



<u>Decision Ref:</u>	2021-0219
<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

This complaint relates to a mortgage loan account held by the Complainant with the Provider. The mortgage loan account which is the subject of the complaint is secured on the Complainant's private dwelling house.

The loan amount was €150,000 and the term of the loan was 25 years. The Letter of Approval which was signed on **27 April 2004** provided for a one-year special variable rate of 2.49%. The mortgage loan was redeemed by the Complainant on **13 May 2010**.

The Complainant's Case

The Complainant submits that in **March 2004** he met with a representative of the Provider in a local branch of the Provider to discuss his mortgage loan application. He further submits that at this meeting, he informed the Provider's representative that he "*didn't have a clue*" in relation to mortgage interest rates. The Complainant states that the Provider's representative advised him "*not to take*" a tracker mortgage and to "*take out a variable rate*" of interest at the time of his mortgage loan application.

The Complainant submits that he "*was young*" at the time he applied for his mortgage loan and that he "*trusted*" the advice given to him by the Provider. The Complainant states that it was only in **2018** when his wife asked him "*why [he] didn't take out [a] tracker mortgage*" that he realised that he "*would have had a[n] option to take [a] tracker mortgage*".

The Complainant contends that when he contacted the Provider to make a complaint, he was told *“that they have no responsibility as it was a broker”*. The Complainant asserts that this *“didn't make sense”* because his mortgage loan application was made in one of the Provider's local branches.

The Complainant is of the view that his interest rate *“would have been a lot less”* had he been on a tracker interest rate.

The Complainant is seeking a *“refund”* of the overpayment of interest comprising of the difference between the mortgage interest rate offered by the Provider in **2004** and the tracker interest rate that the Complainant maintains he should have been offered.

The Provider's Case

The Provider outlines that the Complainant completed an **Application for Credit** on **09 March 2004** with *“an Agent tied”* to the Provider. The Provider explains that the loan application was for an annuity home loan in the amount of €150,000 repayable over a term of 25 years at a discounted variable interest rate of 2.49%. The Provider states that the purpose of the loan was to build a private dwelling house on a site which was a gift from the Complainant's parents.

The Provider states that it uploaded the application onto its loan application processing system and sent it to the underwriting department on **12 March 2004**, an approval in principle was completed on **15 March 2004** and the Complainant's broker was informed. The Provider further states that it received a valuation of the property on **31 March 2004**, and a letter from a project management company on **06 April 2004** confirming that it would be overseeing the progress of the property build.

The Provider submits that it issued a **Letter of Approval** to the Complainant on **08 April 2004** for a home loan with a new business special variable interest rate of 2.49% *“as the amount of the loan he was offered was less than 50% of the value of the mortgage property he was providing as security for the loan”*. The Provider states that the Complainant signed his acceptance of the loan offer on **27 April 2004**, indicating that his solicitor had explained the terms and conditions in full to him.

The Provider submits that tracker interests were on offer to new customers at the time the Complainant submitted his mortgage loan application in **2004**. However, the Provider notes that the Complainant chose to avail of the discounted variable rate of 2.49% for a period of 12 months, which *“was the lowest rate of interest offered by the Bank at this time”* and that this *“rate was available only to borrowers whose borrowing was less than 50% of the value of the mortgage property”*.

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The Provider sets out that the Complainant drew down the loan proceeds in instalments, as follows;

- First instalment of €50,000 drawn down on **19 May 2004**;
- Second instalment of €30,000 drawn down on **29 October 2004**;
- Third instalment of €40,000 drawn down on **22 June 2005**;
- Fourth instalment of €25,000 drawn down on **27 January 2005**; and
- Fifth instalment of €5,000 drawn down on **24 October 2008**.

The Provider outlines the following changes in interest rate that occurred on the Complainant's mortgage loan following the expiry of the initial one-year discounted variable rate;

Date	Interest Rate Type	Interest Rate
19 May 2004	New Business Variable	2.49%
19 May 2005	Variable	3.55%
29 December 2005	Variable	3.70%
22 March 2006	Variable	3.85%
30 June 2006	Variable	4.10%
09 August 2006	Variable	4.35%
12 October 2006	Variable	4.60%
18 December 2006	Fixed	4.85%
18 December 2009	Variable	3.55%
01 February 2010	Variable	4.05%

The Provider states that an interest rate of 4.05% remained on the mortgage loan account until the loan was redeemed in full in **May 2010**.

The Provider contends that it is satisfied that the documentation relating to the Complainant's mortgage loan account was sufficiently clear and transparent as to the Complainant's entitlement to a tracker rate. The Provider states that the *"Letter of Approval did not provide the Complainant with a contractual entitlement to a tracker rate at any time during the term of the loan"*. The Provider relies on **Condition A** of the **Letter of Approval** in this regard which makes it clear that *"the loan issued on a new business special variable rate for a period of 12 months after which this rate would cease to apply and the Bank's standard variable rate would apply to the account"*.

In response to the Complainant's comment that he feels he was incorrectly advised not to take a tracker mortgage when he was making his mortgage loan application in **March 2004**, the Provider states that *"all mortgage advisors will discuss details of the various options available to a customer at the time of application. This allows the customer the opportunity to examine the various options and ultimately choose a mortgage interest rate suitable to their needs"* and that the *"decision regarding which rate to choose is for the customer to make based on personal circumstances."*

The Provider explains that the Complainant's mortgage loan application was assessed based on his *"financial circumstances, needs and requirements identified in the loan application"* and that the new business special variable rate of 2.49% was suitable for the Complainant as *"the value of the loan was less than 50% of the value of the mortgage property."*

The Complaint for Adjudication

The complaint for adjudication is that the Provider incorrectly failed to offer the Complainant the option of a tracker interest rate when he applied for his mortgage loan in **May 2004**.

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 Complainant was 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.

A Preliminary Decision was issued to the parties on **10 May 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.

Following the issue of my Preliminary Decision, the following submissions were received from the Complainant's representative, who is the Complainant's wife;

1. Email from the Complainant's representative dated **10 May 2021**, received by this Office at 12:45pm; and
2. Email from the Complainant's representative dated **10 May 2021**, received by this Office at 21:08pm.

A copy of the Complainant's post Preliminary Decision submissions were exchanged with the Provider on **14 May 2021**. The Provider confirmed by letter to this Office on **28 May 2021** that it had no further submissions to make.

Having reviewed and considered these additional 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, therefore I set out below my final determination.

In my Preliminary Decision that issued on **10 May 2021**, I stated that the application for the mortgage loan was submitted by the Complainant to the Provider through a "tied agent" of the Provider. Further, I noted that given this complaint is made against the Respondent Provider only, it is the conduct of this Provider and not the tied agent which will be investigated and dealt with in this Decision. I now wish to clarify that, in the circumstances of this particular complaint, the tied agent who the Complainant dealt with in **March 2004** appears to have been a natural or legal person who acted for and on behalf of the Respondent Provider and engaged with the Complainant on behalf of the Respondent Provider. While I acknowledge that the Complainant's relationship was ultimately with the Respondent Provider, I am of the view that it is in fact necessary to consider and investigate the conduct of the tied agent of the Respondent Provider, together with that of the Respondent Provider in order to determine this complaint.

The issue to be determined is whether the Provider and /or the tied agent of the Provider incorrectly failed to offer the Complainant the option of a tracker interest rate when he applied for his mortgage loan in **May 2004**. In order to determine this, it is necessary to review and set out the relevant provisions of the Complainant's mortgage loan documentation and details of certain interactions between the Complainant, the Provider and the tied agent of the Provider between **2004** and **2010**, when the mortgage loan was redeemed.

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The Complainant applied for a mortgage loan in the amount of €150,000 in **March 2004** through a tied agent of the Provider. The “*Type of Rate*” selected in the **Application Form** is a “*variable*” rate. **Section 2** of the **Application for Credit**, attached to the **Application Form**, which was signed by the Complainant on **09 March 2004** details as follows;

“2. Details of Mortgage Required

Purchase Price/Value of Property €230,000 Amount of Loan Required: €150,000
Loan Type: Annuity Repayment Term required: 25 Years”

The Provider has submitted into evidence a copy of a published marketing document entitled **Lending Interest Rates**, which is noted as being “*effective from the start of business on the 8th March 2004*”. This document outlines as follows;

“Repayment Home Loans	RATE	APR
<i>Variable Rate</i>	3.55%	3.6%
<i>1 Year Fixed Rate</i>	3.60%	3.6%
<i>2 Year Fixed Rate</i>	3.95%	3.7%
<i>3 Year Fixed Rate</i>	4.30%	3.9%
<i>4 Year Fixed Rate</i>	4.70%	4.1%
<i>5 Year Fixed Rate</i>	4.90%	4.3%
<i>7 Year Fixed Rate</i>	5.30%	4.8%
<i>10 Year Fixed Rate</i>	5.60%	5.3%
Rates applicable to new Home Loans		
<i>1 Year Discounted Variable Rate</i>	2.69%	3.5%
<i>1 Year Discounted Variable Rate (when borrowing <50% of the property value)</i>	2.49%	3.5%
<i>1 Year Fixed Rate</i>	2.54%	3.5%
<i>2 Year Fixed Rate</i>	3.60%	3.6%
Tracker Mortgage (Home Loan and Residential Investment Property)		
<i>Loan Amount €150,000 - €249,999</i>	3.40%	3.5%
<i>Loan Amount of €250,000 or more</i>	3.10%	3.1%”

I note that tracker interest rates were on offer generally by the Provider and the tied agent of the Provider when the Complainant applied for a mortgage loan in **March 2004**. The **Lending Interest Rates** document detailed above clearly outlines the types of interest rates that were available in relation to home loans, to include discounted variable rates, fixed rates and tracker rates.

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There is a dispute between the parties as to whether a tracker interest rate was discussed between the parties as a potential option when the Complainant applied for a mortgage loan from the Provider's tied agent in **March 2004**. The Complainant asserts that he was advised by the Provider's tied agent not to choose a tracker interest rate. There is no documentary or other evidence available from either party that shows the specific discussions that took place between the Provider and/or the tied agent of the Provider and the Complainant about the interest rates that were generally available at that time.

The Complainant's representative, in its post Preliminary Decision submission dated **10 May 2021**, received by this Office at 21:08pm, submits as follows;

"...the broker at the time advised [the Complainant] to take the variable rate, as i have said previously he told the broker how he didnt know what to do regarding interest and he put his trust in the broker.

In the case of no documentary or evidence regarding discussion on a tracker of course there is not it was a verbal conversation.

My husband has no memory of being offered a tracker rate in 2006. However this was not a good year for us my [relative] was killed in a road accident and this was a very stressful time for us and our family.

.....

He put his trust in the broker and was wrong to do so."

I understand that the reference to a "broker" in the Complainant's representative's post Preliminary Decision submissions relates to the actions of the tied agent of the Respondent Provider, the conduct of which I have carefully considered in the investigation and determination of this complaint.

The **Lending Interest Rates** document was published by the Provider, in its branches, on its website and in the national press therefore the Complainant could have accessed that document and appraised himself of the interest rate options available generally by the Provider before proceeding with any application for a mortgage loan with the Provider.

I note that **Approval in Principle** was signed by the Provider on **15 March 2004**. The Provider's **Approval in Principle** details as follows;

*"Loan Purpose: Building Purchase Price: 230,000 Loan Amount: 150,000
Loan Type: Home Loan Rate: 2.69 Term: 25*

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LTV: 65%”

The Provider subsequently issued a **Letter of Approval** dated **08 April 2004** to the Complainant. The **Letter of Approval** dated **08 April 2004** details the particulars of the mortgage loan as follows;

“Loan Type: Home Loan

Purchase Price/Estimated Valu[e]: EUR 380,000

Loan Amount: EUR 150,000

Interest Rate: 2.49%

Term: 25 year(s)”

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

“A. THE INTEREST RATE APPLICABLE TO THIS LOAN WILL FOR A PERIOD OF 12 MONTHS FROM THE DATE OF ISSUE OF THE LOAN, BE THE NEW BUSINESS SPECIAL VARIABLE RATE, THAT IS, THE RATE APPLICABLE WHERE THE LOAN IS LESS THAN 50% OF THE PURCHASE/VALUATION OF THE PROPERTY. THE NEW BUSINESS SPECIAL VARIABLE RATE CURRENTLY EQUATES TO THE INTEREST RATE SHOWN ABOVE. THE NEW BUSINESS SPECIAL VARIABLE RATE, BEING A VARIABLE RATE, MAY CHANGE FROM TIME TO TIME AND WITHOUT REGARD TO THE STANDARD VARIABLE RATE AND ANY VARIATIONS THEREOF, DURING THE 12 MONTH PERIOD FROM THE DATE OF CHEQUE ISSUE IN ACCORDANCE WITH THE MORTGAGE CONDITIONS ON EXPIRY OF THE 12 MONTH PERIOD, THE NEW BUSINESS SPECIAL VARIABLE RATE WILL CEASE AND THE LOAN SHALL REVERT TO THE PREVAILING STANDARD VARIABLE RATE APPLICABLE TO LOANS OF THIS TYPE.”

The **General Mortgage Loan Approval Conditions** attaching to the **Letter of Approval** state that;

*“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 **Housing Loans under Consumer Credit Act 1995** sheet, appended to the **Letter of Approval**, details as follows;

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

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The **Acceptance of Loan Offer** was signed by the Complainant and witnessed by a solicitor on **27 April 2004** on the following terms;

“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’s] Mortgage Conditions*

copies of the above which I/we have received, and agree to mortgage the property to [the Provider] as security for the mortgage loan.

...

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

It is clear to me that the **Letter of Approval** envisaged that an initial one year discounted variable interest rate of 2.49% would apply to the Complainant’s mortgage loan account with a standard variable interest rate to apply thereafter. The variable rate in the Complainant’s mortgage loan documentation 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.

It appears from the Complainant’s submissions that he is of the view that if a tracker interest rate was offered to him at that time, his interest rate would have been a lot less. The **Lending Interest Rates** document published by the Provider at the time clearly shows that the discounted variable interest rates available at the time were at a lower rate than the tracker interest rates that were available for new home loans. It is important for the Complainant to understand that the Provider was free to exercise its commercial discretion in making a loan offer to the Complainant providing for such terms and conditions that it considered appropriate; equally, it was open to the Complainant to decline that offer if he was dissatisfied that the terms and conditions did not provide for a tracker interest rate from the date of drawdown or if he was dissatisfied with the interest rate that would apply at the end of the initial discounted variable interest rate period. However, the Complainant accepted the **Letter of Approval**, that was ultimately issued by the Respondent Provider as opposed to the tied agent of the Provider, having confirmed that his solicitor had “*fully explained*” the terms and conditions of the mortgage loan to him.

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I note that the Complainant ultimately drew down his mortgage loan on a discounted variable rate of 2.49% on **19 May 2004**, which was the lowest rate of interest offered by the Provider at this time for new home loan applicants as per the **Lending Interest Rates** document.

The Provider has summarised its tracker rate offering policy as follows;

“The Bank introduced tracker interest rate loans for new mortgage business in [early] 2004. This meant that, in addition to the other fixed and variable rates which the Bank was then offering as an initial rate of interest to mortgage loan applicants, the Bank could offer an applicant a tracker rate of interest which would vary in accordance with variations in the ECB refinancing rate”.

[In 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 that 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. In the absence of a customer selection, the variable rate was applied to the mortgage. The Bank also provided options letters from [late] 2006 that, in default of selection of one of the offered options, the loan would default to the tracker rate of interest on maturity of the fixed rate period. The tracker interest rate was applied to the mortgage as the default interest rate.

The Bank ceased offering new tracker rate loans [in mid] 2008. It also ceased offering a switch to a tracker rate from another variable rate on that dated (sic.)

While the Bank commenced the withdrawal of its tracker mortgage interest rate offering in [mid] 2008, it continued until [mid] 2009 its policy of offering a tracker interest rate maturity option to existing fixed rate customers whose contracts did not contain an entitlement to be offered a tracker rate at maturity of an existing fixed rate period.

After [mid] 2009, the Bank continued to offer and / or apply Tracker rates to maturing loans where customers had a contractual right to same.”

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The Provider has submitted into evidence a copy of a published marketing document entitled **Lending Interest Rates**, which is noted as being “effective from the start of business on the 11th March 2005”. This document outlines as follows;

“Repayment Home Loans	RATE	APR
<i>Variable Rate</i>	3.55%	3.6%
<i>1 Year Fixed Rate</i>	3.60%	3.6%
<i>2 Year Fixed Rate</i>	3.74%	3.7%
<i>3 Year Fixed Rate</i>	3.95%	3.7%
<i>4 Year Fixed Rate</i>	4.20%	3.9%
<i>5 Year Fixed Rate</i>	4.44%	4.1%
<i>7 Year Fixed Rate</i>	4.99%	4.5%
<i>10 Year Fixed Rate</i>	5.35%	5.1%
Rates applicable to new Home Loans		
<i>1 Year Discounted Variable Rate</i>	2.69%	3.5%
<i>1 Year Discounted Variable Rate (when borrowing <50% of the property value)</i>	2.49%	3.5%
<i>1 Year Fixed Rate</i>	2.74%	3.5%
<i>2 Year Fixed Rate</i>	3.55%	3.6%
<i>3 Year Fixed Rate</i>	3.70%	3.7%
Tracker Mortgage (Home Loan and Residential Investment Property)		
<i>Loan Amount €150,000 - €249,999</i>	3.40%	3.5%
<i>Loan Amount of €250,000 or more</i>	3.10%	3.1%”

The Provider submits that the following rates of interest were offered to the Complainant in **May 2005** upon the expiry of the one year discounted variable interest rate;

- Variable Rate 3.55%
- 1 Year Fixed Rate 3.60%
- 2 Year Fixed Rate 3.74%
- 3 Year Fixed Rate 3.95%
- 4 Year Fixed Rate 4.20%
- 5 Year Fixed Rate 4.44%
- 7 Year Fixed Rate 4.99%
- 10 Year Fixed Rate 5.35%

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While I have not been provided with any letter that issued to the Complainant prior to the expiry of the discounted variable interest rate in **May 2005**, I note that the selection of interest rates outlined above is in line with the interest rates on offer by the Provider in relation to existing repayment home loans as detailed in the **Lending interest Rates** document. It appears to me that in circumstances where the Complainant did not opt to avail of any of the fixed interest rates on offer at the time, the Complainant's mortgage loan account defaulted to the prevailing standard variable rate of 3.55%. This does not appear to be in dispute between the parties. I note that the Complainant's mortgage loan defaulted to the Provider's standard variable rate in accordance with **Special Condition A** of the **Letter of Approval** dated **08 April 2004**.

The Provider issued an **Options Form** to the Complainant in **late 2006** outlining the available interest rates which, in line with its new tracker policy at that time, included a tracker rate of interest.

The options set out on the **Options Form** are as follows;

<i>"Repayment Rate</i>	<i>Interest Rate/APR</i>
<i>Current standard variable rate loan</i>	<i>4.6%/4.7%</i>
<i>Tracker rate (€100,000-249,000)</i>	<i>4.5%/4.6%</i>
<i>2 year fixed rate</i>	<i>4.85%/4.8%</i>
<i>3 year fixed rate</i>	<i>4.85%/4.8%</i>
<i>5 year fixed rate</i>	<i>4.85%/4.8%"</i>

The Complainant chose a three-year fixed interest rate and returned the form to the Provider, signed and dated **08 December 2006**. I note that a fixed interest rate of 4.85% applied to the Complainant's mortgage loan from **18 December 2006**.

The Provider explains that prior to the expiry of the three-year fixed interest rate period in **December 2009**, it issued an **automated options letter** to the Complainant setting out the available rates for selection at that time. I note that while the Provider commenced the withdrawal of its tracker mortgage interest rate offering in **mid- 2008**, it continued its policy of offering a tracker interest rate maturity option to existing fixed rate customers whose contracts did not contain an entitlement to be offered a tracker rate at maturity of an existing fixed rate period until **August 2009**. As a result, a tracker rate was not included on the **automated options letter** issued to the Complainant in late **2009**. In the absence of a written instruction forthcoming from the Complainant confirming his preference, his mortgage loan account automatically defaulted to the prevailing standard variable rate of 3.55% in line with the Provider's policy at the time.

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While I am disappointed to note that a copy of the **automated options letter** has not been made available to this office by the Provider, the existence of this letter and the Provider's submissions in relation to the letter are not in dispute between the parties.

The **Mortgage Statements** submitted in evidence show that the Complainant's mortgage loan account remained on a standard variable rate until the loan was redeemed in full on **13 May 2010**.

It is clear to me that if the Complainant wished to pursue the option of applying for a tracker interest rate mortgage loan in **March 2004**, he could have indicated to the Provider and/or the tied agent of the Provider that he preferred a tracker interest rate. The Complainant however did not do so. It is important for the Complainant to understand that there is nothing to say that if he had applied for tracker interest rate loan that this would have resulted in the Provider acceding to that request and issuing a Letter of Approval on that basis.

In any event, the Complainant instead applied for a variable interest rate mortgage loan and the Provider offered him a discounted variable interest rate, which was accepted by the Complainant, having acknowledged that the terms and conditions of the mortgage loan were explained to him. There was no obligation on the Provider and/or the tied agent of the Provider, contractual or otherwise, to give the Complainant the option of a tracker interest rate on his mortgage loan when he made his application to the Provider.

The Complainant is seeking a refund on the balance between the interest he paid and the interest he would have paid had he chosen a tracker interest rate. The ECB base rate was 2.00% at the time that the Complainant applied for his mortgage loan in **March 2004**, however it subsequently rose intermittently to a maximum of 4.25% in **2008**. I note that the one year discounted variable rate (when borrowing <50% of the property value) was the Complainant's selected preference at the time of his loan application in **March 2004**. This rate was offered to the Complainant because the value of the loan was less than 50% of the value of the mortgaged property, and as such he was eligible for the reduced rate. This was a lower rate of 2.49% in comparison to the tracker rate of 3.40% that was offered by the Provider at that time. The discounted rate was offered to the Complainant for one year, after which point the mortgage loan account switched to a standard variable rate of 3.55%. I have been provided with no evidence, nor do I have any reason to believe, that the Complainant could have known of any future changes to the ECB base rate in **2004**, such as to make the option of a tracker interest rate more beneficial into the future.

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In the circumstances, I have been provided with no evidence to support the Complainant's argument that he would have chosen a tracker rate had he not been advised "not to take" it. It is important to note that the Provider offered the Complainant a tracker interest rate of 4.5% in **December 2006**, even though it had no obligation, contractual or otherwise, to do so, however the Complainant did not accept the tracker rate on that occasion and instead opted for a three-year fixed rate of 4.85%. It would appear to me therefore that the Complainant did not have a preference for a tracker rate to be applied to his mortgage loan account.

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

Conclusion

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

The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.



GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

28 June 2021

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.