



<b><u>Decision Ref:</u></b>	2021-0268
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Tracker Mortgage
<b><u>Conduct(s) complained of:</u></b>	Failure to offer a tracker rate at point of sale
<b><u>Outcome:</u></b>	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 that is the subject of this complaint was secured on the Complainant's private dwelling house.

The loan amount was €115,000 and the term of the loan was 30 years. The Loan Offer Letter dated **7 March 2005** provided for a variable interest rate of 3.53%.

**The Complainant's Case**

The Complainant submits that he drew down his mortgage loan account ending **3959** with the Provider in **March 2005** on a standard variable rate of interest.

The Complainant states that during the mortgage loan application process with the Provider, a tracker interest rate was available however he "*was not given this option or advised that this was an option*". The Complainant submits that he was advised by the Provider that the only interest rate options available to him were a fixed interest rate or a variable interest rate.

In response to the Provider's submission that the Provider was not authorised to provide advice and trained staff to provide information in respect of the interest rate options, the Complainant submits that he requested information about the available interest rates however he was only advised "*that there were 2 available – standard and variable rates*" and was advised by the Provider "*to go down the mortgage path*" that he ultimately chose.

The Complainant contends that the Provider did not *“at any stage”* advise him or offer him the option of a tracker interest rate at the time he applied for his mortgage loan.

As a result, the Complainant explains that he *“came into difficulty with repaying”* his mortgage and had to move out of his home and *“rent it just to cover mortgage repayments”*.

The Complainant submits that he feels *“betrayed... victimised and ...to this day traumatised by this matter”*.

The Complainant is seeking:

- (a) A tracker rate to be applied to his mortgage loan account ending **3959**;
- (b) A refund of the overpayment of interest comprising the difference between the mortgage interest rate that he was given by the Provider in **2005** and a tracker mortgage interest rate; and
- (c) A payment of the interest on any amount of extra money that he was charged in error.

### **The Provider’s Case**

The Provider submits the Complainant applied for a mortgage loan by completing and signing a Mortgage Application Form on **14 February 2005**. The Provider explains that the Complainant had the option to select *“to apply for a tracker mortgage”* on the application form *“but chose to apply for a ‘Standard Mortgage’”*. The Provider further explains that this was confirmed again by the Complainant later in the application form where the Complainant *“requested that the interest type of his mortgage loan was to be a variable interest rate and the interest rate was input as 3.53%.”* The Provider notes that *“the Tracker Variable option was not selected”* in the application form.

The Provider submits that a Loan Offer Letter dated **7 March 2005** issued to the Complainant offering a standard annuity loan at a standard variable interest rate and the Loan Acceptance attaching to the Loan Offer Letter was signed by the Complainant on **31 March 2005**.

The Provider submits that the Complainant's mortgage loan was drawn down on a variable interest rate and the Loan Offer *"did not contain any specific condition referring to a tracker rate"*. The Provider further states that the Loan Offer did not confirm *"that a tracker interest [rate] would be made available to the customer at a future date"*. The Provider indicates that *"[s]uch a reference would have been necessary for a tracker interest rate to apply"*.

In **April 2006**, the Provider states that it wrote to the Complainant outlining the alternative interest rates available at that time. The Provider explains that the Complainant selected a fixed interest rate of 4.09% which applied to the Complainant's mortgage loan account until **April 2008**. The Provider explains that the Complainant's mortgage loan account rolled onto a standard variable rate in **May 2008**.

In **July 2008**, the Provider states that it wrote to the Complainant outlining the alternative interest rates available at that time and also invited the Complainant to contact the Provider if he had any queries in relation to *"the availability of tracker variable rate options"*. The Provider explains that a standard variable interest rate applied to the Complainant's mortgage loan account until **October 2009**.

The Provider submits that it issued a letter dated **7 October 2009** to the Complainant outlining alternative interest rates available at that time and this letter included a Rate Change Letter of Authority form to be completed and signed by the Complainant if the Complainant wished to avail of an alternative interest rate. The Provider explains that in circumstances where *"Tracker interest rates had been withdrawn from the market by the Bank [in late] 2008"*, a tracker interest rate option was not included in the letter dated **7 October 2009**. The Provider explains that the Complainant opted for a fixed interest rate of 4.20% which was applied to the Complainant's mortgage loan account until **September 2011**, after which it converted to a standard variable rate until **March 2019**. The Provider notes that the mortgage loan account has remained on a fixed interest rate of 2.30% since **April 2019**.

The Provider states that it was *"not authorised to provide advice or recommendations to customers as to what interest rate option to select"*. The Provider also submits that *"staff were trained to provide information in relation to various interest rate options that were available when such information was requested"*. The Provider explains that even though there was *"no legal or regulatory requirement in 2005...for the Bank to ensure that the product was suitable"*, the Provider states that it is satisfied that mortgage loan offered and accepted by the Complainant *"was in line with the mortgage application which the customer had made to the Bank"*.

### **The Complaint for Adjudication**

The conduct complained of is that the Provider incorrectly failed to advise or offer the Complainant the option of a tracker interest rate when he applied for his mortgage loan in **2005**.

### **Decision**

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The 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.

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 **24 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 Complainant made a post Preliminary Decision submission on **14 June 2021**.

A copy of the Complainant's additional submission was exchanged with the Provider.

The Provider has not made any further submission.

Having considered the Complainant's post Preliminary Decision submission and all submissions and evidence furnished by both parties to this office, I set out below my final determination.

In order to determine this complaint, it is necessary to review and set out the relevant documentation relating to the Complainant's mortgage loan account ending **3959** and consider the details of certain interactions between the Complainant and the Provider in **2005** during the mortgage loan application process.

The Complainant applied for a mortgage by way of **Mortgage Application Form**. On page 1 of the Mortgage Application Form, in response to the question "*Mortgage Type*" the Complainant selected the "*Standard Mortgage*" option. The other option available was "*Tracker Mortgage*" which was not selected by the Complainant.

The section titled "*Loan Details*" of the Mortgage Application Form as completed by the Complainant details as follows;

*"Amount Required: €115,000                      Term 30 years*  
*Type of Loan    Annuity                       Pension*  
*Interest Only Option    Deferred Start*  
*Rate Type            Variable             Tracker Variable            Fixed            Discount*  
*Interest Rate    3.53 %                      Fixed Term            years "*

I note that the Provider has indicated that it does not hold any record of notes, minutes, or memoranda in relation to any discussions between the Provider's representative and the Complainant when the mortgage loan application was completed in **February 2005**.

The Complainant, in his post Preliminary Decision submission dated **14 June 2021**, states as follows:

*"...*

*In February 2005 I insisted I wanted a tracker mortgage when I was applying for my mortgage with [the Provider].*

*I knew about Tracker Mortgages as I was advised by a friend who got one at the time and who told me of the benefits.*

*When I asked the mortgage adviser in [Provider], I was dissuaded [sic] from the tracker mortgage because she said I was not eligible for one and would not be eligible for one in the future.*

/Cont'd...

*I would like to state that I was not offered the choice to opt for a tracker mortgage which I distinctly asked for in 2005.*

*I believe that I was talked out of what I wanted and advised to take a variable rate.*

*....”*

Having considered the Complainant’s additional submission, it remains clear to me from a review of the **Mortgage Application Form** that the Complainant selected an “*Annuity*” loan and a “*Variable*” interest rate of 3.53%. I note that while a tracker interest rate option was available for selection on the **Mortgage Application Form**, the Complainant did not select this option. The Complainant signed the **Mortgage Application Form** on **14 February 2005**.

It is important for the Complainant to be aware that although tracker interest rates were on offer generally by the Provider as part of its suite of products when the Complainant applied for the mortgage loan in **February 2005**, there was no obligation on the Provider to provide the Complainant with information on the tracker interest rate offering at that time. The evidence does not support the Complainant’s contention that he “*was not offered the choice to opt for a tracker mortgage*” as the **Mortgage Application Form** clearly outlined the types of interest rate options available generally on mortgage loans, including a “*Tracker Variable*” rate. If the Complainant wished to seek a tracker interest rate on the mortgage loan at the time, the Complainant could have selected this option on the **Mortgage Application Form**. However, the Complainant selected a preference for a variable option for the loan.

The Complainant appears to be of the view that he was “*not advised*” by the Provider’s representative that he “*had (or was entitled) to an option called Tracker Rate Mortgage*”. In his post Preliminary Decision submission dated **14 June 2021**, the Complainant states that he was advised by the Provider that he was not eligible for a tracker mortgage however I have not been provided with any evidence in this regard. In any event, the Complainant did not have an entitlement to be offered a mortgage loan on a tracker interest rate when applying for a mortgage loan in **February 2005**.

The Provider issued a **Loan Offer Letter** dated **7 March 2005** to the Complainant, which details as follows:

<i>“Loan Type:</i>	<i>STANDARD ANNUITY</i>
<i>Loan Amount:</i>	<i>€115,000.00</i>
<i>Interest Rate:</i>	<i>3.53%</i>
<i>Interest Type:</i>	<i>VARIABLE</i>
<i>Term:</i>	<i>30 YRS”</i>

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The **Loan Offer Letter** dated **7 March 2005** also details as follows;

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

The Complainant signed the **Loan Acceptance** dated **31 March 2005** on the following terms:

*“I/We acknowledge receipt of the General Terms and Conditions and Specific Conditions attached to the Loan Offer. I/We have had the Loan Offer, the Specific Loan Offer Conditions and the General Terms and Conditions explained to me/us by my/our Solicitor and I/We fully understand them. I/We hereby accept the Loan Offer on the terms and conditions specified. I/We undertake to complete the Mortgage Deed as soon as possible.*

*I/We fully understand and accept the specific nature of this Standard Mortgage. I/We further understand that any outstanding debt owing (whether owing now or in the future) to [Provider] by me/us at any given time is secured on the Property the subject of the Standard Mortgage and must be repaid in full before the relevant title deed can be returned or the relevant mortgage deed released.”*

In considering the Complainant’s post Preliminary Decision submission dated **14 June 2021**, if it was the case that the Complainant did not believe that the interest rate product that was offered to him by the Provider was suitable for him, the Complainant could have decided not to sign the **Loan Acceptance** and sought an alternative interest rate from the Provider or indeed an alternative provider.

However, the Complainant signed the **Loan Acceptance** and his mortgage loan account was subsequently drawn down on **13 April 2005**.

The Complainant subsequently signed a **Letter of Authority/ Acknowledgement** dated **25 April 2006** to request to apply a 2-year fixed interest rate of 4.09% to his mortgage loan account. The **Letter of Authority/ Acknowledgement** dated **25 April 2006** outlined what is to occur on the expiry of the fixed term as follows:

*“TRANSFER FROM FIXED RATE TO VARIABLE RATE AT THE END OF THE FIXED NOTICE*

/Cont’d...

*On expiry of the fixed term I/We may, by prior notice in writing to the Company, opt to choose a further fixed rate of interest for a certain period, if such an option is made available by the Company. Where such an option is not available or I/We fail to exercise the option if available, the interest rate applicable will be a rate of interest which may be increased or reduced by the company from time to time and at any time in line with market interest rates (the variable rate)."*

The cover letter dated **25 April 2006** enclosing the **Letter of Authority/ Acknowledgement** states as follows:

*"Should you have any specific queries in relation to re-fixing your mortgage, or the availability of tracker variable rate options, please contact us at [Provider's number]"*

The Provider referred to the availability of tracker variable rate options in the letter dated **25 April 2006** however there was no contractual or other obligation on the Provider to do so.

The Complainant, in his post Preliminary Decision submission dated **14 June 2021**, states as follows:

*"In April 2006, I asked again for a tracker mortgage, and again I was talking out of same and advised that I was not entitled to a Tracker Mortgage".*

If the Complainant wished to pursue the potential option of applying a tracker interest rate on his mortgage loan in **April 2006**, the Complainant could have contacted the Provider at that time. However, I have not been provided with any evidence to suggest that the Complainant contacted the Provider to discuss his eligibility for tracker variable rate options. Rather, the evidence demonstrates that the Complainant clearly selected a 2-year fixed interest rate in **April 2006**. The Provider duly applied a 2-year fixed interest rate of 4.09% to the Complainant's mortgage loan account in **May 2006** after which the mortgage loan account converted to a standard variable rate, as detailed in the mortgage account statements submitted in evidence.

The Provider issued a letter to the Complainant dated **30 July 2008** outlining the interest rate options available at that time to include a 2-year, 3-year and 5-year fixed interest rate.



The cover letter dated **30 July 2008** enclosing the **Letter of Authority/ Acknowledgement** states as follows;

*“Should you have any specific queries in relation to re-fixing your mortgage, or the availability of tracker variable rate options, please contact us at [Provider’s number]”*

The Provider referred to the availability of tracker variable rate options in the letter dated **30 July 2008** however there was no contractual or other obligation on the Provider to do so. If the Complainant wished to pursue the potential option of applying a tracker interest rate on his mortgage loan in **July 2008** shortly after the expiry of the fixed interest rate period, the Complainant could have contacted the Provider at that time. In circumstances where the Complainant did not select a fixed interest rate, the mortgage loan account remained on a standard variable interest rate.

In **October 2009**, it appears that the Complainant requested information on available fixed interest rate options. The Provider issued a cover letter dated **7 October 2009** enclosing a **Letter of Authority/ Acknowledgement** dated **7 October 2009** to the Complainant outlining the interest rate options available at that time to include a 2-year, 3-year and 5-year fixed interest rate. The cover letter dated **7 October 2009** states as follows:

*“Should you have any specific queries in relation to re-fixing your mortgage, or the availability of variable rate options, please contact us at [Provider’s number]”*

I note that the Provider decided to withdraw tracker interest rates from the market in **late 2008**. Consequently, a tracker interest rate product was not available for selection when the Complainant enquired about available interest rates in **October 2009**.

The Complainant selected a 2-year fixed interest rate of 4.20% and the Provider duly applied that interest rate to the Complainant’s mortgage loan account. I note from the mortgage account statements that the Complainant’s mortgage loan account remained on a fixed interest rate until **September 2011** after which the Complainant’s mortgage loan account converted to a standard variable rate.

With respect to the Complainant’s assertion that he feels “*betrayed*” and “*victimised*” by the Provider, I have not been provided with any evidence to suggest that the Complainant was in any way “*victimised*” or “*betrayed*” by the Provider when the loan application was completed in **February 2005** or indeed at any stage during the term of the loan.

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It is clear to me that the Complainant applied for a mortgage loan on a variable interest rate and the Provider offered the Complainant a variable interest rate, which was accepted by the Complainant, having acknowledged that the terms and conditions of the mortgage loan were explained to him by his solicitor. If it was the case that the Complainant was of the view that the variable interest rate loan was not suitable for him, then the Complainant could have decided not to sign the **Loan Acceptance** and ultimately draw down the loan and instead, seek an alternative rate with the Provider or with another mortgage provider. However, the Complainant did not do so. The Provider informed the Complainant of the availability of tracker interest rate options in **2006** and **2008**, despite the Complainant not having an entitlement to a tracker rate, contractual or otherwise. However, the Complainant chose not to explore tracker interest rate options with the Provider on those occasions.

For the reasons outlined 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**

4 August 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.

