



<u>Decision Ref:</u>	2020-0448
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Tracker Mortgage
<u>Conduct(s) complained of:</u>	Failure to offer a tracker rate throughout the life of the mortgage
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainants hold two mortgage loan accounts with the Provider, as follows:

- **Mortgage loan account ending 7678**
The loan amount for mortgage loan account ending **7678** was €150,000 and the term of the loan was 18 years and is secured on the Complainants' private dwelling house. The Letter of Approval outlined the Loan Type as a 1 Year Fixed Rate Home Loan. The Complainants drew down mortgage loan account ending **7678** on **20 December 2005**.
- **Mortgage loan account ending 4711**
The loan amount for mortgage loan account ending **4711** was €125,000 and the term of the loan was 18 years and is secured on the Complainants' private dwelling house. The Letter of Approval outlined the Loan Type as an Equity Release 1 Year Fixed Rate SPL (Interest Only). The Complainants drew down mortgage loan account ending **4711** on **01 May 2008**.

This complaint relates to mortgage loan account ending **4711** only.

The Complainants' Case

The Complainants detail that their principal mortgage (mortgage loan account ending **7678**) is on a tracker interest rate of ECB+1.25%.

The Complainants submit that in **2008** they applied for an “*extension*” of mortgage loan account ending **7678** for the purposes of building an extension on to their home and increase their home’s value. The Complainants submit that it was their intention to obtain an extension to their existing loan when they approached the Provider.

They detail that the Provider “*dealt with our application as equity release and did not offer us an extension to our Tracker Mortgage.*” The Complainants detail that an extension to their tracker mortgage was never mentioned to them by their Provider’s advisor as an option. The Complainants detail that they were approved for an additional loan at the Provider’s standard variable rate.

The Complainants contend that they should have been offered an extension to their existing tracker mortgage, mortgage loan account ending **7678**, and if they had been offered this, then their repayments “*...would have been considerably more affordable*”. The Complainants query why a second mortgage on the standard variable rate was considered the most suitable option by the Provider, when “*...an extension of [their] Tracker Mortgage would have been the most suitable and more affordable option*”.

The Complainants contend that they do not believe that a new legal mortgage would have been required had their existing mortgage been “*extended*”. The Complainants detail that it is their view that the Provider’s decision not to “*extend*” their existing mortgage was contrary to what was most suitable to their requirements.

The Complainants submit that if they had been offered an extension to their tracker mortgage by the Provider, their repayments would have been considerably more affordable. The Complainants submit that, since the financial crisis, they have made considerable sacrifices in order to maintain their repayments towards both mortgage loan accounts. The Complainants submit that this has caused them stress and hardship and they have both suffered ill health as a result.

The Complainants detail that they had a telephone call with a member of staff of the Provider and were advised that a tracker mortgage was not made available to them in **2008** as the second mortgage was considered an equity release. The Complainants contend that the second mortgage, mortgage loan account ending **4711**, was for an extension on their family home and therefore should have been treated as an extension of their existing tracker mortgage.

The Complainants outline that they complained to the Provider on **05 January 2018**, **05 February 2018** and **10 April 2018** regarding this but the Provider's response did not deal with the substantive issue, which was that the "... *application should have been treated as an extension of our tracker mortgage.*"

The Complainants contend that "*An extension to our existing mortgage would have been fairer and more reasonable in the circumstances.*"

The Complainants are seeking the following;

- (a) To be placed in the financial position that they would have been in, had the Provider treated their application for additional funds in **2008** as an extension of their existing tracker mortgage;
- (b) To have mortgage loan account ending **4711** placed on a tracker interest rate; and
- (c) A payment of €42,406, which the Complainants submit is based on the following;
 - i. an overpayment of €36,875, calculated based on an average difference in interest rates of 2.95% over ten years; and
 - ii. compensatory interest at 15%, which the Complainants submit amounts to €5,531.

The Provider's Case

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

1. Mortgage loan account ending 7678

The Provider submits that the Complainants signed and accepted a loan offer for mortgage loan account ending **7678** with the Provider dated **10 November 2005**. The loan amount for mortgage loan account was €150,000 and the term of the loan was 18 years. The Letter of Approval outlined the Loan Type as a "*1 Year Fixed Rate Home Loan*". Mortgage loan account ending **7678** was drawn down on **20 December 2005**.

2. Mortgage loan account ending 4711 (the loan account the subject of this complaint)

The Provider details that equity release loans were included in its products from **2002** and tracker interest rates were launched as a product on **15 January 2004**. The Provider

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outlines that it made a commercial decision not to include tracker interest rates for equity release products, and only offered variable and fixed interest rates for equity release loans. The Provider also submits that it made a commercial decision in **2004** not to make tracker interest rates available on existing or future equity release loans.

The Provider submits that in **April 2008** the Complainants *“applied for an additional loan for a number of purposes including a Credit Union Loan and building an extension to their home.”* It details that a *“range of loan types were discussed with the Complainant, including equity release additional loans which could be offered to them due to the value of their equity in their home in 2008 and their existing mortgage.”*

The Provider submits that the Complainants completed an application form dated **11 April 2008** in respect of an Equity Release Loan in the sum of €100,000 with the first year of interest fixed at 5.20%. The Provider details that, having chosen to apply for an equity release loan, the interest rates available to the Complainants were either variable or fixed.

The Provider submits that *“no new legal mortgage was required”* for an equity release loan where there was an earlier mortgage in favour of the Provider. The Provider further submits that equity release loans were *“designed to enable customers release equity in their homes”* and that the interest rates applicable to equity release loans *“were/are based on mortgage rates which are typically lower than the [Provider’s] Personal loan rates.”* The Provider submits that it made a commercial decision to offer either fixed interest rates or variable 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 **2008**. It details that the Complainants were in a position to provide security for the lending and the legal mortgage was in place, therefore the Complainants did not 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 states that the Complainants indicated that they sought additional funds for *“a number of personal expenditure purposes including an extension to their family home and repayment of a Credit Union loan”*. The Provider further submits that it *“is not clear what is meant by”* an extension to the Complainants’ existing tracker mortgage, as the Complainants did not have an entitlement to require the Provider to make available any additional lending in their principal mortgage loan account.

The Provider outlines that an equity release loan was suitable for the Complainants for “*a number of reasons*” as it was a loan type which could be used for any expenditure other than for business or commercial purposes and it was offered at competitive mortgage loan interest rates without the requirement of a new legal mortgage.

The Provider details that it issued a Letter of Approval to the Complainants dated **24 April 2008** in the amount of €125,000 for a “*1 Year Fixed Rate SPL (Interest Only) Home Loan*”, with the first year on a fixed interest rate of 5.20%, repayable over 16 years. The Provider further submits that the Letter of Approval for loan account ending **4711** clearly refers to a new and different loan account to mortgage loan account ending **7678**. The Provider outlines that loan account ending **4711** had its own loan amount, interest rate, repayment period, end date and loan conditions and that none of these conditions were dependent on mortgage loan account ending **7678**. In this regard, the Provider submits that it is satisfied that it was made “sufficiently clear and transparent to the Complainants that mortgage loan ending **4711** was a separate loan account.

The Provider outlines that it did not offer the Complainants a tracker interest rate on loan account ending **4711** because it was an equity release loan and the Provider had made a commercial decision in **2004** not to include tracker interest rates for its equity release loans.

The Provider submits that equity release loans have “*at all times been offered with a variable or fixed rate only*”, they were “*never available with a tracker rate*”, and that it did not offer the Complainants a tracker interest rate in **April 2008** because it did not “*at that time or at any time offer equity release loans with tracker rates.*”

The Provider submits that the Complainants were issued with a Suitability Letter dated **24 April 2008**, along with their Letter of Approval, the former of which stated that the Complainants should “*...review the information in this letter and ensure the mortgage features and details best suit your requirements and wishes, given the advice from [the Provider’s] staff and the information provided*”.

The Provider notes that the Complainants subsequently signed the Acceptance of Offer of an additional loan confirming that they “*had received/had an opportunity to receive, independent legal advice before accepting the offer of the additional loan*”.

The Complaint for Adjudication

The complaint for adjudication is that the Provider incorrectly failed to offer the Complainants an extension on their existing tracker mortgage rate on mortgage loan account ending **4771** in **April 2008**.

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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 November 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, I set out below my final determination.

Before dealing with the substance of the complaint, I would like to make a comment about the jurisdiction of this Office to deal with the matters complained of. In their submission to this office dated **8 November 2018**, the Complainants detail as follows;

"We are also in the process of requesting from [the Provider], under Data Protection, all documentation relating to our mortgages, supplied to the Central Bank. We do not feel confident that [the Provider] provided all relevant information and this may have adversely influenced the outcome of the Central Bank's examination."

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The Complainants further detail in their submission to this Office dated **10 December 2018** as follows;

“To me [the Provider’s response to the Complainants’ Data Access Request] appears to be in conflict with [the Provider’s] response to my original complaint dated 23rd April.

...

This compounds my concerns regarding the accuracy and adequacy of information supplied by [the Provider] to the Central Bank, which led [the Provider] to conclude “that the mortgages in question were not eligible for redress and/or compensation under this examination”.”

With respect to any issues relating to an alleged breach of data protection legislation, the Office of the Data Protection Commissioner is the more appropriate body to raise such concerns with. Therefore matters relating to Data Protection do not form part of this investigation and decision.

The issue to be determined is whether the Provider should have offered the Complainants an extension of their existing tracker mortgage when they sought additional funds in **April 2008**, rather than offering them a separate loan facility in the form of an equity release loan.

In order to determine this complaint it is necessary to review and set out the relevant provisions of the Complainants’ loan documentation in relation to both mortgage loan account ending **7678** and **4711**, as well as the interactions between the Complainants and the Provider between **2005** and **2008** when the Complainants applied for and drew down both mortgage loan accounts.

Mortgage loan account ending 7678

A **Letter of Approval** dated **10 November 2005** was issued to the Complainants for mortgage loan account ending **7678** which details as follows;

“Loan Type:	1 Year Fixed Rate Home Loan
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<i>Purchase Price / Estimated Value:</i>	<i>EUR 450,000.00</i>
<i>Loan Amount:</i>	<i>EUR 150,000.00</i>
<i>Interest Rate:</i>	<i>2.55%</i>
<i>Term:</i>	<i>18 year(s)”</i>

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Condition A of the **Special Conditions** attaching to the **Letter of Approval** dated **10 November 2005** detailed 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** provides that;

“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 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 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 the 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.”

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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."

It is clear that the Letter of Approval envisaged a one-year fixed interest rate of 2.55% and thereafter the option of a variable interest rate. The variable interest rate in this case was a variable rate that could be adjusted by the Provider.

While I acknowledge that tracker interest rates were part of the Provider's suite of mortgage products on offer to customers in **2005**, the Complainants in this instance opted for a one year fixed interest rate mortgage to revert to a variable interest rate thereafter. I note that that the Complainants' mortgage loan documentation does not contain a contractual entitlement to a tracker interest rate. The Provider has submitted details of its policy with respect to tracker interest offerings to new and existing customers in evidence. In this regard, I note that in **mid-2006** the Provider commenced offering all existing, maturing fixed interest rate customers a tracker mortgage on expiry of their fixed rate. In these cases, the Provider explains that the tracker interest rate was listed as an option in the automated options letters that issued to the customer, in the month prior to the maturity of the fixed interest rate period and in the absence of customer selection, the tracker interest rate was applied. It appears to me that the Complainants chose to apply a tracker interest rate to their mortgage loan account at some point after the drawdown of mortgage loan account ending **7678**. While it is unclear as to when a tracker interest rate was applied to the Complainants' mortgage loan account, it does not appear to be in dispute between the parties that a tracker interest rate was applied.

Mortgage loan account ending 4711

In **April 2008**, the Complainants sought a further advance of funds from the Provider for the purposes of clearing Credit Union loans and building an extension to their private dwelling house over which the Provider held a legal mortgage the subject of mortgage loan account ending **4711**. 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 mortgage or any particular type of mortgage in **2008**.

It was a matter for the Provider to decide firstly, if it was willing to offer the Complainants any additional borrowings at the time and secondly, how that offer would be structured.

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It is understood that on foot of discussions between the Provider and the Complainants, the Provider issued a **Letter of Suitability** dated **24 April 2008** to the Complainants which detailed as follows;

"Dear [Complainants]

The following outlines our proposal based on information you have given us regarding your personal circumstances, financial needs and plans. The loan preferences and options you have chosen are also listed, as at April 23rd, 2008.

Proposal

We propose the following:

Interest only repayments- As you have told us you require lower repayments in the first years of your loan.

Mortgage details agreed

You have selected a loan type from a range which we are prepared to offer you based on your needs and circumstances. You have chosen a repayment term and flexible options (where relevant) to achieve a repayment amount best suited to your needs and preferences. Details are as follows:

- | | |
|-----------------------------|---|
| • Amount of loan required | €125,000.00 |
| • Property price/value | €0.00/€450,000.00 |
| • Loan Purpose | Equity Release |
| • Loan Type | Equity Release 1 Year Fixed Rate SPL (Int only) |
| • Repayment term required | 16 Years |
| • Flexible repayment option | None |

The loan amount has been derived from your stated borrowing requirement and by calculating your ability to repay from the following items of information you have supplied:

- *The individual elements of your income*
- *Your financial commitments*
- *Our lending policy*

.....

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Please review the information in this letter and ensure the mortgage features and details best suit your requirements and wishes, given the advice from [the Provider's] staff and the information you provided. You should take the necessary time to consider and query any information provided to you in relation to your loan application. If you have chosen a fixed interest rate loan term and you feel your personal circumstances may potentially change soon, then a fixed interest rate loan term may not be the best option for you. Further details on the range of mortgage options available are enclosed...

In the case of a joint application it is understood that the above represents the wishes and requirements of both applicants. If you disagree with, or wish to change any of the above requirements/statements, please contact your branch."

The Provider furnished into evidence a copy of its lending interest rates effective from **01 April 2008** which details as follows:

"LENDING INTEREST RATES

...

Rates applicable to Existing Home Loans

	RATE	APR
1 Year Fixed Rate*	5.20%	5.4%
2 Year Fixed Rate*	5.20%	5.4%
3 Year Fixed Rate*	5.25%	5.4%

Equity Release / Secured Personal Loans

	RATE	APR
"Product Name" Variable Rate	5.44%	5.6%
Fixed Interest "Product Name" options above (APR may vary)*		
Secured Personal Loan Variable Rate	6.94%	7.1%

Variable Rate Personal Loans

New Applications

Standard Loan Rate

€9,000 or more	8.60%	8.9%
€5,000 to €8,999	9.90%	10.4%
Less than €5,000	11.35%	12.0%"

The **Letter of Approval** for mortgage loan account ending **4711** dated **24 April 2008** details as follows;

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"Loan Type:	Equity Release 1 Year Fixed Rate SPL (Int only)
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Purchase Price / Estimated Value: EUR 450,000.00
Loan Amount: EUR 125,000.00
Interest Rate: 5.2%
Term: 16 year(s)"

The **Special Conditions attaching to the** to the Letter of Approval dated **24 April 2008** detail as follows;

"Special Conditions

...

3. General mortgage 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.

...

9. That the total borrowings with Credit Union (a/c [redacted]) be discharged from the proceeds of [the Provider's] advance.

10. That the total borrowings with Credit Union (a/c [redacted]) be discharged from the proceeds of [the Provider's] advance.

11. 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 offer and no separate mortgage deed is required to be executed in respect of this additional loan."

General Condition 5 of the **General Mortgage Loan Approval Conditions** details as follows;

"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.

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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:

- (c) a sum equal to one half of the amount of interest (calculated on a reducing basis) which would have been payable on the principal sum desired to be repaid, for the remainder of the Fixed Rate Period, or
- (d) a sum equal to [the Provider's] estimate of the loss (if any) occasioned by such early repayment, calculated as the difference between on the 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."

General Condition 11 of the **General Mortgage Loan Approval Conditions** outlines the **Conditions relating to "[Name of Product]" Equity Release Loans** and details the following regarding the calculation of interest;

"....

11.4 For the purposes of the calculation of interest, the daily balance of the [Name of Product] Equity Release Loan shall be reduced by the then credit balance (if any) in the Holding Account. The credit balance in the Holding Account shall be reduced by the amount of withdrawals on the date of the withdrawal irrespective of when the withdrawal cheque is cashed. No interest will be payable to the Applicant on the balance held in the Holding Account."

However, 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:

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“THE PAYMENT RATES ON THIS HOUSING LOAN MAY BE ADJUSTED BY THE LENDER FROM TIME TO TIME.”

I note that the information document in relation to the **Housing Loans under Consumer Credit Act 1995** on the reverse side of each page of the **Letter of Approval** outlines as follows;

“VARIABLE RATE LOANS

“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** attaching to the **Letter of Approval** dated **24 April 2008** was signed by the Complainants on **28 April 2008**. The Acceptance of Loan Offer states as follows:

“1. I accept the above offer of an additional loan under the terms and conditions set out in:

- (i) Letter of Approval;*
- (ii) The General Mortgage Loan Approval Conditions sent to me with the above Letter of Approval; and*
- (iii) The mortgage conditions applying to the existing loan, as amended by the General Mortgage Loan Approval Conditions.*

2. I agree that the existing mortgage you have over the property will extend so this loan is also secured on the property.

3. I confirm that no other person or organisation has or claims any right over or interest in the property.

4. I declare that all the statements, details and any other information, which I have given you in relation to my application for the additional loan, is true as far as I know and believe.

5. I confirm that I have received/have had the opportunity to receive independent legal advice before accepting this offer of additional loan.

6. If the loan is an equity release loan in joint names, and all or part of the loan will be transferred to a holding account, withdrawals from the holding account can be made by any one of us. In line with condition 11.10 of the General Mortgage Loan Approval Conditions.”*

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The equity release mortgage loan was subsequently drawn down by the Complainants.

It is clear to me from the Letter of Approval dated **24 April 2008** that the loan envisioned was an equity release mortgage loan on a variable interest rate 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 taking out an additional mortgage loan secured on their private dwelling house or with the 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 Offer of an additional loan on 28 April 2008**.

The Complainants contend that in **April 2008**, they sought an "extension" to mortgage loan account ending **7678** and given that mortgage loan account was on a tracker interest rate, the Provider should have placed loan account ending **4711** on the same terms and conditions as mortgage loan account ending **7678**, and should not have offered an entirely separate mortgage loan agreement.

It is important for the Complainants to understand that in **April 2008** they were seeking additional lending from the Provider, secured against the equity in the Complainants' property the subject of mortgage loan account ending **7678**. There was no obligation on the Provider to offer the Complainants the amount that they sought to borrow or to structure the lending arrangement as an addition or "extension" to their existing home loan under mortgage loan account ending **7678**, as the Complainants have suggested.

It is clear from the loan documentation that the type of loan that the Complainants were offered by the Provider in **April 2008** was an equity release loan and this loan, which was drawn down on mortgage loan account ending **4711**, was an entirely separate loan to the Complainants' original mortgage loan account ending **7678**. Therefore, I am of the view that whether or not a tracker interest rate applied to mortgage loan account ending **7678** is irrelevant to the interest rate applicable to mortgage loan account ending **4711**. The variable interest rate applicable to mortgage loan account ending **4711** was clearly outlined in the mortgage loan documentation to be a variable rate which could be adjusted by the Provider.

The Provider submits that at no point did it offer tracker interest rates on equity release products. 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 **April 2008** or at any other

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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. Further, the **Equity Release Brochure** submitted by the Provider in evidence confirms that a standard variable interest rate and a fixed interest rate 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 in **April 2008**, or at any other time.

The two mortgage loans held by the Complainants with the Provider were clearly two separate mortgage loans. It is important for the Complainants to understand that each mortgage loan is governed by the terms and conditions applicable to that particular mortgage loan. The evidence shows that the choice to take out both mortgage loans on the terms and conditions offered by the Provider was a choice that was freely made by the Complainants.

For the reasons set out in this Decision, 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**

8 December 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—

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(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.

