



<b><u>Decision Ref:</u></b>	2021-0362
<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 is secured on the Complainant's principal private residence.

The loan amount is €234,600 and the term of the loan is 40 years. The **Offer of Advance** which was signed on **17 July 2006** outlined that the interest rate applicable to the loan was "[the Provider's] Variable Home Loan Rate less 0.55%" from the date of drawdown until **31 January 2007**, with the Provider's "Variable Home Loan Rate" to apply thereafter.

**The Complainant's Case**

The Complainant states that he took out a mortgage with the Provider in **February 2006** in the amount of €234,600 through a third-party broker. At the time, the Complainant explains that he was only offered "a variable interest rate loan or a Fixed rate". The Complainant maintains that there was "absolutely no discussion of any offer of a tracker mortgage".

The Complainant states that the variable interest rate applicable to his mortgage loan account *“increased immediately from 3.69% in 2006 to 6.1% in 2008 and remained high for many years afterwards”*.

The Complainant states that he feels that he was *“ill-advised”* by the Provider and was not provided with all of the information at the time of his mortgage loan application. The Complainant submits that he was *“wrongly denied a tracker mortgage”* when he applied for his mortgage loan in **February 2006**. The Complainant asserts that he is *“now fully aware that there were tracker mortgages [being] offered to customers up to 2008”*.

The Complainant submits that *“even though I was dealing with [the Broker] directly, surely there is an [onus] on [the Provider] to make sure all brokers working on their behalf show good customer code of practice and give their customers all the available rate options”*.

The Complainant further submits that he was under *“too much financial strain”* to maintain his mortgage repayments and therefore had to move back in with his parents. Further, he contends that he has done everything to keep up with his mortgage repayments to include *“letting out rooms to various people who in turn turned out to be very unpleasant and gave [him] such mental stress”*. The Complainant notes that in **2019**, he began making arrangements to sell the mortgaged property the subject of his mortgage loan account *“because of the stress of maintaining the repayments”*.

The Complainant is seeking the following:

- (a) A tracker interest rate applied to his mortgage loan account;
- (b) Reimbursement of the overpaid interest, backdating to the date of draw-down; and
- (c) Compensation for mental stress caused as a result of the Provider’s alleged failure to offer him a tracker interest rate.

### **The Provider’s Case**

The Provider details that it issued an Offer of Advance in **February 2006** to the Complainant, through his broker, which outlined that the interest rate applicable to the loan was *“[the Provider’s] Variable Home Loan Rate less 0.55%”* which was 3.2% from the date of drawdown until **31 January 2007**. The Provider explains that the Complainant’s mortgage loan account would thereafter switch to the Provider’s *“Variable Home Loan Rate”*. The Provider asserts that there was no reference whatsoever to a tracker interest rate in the Complainant’s Offer of Advance dated **29 February 2006**.

The Provider notes that the Complainant signed and accepted the **Offer of Advance** on **17 July 2006** and in doing so confirmed that he accepted the terms and conditions attaching to the Offer of Advance, which were explained to him by his solicitor.

The Provider states that it *"is satisfied that the loan documentation relating to the customer's mortgage loan was sufficiently clear and transparent"* with regard to the Complainant's interest rate entitlements.

The Provider also submits that *"there was no contractual entitlement for the customer's mortgage loan to move to a tracker interest rate at the end of the initial discounted variable interest rate period, or at another future date"*.

The Provider states that it *"categorically reject[s]"* the Complainant's assertion that he was *"ill-advised"* by the Provider when he applied for his mortgage loan in **2006**. The Provider submits that it is *"not in a position to confirm or comment on any information or advice given to the customer by his broker during the application stage of his mortgage"* but acknowledges that tracker mortgages were available at the time of the Complainant's application. The Provider submits that *"no advice or recommendation regarding the product or suitability of the product was provided to the customer by the Bank"* and that communications prior to drawdown were limited to those with the Complainant's broker. Further, the Provider asserts that it is *"not responsible for the actions or advice provided to customers by this third party broker"*.

The Provider notes that the Complainant's mortgage loan account remained on the Provider's initial discounted variable interest rate until **September 2008** at which stage the mortgage loan account switched to the Provider's standard variable rate. On **19 September 2008**, the Provider states that it wrote to the Complainant to inform him that the mortgage loan account had transferred to the standard variable rate, which was 6.10%.

In **January 2016**, the Provider states that it wrote to the Complainant in response to an enquiry made by the Complainant requesting information on available interest rates at that time. The Provider notes that this letter outlined both the fixed and variable interest rates available at that time, and also enclosed a Rate Change Letter of Authority form, should the Complainant have wished to avail of any of the interest rate options on offer at the time. The Provider explains that in circumstances where it had withdrawn tracker interest rates from the market in **late 2008**, a tracker interest rate was not included in Provider's the letter.

The Provider notes that the Complainant completed the Rate Change Letter of Authority form on **04 February 2016** and selected to change the interest rate on his mortgage loan to a fixed interest rate of **3.85%** until **31 March 2019**.

The Provider explains that the Rate Change Letter of Authority form clearly stipulated what would transpire at the end of the fixed interest period. The Provider states that the Complainant could opt to choose a further fixed rate of interest for a certain period or where such an option was not available or selected by the Complainant, the mortgage loan account would revert to the Provider's standard variable rate.

The Provider submits that a fixed interest rate of 3.85% applied to the Complainant's mortgage loan account until **31 March 2019**. In **January 2019**, the Provider notes that it contacted the Complainant to inform him that the fixed interest rate was coming to an end and listed the interest rate options available to the Complainant. The Provider states that the letter explained that if the Complainant did not select from one of rate options available, their mortgage loan account would move to the Provider's standard variable rate.

In **April 2019**, the Provider states that it wrote to the Complainant in response to an enquiry made by the Complainant requesting information on available interest rates at that time. The Provider notes that this letter outlined both the fixed and variable interest rates available at that time, and also enclosed a Rate Change Letter of Authority form, should the Complainant have wished to avail of any of the interest rate options on offer at the time. The Provider explains that in circumstances where the Complainant did not exercise any of the options outlined in its letter, the mortgage loan account "*defaulted to the Standard Variable Rate in line with his mortgage documentation and has remained on that interest rate since*".

The Provider submits that in **April 2019** it also received a request from the Complainant for a 6-month moratorium on his mortgage loan because he was selling the mortgage property and did not have any tenants in it at the time of the request. The Provider states that it granted this payment break with effect from **April to September 2019** inclusive.

### **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 account in **2006**.

## **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 16 September 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.

Before dealing with the substance of the complaint, I note that the Complainant has submitted that he engaged the services of a third-party broker during the application process for his mortgage loan. As this complaint is made against the Respondent Provider only, it is the conduct of the Provider and not the broker which will be investigated and dealt with in this Decision.

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The Complainant was informed of the parameters of the investigation by this office, by letter, which outlined as follows:

*“In the interests of clarity, the complaint that you are maintaining under this complaint reference number is against [the Provider] and this office will not be investigating any conduct of the named Broker in the course of investigating and adjudicating on this complaint.”*

Therefore, the conduct of the third-party broker engaged by the Complainant, does not form part of this investigation and Decision for the reasons set out above.

The issue to be determined is whether the Provider incorrectly failed to offer the Complainant the option of a tracker interest rate when the Complainant applied for his mortgage loan in **2006**. In order to determine this, it is necessary to set out and review the relevant provisions of the Complainant’s mortgage loan documentation. It is also necessary to consider details of certain interactions between the Complainant and the Provider in **2006**.

The Complainant applied for a mortgage by way of **Mortgage Application Form** which was signed by the Complainant and his personal guarantor on **28 February 2006**. **Section 7** of the Mortgage Application Form is titled *“Mortgage Required”* and the Complainant selected *“Repayment”* under *“Type of Loan”* and *“Variable”* under *“Rate Type”*. The other rate options available for selection in the Mortgage Application Form were *“Tracker”*, *“Fixed”*, *“Discount”*, *“Split”* or *“Other”*.

The Provider issued an **Offer of Advance** dated **28 February 2006** to the Complainant which details as follows:

*“Amount of Credit Advanced: 234,600.00 Eur  
Period of agreement: 40 years 0 months  
...  
Interest Rate: 3.200 %*

The **Offer of Advance** dated **28 February 2006** also details as follows:

**“WARNING**

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

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The Special Conditions attaching to the **Offer of Advance** dated **28 February 2006** detail as follows:

*“The interest rate as quoted represents a reduction of 0.55% on the present [the Provider] Variable Home Loan Rate. The [Provider] Variable Home Loan rate less 0.55% will apply from initial date of drawdown until **31 January 2007** after which time your interest rate will revert to the then [the Provider] Variable Home Loan Rate.”*

**Condition 2** of the **General Conditions** attaching to the **Offer of Advance** dated **28 February 2006** details as follows:

*“...*

*The monthly repayments will vary if changes in the Home Loan Interest Rate occur. Variations in [Provider] Home Loan Rate may occur at any time and notice of each variation will be published at least once in a national daily newspaper...”*

**Condition 4 (a)** of the **General Conditions** attached to the **Offer of Advance** details as follows:

*“Before the Advance is drawn down the following requirements must be complied with:*

*.....*

*The mortgage which must be on the Bank’s standard form must be a first legal mortgage and will secure the following: (i) The advance together with interest thereon at the Home Loan Interest Rate (varying) and...”*

The Complainant signed the **Acceptance and Authority** on **17 July 2006** on the following terms:

*“I/we the undersigned accept the within Offer of Advance on the terms and conditions set out above and overleaf and in the Banks standard form of mortgage”.*

The **Acceptance and Authority** was signed and witnessed by the Complainant’s solicitor on the following terms:

*“Witnessed by me a Solicitor having explained the nature and contents hereof to the Applicant(s)”*

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The mortgage loan account was subsequently drawn down on **31 August 2006**.

It is clear from the **Offer of Advance** that the Provider offered the Complainant a discounted variable interest rate of 3.2% for a period from the initial drawdown of the mortgage until **31 January 2007**, after which the interest rate would switch to the Provider's "*Variable Home Loan Rate*".

Whilst I note that there is no mention as to what the Provider's variable interest rate would be after **31 January 2007** in the loan documentation, the **Offer of Advance** clearly sets out the nature of the variable rate to be one which may be increased or decreased by the Provider at any time. The **Offer of Advance** does not contain any reference to the interest rate varying in accordance with the ECB rate.

The particulars of the **Offer of Advance**, including the applicable interest rate, were accepted by the Complainant by signing the **Acceptance and Authority** which was also signed and witnessed by the Complainant's solicitor who, by doing so, confirmed that he had explained the nature and contents of the **Offer of Advance** to the Complainant.

The Complainant appears to be of the view that he was entitled to be offered a tracker interest rate when he applied for his mortgage loan in **February 2006** but was denied such a rate. In circumstances where the Complainant made his loan application through a third-party broker, the Provider (as per its agreement with third party brokers) did not have any contact with the Complainant prior to the date of drawdown of the mortgage. While I acknowledge that tracker interest rates were available from the Provider when the Complainant applied for his mortgage loan through a third-party broker in **2006**, there was no contractual or other obligation on the Provider to offer the Complainant a tracker interest rate on his mortgage loan account in **2006** or indeed at any other time during the term of the loan.

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, with the terms and conditions of the mortgage loan having been explained to him by his solicitor. It is important for the Complainant to understand that there is no reference whatsoever to a tracker rate of interest in the loan documentation that issued to him, and which was accepted by him. If it was the case that the Complainant was of the view that a variable interest rate loan was not suitable for him, then the Complainant could have decided not to sign the **Acceptance and Authority** 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.

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

11 October 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.**