



<b><u>Decision Ref:</u></b>	2021-0386
<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 Refusal to move existing tracker to a new mortgage product
<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 €120,000 and was repayable over a term of 20 years. The **Loan Offer** dated **24 August 2007** provided for a fixed interest rate of 5.44% to apply for the first five years of the loan, with the Provider's "*variable base*" rate to apply thereafter.

**The Complainant's Case**

The Complainant submits that she moved her mortgage loan from a third-party provider to the respondent Provider in **August 2007**. The Complainant states that she opted to fix her mortgage loan at a rate of 5.44% for a period of five years. The Complainant explains that a tracker interest rate applied to the mortgage loan that she held with the third-party provider, therefore she presumed that when she switched to the respondent Provider, her new mortgage account ending **5172** would be able to "*revert to a tracker rate when the fixed term was over*".

The Complainant submits that she specifically requested that a tracker interest rate would apply on the expiry of the 5-year fixed interest rate period and was led to believe that the Provider's tracker rate and variable rate *"were equivalent products"*.

On the expiry of the 5-year fixed interest rate period, the Complainant asserts that she was informed that she could not avail of a tracker rate *"and had to revert to a variable rate"*.

The Complainant maintains that the Provider *"should have offered [her] the option of a tracker rate when [her] fixed term ended"*. The Complainant submits that the Provider was *"not transparent and did not advise [the Complainant] of the options available"*. The Complainant also asserts that after the fixed rate period had expired, she *"approached [the Provider] on several occasions regarding this issue and was told that tracker rates are no longer being offered"*.

The Complainant submits that her *"complaint/issue is that [she] was not offered the option of reverting to a tracker rate when [her] fixed term was up, even though tracker rates were still being offered at that time"*.

The Complainant contends that the Provider did not act in her best interests *"when providing advice on switching [her] tracker mortgage to a fixed rate"*. The Complainant further contends that she was not provided with *"a clear explanation of the implications of switching"*, *"details of the advantages and disadvantages"* of tracker interest rates compared to the alternative rates on offer and *"a comparison of the cost of monthly repayments of [her] tracker rate mortgage and the rates being offered"*.

In addition, the Complainant submits that the variable base rate (referenced in her loan documentation) is *"profoundly ambiguous"* and should have never been used in a loan offer. The Complainant therefore submits that under the *contra proferentem* rule *"legislation favours the consumer when ambiguous terms are used in contracts"*.

The Complainant is seeking the following:

- (a) That her mortgage loan account be switched to a tracker variable rate; and
- (b) Compensation

### **The Provider's Case**

The Provider explains that the Complainant approached the Provider in **August 2007** seeking to move her mortgage from another financial institution to the Provider.

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The Provider states that the fixed interest rate on the then existing mortgage was due to expire on **19 September 2007** and, as contracted, was due to convert to a tracker interest rate of 4.89% (ECB+0.80% margin).

The Provider submits that the Complainant applied for a mortgage, by completing a **Home Loan Application Form** on **20 August 2007**. The Provider details that the Complainant applied for a loan in the amount of €120,000 and the stated purpose of the loan was to refinance her then existing mortgage with another financial institution and a personal loan.

The Provider asserts that **Home Loan Application Form** contains details of the various interest rates from which the Complainant could have chosen, which included a tracker interest rate. The Provider notes that the Complainant indicated on the **Home Loan Application Form** that she wished to apply for a fixed interest rate option. The Provider further outlines that when applying for the fixed interest rate, the Complainant also completed an **Application for a Fixed Rate Mortgage**, in which the Complainant requested that a 5-year fixed interest rate of 5.44% be applied to her mortgage loan account. The Provider submits that the **Application for a Fixed Rate Mortgage** form, completed by the Complainant on **20 August 2007**, provides that on the expiry of the fixed interest rate period, the Complainant's loan would convert to the applicable variable rate then prevailing. The Provider asserts that this **Application for a Fixed Rate Mortgage** "*does not state that [the Complainant's] loan will convert to a tracker interest rate*".

The Provider contends that "*it was standard procedure to inform customers of all interest rate options that were available at the time of application*". The Provider notes that tracker interest rates were available at the time of the Complainant's mortgage loan application and submits that "*it was the obligation of the customer to apply for the required interest rate*". The Provider asserts that it has complied with its obligations under the applicable legislation at the time of the application.

The Provider details that it subsequently issued a **Loan Offer** dated **24 August 2007** to the Complainants which provided for a loan amount of €120,000, with a fixed interest rate to apply for the first 5 years of the loan after which a "*Variable Base Rate*" would apply.

The Provider states that it issued a **Suitability Statement** to the Complainant on the same date which detailed "*the principal features of the mortgage*" and "*the reasons why the mortgage was deemed suitable*" for the Complainant.

The Provider submits that the Complainant signed the **Acceptance Form** on **29 August 2007** and the loan cheque was subsequently issued on **27 September 2007** “*at the lower applicable 5 year fixed interest rate of 5.33%*”.

The Provider notes that it later withdrew tracker interest rates from the market in **late 2008**.

On the expiry of the 5-year fixed interest rate period in **September 2012**, the Provider explains that the Complainant’s mortgage loan account ending **5172** converted to “*the applicable variable rate then prevailing which was 4.33%*”. The Provider notes that the Complainant’s mortgage loan account has remained on the Provider’s variable rate.

The Provider contends that the Complainants did not have a contractual entitlement to be offered a tacker interest rate at the end of the 5-year fixed interest rate period.

### **The Complaint for Adjudication**

The complaint for adjudication is that the Provider incorrectly failed to offer the Complainant a tracker interest rate on the expiry of the fixed interest rate period in **2012**.

### **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 5 October 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 between **2007** and **2012**.

The Complainant applied for a mortgage loan with the Provider by completing a **Home Loan Application Form** on **20 August 2007**. The **Home Loan Application Form** details as follows:

<i>"Loan Required</i>	<i>€120,000</i>
<i>Term of Loan</i>	<i>20 Yrs"</i>

In addition, under the 'Interest Rate' section of this form, there are four options available to include "*Variable*", "*Tracker*", "*Fixed*" and "*Split*". The Complainant selected the option of a fixed interest rate. The 'Interest Rate' section of this form also provides as follows:

*"If choosing a fixed rate, please complete the Fixed Rate section enclosed which outlines the terms and conditions associated with fixed rate loans...*

*If choosing Tracker, please complete the Tracker form enclosed"*.

The Complainant also completed and signed the associated **Application for a Fixed Rate Mortgage Form** on **20 August 2007** which states as follows:

*"I/We wish to apply for a fixed rate of 5.44% for the first 5 year(s) of my/our mortgage.*

*I/We understand that when this fixed rate period has expired the loan will **convert to the applicable variable rate** then prevailing. The variable interest rate basis will be specified in the loan offer letter issued by [the Provider] (if the loan is approved).*

/Cont'd...

**IMPORTANT**

*I/We understand that in event of there being a change in interest rates before [the Provider] have issued our loan cheque, [the Provider] will apply the fixed rate currently available. If there is no other fixed rate available, the appropriate variable rate will apply.*

...

*This document forms part of the application for a mortgage, the conditions and the declaration of which also govern this document.*

*I/We confirm that we understand the workings of the Fixed Rate and wish to proceed with this application.”*

I note that tracker interest rates were on offer generally by the Provider when the Complainant applied for the mortgage loan in **August 2007**. I have not been provided with any evidence to suggest that the Complainant completed a “*tracker form*” which appears to have been required if the Complainant wished to pursue the option of applying for a tracker interest rate mortgage loan.

Instead, the Complainant applied for a mortgage loan on a fixed interest rate, having acknowledged that she understood the workings of the fixed rate and that a variable rate would apply at the end of the 5-year fixed interest rate period.

The Provider subsequently issued a **Suitability Statement** together with a **Loan Offer** to the Complainant on **24 August 2007**.

The **Suitability Statement** dated **24 August 2007** details as follows:

*“...This letter outlines the principal features of the mortgage that you have chosen and the reasons why this mortgage is deemed suitable for you.*

*This loan had been individually assessed for affordability and the repayments have been deemed to be sustainable based on the information you have provided and you believe that you will be able to meet these requirements based on your circumstances.*

....

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Interest Rate Type

**Fixed Rate**

You have opted to fix your interest rate for the first 05 years, as you require your repayments to be protected against interest rate variations for this period. At the expiry of the fixed rate term your loan will revert to the Standard Variable Rate which will mean that your repayments will be subject to fluctuation in line with interest rate variations, unless you choose to fix your interest rate for an additional period at the prevailing fixed interest rates.

Please sign the enclosed Acceptance Form in order to accept your loan offer, and to acknowledge and accept the terms of this suitability statement.”

The **Loan Offer** dated **24 August 2007** details as follows:

“Total Amount of loan:	€120,000
...	
Interest Rate (Yrs 1-5):	5.44% (see Important Note)
After 5 years:	Variable Base (currently 05.25%)
Repayment Period (Years):	20 Approx.

**Important Note on Fixed Rate:**

The fixed rate shown is the current rate. If there is an interest rate change before the main loan cheque is issued, the rate will be altered to the fixed rate on offer at the date of cheque issue, and this is the rate that will apply to the loan account. If no fixed rate is available at that time, the variable rate will apply.

...

There are a few special conditions-set out below that must be met before the loan can be completed. If these conditions are not fulfilled, we can unfortunately not issue your loan cheque.

...

**Conditions:**

- Subject to this Offer Letter, dated 24/08/07 09:59, being signed by the borrower(s) in the Acceptance Form and the full signed Offer Letter being returned to [Provider].

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- *Your existing loan with [named credit union] being paid off prior to or on execution of the mortgage deed.*
- *Subject to evidence that the Personal Loan with [third party provider] has been paid off being submitted to [Provider] prior to cheque issue.*

...

- *Subject to the first 5 years of this mortgage being fixed at a 5 year fixed interest rate.*

...

- *Your existing mortgage with [third party provider] being paid off prior to or on execution of the mortgage deed*

*If your Home Loan is with another Financial Institution and you are applying to move this mortgage to [Provider], you have two options:*

- 1) *You may use your own solicitor and pay the costs yourself*
- 2) *You may avail of the [redacted] scheme provided by [named company] and [other named company]*

*... you will be able to move your mortgage without having to payout any cash in respect of legal services and outlays such as registration fee or search fees for investigation of title”.*

The **Special Conditions** clearly state that the Complainant was required to pay off her existing mortgage with a third-party provider and other personal loans before drawing down her new mortgage with the Provider.

The **General Conditions for Home Loans** details as follows:

**“3. Acceptance of terms and conditions:** *By taking the loan from [the Provider], the borrower accepts all the terms and conditions set out in the application form, offer letter, these general conditions and mortgage.*

**9. Fixed Rate Loans:** *Where a [customer] applies for a fixed rate, it will be for a set period of time. When the fixed rate period ends the loan will convert to a variable interest rate. If [the Provider] is then offering a Fixed Home Loan rate for a variety of defined periods, the borrower may opt to convert to a fixed rate again at that point, and defer conversion to a variable rate.*

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*An early redemption charge is payable in the following cases where the fixed rate period as not expired:*

- 1. If a capital payment of full repayment is made to the loan.*
- 2. If the loan is converted to a variable rate/tracker rate.*
- 3. If the loan is converted to another fixed rate.*

*Please sign the enclosed **Acceptance Form** in order to accept your loan offer, and to acknowledge and accept the terms of this suitability statement.”*

**General Condition 9** of the Provider’s **General Conditions for Home Loans** confirms that on the expiry of the fixed interest rate period, the mortgage loan will convert to a variable interest rate. The **Suitability Statement** also clearly states that a standard variable interest rate will apply on the expiry of the 5-year fixed interest rate period.

There is no reference to the mortgage loan converting to a tracker rate of interest when the fixed interest rate period ends.

The Complainant completed and signed the **Acceptance Form** attached to the **Suitability Statement** and **Loan Offer** on **29 August 2007** on the following terms:

*“I/We, the undersigned, accept the offer of an advance made to me/us by [the Provider] on the terms and conditions set out in:*

- (i) This Offer Letter in replacement of all previous offer letters;*
- (ii) The General Conditions for [the Provider] Home Loans;*
- (iii) [The Provider’s] Mortgage Conditions;*
- (iv) [The Provider’s] standard Form of Home Loan Mortgage; and*
- (v) The Rules of [the Provider].*

*copies of which I/we have received and in respect of which I/We have been advised upon by my/our solicitor.*

....

*I/We confirm that I/we have read the suitability letter which sets out the reasons why the mortgage options selected by me/us are considered suitable, and agree that the options are appropriate for me/us and suit my/our personal circumstances.*

/Cont’d...

*I/we also acknowledge that any subsequent changes to any of the options will be made by me/us on an execution-only basis which means that I/we will have selected the revised options without having received any advice as to the suitability of the new options”.*

The Complainant also signed an application form on **29 August 2007** to switch her mortgage from a third-party provider to the Respondent Provider. A copy of this application form has been submitted in evidence.

The Provider subsequently issued a letter to the Complainant on **26 September 2007**, which informed the Complainant of the issuance of her loan cheque in the amount of €120,000 to her solicitor.

This letter details as follows:

*“I refer to our letter of the 24/08/2007. I am pleased to inform you that your loan cheque has been forwarded to your solicitors [Name]. I understand that an appointment has been made with your solicitor to complete the transaction.*

*The amount of the cheque will be made up as follows:*

<b>Total</b>	<u>€120,000.00</u>
<b>Net loan</b>	€120,000.00

*Term of Loan: 20 years Approx.*

*Rate of Interest: 5.33% Base Rate Yrs 1-5*

*After 5 years the Interest Rate will be: Variable Base Rate (currently 05.25%)*

*Daily Interest €17.52*

...

*We enclose [the Provider’s] standard Home Loan Mortgage and booklet of conditions for your attention in compliance with the Consumer Credit Act, 1995. This Mortgage and booklet should be retained for your records.*

...

/Cont’d...

*THE PAYMENT RATES ON THIS HOUSING LOAN MAY BE ADJUSTED BY [the Provider] FROM TIME TO TIME (Does not apply while the loan is at a fixed rate)."*

The mortgage loan was subsequently drawn down on **27 September 2007** on a lower fixed interest rate of 5.33% as there was an interest rate change before the loan cheque issued.

It is clear to me that the **Loan Offer** envisaged an initial 5-year fixed interest rate and thereafter the variable base rate. The **Loan Offer** does not contain any reference to a tracker interest rate that varies in line with the changes to the ECB rate.

The Provider was free to exercise its commercial discretion in making a loan offer to the Complainant providing for such terms and conditions that it considered appropriate; equally, it was open to the Complainant to decline that offer if she was dissatisfied that the terms and conditions did not provide for a tracker interest rate from the date of drawdown or if she was dissatisfied with the interest rate that would apply at the end of the initial 5-year fixed interest rate period. The Complainant signed the mortgage loan having confirmed that her solicitor had explained the terms and conditions of the mortgage loan to her.

The Provider subsequently withdrew its tracker interest rate products from the market in **late 2008**. A press release issued by the Provider in **late 2008** states as follows:

*"[The Provider] today announced that it will no longer offer Tracker Mortgages for new mortgage applicants. This change is effective from close of business today [date redacted].*

...

*Existing customers with Tracker Mortgages are not affected. Customers who already have an offer of a Tracker Mortgage, but which is not yet drawn down, will still be able to avail of the Tracker mortgage within the terms of their loan agreement."*

The Complainant wrote to the Provider on **25 May 2009**, requesting a reduction in her monthly loan repayments. This letter states as follows:

*"I would be very grateful if you would kindly consider renegotiating the terms of my mortgage in order to reduce my monthly repayments, which are increasingly becoming more difficult for me to meet."*

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The Complainant subsequently completed a **Conversion to Interest Only** form on **21 October 2009**. This allowed the Complainant to make interest only payments on her mortgage loan account ending **5172** for a period of 6 months.

The Complainant later sent a letter to the Provider on **10 March 2010**, which states as follows:

*"I would like to arrange a meeting with you to discuss my mortgage account. I have been on interest only repayments for the past few months and this option is due to end in **May 2010**. I am not in arrears on my mortgage at present, but when the interest only repayment option ends, I will find it increasingly difficult to maintain my mortgage repayments, due to a major reduction in my income.*

*...I would be very grateful if you would kindly consider renegotiating the terms of my mortgage in order to reduce my monthly repayments, which are increasingly become difficult for me to meet."*

The Complainant completed a further **Conversion to Interest Only** form on **19 April 2010** to make interest only payments on her mortgage for a period of 6 months.

The Complainant issued a further letter to the Provider on **12 October 2010**, in which the Complainant requested that the Provider renegotiate the terms of the Complainant's mortgage in order to reduce monthly repayments. The Complainant completed an **Application for an Interest Only Facility** to apply for an interest only repayment period of 12 months on **03 November 2010**. However, the Provider declined the Complainant's request, noting as follows:

*"Thank you for your recent request in relation to an Interest Only facility on the above loan accounts.*

*Unfortunately, this request has been turned down by our underwriting department. We advise that you extend the term of your loan to 24 years which will reduce your monthly repayment."*

In response to this letter, the Complainant wrote to the Provider stating as follows:

*"Please note I wish to extend to extend term of my mortgage to 23 years"*

A **Term Extension** form was completed and signed by the Provider on **17 December 2010**.

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Prior to the expiry of the 5-year fixed interest period, the Provider issued a letter to the Complainant on **04 September 2012**, which states as follows:

*“At the end of this month the fixed term of your loan will expire. Your repayment will revert back automatically to the current variable rate, you are not required to do anything. The table illustrates your repayment details. Please note that these figures are based on the applicable variable rate which is subject to change.*

<b>Option</b>	<b>Interest Rate</b>	<b>Monthly Repayment</b>	<b>Monthly Insurance Premium</b>	<b>Total Monthly Repayment</b>
Variable	4.330	644.99	18.02	663.01

”

The Mortgage Loan Statements submitted in evidence show that the Complainant’s mortgage loan account switched to a rate of 4.330% on **30 September 2012** when the fixed interest rate period ended.

Having considered the evidence before me, including the mortgage loan documentation, it is evident that the Provider was under no obligation to offer a tracker interest rate to the Complainant at that time because the Complainant did not have a contractual or other entitlement to a tracker interest rate at the end of the fixed interest rate period.

I note that the Complainant wrote to the Provider on **22 February 2017**, questioning whether the Complainant’s loan account would be reviewed under the Central Bank of Ireland directed Tracker Mortgage Examination. In this letter the Complainant stated as follows:

*“I do not feel that [the Provider] acted in my best interest when providing advice on switching my tracker mortgage to a fixed rate. I was not provided with any of the following:*

- *A comparison of the cost of monthly repayments of my tracker rate mortgage and the rates being offered*
- *Details of the advantages and disadvantages of both the tracker mortgage rate compared to the other rates being offered*
- *A clear explanation of the implications of switching i.e. that moving from a tracker rate mortgage to an alternative interest rate might result in the tracker rate or alternative tracker rate not being available again in the future”*

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It is important to note that the choice to switch mortgage loan providers in **August 2007** was a choice freely made by the Complainant. If the Complainant wanted independent advice about the consequences of switching providers and changing rates, the Complainant could only get that advice from an independent third-party advisor. The Complainant chose to pay off her mortgage loan with a third-party provider and move to the Respondent Provider in **August 2007**. By doing so, the Complainant drew down an entirely new mortgage loan with the Provider governed by new terms and conditions. While the terms and conditions of the Complainant's previous mortgage loan with a third-party provider may have provided for a tracker rate of interest to apply after a fixed interest rate period, this has no relevance whatever to her new mortgage with the Provider. The Complainant's new mortgage loan with the Provider is governed by the **Loan Offer** dated **24 August 2007** and terms and conditions attaching to the **Loan Offer** (not the terms and conditions of her mortgage with another provider), none of which contain a contractual entitlement to a tracker interest rate.

The Complainant applied for a new mortgage loan on a fixed interest rate with the Provider and the Provider offered the Complainant a fixed rate, which was accepted by the Complainant, having acknowledged that the terms and conditions of the mortgage loans were explained to her. It is clear from the Complainant's mortgage loan documentation that a fixed interest rate would apply for the first 5 years of the loan and would thereafter revert to the Provider's standard variable interest rate. There is no reference to the nature of the variable rate as being one that varied in accordance with variations in the ECB refinancing rate.

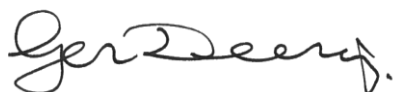
If the Complainant was not satisfied with the terms and conditions on which her new mortgage loan was offered, including what would transpire at the end of the fixed interest rate period, the Complainant could have decided not to accept the loan offer and ultimately draw down the loan and instead, seek an alternative rate with the Provider or with another mortgage provider. However, the Complainant did not do so.

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**

29 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.