<i>[Product] Variable Rate</i>	5.35%	5.5%
<i>Fixed Interest [product] options above (APR may vary)*</i>		
<i>Secured Personal Loan Variable Rate</i>	6.85%	7.1%

/Cont’d...

Variable Rate Personal Loans

New Applications

Standard Loan Rate

€9,000 or more	8.10%	8.4%
€5,000 to €8,999	9.90%	10.4%
Less than €5,000	11.35%	12.0%”

It is not in dispute between the parties that the Complainants were seeking a further advance of funds of €70,000 from the Provider for the purposes of home improvements. I have not been furnished with any documentary evidence of any discussions which may have taken place between the Provider and the Complainants during the application stage in relation to interest rate options.

Notwithstanding this, it is important for the Complainants to be aware that the Provider was under no obligation to offer them any loan or any particular type of loan in **September 2007**. 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 is clear from the **Lending Interest Rates** document that tracker interest rate mortgages were a product type available from the Provider in **September 2007** when the Complainants were seeking a loan from the Provider. However the Complainants were not seeking a “*New Home Loan*” in order to be in a position to apply for or avail of the tracker interest rate offering from the Provider. Rather what they were seeking was a personal loan for the purposes of home improvements. In these circumstances the Provider offered the Complainants the equity release variable rate loan. This product attracted an interest rate of 4.35%. The alternative available was for the Complainants to apply for an unsecured personal loan for the sum of €70,000 which would have attracted an interest rate of 8.10%.

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 **September 2007** or at any other time. This was a commercial decision which I cannot interfere with as the Provider was legitimately entitled to make such a decision.

/Cont’d...

It is clear that the Letter of Approval envisaged a variable interest rate loan of 5.35% 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 7 October 2007.**

In light of all the foregoing, I accept that there was no obligation on the Provider to offer the Complainants a tracker rate for their equity release mortgage loan in **September 2007.**

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**

22 September 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,

/Cont'd...

**(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.

