



<b><u>Decision Ref:</u></b>	2021-0368
<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 private dwelling house.

The loan amount was for €95,000 and the term of the loan was 25 years. The **Letter of Offer of Mortgage Loan** dated **08 August 2003** provided for a fixed interest rate of 2.75% for the first 12-months of the loan with the Provider's variable interest rate to apply thereafter.

**The Complainant's Case**

The Complainant submits that he drew down mortgage loan account ending **1076** in **December 2003** for the sum of €95,000 with a fixed interest rate of 2.75% applying for the first year of the loan, with the Provider's variable interest rate to apply thereafter.

The Complainant states that he received a letter from the Provider dated **22 December 2003** informing him that he would be "*advised*" of the interest rate options available to him prior to the expiration of the 1-year fixed interest rate.

The Complainant submits that in **February 2004**, the Provider began offering “*competitive*” tracker interest rates which were “*below*” his then fixed interest rate.

The Complainant states that by way of letter dated **09 December 2004**, the Provider furnished him with “*sample rates*” which did not include a tracker rate of interest rate. The Complainant maintains that the Provider failed to “*provide adequate information in Dec 2004*” regarding the interest rate options available to him. The Complainant also contends that the Provider did not “*strictly comply*” with its letter dated **22 December 2003**, which stated that the Provider would “*advise*” the Complainant as to his interest rate options at the expiry of the 1-year fixed interest rate period. The Complainant asserts that he was deprived or “*at least not informed as promised*” of all the interest rate options that were available to him at that time.

The Complainant notes that in **December 2004**, his mortgage loan account defaulted to the Provider’s standard variable rate. In **January 2006**, the Complainant submits that he opted to apply a further 3-year fixed interest rate to his mortgage loan account from **16 January 2006**. The Complainant states that he acknowledges that he could have opted for a tracker interest rate in **January 2006** but decided otherwise.

The Complainant asserts that his complaint is “*based on the difference between “advising me on options” and then only providing “sample options” avoiding the competitive options which [the Provider] had enhanced during my 1 Year Fixed New Mortgage introductory offer*”. The Complainant maintains that there is a 13-month period from **December 2004** to **January 2006** when he was not provided with adequate information regarding the availability of tracker interest rates. The Complainant contends that this “*gap / effect only lasted until Jan 2006 when [the Complainant] reviewed the situation and got enough detail to make [his] decision*”.

The Complainant is seeking for the Provider to acknowledge its “*erroneous*” letter from **December 2004** which “*had a potential 13 month time bound impact and make some good marginal costs which may have been involved*”

### **The Provider’s Case**

The Provider details that that the Complainant applied for a home loan mortgage in the amount of €95,000 in **July 2003**. The Provider states that it issued a **Letter of Offer of Mortgage Loan** to the Complainant on **08 August 2003** for the sum of €95,000 repayable over a term of 25 years, with a fixed interest rate of 2.75% applying for the first year of the loan.

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The Provider explains that the Provider's variable interest rate was to apply on the expiry of the initial fixed interest rate period unless the Complainant selected another interest rate option on offer by the Provider. The Provider notes that the **Letter of Offer of Mortgage Loan** was signed and accepted by the Complainant and witnessed by his solicitor on **02 September 2003** and the mortgage loan account was drawn down on **22 December 2003**.

The Provider submits that it sent a fixed interest rate rollover letter to the Complainant on **09 December 2004** to advise the Complainant of the expiry of the 1-year fixed interest rate period and to provide the Complainant with a sample of the interest rate options available to him. The Provider submits that this letter also sought "*further instructions as to the rate [the Complainant] wish[es] to avail of*" from the date of the expiry of the fixed interest rate period. The Provider further submits that this letter advised the Complainant that in the absence of any instruction from the Complainant, the loan would switch to the Provider's standard variable interest rate.

The Provider notes that on **22 December 2004**, the Complainant's mortgage account switched to the Provider's standard variable interest rate of 3.30%, as no instructions had been received from the Complainant.

The Provider asserts that the **Letter of Offer of Mortgage Loan** did not contain a contractual entitlement to a tracker interest rate at the end of the fixed interest rate period or at any time during the term of the mortgage loan. The Provider further asserts that its obligations to the Complainant was to honour the terms set out in the loan documentation, which it states that it did and continues to do. In addition, the Provider submits that "*the Bank and its staff do not advise customers on interest rates or which rate to choose*".

The Provider highlights that its interest rates were "*publicly advertised through our website and in our branches*" and that the decision as to what interest rate applies to a mortgage loan account "*rests solely with the customer subject to availability of rates and the terms and conditions of the Letter of Offer*".

The Provider submits that the option to apply for a tracker interest rate was available to the Complainant from the when he applied for his mortgage loan, until tracker interest rates were withdrawn by the Provider in **late 2008**. The Provider notes however that there is no evidence on its file that demonstrates that the Complainant applied for or enquired about tracker interest rates at any time before receiving the Complainant's query on **17 December 2012**, at which stage tracker interest rates had been withdrawn.

### **The Complaint for Adjudication**

The complaint for adjudication is that the Provider incorrectly failed to inform the Complainant of the availability of tracker interest rates on the expiry of the fixed rate interest period on mortgage loan account ending **1076** in **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.

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 15 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.

In order to determine this complaint, it is necessary to consider the relevant provisions of the Complainant's mortgage loan documentation and details of certain interactions between the Provider and the Complainant from **2004** to **2006**.

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The Complainant applied for a mortgage loan with the Provider in **July 2003** on foot of which the Provider issued a **Letter of Offer of Mortgage Loan** to the Complainant dated **08 August 2003**, which details as follows:

<i>"Mortgage Loan Amount</i>	<i>€95,000.00</i>
<i>Loan Term</i>	<i>25 years/300 months</i>
<i>...</i>	
<i>Applicable Interest rate (at Offer Date)</i>	<i>2.75% Fixed, for 1 years after which the rate will revert to the Bank's Variable Interest Rate, unless borrower(s) avail(s) of another interest rate option then on offer by the Bank. (Rates include margin of 0.00%). APR 3.296%"</i>

**Condition 3.2** of the **General Terms and Conditions of Offer of Mortgage Loan** details as follows:

**"3.2 FURTHER FIXED INTEREST RATE OPTIONS/CHOICE**

*The Bank in its sole discretion, at the end of any fixed interest rate period, may provide any further fixed interest rate period, but if it elects not to do so or the Bank offers the Customer a fixed interest rate choice at the end of any fixed interest rate period and the Customer fails to exercise this choice then the Mortgage Loan will convert to a variable interest rate Mortgage Loan."*

**General Condition 3.5** of the **General Terms and Conditions of Offer of Mortgage Loan** details as follows:

**"3.5 VARIABLE INTEREST RATE MORTGAGE LOAN**

*In the case of a variable interest rate Mortgage Loan the interest rate applicable, at any time, will vary according to the prevailing rates set generally by the Bank from time to time, subject to these conditions."*

**Part 5- Statutory Notices and Other Notices** of the **Letter of Offer of Mortgage Loan** states as follows:

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

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The **Acceptance and Consent** section of the **Letter of Offer of Mortgage Loan** was signed by the Complainant and witnessed by his solicitor on **02 September 2003** on the following terms:

*"I/We accept the conditions of this Offer and agree to mortgage the property to the Bank as Security for the Mortgage Loan."*

In the interest of clarity, I note that the Provider submits that the Complainant's mortgage loan account was drawn down on **22 December 2003**, however the mortgage loan statements provided in evidence indicate that the loan was drawn down on **19 December 2003**.

It is clear that the **Letter of Offer of Mortgage Loan** provided that a fixed interest rate of 2.75% would apply for the first year of the loan with the Provider's standard variable interest rate to apply on the expiry of the fixed rate period, unless the Complainant chose to apply another interest rate on offer by the Provider. The nature of the Provider's standard variable rate was one that could be adjusted by the Provider as opposed to a tracker interest rate that fluctuated in line with the variations to the ECB refinancing rate.

Following the drawdown of the mortgage loan, the Provider issued a letter to the Complainant dated **22 December 2003** which states as follows:

*"You will be advised of your interest rate options before 22/12/2004 and interest instruction will be required prior to that date."*

The Complainant has provided a copy of a **press release** issued by the Provider on **29 January 2004** in evidence in relation to a new offering of "*competitive Tracker rates*" effective from close of business on **30 January 2004**. The press release contained the following tracker interest rates:

"

<i>Loan to Value</i>	<i>Mortgage Amount</i>	<i>Interest Rate</i>
<i>Up to 60%</i>	<i>All amounts</i>	<i>2.95%</i>
<i>Above 60%</i>	<i>Mortgages less than €250,000</i>	<i>3.25%</i>
<i>Above 60%</i>	<i>Mortgages greater than €250,000</i>	<i>3.10%</i>

*[Provider's] existing range of mortgage interest rate options are:  
Standard Variable Rate 3.3% APR 3.3%*

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*1 Year Fixed Rate 2.75% APR 3.3%”*

Prior to the expiry of the fixed interest rate period on **22 December 2004**, the Provider issued a letter to the Complainant dated **09 December 2004** which details as follows:

*“The fixed rate period on you above home mortgage expires on 22/12/2004 and I should be obliged for your further instructions as to the rate you wish to avail of from that date. In the absence of any reply the Bank’s current standard Variable rate (plus the existing agreed adjustment of 0.00%) will be applied but may subsequently be revised at your request to any fixed rate option available in the future. The payments quoted below do not include any PPP cover which you may have taken upon drawdown of the mortgage.*

*Here is a **sample** of the rates currently on offer from [the Provider]. To avail of a fixed rate please complete the attached tear-off section below and return it to this Department immediately. **Please note that the rates quoted are valid as of to-days date and are subject to variation prior to the rollover date above.***

<u>Rate</u>	<u>%</u>	<u>APR%</u>	<u>Repayment</u>
Variable rate	3.300	3.3470	463.70
1 Year Fixed	3.300	3.3470	463.70
3 Year Fixed	4.250	3.6030	510.70
5 Year Fixed	4.750	3.9680	536.39
10 Year Fixed	5.400	4.9020	570.75
[..]			”

I have not been provided with any evidence that would indicate that the Complainant selected any of the interest rates offered by the Provider by signing and returning the options form to the Provider therefore the Complainant’s mortgage loan account converted to the Provider’s standard variable interest rate of 3.30% on **22 December 2004**.

The Complainant sent a written request to the Provider on **09 January 2006** seeking to apply a 3-year fixed interest rate of 3.98% to his mortgage loan account. This written request stated as follows:

*“Please fix my mortgage for 3 years at 3.98% or less.”*

In response to this request, the Provider issued a letter dated **16 January 2006** to the Complainant which details as follows:

*“With reference to your recent request, I confirm that a fixed interest rate of 3.98% (including the existing interest adjustment of 0.00%) will apply to your home loan from 16 January 2006 for a period of 3 years [....]”*

*You will be entitled, with the Bank’s prior consent, to withdraw from the fixed rate agreement either by repayment in full of the Home Mortgage and interest accrued to the date of repayment or by conversion to the variable interest rate then prevailing [....]”*

The Complainant clearly chose to fix the interest rate on his mortgage loan account in **January 2006** for a further 3 years and the Provider duly complied with this request.

The Complainant appears to be of the view that the Provider’s letter dated **09 December 2004** only provided him with a “sample” of the interest rates available at that time and therefore was not properly advised of all the interest rate options available to him, to include tracker rates of interest.

It is important for the Complainant to understand that while tracker interest rate options may have been on offer by the Provider at the time of the expiry of the initial fixed interest rate period on his mortgage loan account, the Provider was under no obligation to offer the Complainant a tracker rate interest option in respect of his mortgage loan account. The Complainant’s loan agreement with the Provider contained no contractual entitlement on the part of the Complainant to a tracker interest rate at the end of the fixed interest rate period. The letter from the Provider to the Complainant dated **09 December 2004** outlined the sample rates of interest available from the Provider and applicable to the Complainant’s mortgage loan account on that particular day, in line with the terms and conditions of the **Letter of Offer of Mortgage Loan**. It would appear to me that these interest rates were considered to be samples because the rates were subject to variation prior to **22 December 2004**, the expiry of the fixed interest rate period.

The Provider explains that its staff do not give advice on interest rates, but rather provide information on the interest rates available on request, either at application stage or at any time during the lifetime of the mortgage loan. In addition, the Provider contends that its available mortgage interest rates were publicly available on its website and in its branches. If the Complainant was not satisfied with the interest rate options offered by the Provider in **December 2004**, the Complainant could have contacted the Provider to explore other potential interest rate options with the Provider such as tracker interest rates.

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However, the Complainant did not do so, and his mortgage loan account converted to the Provider's standard variable rate. The Complainant was free to contact the Provider at any stage to explore the option of applying the tracker interest rates outlined in the press release of **29 January 2004** to his mortgage loan up until the Provider withdrew its tracker interest rate offering from the market in later **October 2008**. Even if the Complainant had sought to apply a tracker interest rate to his mortgage loan account, it would have been within the Provider's commercial discretion as to whether or not it wished to accede to such a request.

It was not until **January 2006** that the Complainant decided to approach the Provider to explore interest rate options, specifically fixed interest rate options. While the Complainant acknowledges that he could have applied a tracker interest rate to his mortgage loan account at this time, the Complainant chose to apply a 3-year fixed interest rate. When the 3-year fixed interest rate period expired on **16 January 2009**, tracker interest rates were no longer on offer by the Provider.

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**

14 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.

