



<b><u>Decision Ref:</u></b>	2021-0294
<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 Complainants with the Provider. The mortgage loan is secured on the Complainants' holiday home.

The loan amount was €137,000 and the term of the loan was 25 years. The "*Loan Type*" provided for in the Letter of Approval dated **16 December 2008** is a "*1yr Disc Variable (<=80% LTV) Home Loan*". The mortgage loan account was drawn down in **March 2009**.

#### **The Complainant's Case**

The Complainants submit that when they initially applied for loan approval with the Provider in **2008**, they were "*offered a tracker mortgage and took that option*".

The Complainants explain that they were not in a position to avail of the loan offer "*until some time later*" however they were "*under the impression*" that the offer of a tracker mortgage was "*still in effect*". The Complainants state however that when they went to drawdown that loan, they were informed that a tracker interest rate "*was no longer available*" and they "*had to take*" a variable rate.

The Complainants maintain that they had no choice and had to choose a fixed or variable rate. The Complainants state that they were never informed that the initial agreement which included a tracker rate of interest was cancelled.

The Complainants submit that the Provider informed them that *“new mortgage contract papers would have to be signed before we got the loan”*. The Complainants further submit that *“this put us on the spot and we signed”*.

The Complainants are seeking that the Provider place their mortgage loan account on the tracker interest rate that they were initially offered, or on a similar rate.

### **The Provider’s Case**

The Provider details that the First Complainant attended one of the Provider’s branches on **08 August 2008** on which date he confirmed that he required a loan in respect of a planned holiday home. The Provider states that the notes entered on the mortgage loan application processing system show that a loan application had been approved a year previous but the previous loan approval had not been accepted or drawn down. The Provider outlines that it does not retain records in respect of previous loan applications that do not proceed, for the purposes of confidentiality in accordance with the Provider’s policy.

The Provider submits that the Complainants signed an electronic **Application for Credit** on **08 August 2008** for a mortgage loan in the amount of €150,000 on a 12-month discounted variable rate over a period of 19 years.

The Provider details that the Complainants submitted a further Application for Credit on **29 August 2008**, amending the repayment period from 19 years to a period of 25 years and with a variable rate of interest.

The Provider explains that from **09 September 2008** to **16 December 2008**, the Complainants made various changes to the loan application and during that time, the Provider issued four consecutive loan offers to the Complainants, none of which offered a tracker rate of interest.

The Provider outlines that a **Letter of Approval** dated **16 December 2008** issued to the Complainants for a loan in the sum of €137,000 for a period of 25 years at a discounted variable rate of 4.75% for 12 months.

The Provider notes that on the expiry of the discounted interest rate period, the interest rate would be *“determined either by a selection of a rate by the Complainants or, in default of that, a variable rate to be applied by the Bank”*. In this regard, the Provider refers to **Special Condition 9** of the Letter of Approval dated **16 December 2008** which was signed and accepted on **22 December 2008**.

The Provider does not accept the Complainants’ assertion that they were *“put on the spot”* to sign their acceptance of the Letter of Approval. In this regard, the Provider refers to the various interactions with the First Complainant and the history of the Complainants’ mortgage loan application from **early August 2008** until the Letter of Approval was issued on **16 December 2008**.

The Provider states that the Complainants’ mortgage loan account was drawn down on **03 March 2009** on a discounted variable interest rate of 3.50%. The Provider states that it ceased offering tracker rates to existing customers whose loan was maturing from a fixed rate of interest or a discounted rate of interest from **late 2009**. The Provider outlines that in **February 2010**, prior to the expiry of the discounted variable rate, it issued a rate options letter to the Complainants. The Provider states that *“the options letter informed the Complainants that the Bank’s rate, if no selection was made by them, was a LTV Variable Rate of 3.55%”*. The Provider details that on **03 March 2010**, the Complainants’ mortgage loan account automatically switched to a variable rate of 3.55% in the absence of a rate selection by the Complainants. The Provider maintains that given the Complainants did not make a selection at that time, it was entitled *“to apply a variable rate which may or may not be a tracker variable rate”*.

### **The Complaint for Adjudication**

The conduct complained of is that the Provider withdrew its original offer of a tracker interest rate when the Complainants sought to draw down their mortgage loan account in **2008**.

### **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 **04 August 2021**, outlining the preliminary determination of this Office in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

In the absence of additional submissions from the parties, within the period permitted, I set out below my final determination.

In order to determine this complaint, it is necessary to review and set out the relevant provisions of the Complainants' mortgage loan documentation and to consider the details of certain interactions between the Complainants and the Provider from **August 2008 to December 2008** during the Complainants' mortgage loan application process.

The Provider has submitted a document titled "**DIARY QUERY APPLICATION**" in evidence which details as follows:

<b><i>"Activity</i></b>	<b><i>Created Date</i></b>	<b><i>Created By</i></b>	<b><i>Login</i></b>	<b><i>Note</i></b>
<i>Master Diary</i> <i>[First Complainant]</i>	<i>08/08/2008</i> <i>15:17:17</i>	<i>[Provider]</i>	<i>[Login Details]</i>	<i>[First Complainant] was in today, looking to purchase [second property], was <b>previously approved last year under a tabs number but never went ahead.</b> Currently bidding on a property, dont order valuation until [First Complainant] confirms is [First Complainant] got the house. Also have requested details of</i>

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*[Second Complainant] who will be added to the application, need id/proof of address.” [my emphasis]*

It appears from the diary entry above that the First Complainant previously approached the Provider to seek loan approval on a second property in his sole name however the First Complainant never proceeded with that loan approval. The Complainants appear to be of the view that the loan that was approved previously provided for a tracker rate of interest.

The First Complainant has submitted an email to a third party dated **04 August 2008** in evidence which states as follows:

*“Dear [redacted],*

*We spoke on Saturday last on the cottage in [location]. I have just a few questions.*

*Can you send me a copy of original site map. Is the title absolute? Would planning allow an extension in the area?*

*I am prepared to offer 201,000 if all is in order, I have had a loan approval confirmed and no property to sell and could move quickly if our engineer passes the site map etc. Refundable deposit could issue from me within days if OK”.*

While I acknowledge that the First Complainant refers to having been granted “*loan approval*” in his email dated **04 August 2008**, I have not been provided with any evidence as to this previous loan application nor have I been provided with any evidence that a loan offer was issued by the Provider to the Complainants prior to **08 August 2008**. The Provider submits that it has “*no record of any earlier loan application by the complainants*”. The Provider explains that in order to “*protect applicants’ confidentiality, the Bank does not retain such records if a loan application does not proceed to a loan*”. In circumstances where the previous loan application did not progress, I accept that there was no legitimate business reason on the part of the Provider to retain such records on file. Moreover, I would not expect that loan approval granted in **2007** would remain valid indefinitely.

It is now important to consider the subsequent loan offers that issued to the Complainants to establish whether a tracker interest rate mortgage was offered to the Complainants.

The Provider states that the following interest rates were available in relation to new loans as of **05 August 2008**:

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<i>"Rates applicable to New home loans</i>	<i>Rate</i>	<i>APR</i>
<i>1 year Discount variable LTV &lt;80%</i>	<i>5.75%</i>	<i>6.00%</i>
<i>1 year Discount variable Rate &lt;80%</i>	<i>5.85%</i>	<i>6.10%</i>

*Rates applicable to New and Existing Home Loans*

<i>Standard Variable Rate</i>	<i>5.94%</i>	<i>6.10%</i>
<i>2 year Fixed Rate</i>	<i>6.35%</i>	<i>6.20%</i>
<i>5 year Fixed Rate</i>	<i>5.99%</i>	<i>6.10%</i>
<i>7 year Fixed Rate</i>	<i>6.10%</i>	<i>6.20%</i>
<i>10 year Fixed Rate</i>	<i>6.10%</i>	<i>6.20%</i>

It is clear to me that the only interest rates available in **August 2008** were fixed and variable interest rates. The Provider has submitted a document titled **Tracker Interest Rates Offered as a Matter of Bank Policy** in evidence which outlines the following:

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

*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 interest rates to maturing loans where customers had a contractual right to a tracker rate."*

I note that the Provider ceased offering tracker rate mortgages on loans for new customers from **mid-2008**, before the Complainants applied for a mortgage loan with the Provider in **August 2008**. As a result, tracker interest rates were not on offer generally by the Provider as part of its suite of mortgage products when the Complainants applied for a mortgage loan in **August 2008**.

A **Letter of Approval in Principle** dated **08 August 2008** was issued by the Provider to the First Complainant which details as follows:

*"Dear [First Complainant],*

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Many thanks for contacting us for a mortgage.

I am delighted to approve you, in principle, for the following:

Product Name:	1 yr Disc Variable (<=80% LTV) Home Loan
Amount:	€150,000.00
Length of the mortgage:	25 Year(s)
Based on a purchase price or valuation of:	€210,000.00
Interest Rate:	5.75%
Monthly Repayment:	€943.66
Net Mortgage Repayment after TRS (if applicable)	€943.66
APR:	6%

*This is an approval 'in principle' only. If you wish to proceed further with your application you should meet the conditions listed in our 'specific conditions' section on the next page...."*

The Provider subsequently issued a **Letter of Approval** dated **09 September 2008** which details as follows:

**"LETTER OF APPROVAL – PARTICULARS OF MORTGAGE LOAN**

Loan Type:	1yr Disc Variable (<=80% LTV) Home Loan
....	
Loan Amount:	€150,000.00
Interest Rate:	5.75%
Term:	19 year(s)"

The **General Mortgage Loan Approval Conditions** attaching to the Letter of Approval dated **9 September 2008** state as follows:

**"1. STANDARD CONDITIONS RELATING TO ALL LOAN APPROVALS**

**1.2** [Provider's] right to withdraw or vary this approval at any time before completion of the mortgage transaction. The applicant may withdraw before the completion of the transaction.

.....

**1.7** The Applicant must personally within 21 days indicate in writing his willingness to take up this advance and the mortgage loan must be completed within 40 days of this acceptance Failure to comply with the foregoing or

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*rejection of the property for such insurance as {Provider} may require at the standard rate without any special conditions cancels this approval”.*

**Special Condition 4** of the Letter of Approval dated **09 September 2008** states as follows:

*“Condition 1.7 of the General Mortgage Loan Approval conditions (relating to time limits for acceptance and drawdown of the loan) applies to this Letter of Approval. Without prejudice to condition 1.7 [Provider] may, at its discretion, extend the period for drawdown of the loan by up to 6 months from the date of issue of the Letter of Approval.*

*Where this Letter of Approval is an amendment to an existing Letter of Approval [Provider] may, when exercising such discretion and without prejudice to the time limits specified in the said condition 1.7 and where relevant to the date of issue of this amended Letter of Approval, notwithstanding such time limits, require drawdown of the loan under this amended letter of Approval to take place not later than 6 months from the date of issue of the original Letter of Approval”.*

**Special Condition 7** of the Letter of Approval dated **09 September 2008** states as follows:

*“The interest rate specified in the Letter of Approval is a discounted LTV variable rate and will apply for a period of 12 months from the dates of the advance (“the Discount Period”) but may be varied within the Discount Period (and/or at any time prior to drawdown of the advance) without regard to variations in the [Provider’s] standard variable rate or the European Central Bank Refinancing Rate. On expiry of the Discount Period, the interest rate will be such rate as may be selected by the Applicant(s) from the [Provider’s] interest rates then offered by [the Provider] to the Applicant(s) for selection by the Applicant(s) or such variable interest rate (which may be a tracker variable rate) as will apply in the absence of such selection”.*

The Letter of Approval dated **09 September 2008** provided for a 1-year discounted variable interest rate of 5.75% over a term of 19 years after which the Complainants could select an interest rate from the rates then offered by the Provider or in the absence of any such selection, a variable interest rate would apply. The nature of the variable rate is not specified in the Special Conditions. I note that the Complainants did not sign their acceptance of the Letter of Approval dated **09 September 2008**.

The Provider issued a further **Letter of Approval** dated **17 September 2008** to the Complainants which details as follows:

**“LETTER OF APPROVAL – PARTICULARS OF MORTGAGE LOAN**

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*Loan Type:* 1yr Disc Variable (<=80% LTV) Home Loan

....

*Loan Amount:* €150,000.00

*Interest Rate:* 5.75%

*Term:* 25 year(s)"

**Special Condition 7** of the Letter of Approval dated **17 September 2008** is the same as **Special Condition 7** of the Letter of Approval dated **9 September 2008**, as outlined above.

The Letter of Approval dated **17 September 2008** provided for a 1-year discounted variable interest rate of 5.75% over a term of 25 years after which the Complainants could select an interest rate from the rates then offered by the Provider or in the absence of any such selection, a variable interest rate would apply. The nature of the variable rate is not specified in the Special Conditions. I note that the Complainants did not sign their acceptance of the Letter of Approval dated **17 September 2008**.

The Provider's internal notes dated **05 December 2008** detail as follows:

*"Can you please reapprove this loan, please be advised that purchase price has been amended to €182k, all details remain the same i.e. value in repair. Reason for deferral is due to [ Second Complainant's] age at maturity but [ Second Complainant] is a housewife and repayments will be based on [ First Complainant's] salary alone."*

The Provider issued a further **Letter of Approval** dated **08 December 2008** to the Complainants which details as follows:

***"LETTER OF APPROVAL – PARTICULARS OF MORTGAGE LOAN***

*Loan Type:* 1yr Disc Variable (<=80% LTV) Home Loan

....

*Loan Amount:* €150,000.00

*Interest Rate:* 4.75%

*Term:* 25 year(s)"

**Special Condition 9** of the Letter of Approval dated **08 December 2008** is the same as **Special Condition 7** of the Letters of Approval dated **09 September 2008** and **17 September 2008**, as outlined above. The Letter of Approval dated **08 December 2008** provided for a 1-year discounted variable interest rate of 4.75% over a term of 25 years after which the Complainants could select an interest rate from the rates then offered by

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the Provider or in the absence of any such selection, a variable interest rate would apply. The nature of the variable rate is not specified in the Special Conditions. I note that the Complainants did not sign their acceptance of the Letter of Approval dated **08 December 2008**.

The Provider issued a further **Letter of Approval** dated **16 December 2008** to the Complainants which details as follows:

***“LETTER OF APPROVAL – PARTICULARS OF MORTGAGE LOAN***

*Loan Type: 1yr Disc Variable (<=80% LTV) Home Loan*  
*....*  
*Loan Amount: €137,000.00*  
*Interest Rate: 4.75%*  
*Term: 25 year(s)”*

**Special Condition 9** of the Letter of Approval dated **16 December 2008** is the same as **Special Condition 7** of the Letters of Approval dated **09 September 2008** and **17 September 2008** and **Special Condition 9** of the **Letter of Approval** dated **08 December 2008**, as outlined above. The Letter of Approval dated **16 December 2008** provided for a 1-year discounted variable interest rate of 4.75% over a term of 25 years after which the Complainants could select an interest rate from the rates then offered by the Provider or in the absence of any such selection, a variable interest rate would apply. The nature of the variable rate is not specified in the Special Conditions.

The **Acceptance of Loan Offer** attached to the Letter of Approval dated **16 December 2008** was signed by the Complainants and witnessed by their solicitor on **22 December 2008** 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] 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.*

*.....*

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

The Complainants contend that "on coming into the office to drawdown the mortgage, that new contract papers would have to be signed before we got the loan. This put us on the spot and we signed". It is clear to me that the Complainants considered the terms of their loan given that four separate Letters of Approval were issued to them. The Complainants ultimately accepted and agreed to the terms and conditions of the Letter of Approval dated **16 December 2008** after their solicitor had fully explained the terms and conditions to them. Therefore, I do not consider that the Complainants were "put on the spot" in signing the mortgage loan documentation.

Furthermore, I do not consider it unreasonable that the Complainants were required to sign the contract before drawing down the loan.

If the Complainants were not happy with the terms of the Letter of Approval dated **16 December 2008**, including the nature of the interest rate applicable to their loan, the Complainants could have decided not to accept the offer made by the Provider or sought to have a different interest rate applied. However, the Complainants signed and accepted the Letter of Approval dated **16 December 2008**, acknowledging that their solicitor had explained the terms and conditions attaching to the loan offer.

The Provider issued a letter to the Complainants dated **02 March 2009** which states as follows:

<i>LENGTH OF YOUR MORTGAGE:</i>	<i>25 Year(s)</i>	<i>MONTHLY INSTALMENT:</i>	<i>€685.85</i>
<i>LOAN AMOUNT:</i>	<i>€137,000.00</i>	<i>MONTHLY MORTGAGE PROTECTION PREMIUM:</i>	<i>€0.00</i>
<i>AMOUNT OF CHEQUE:</i>	<i>€137,000.00</i>	<i>TOTAL MONTHLY REPAYMENT:</i>	<i>€0.00</i>
<i>AMOUNT HELDBACK:</i>	<i>€0.00</i>		
<i>CURRENT INTEREST RATE:</i>	<i>3.5%</i>		

The Mortgage Loan Account Statements submitted in evidence show that the Complainants' mortgage loan account was drawn down on **03 March 2009** on a variable interest rate of 3.5%.

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I have not been provided with any evidence that the Complainants were offered a tracker interest rate on their mortgage loan which was subsequently withdrawn by the Provider when they ultimately drew down their loan. Even if the Complainants had been offered a tracker interest rate by way of approval in principle in the year previous in **2007**, there was no obligation on the part of the Provider to keep a loan approval open for an unlimited period of time. The Provider issued four Letters of Approval to the Complainants throughout **2008**, none of which contained a contractual or other entitlement to a tracker interest rate. The Provider was not offering tracker interest rates to new customers in **August 2008** when the Complainants applied for their loan. The Provider's decision to withdraw tracker interest rates from its suite of products on offer to new customers was a commercial decision that the Provider was entitled to make.

The evidence shows that the choice to take out the mortgage loan on the terms and conditions offered by the Provider was a choice that was freely made by the Complainants when they signed the Letter of Approval dated **16 December 2008** on **22 December 2008**.

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**

31 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.

