



<b><u>Decision Ref:</u></b>	2021-0318
<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 throughout the life of the mortgage
<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 €125,000 and the term of the loan was 20 years. The Revised Offer of Advance accepted by the Complainant on **16 August 2006** provided for a rate of 4.99% fixed for a period of five years after which the mortgage loan account was to revert to the Provider's "variable home loan rate".

The mortgage loan account was redeemed in **August 2019**.

**The Complainant's Case**

The Complainant submits that his loan documentation stated that on the expiry of his fixed term interest rate period, "the rate would revert to the [Provider] 'variable home loan rate'."

The Complainant submits that "this terminology ('variable home loan rate') is ambiguous and confusing and lacks any transparency" and that "it is not clear exactly what rate [the Provider] are talking about".

The Complainant submits that on **1 February 2018**, present in front of the Joint Committee on Finance and Public Expenditure and Reform, the Provider *“stated that “the ambiguity in the documentation we produced presented circumstances whereby our subsequent actions certainly disadvantaged our customers”.* The Complainant submits that *“it would equally appear that such ambiguous language was later used to the benefit of the bank in order to deny customers the possibility of a ‘tracker rate’.”*

The Complainant submits that *“[the Provider] has refunded other customers who were impacted by the use of this ambiguous and confusing terminology”.*

The Complainant is seeking:

- (a) The option of a tracker interest rate to be offered on the mortgage loan account ending **6861**; and
- (b) Redress and compensation.

### **The Provider’s Case**

The Provider submits that the **Revised Offer of Advance** dated **14 August 2006** provided for a *“fixed rate of interest at a rate of 4.99% until 31 July 2006”*. It states that the offer *“did not contain a condition specifying that a tracker interest rate would be made available to the customer at any future date”* and *“such a reference would have been necessary for a tracker interest rate to apply”*.

The Provider states that the interest rate applicable to the Complainant’s mortgage loan and what would transpire at the end of the fixed interest rate period was outlined in the **Special Conditions** of the Revised Offer of Advance. It details that the **Special Conditions** stated that on the expiry of the fixed interest rate period, the Complainant’s mortgage loan account *“would “automatically revert to the [Provider’s] Variable Home Loan Rate”* and in the event that *“an offer is made by [the Provider] and not accepted by the Applicant(s) the [Provider’s] Variable Home Loan Rate shall apply from 01 August 2011 and thereafter but otherwise in accordance with General Condition 2 of the Bank’s General Conditions...”*

The Provider states that **General Condition 2** of the Revised Offer of Advance did not state that a tracker interest rate would be made available to the Complainant on expiry of the fixed rate period. It details that this condition set out information as to the nature of the Home Loan Rate and specifically that it can be amended at any time.

The Provider submits that in accordance with the above condition, it issued a **Product Expiry Letter** to the Complainant on **16 July 2011**, prior to the expiry of the fixed interest rate period, advising the Complainant of the upcoming end of the fixed interest rate period. It details that the letter outlined that *“any borrowings you have on this fixed rate will automatically roll to the Standard Variable Rate”*.

The Provider acknowledges that the Revised Offer of Advance does not contain the term Standard Variable Rate as referred to in the Provider’s letter of **16 July 2011**. It states however that the Provider’s variable home loan rate and the Provider’s standard variable rate *“are the same i.e. a rate which can be amended at any time”* by the Provider. It states that *“By comparison a tracker interest rate is linked to the European Central Bank (ECB) base rate and so will only rise and fall in line with movements in the ECB base rate, which cannot be changed by [the Provider]”*.

The Provider details that the letter of **16 July 2011** also outlined the alternative interest rate products available to the Complainant at that time. It submits that as tracker interest rates had been withdrawn from the market by the Provider in **late 2008**, this product type was not included in the letter. The Provider further states that it *“never offered a tracker interest rate as a default rate upon the expiry of a fixed interest rate”*.

The Provider submits that the Complainant *“chose to move his mortgage to a Discounted Variable Interest rate of 4.65%”* by completing and signing a **Rate Change Letter of Authority** form dated **26 July 2011**.

The Provider submits that given the above, it *“does not consider that the customer could have formed any reasonable expectation of defaulting to a tracker interest rate at the end of the fixed rate period for his mortgage loan account in July 2011.”* It states that it *“is satisfied that the terms contained in the customer’s Revised Offer of Advance were sufficiently clear and transparent.”*

The Provider submits the Complainant’s mortgage loan was redeemed on **9 August 2019** and is no longer active with the Provider.

### **The Complaints for Adjudication**

The complaints for adjudication are;

- (a) The Provider failed to offer the Complainant the option of a tracker interest rate on his mortgage loan account on expiry of his 5 year fixed interest rate period in **2011**;  
and

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- (b) The Provider's terms and conditions in relation to interest rates within the Revised Mortgage Loan Offer is "*ambiguous and confusing and lacks any transparency*".

### **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 23 August 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.

In order to determine this complaint, it is necessary to review and set out the relevant provisions of the Complainant's mortgage loan documentation. It is also necessary to consider the details of certain interactions between the Complainant and the Provider between **2006** and **2011**.

The Provider issued a **Revised Offer of Advance** dated **14 August 2006** which details as follows;

"1. Amount of Credit Advanced: 125,000.00 Eur  
2. Period of agreement: 20 years 0 months  
3. Number of repayment instalments: 240

...  
Interest rate : 4.9900%

...  
WARNING

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

***This offer supercedes the offer issued on the 29<sup>th</sup> of November 2005***"

The **Special Conditions** of the mortgage loan detail as follows;

*"The [Provider] Home Loan fixed rate of interest applicable at the date of this letter is 4.9900% per annum and this rate will apply until 31 July 2011. At the end of the fixed rate period the loan will automatically revert to the [Provider] Variable Home Rate and [the Provider] may offer to continue the Advance at a Fixed Rate of Interest for such a period and at such a rate as it may decide. In the event of the Applicant electing to accept such an offer (if any), he/she must do so in writing, and the agreement must be signed by all parties to the mortgage in advance. If no such offer is made by [the Provider] or if an offer is made by [the Provider] and not accepted by the Applicant(s) the [Provider] Variable Home Loan Rate shall apply from 1 August 2011 and thereafter but otherwise in accordance with General Condition 2 of the Bank's General Conditions Relating to Advances by [the Provider] House Mortgages Section enclosed herewith, which varies the Interest Rate, and the mortgage conditions incorporated in the mortgage, and the said General Conditions relating to the Advances shall be construed accordingly."*

The **General Conditions relating to Home Loan Advances** state as follows;

"2) Interest is calculated on the balance outstanding on the home loan at the close of business each day from the date of release of the advance monies until the home loan is repaid. Interest so calculated is charged on the last day of the calender [sic] month in which release of funds takes place and on the last day of each calender [sic] month thereafter until the home loan is repaid.

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*Interest charged to the home loan is included in the outstanding balance on which interest is calculated. The outstanding balance on which interest is calculated will include any overdue repayments and other sums outstanding. Overdue repayments and other sums outstanding will be included in the outstanding balance from the date on which they are debited to the home loan account until the date on which they are discharged. If redemption of the home loan takes place mid month the amount required to redeem the loan will include interest from the first day of the month in which redemption takes place to the date of redemption. The monthly repayments will vary if changes in the Home Loan Interest Rate occur.*

*Variations in [the Provider's] Home Loan Rate may occur at any time and notice of each variation will be published at least once in a national daily newspaper. Interest is calculated on a compound basis.*

*Drawdown date of your mortgage will be the date on which the advance monies are issued. If drawdown date is before the date on which direct debits are raised in any given month the first repayment will be on the 1<sup>st</sup> of the month following the month in which drawdown takes place and will be interest only on the amount drawdown from the date of drawdown until month end. This repayment will be in addition to the number of repayment instalments shown on the schedule of important information. If drawdown date is after the date on which direct debits are raised in any given month interest will be charged on the last day of the month on the amount draw down from date of drawdown until month end. This interest will be added to your first normal repayments on the 1<sup>st</sup> month following the month which follows the month in which drawdown takes place. In this case the total number of repayments will be as shown under the number of repayments instalments in the schedule of important information.*

*APR calculations assumes that drawdown of the loan will take place on the 15<sup>th</sup> of the month following the month in which the Offer of Advance issues.”*

The Complainant signed the **Acceptance and Authority on 18 August 2006**, in the presence of his solicitor, on the following terms:

*“1. I/We the undersigned accept the within Offer of Advance on the terms and conditions set out above and overleaf and in the Bank's standard form of Mortgage.*

*2. I/We hereby irrevocably authorise my/our Solicitor to give the Undertaking referred to in clause 4(a) of the General Conditions and to do all things necessary to comply with the Undertaking.*

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3. *I/We hereby irrevocably authorise the Bank to pay the Advance through my/our solicitor."*

I note that the **Offer of Advance** envisaged that a fixed interest rate of 4.99% would apply to the mortgage account until **31 July 2011**, and at the end of the fixed interest rate period, the Provider "*may*" offer a further fixed interest rate period and that if no such offer was made or if an offer was made and it was not accepted, then the Home Loan Rate would apply. This was set out in the **Special Condition** to the mortgage loan and also **General Condition 2** of the **General Conditions relating to Home Loan Advances**.

I note that **General Condition 2** is somewhat lengthy and deals with a number of other matters related to the mortgage loan aside from the nature of the Home Loan Interest Rate which was applicable to the mortgage loan.

The section that I have emphasised above in **General Condition 2**, when taken together with the warning in the **Important Information** section of the **Offer of Advance**, outlines the **Home Loan Rate** to be one which may be adjusted by the Provider at any time. I do not accept the Complainant's submission that there was ambiguity or a lack of clarity about the nature of the "*Variable Home Loan Rate*". There was no real basis for the Complainant to reasonably expect that the term "*Variable Home Loan Rate*" to relate to a tracker interest rate, given that there is no reference to a tracker or the ECB rate in the mortgage loan documentation for that portion of their loan. The Complainant was offered a variable rate which could be increased or decreased by the Provider at any time.

In order for the Complainant to have a contractual right to a tracker interest rate on the mortgage loan account at the end of the fixed interest rate periods, that right would need to have been specifically outlined in the mortgage loan documentation, that was signed by the parties. However, no such right was set out in writing in the **Revised Offer of Advance** dated **14 August 2006** which was signed by the Complainants on **18 August 2006**. It is important for the Complainant to understand that the terms of a mortgage loan are governed by the terms contained in the **Loan Offer** which is signed by the parties.

If the Complainant was of the view that the **Offer of Advance** was ambiguous as to the type of interest rate that the loan would roll over to at the end of the fixed interest rate period, the Complainant could have decided not to accept the offer made by the Provider or sought clarification as to the interest rate that would apply at the end of the fixed interest rate period. Instead, the Complainant signed the **Acceptance and Authority** on **18 August 2006**, in the presence of his solicitor and confirmed that he accepted the loan offers on the terms and conditions set out therein.

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The Provider issued the Complainant a **Product Expiry Letter** dated **16 July 2011**, which detailed as follows:

*"The fixed rate period on your mortgage is coming to an end on **31/07/2011**, so not its time to start thinking about your next mortgage deal. Any borrowings you have on this fixed rate will automatically roll to the **Standard Variable Rate Default Option (APR 5.1%)**. Your monthly repayment on this rate is included in the table overleaf.*

*Alternatively you might choose a new variable or fixed rate. To help you make an informed decision the table below outlines the advantages and disadvantages of the default Standard Variable Rate compared to other variable and fixed rate mortgages.*

*...*

*If you choose one of the interest rate options, other than your Default option, please complete the enclosed Letter of Authority and return it to us within 10 days of the date on this letter. We will then move your existing Mortgage to the option chosen.*

*..."*

I note that the Provider's letter to the Complainant of **16 July 2011** detailed that if no response was received the interest rate would roll to the Provider's "*Standard Variable Rate*". I understand that the Standard Variable Rate is the same as the "*Variable Home Loan Rate*". The Provider should have used the same terminology as contained in the Complainant's mortgage loan documentation when referring to rate choices and options in subsequent correspondence with the Complainant. This would avoid any confusion as to interest rate options (contractual or otherwise) being offered by the Provider. I note that the letter of **16 July 2011** also detailed a number of Residential Fixed rate options, Discounted Variable rate options and Flexible Variable Rate options.

I note that tracker mortgages had been withdrawn from the market by the Provider from **mid-2008** and therefore the Complainant could not have been offered a tracker interest rate when the fixed rate expired in **July 2011**. Furthermore, for the avoidance of doubt I accept that the Complainant did not have a contractual or other entitlement to a tracker interest rate at the end of the fixed rate period which applied from **August 2006 to July 2011**.

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The Complainant completed and signed the **Letter of Authority** on **26 July 2011** selecting the discounted variable rate of 4.65%. The Complainant's handwritten note on the signed **Letter of Authority** stated "*Valuation waived as per [Provider employee] in your office. [Complainant's initials]*".

The Provider issued a letter to the Complainant dated **3 August 2011**, which stated:

*"Further to recent correspondence your mortgage has been transferred to our [redacted] flexible variable rate of 4.65%".*

As outlined above, the Complainant did not have a contractual entitlement to a tracker interest rate on their mortgage loan account and accordingly there was no contractual or other obligation on the Provider to offer the Complainant a tracker interest rate on his mortgage loan account at the end of the initial fixed interest rate period in **July 2011**.

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**

15 September 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.

