



<u>Decision Ref:</u>	2021-0046
<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 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 held two mortgage loan accounts with the Provider, as follows:

- **Mortgage loan account ending 2134**
The loan amount for mortgage loan account ending **2134** was €119,600.00 and the term of the loan was 25 years. This mortgage account was secured on the Complainants' private dwelling house. The Letter of Approval outlined the Loan Type as a 2 Year Fixed Rate Home Loan. The mortgage loan account ending **2134** was drawn down on **26 October 2004** and redeemed in full on **09 July 2007**.
- **Mortgage loan account ending 6991**
The loan amount for mortgage loan account ending **6991** was €142,000.00 and the term of the loan was 22 years. This mortgage account is secured on the Complainants' private dwelling house. The Letter of Approval outlined the Loan Type as an Equity Release 3 Year Fixed Rate Secured Personal Loan. The Complainants drew down mortgage loan account ending **6991** on **06 July 2007**.

The Complainants' Case

The Complainants submit that they received a letter of loan offer dated **5 August 2004** from the Provider for a mortgage for €119,600 over a term of 25 years. They outline that the mortgage loan account ending **2134** was drawn down on **26 October 2004** on a 2-year fixed interest rate of 3.55%.

They detail that *“on expiry of the fixed rate in October 2006 the mortgage account defaulted to a tracker rate of 4.50%. On that basis [the Complainants] were satisfied to opt for the default tracker rate at it was the most advantageous and best rate on offer”*.

The Complainants submit that in **June 2007** they *“wished to build an extension to their property and applied to the Bank for a top-up mortgage to do so”*. They detail that at that time their existing mortgage account ending **2134** was still on *“the default tracker rate”*. The Complainants state that they *“were advised by the Bank to take out an equity release loan”* and this was offered to them by letter of loan offer dated **20 June 2007**. They detail that the loan offer provided for a 3-year fixed rate of 5.1% for the new mortgage loan account ending **6991**, *“which was a much higher interest rate th[a]n the current tracker they were on with their existing mortgage.”*

The Complainants' original mortgage loan account ending **2134** was redeemed in **July 2007**. They outline that *“at no stage did the Bank and or its mortgage adviser's alert them to the potentially serious consequences of re-mortgaging and redeeming their existing mortgage on the tracker rate and opting for an equity release loan. At no stage of the process were the [Complainants] advised to seek independent legal advice or consult a Solicitor to receive independent legal advices on the implications of the Equity Release Loan product being advanced.”*

The Complainants *“refute the statements made”* in the Provider's Final Response letter of **23 March 2015**. They submit that the **Loan Acceptance** document *“was signed by the [Complainants] in [Location] branch at the Banks direction and witnessed by a Bank employee therefore they did not give informed consent to accepting the new mortgage being an equity release loan or receive independent legal advice. At no stage did the Banks advisers alert the complainants to the serious adverse consequences of switching the mortgage and taking out an equity release loan on their home.”*

The Complainants submit that if they *“had been advised of the serious financial implications and consequences of re-mortgaging and forfeiting [their] existing tracker rate loan they would have taken a different course of action. As a consequence of the Banks action the [Complainants] have suffered personal and financial loss and they call upon the Bank to compensate them in full for the loss of the tracker mortgage on their property.”*

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The Complainants state that they are seeking restitution / compensation *“for the position they would have been if they had not forfeited their tracker rate mortgage.”*

The Provider’s Case

The Provider details that the Complainants were offered a mortgage in the amount of €119,600 subject to a 2 year fixed rate of 3.55% over a term of 25 years by **Letter of Approval** dated **05 August 2004**. It outlines that the mortgage loan account ending **2134** was drawn down on **26 October 2004**.

The Provider submits that the fixed rate period was due to expire in **October 2006** and the *“interest rate switched to a tracker variable rate of 4.50% (ECB + 1.25%)”* on **26 October 2006**, which the mortgage account ending **2134** remained on until it was redeemed on **09 July 2007**.

The Provider outlines that in **June 2007** the Complainants requested a loan to complete an extension to their home. It states that the *“sum which the Complainants required was of the order of €30,000.”*

The Provider details that *“Some years previously, the Bank had introduced an equity release personal loan product which was designed to enable existing mortgage loan customers to borrow further sums using as collateral their equity in their previously mortgaged property. An equity release loan could be applied for any personal purpose other than a commercial purpose. The interest rates on the equity release loans were based on mortgage rates and were thus typically lower than the Bank’s other personal loan rates. If there was an existing mortgage in favour of the Bank, and equity existed the previous mortgaged property provided the collateral for a new equity release loan without the necessity of a new legal mortgage for the new loan.”*

The Provider outlines that a repayment home loan in comparison to an equity release loan is a loan secured by the borrower’s principal private residential property and the *“credit advanced may be used to buy, build or improve the borrower’s family home.”* It submits that a repayment home loan is one in respect of which a borrower repays capital from the outset as well as paying interest on the loan balance. It further outlines that the security *“is provided to the Bank by legal transfer of the borrower’s interest by way of legal mortgage”* and that the interest rates applicable *“can be either fixed or variable”*. The Provider details that the customers who submitted an application for a Repayment Home Loan between **early 2004** and **mid-2008** also had a tracker variable rate option until it was removed from the Provider’s new business rates in **mid-2008**.

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The Provider details that in comparison, the equity release loan *“is a secured personal loan provided by the Bank to a customer for any purpose other than a commercial or business purpose”* and the security provided *“is an existing equitable interest in a home or other premises or land owned by the borrower which has not been transferred as security for any other loan”*. It states that the interest rates offered on equity release loans are fixed or variable and it has never offered a tracker rate on equity release loans.

The Provider submits that when first introducing tracker rates in **early 2004**, it made a commercial decision not to apply a tracker rate to its equity release loans. It states that in some cases a request for additional credit facilities may not have been available by way of equity release and may have necessitated refinancing the entire debt in order to ensure the criteria outlined in the Provider’s **Credit Policy** were met and the customers’ other financial commitments remained affordable. It details that *“the interest rates applying to other personal loan types were significantly higher than those applying to equity release secured personal loans.”*

The Provider submits that during a loan application discussion, all currently available interest rate options relevant to a loan application are discussed with applicant(s) to enable the applicant(s) to examine options and ultimately choose a product suitable to their needs. It states that *“the decision as to which type of loan and rate option to choose is for customers alone to make based on their personal circumstances”*. The Provider submits that tracker rate options *“were available to new and existing customers when the Complainants submitted their application in 2007.”*

The Provider details that the minimum loan amount available in an equity release loan at the time of the Complainants’ application in **June 2007** was €40,000 and the Complainants required €30,000. It states that the Complainants had the following options available when they initially requested an additional loan:

- *“A personal term loan facility for the additional funds. The interest rates were higher and the repayment periods were lower than equity release additional loans.*
- *An additional equity release loan of minimum amount of €40,000.00.*
- *An equity release product incorporating the balance outstanding on the existing facility and the additional funds required.*
- *A redemption of their existing mortgage loan and release of the legal mortgage on which was secured together with a new mortgage loan , i.e. a redemption process together with a credit application process and legal process similar to those involved in acquiring their home loan mortgage in 2004.”*

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The Provider outlines that the Complainants completed a loan application for an Equity Release secured personal loan on **12 June 2007**. It submits that net income ratio calculations were completed during the application and assessment process for the equity release loan, and that whilst the Complainants qualified for the loan over a 30 year term, their request for a term of 22 years *“placed the net income ratio calculations slightly in excess of the Bank’s requirement.”* It submits that *“in spite of this”* the facility was approved as the Complainants’ current account demonstrated clear capacity to meet the higher repayment of approximately €876.00 per month over the shorter repayment term. It outlines that the Complainants subsequently opted for an equity release loan on a 3 year fixed rate over a 22 year term, which was the remaining term on the existing home loan.

The Provider details that a **Letter of Approval** for mortgage loan account ending **6991** was subsequently issued to the Complainants on **20 June 2007** for the loan amount of €142,000, over a term of 22 years, subject to a 3 year fixed rate of 5.10%. It states that part of the loan was to be used to clear the existing mortgage loan account ending **2134** and the remainder was available for use by the Complainants. The Provider details that the Complainants signed and accepted the **Letter of Approval** on **25 June 2007** and in doing so *“confirmed that they had obtained or been given an opportunity to obtain independent legal advice prior to accepting”* the mortgage loan offer.

The Provider submits that its internal notes show that a *“conversation”* took place with the Complainants on **25 June 2007** during which it was *“confirmed that they had received the loan pack and were aware of and looking after outstanding items”*. It details that it *“was not the practice of the Bank to retain full details of conversation(s) which took place between the Bank and loan applicants during mortgage application process in 2007.”*

The Provider outlines that the Complainants drew down the loan on **06 July 2007** and the amount of €111,815.61 was applied to mortgage loan account ending **2134** in order to clear the existing balance. That account was accordingly redeemed by the Complainants on **09 July 2007**.

The Provider states that it has reviewed its Final Response letter dated **23 March 2015** and acknowledges that the information with regard to the **Loan Acceptance** being signed by the Complainants in the presence of their solicitor *“was incorrect.”*

It submits that it *“regrets this error”* and in *“recognition of this service issue the Bank would like to offer the Complainants a gesture €250.00”*.

The Complaints for Adjudication

The complaints for adjudication are as follows;

- a) The Provider did not advise the Complainants of the “*serious financial implications*” of redeeming their existing mortgage loan account ending **2134** and taking out the Equity Release loan in **2007**, which led to the loss of their tracker rate; and
- b) The Provider did not advise the Complainants at any stage to seek independent legal advice with regard to the consequences of switching to an Equity Release product in **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 3 February 2021, 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.

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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 accounts ending **2134** and **6991**. It is also necessary to consider the interactions between the Complainants and the Provider between **2004** and **2007** when the Complainants applied for and drew down both mortgage loan accounts.

Mortgage loan account ending 2134

A **Letter of Approval** dated **05 August 2004** was issued to the Complainants for mortgage loan account ending **2134** which details as follows;

<i>"Loan Type:</i>	<i>2 Year Fixed Rate Home Loan</i>
--------------------	------------------------------------

<i>Purchase Price / Estimated Value:</i>	<i>EUR 130,000.00</i>
<i>Loan Amount:</i>	<i>EUR 119,600.00</i>
<i>Interest Rate:</i>	<i>3.55%</i>
<i>Term:</i>	<i>25 year(s)"</i>

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."*

European Standardised Information Sheet, details as follows;

"...

Description of Product

...

This is a repayment home loan where the capital is repaid over the term of the loan.

...

Nominal Rate

The interest rate is 3.55% percent.

This rate is fixed for 2 year(s).

At the end of the fixed rate period you may exercise an option to contract for another fixed rate period (if available) or to move to a variable rate.

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*In the event of the rate becoming variable, THE PAYMENT RATES ON THIS HOUSING LOAN MAY BE ADJUSTED BY THE LENDER FROM TIME TO TIME.
..."*

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 balance basis) which would have been payable on the principal sum desired to be repaid, for the remainder of the Fixed Rate Period, or*
- (b) a sum equal to [the Provider's] estimate of the loss (if any) occasioned by such early repayment, calculated as the difference between on the one hand the total amount of interest (calculated on a reducing balance basis) which the applicant would have paid on the principal sum being repaid to the end of the Fixed Rate Period at the fixed rate of interest, and on the other hand the sum (if lower) which [the Provider] could earn on a similar principal sum to that being repaid, if [the Provider] loaned such sum to a Borrower at its then current New Business Fixed Rate with a maturity date next nearest to the end of the Fixed Rate Period of the loan, or part thereof being repaid.*

5.4 Notwithstanding Clause 5.1, [the Provider] and the applicant shall each have the option at the end of each fixed rate period to convert to a variable rate loan agreement which will carry no such redemption fee."

The **General Mortgage Loan Approval Conditions** 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."

The **Acceptance of Loan Offer** signed and accepted on **13 October 2004**, which details 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 conditions*
- iii the [Provider] 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 same terms and conditions to me/us.
..."*

It is clear that the Letter of Approval envisaged a two year fixed interest rate of 3.55% 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. I note 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, as follows;

"...on [mid] 2006, the Bank introduced a policy of offering a tracker rate of interest to its existing customers who were maturing from a period of a fixed rate of interest although their loan contract did not specify an entitlement to be offered a tracker rate at maturity (this initiative was taken against the backdrop of the competitive mortgage market at the time). Therefore, a Tracker mortgage rate was included in the list of options in the automated options letter issued to a customer in the month prior to the date of maturity of the fixed rate period.

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Between [mid] 2006 and [late] 2006 while the options letter included the option of a tracker rate, in the absence of a customer selection, the variable rate was applied to the mortgage as the default interest rate. From [late] 2006 until [mid] 2009, in the absence of a customer selection the tracker interest rate was applied to the mortgage as the default interest rate."

The two year fixed interest rate period expired on **26 October 2006**. No evidence has been provided of the available rate options, if any, that were offered to the Complainants on the expiry of the fixed interest rate period. However it is not disputed that a tracker interest rate of ECB + 1.25% was applied to the mortgage loan account on the expiry of the fixed interest rate period. It appears that the Provider applied the tracker rate of ECB + 1.25% to the mortgage loan account as a matter of policy and not because the Complainants had any contractual entitlement to a tracker rate.

It appears that the mortgage loan account ending **2134** remained on the tracker interest rate until the account was redeemed in full in **July 2007**.

Mortgage loan account ending 6991

It appears from the evidence that in **June 2007**, the Complainants sought a further advance of funds from the Provider for the purposes of building an extension to their private dwelling house over which the Provider held a legal mortgage the subject of mortgage loan account ending **2134**.

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 **2007**. 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.

The Provider has furnished in evidence a copy of its **booklet** relating to the Equity Release Product which is time-stamped **21 April 2008**. The booklet details as follows;

"...

How much do I qualify for?

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[Product] allows you to release equity from €40,000 up to 92% of the current market value of your property if you have a residential home loan or up to 80% if you have residential investment loan. This depends on our standard lending conditions, which are available from our mortgage advisors.

...

How do I get access to my funds?

This will depend on the type of loan rate you choose – a standard variable rate or a fixed rate.

If you choose a standard variable rate, we can give you a cheque for the full amount of your loan. However, if you'd prefer to use some of your funds now, and keep the rest for a later date, we will give you one cheque when your loan issues (become available) and transfer the rest of the money to a [the Provider] holding account. This account will be in your name.

You can access these funds at any time in the future, without applying again, by:

- 1. using your [Product] mortgage chequebook to pay for your purchases (the minimum cheque withdrawal is €3,000); or*
- 2. simply calling into any branch of [the Provider], producing your passport or driver's licence, and filling in the appropriate documents.*

If you choose a fixed rate, we will give you a cheque for the full amount of the loan.

How do I repay what I borrow?

Standard variable-rate [Product]

Once you have chosen the type of loan rate you want you can decide on a term that suits you, between five and 40 years if you have a residential home loan or between five and 25 years if you have a residential investment loan. The term you choose doesn't have to be the same as the term of your mortgage.

Having a standard variable-rate [Product] means that your interest rate can go down or up.

With a standard variable-rate [Product], the good news is that your repayments are based only on the amount you have withdrawn. When you begin to access the funds from your [Product] account we will send you a monthly [Product] statement.

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This will show the value of funds you have already withdrawn and, where this applies, the amount left in your holding account. It will also list all of the transactions on the holding account, so you will always be kept up to date. If you do not access your [Product] funds immediately, we will send you a [Product] statement every three months to tell you what funds are available to you. When you have withdrawn all your funds, we will send you a statement every year.

Fixed-rate [Product]

With a fixed-rate [Product], you can have peace of mind in knowing that your [Product] repayment will stay the same for a fixed period of time. We offer a choice of fixed-term rates from two to five or 10 years.

When the time comes for you to draw down your fixed rate [Product], we will issue you with a cheque for the full amount of your loan. You will start your repayments one month after the date on your cheque.”

It is not clear whether the Complainants were furnished with a copy of this booklet at the time of the loan application in **2007**. Nonetheless it is clear from the booklet that the interest rates available for the Provider’s Equity Release product were fixed interest rates or the standard variable interest rate.

The Provider has furnished in evidence a copy of its lending interest rates effective from **17 April 2007** which details as follows:

“LENDING INTEREST RATES

...

Rates applicable to Existing Home Loans	RATE	APR
Standard Variable Rate	5.10%	5.2%
1 Year Discounted Variable Rate	4.44%	5.1%
1 Year Discounted Variable Rate (when borrowing <50% of the property value)	4.24%	5.1%
2 Year Discounted Variable Rate	4.74%	5.1%
1 Year Fixed Rate*	4.99%	5.2%
2 Year Fixed Rate*	5.15%	5.2%
3 Year Fixed Rate*	5.10%	5.2%
4 Year Fixed Rate*	5.15%	5.2%

...

Equity Release / Secured Personal Loans	RATE	APR
[Product Name] Variable Rate	5.10%	5.2%

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Fixed [Product Name] option available on home loan rates above*

Secured Personal Loan Variable Rate 6.60% 6.8%

...

Variable Rate Personal Loans

New Applications

Standard Loan Rate	Rate	APR
€9,000 or more	8.10%	8.4%
€5,000 to €8,999	9.90%	10.4%
Less than €5,000	11.10%	11.7%

An **Application for Credit** was signed by the Complainants on **12 June 2007**, which detailed as follows;

“...

2. Details of Mortgage Required

Type of Loan:

Amount of Loan Required	EUR 142,000.00
Purchase price /Value of property	EUR 155,000.00
Loan type	Equity Release 3 Year Fixed Rate SPL
Repayment Term required	22 Years

...

6. Signature & Declaration

I/We declare that I/we am/are of full age and I/we hereby make application for an advance with [the Provider] upon mortgage of the property described above. I/We declare that the foregoing statements and particulars and any other information we have given to [the Provider] to be strictly true, to the best of my/our knowledge and belief.

...

I/We note that if I/we are approved by [the Provider] for a loan that at any time before the completion of the mortgage transaction [the Provider] has the right to withdraw or vary the approval. In the event that I/we wish to change any of the details on Part 1 of the application the changes will be recorded on the loan approval without the necessity of re-signing a further application form.

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I/We request that a Holding Account be opened in my/our names for the purpose of the lodgement of all or part of the loan to the Holding Account as specified above and I/we acknowledge that where the Holding Account is in joint names, funds may be withdrawn from the Holding Account on any one of our signature or debited from the Holding Account by way of [Product] cheques signed by any one of us.*

*Only applies where all or part of the loan is to be transferred to a Holding Account in respect of the Equity Release Loan for [Product].

I/We hereby consent to the transfer of the benefit of the mortgage to any person. ”

The evidence shows that the Provider completed a **net income ratio calculation** over a term of 22 years on **14 June 2007** which details as follows;

Section 2 - Applicant(s) Income & Outgoings
 (Enter figures in the white cells only)

	Actual Gross	Allowable Gross per Policy		Actual Gross	Allowable Gross per Policy
Basic Income - 1	€ 28,045	€ 28,045	Basic Income - 2		€ 0
Overtime - 1	€ 2,804	€ 2,804	Overtime - 2		€ 0
Bonus - 1		€ 0	Bonus - 2		€ 0
Commission - 1		€ 0	Commission - 2		€ 0
Other Income - 1		€ 0	Other Income - 2		€ 0
Net Monthly Income				€ 2,159	€ 0
Combined Net Monthly Income	(To be entered on TABS)				€ 2,159

The remaining customer details are to be entered below and then input directly onto the Financial screen on TABS

Existing Commitments

Monthly Maintenance Payments (if applicable) _____

Monthly Short Term Loan Repayments (not redeemed by this facility)

(lender & purpose)	1	
	2	
	Total	€ 0

Monthly Mortgage Repayments (not redeemed by this facility)

(lender & security)	Current Balance (enter total of combined loans)	
	Loan Term as per policy (based on Customer Age to max of 35 years)	_____ years
	Total Combined Monthly Repayment on existing mortgage debt	#DIV/0!

Section 3: Proposed Loan Details

Calculation Rate	4.85%	Term In Years	22
MAX LOAN (for indicative purposes only based on Term & Rate above)	€124,278		
PROPOSED LOAN (Use Standard Tracker and Actual Term Requested up to max. of 35 years)	€142,000		
LTV	Not over Term Requested		92.0%
Gross Monthly Repayment of Proposed Loan	€876		
Actual TRS Amount	(To be entered on SMART)		€0
NET Monthly Repayment of Proposed Loan	(To be entered on TABS)		€876
Total Commitments including NET repayment of Proposed Loan	€876		
<hr/>			
NET DISPOSABLE INCOME	€1,284		
NET INCOME RATIO	41%		
NET INCOME RATIO AFTER STRESS TEST OF 2%	51%		

The Provider completed a second **net income ratio calculation** over a proposed loan term of 30 years on **14 June 2007**, which detailed as follows;

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Section 2 - Applicant(s) Income & Outgoings

(Enter figures in the white cells only)

	Actual Gross	Allowable Gross per Policy		Actual Gross	Allowable Gross per Policy
Basic Income - 1	€ 28,045	€ 28,045	Basic Income - 2		€ 0
Overtime - 1	€ 2,804	€ 2,804	Overtime - 2		€ 0
Bonus - 1		€ 0	Bonus - 2		€ 0
Commission - 1		€ 0	Commission - 2		€ 0
Other Income - 1		€ 0	Other Income - 2		€ 0
Net Monthly Income				€ 2,159	€ 0
Combined Net Monthly Income	(To be entered on TABS)				€ 2,159

The remaining customer details are to be entered below and then input directly onto the Financial screen on TABS

Existing Commitments

Monthly Maintenance Payments (if applicable) _____

Monthly Short Term Loan Repayments (not redeemed by this facility)

(lender & purpose) 1 _____

2 _____

Total _____ € 0

Monthly Mortgage Repayments (not redeemed by this facility)

(lender & security) Current Balance (enter total of combined loans) _____

Loan Term as per policy (based on Customer Age to max of 35 years) _____ years

Total Combined Monthly Repayment on existing mortgage debt = #DIV/0!

Section 3: Proposed Loan Details

Calculation Rate	4.85%	Term in Years	30
MAX LOAN (for indicative purposes only based on Term & Rate above)	€145,273		
PROPOSED LOAN (Use Standard Tracker and Actual Term Requested up to max of 35 years)	€142,000		
LTV	Qualify over 30 years		97%
Gross Monthly Repayment of Proposed Loan	€749		
Actual TRS Amount (To be entered on SMART)	€0		
NET Monthly Repayment of Proposed Loan (To be entered on TABS)	€749		
Total Commitments including NET repayment of Proposed Loan	€749		
NET DISPOSABLE INCOME	€1,410		
NET INCOME RATIO	35%		
NET INCOME RATIO AFTER STRESS TEST OF 2%	43%		

The Provider's internal notes dated 14 June 2007 detail as follows;

"Are there any mortgage(s) being redeemed from the proceeds of this loan? YES ... [Account ending] 2134 ... Updated by [Provider employee] on date. 14.06.2007 at 12:20:23^^^"

/Cont'd...

The Provider's internal note of **19 June 2007** details;

[Complainant] IN PERMANENT EMPLOYMENT WITH [REDACTED] SINCE 09/06^WELL RUN CURRENT A/C WITH HIGH AVG BALANCES^ ... NETS 41% OVER TERM REQUESTED BUT QUALIFY OVER 30 YEARS – NETS 35%^CURRENT MTG PAYMENT 813 PER MONTH – CURRENT A/C SHOWS CLEAR CAPACITY TO MEET HIGHER PAYMENT OF 876 PER MONTH”

The Provider has also furnished into evidence a copy of its lending interest rates effective from **19 June 2007**, which details as follows:

“LENDING INTEREST RATES

...

Rates applicable to Existing Home Loans only	RATE	APR
Tracker Rate LTV <80% loan <€500K	4.80%	4.9%
Tracker Rate LTV <80% loan €500K+	4.75%	4.9%
Tracker Rate LTV 80% - 95% loan <€500K	5.10%	5.2%
Tracker Rate LTV 80% - 95% loan €500k -€1M	4.90%	5.0%
Tracker Rate LTV 80% - 95% loan €1M+	4.75%	4.9%
1 Year Fixed Rate	4.99%	5.2%
2 Year Fixed Rate	5.15%	5.2%
3 Year Fixed Rate	5.10%	5.2%

**Rates applicable to Existing Home Loans
(pre 17/04/07)**

	RATE	APR
1 Year Discounted Variable/ Tracker Rate	4.69%	5.4%
1 Year Discounted Variable/ Tracker Rate (when borrowing <50% of the property value)	4.49%	5.4%
2 Year Discounted Variable/ Tracker Rate	4.49%	5.4%
Tracker Loan Amount < €100K	5.35%	5.5%
Tracker Loan Amount €100K - €250K	5.25%	5.4%
Tracker Loan Amount €250K -€750K	5.10%	5.2%
Tracker Loan Amount €750K+	4.90%	5.0%

...

Equity Release / Secured Personal Loans	RATE	APR
[Product Name] Variable Rate	5.35%	5.5%
Fixed [Product Name] option available on home loan rates above*		
Secured Personal Loan Variable Rate	6.85%	7.1%

...

/Cont'd...

Variable Rate Personal Loans

New Applications

Standard Loan Rate	RATE	APR
€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%

A **Letter of Approval** dated **20 June 2007** was issued to the Complainants for mortgage loan account ending **6991** which details as follows;

"Loan Type:	Equity Release 3 Year Fixed Rate SPL
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<i>Purchase Price / Estimated Value:</i>	<i>EUR 155,000.00</i>
<i>Loan Amount:</i>	<i>EUR 142,000.00</i>
<i>Interest Rate:</i>	<i>5.10%</i>
<i>Term:</i>	<i>22 year(s)"</i>

Condition A of the **Special Conditions** attaching to the **Letter of Approval** dated **20 June 2007** 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.
...
- D. 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.
- E. THAT THE TOTAL LOAN FACILITY WITH [THE PROVIDER] REF [MORTGAGE LOAN ACCOUNT ENDING 2134] BE DISCHARGED FROM THE PROCEEDS OF [THE PROVIDER] ADVANCE."

The **European Standardised Information Sheet**, details as follows;

"...

Description of Product

...

This is a repayment home loan where the capital is repaid over the term of the loan.

/Cont'd...

Nominal Rate

The interest rate is 5.10% percent.

This rate is fixed for 3 year(s).

At the end of the fixed rate period you may exercise an option to contract for another fixed rate period (if available) or to a variable rate. In the event of the rate becoming variable, THE PAYMENT RATES ON THIS HOUSING LOAN MAY BE ADJUSTED BY THE LENDER FROM TIME TO TIME.

..."

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 balance basis) which would have been payable on the principal sum desired to be repaid, for the remainder of the Fixed Rate Period, or

(b) a sum equal to [the Provider's] estimate of the loss (if any) occasioned by such early repayment, calculated as the difference between on the one hand the total amount of interest (calculated on a reducing balance 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.

/Cont'd...

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 "[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 [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 "[Product]" Equity Release Loans** in relation to the interest rate applicable to the loan.

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 **20 June 2007** was signed by the Complainants on **25 June 2007**. The Acceptance of Loan Offer states as follows:

"1. I/We the undersigned accept the above offer of an additional loan on the terms and conditions set out in:

- (i) the above Letter of Approval;*
 - (ii) the General Mortgage Loan Approval Conditions sent to me/us with the above Letter of Approval, a copy of which I/we received;*
- and*

/Cont'd...

(iii) *where my/our existing loan is secured by an [Provider] or [Provider] form of Mortgage (as opposed to [Provider] Bank form of Mortgage), the mortgage conditions applicable to that mortgage as amended by the General Mortgage Loan Approval Conditions referred to at (ii) above.*

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

3. I/We hereby state that no third party (whether a person or persons or body or bodies) has or claims any financial, equitable or beneficial estate or interest in the Property.

4. I/We hereby declare that all the statements and particulars which we have given to [the Provider] in respect of my/our application for the additional loan to be strictly true, to the best of my/our knowledge, information and belief.

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

6. We further acknowledge that where we have been approved an Equity Release Loan in our joint names and all or part of the loan will be transferred to a Holding Account, withdrawals may be made by us from the Holding Account on any one signature in accordance with Condition 11.10 of the General Mortgage Loan Approval Conditions."*

It is clear to me from the Letter of Approval dated **20 June 2007** that the loan envisioned was an equity release mortgage loan on a fixed interest rate, with a variable rate to apply on the expiry of the fixed rate period. The variable rate to be applied on the expiry of the fixed rate period 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 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 25 June 2007**.

While I note the Complainants' assertion that the Provider did not advise them at any stage to seek independent legal advice with regard to the consequences of switching to an Equity Release product in **2007**, the evidence does not support this assertion. In particular I would point out that when the Complainants signed the **Acceptance of Offer of an additional loan** they in fact confirmed that *"we have obtained or have been given an opportunity to obtain independent legal advice prior to accepting this offer of additional loan"*.

The Provider's internal notes dated **25 June 2007**, detail as follows;

"Approval Letter and Legal Pack (if appropriate) sent to the customer/ broker ...

...

GOT LOAN PACK, AWARE OF O/S ITEMS AND LOOKING AFTER SAME^ Updated by [employee of the Provider] on date: 25.06.2007 at 12:08:58^^^"

The Provider's internal notes dated **05 July 2007**, detail as follows;

"...CHEQUE DISBURSED FOR EUR000142000.00..."

The equity release mortgage loan was subsequently drawn down by the Complainants on **06 July 2007**. The Complainants redeemed the mortgage loan account ending **2134** on **09 July 2007**.

It is important for the Complainants to understand that in **June 2007** they were seeking additional lending from the Provider, secured against the equity in the Complainants' property the subject of mortgage loan account ending **2134**. 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 **2134**.

It is clear from the loan documentation that the type of loan that the Complainants were offered by the Provider in **June 2007** was an equity release loan and this loan, which was drawn down on mortgage loan account ending **6991**, was an entirely separate loan to the Complainants' original mortgage loan account ending **2134**. Therefore, I am of the view that whether or not a tracker interest rate applied to mortgage loan account ending **2134** was not relevant to the interest rate applicable to mortgage loan account ending **6991**. The variable interest rate applicable to mortgage loan account ending **6991** following the expiry of the initial fixed interest rate period was clearly outlined in the mortgage loan documentation to be a variable rate which could be adjusted by the Provider.

/Cont'd...

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 based on its own commercial discretion. The Provider was not offering tracker interest rates on equity release products in **June 2007** 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. The **Equity Release Brochure** submitted by the Provider in evidence also outlines that the available interest rate options were a standard variable interest rate and a fixed interest rate. The Provider was not under any obligation to offer the Complainants a tracker interest rate option on the equity release product option in **June 2007**, 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.

The Provider has submitted in evidence, a comparison table which shows the following;

- The Complainants' monthly repayment for the new equity release mortgage of €142,000.00
- The Complainants' estimated monthly repayment if they had opted to retain the existing mortgage account ending **2134** and take out a term loan of €30,000.00 for the additional funds required.
- The Complainants' estimated monthly repayment if they had opted to retain the existing mortgage account ending **2134** and take out an equity release of €40,000.00 for the additional funds required.

The table outlines as follows;

<i>"Existing mortgage</i>		<i>Proposed new equity release mortgage</i>	
<i>Balance o/s on existing mortgage (Home Loan) @ change</i>	€111,815.61	<i>New balance (existing balance o/s + new amount required)</i>	€142,000.00
<i>Existing repayment</i>	€813.79	<i>Proposed new repayment</i>	€895.93
<i>Applicable rate</i>	5.00%	<i>Proposed rate</i>	5.10%

/Cont'd...

<i>Term remaining</i>	<i>22 years approx. remaining</i>	<i>Proposed term</i>	<i>22 years</i>
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Equity Release total monthly repayment of €895.93

Retain Existing facility New Term loan facility (figures below are approximate)

<i>Existing mortgage facility</i>	<i>€111,815.61</i>	<i>*Term loan facility</i>	<i>€30,000.00</i>
<i>Existing repayment</i>	<i>€813.79</i>	<i>Proposed new repayment</i>	<i>€469.08</i>
<i>Applicable rate</i>	<i>5.00%</i>	<i>Applicable rate</i>	<i>8.10%</i>
<i>Term</i>	<i>22 years approx remaining</i>	<i>Term</i>	<i>84 months</i>

Home loan monthly repayment €813.79
+ Term loan monthly repayment €469.08
Total monthly repayment €1,282.87

Retain Existing facility New equity release loan for €40,000.00

<i>Existing mortgage facility</i>	<i>€111,815.61</i>	<i>*Equity release facility</i>	<i>€40,000.00</i>
<i>Existing repayment</i>	<i>€813.79</i>	<i>Proposed new repayment</i>	<i>€252.37</i>
<i>Applicable rate</i>	<i>5.00%</i>	<i>Applicable rate</i>	<i>5.10%</i>
<i>Term</i>	<i>22 years approx. remaining</i>	<i>Term</i>	<i>22 Years</i>

Home loan monthly repayment €813.79
+ Equity Release monthly repayment €252.37
Total monthly repayment €1,066.16

**Please note the Bank cannot confirm whether or not the term loan facility or the additional separate equity release facility would have been approved in 2007, any application for additional credit would require approval from the Central Credit Department and would be based on the Bank's Credit Policy (which included repayment capacity) applicable at that time."*

It is evident from the table submitted that the first option, of redeeming the existing mortgage loan account ending **2134** and drawing down the new equity release mortgage loan was the cheapest option. However I do not propose to take this table into consideration in circumstances where the Provider itself has submitted that it cannot confirm whether or not the term loan facility or the separate equity release facility would have actually been approved in **2007**. Consequently there is no way of knowing whether the options as outlined in the table would have been open to the Complainants in **2007**.

The Complainants have also submitted that the Provider's Final Response Letter dated **23 March 2015** stated, incorrectly, that the Complainants signed the Letter of Approval dated **06 July 2007** with the benefit of legal advice from and in the presence of their solicitor.

The Provider's **Final Response Letter** to the Complainants dated **23 March 2015** detailed as follows;

"Mortgage Account [ending 2134]

I can confirm the above Mortgage Account issued on the 26th October 2004 with a 2 year Fixed rate of 3.55%. I have enclosed a copy of the Letter of Approval which states:

"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."

Kindly note the contract did not include a special condition outlining that a Tracker rate could be availed of at any time during the Mortgage. Please note the Loan Offer was accepted by your clients in the presence of their solicitor, which states that the terms and conditions of the mortgage were fully explained to your clients by their solicitor and they agreed to same. I have enclosed a copy of the signed Acceptance of Loan Offer.

...

"Mortgage Account [ending 6991]

I can confirm the above Mortgage Account issued on the 6th July 2007 with a 3 year Fixed rate of 5.1%.

/Cont'd...

I have enclosed a copy of the Letter of Approval which states:

“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.”

Kindly note the contract did not include a special condition outlining that a Tracker rate could be availed of at any time during the Mortgage. Again the Loan Offer was accepted by your clients in the presence of their solicitor, which states that the terms and conditions of the mortgage were fully explained to your clients by their solicitor and they agreed to same. I have enclosed a copy of the signed Acceptance of Loan Offer.”

In its response to the complaint the Provider has acknowledged that it was incorrect to state that the Complainants signed the loan offer in their solicitor’s presence. I note that in recognition of this error the Provider has offered a goodwill gesture offer of €250.00 to the Complainants. I understand that this offer remains open to the Complainants to accept.

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**

24 February 2021

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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.

