



<u>Decision Ref:</u>	2021-0389
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Tracker Mortgage
<u>Conduct(s) complained of:</u>	Failure to offer a tracker rate at point of sale
<u>Outcome:</u>	Rejected

**LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

This complaint relates to mortgage loan account ending **5521** held by the Complainant with the Provider. The mortgage loan account was secured on a property that was intended to be the Complainant's primary dwelling home.

The loan amount was €180,000 and the term of the loan was 35 years. The particulars of the **Loan Offer** dated **23 January 2007** provided for an interest rate of 4.83% fixed for a period of three years. The Complainant accepted and signed the **Loan Offer** on **20 February 2007** at which point the three-year fixed rate had changed to 5.05%.

The Complainant's Case

The Complainant submits that she applied to the Provider for a mortgage loan in **2007**. She details that various interest rate options were discussed with her at a meeting with the Provider's mortgage advisor, including tracker, variable and fixed rates. She states that *"I do not dispute, nor have I at any stage, that I was not given information on the range of all viable mortgage rates and options ... My assertion is, that I was informed that a fixed rate mortgage was a better option than a tracker mortgage, given my mortgage related to the purchase of a site, and a subsequent likely application for a top up to build."*

The Complainant further submits that *“I also take issue with statements that it is the obligation of the customer to apply for their preferred interest rate. While I understand this is correct, they do not address my concern that I believe I was given incorrect information on which to base my decision.”*

The Complainant submits that she has since become aware that she may have been provided with *“wrong or misleading”* information at the time of her mortgage application which resulted in her applying for a fixed rate loan. She states that the Provider has submitted that there is no evidence to suggest that the Provider’s mortgage advisor advised her that a fixed interest rate was a better option. She states that *“the absence of evidence on the account, does not mean that what I suggest was said to me, did not happen”*. The Complainant also queries how in the absence of evidence the Provider can *“be so definitive”* in its assertion that *“standard practice”* was adhered to, in circumstances where its mortgage advisor *“clearly does not recall the conversation, as admitted by him”*. The Complainant states that it appears that the Provider has made assertions based *“on what should have happened, rather than on what happened.”*

The Complainant states that *“this lack of evidence supplied to support [the Provider’s] high degree of confidence would make one wonder, are SOPs always complied with?”* The Complainant states that while the Provider has submitted that it has no file notes of any meetings and/or discussions that took place, she recalls that the mortgage advisor was taking notes on a notepad during the meeting in question. The Complainant queries whether there is *“an SOP to say all notations made must be added to the system? If so, was this not complied with? Is there an SOP in this area and if so what does it say in respect to note taking? If not, are there other recommended practices in this regard? Were these complied with...?”*

The Complainant submits that on **15 March 2017** she wrote to the Provider in relation to concerns she had regarding the advice she received during the mortgage application process in **2007**. She submits that in its response letter dated **6 April 2017** the Provider missed her point *“in raising concerns about the advice given”* during the mortgage application process. She states that the Provider’s letter outlined that it had *“fully investigated”* the case. She submits that the Provider has not furnished *“any records of this investigation ... What did this investigation include? Are there SOPs for such processes?”*

The Complainant submits that she wrote to the Provider again on **18 April 2017** in relation to her concerns that she was *“subtly advised against a tracker rate”* in **2007** and therefore her decision to select the fixed interest rate, was based on inaccurate information. She states that she received a response from the Provider on **6 June 2017** which stated that the matter was *“fully investigated previously”*. She submits that this was despite the fact that she *“drew their attention to the fact that they had mis[re]presented my complaint”*.

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The Complainant further states that the Provider initially stated that her letter of **18 April 2017** was received by it on **31 May 2017**. She states that when she was able to prove that the letter was actually received by the Provider on **24 April 2017**, the Provider then *“changed [its] account to say it was not received by the Tracker Examination [Complaints] until the 31st May.”* The Complainant submits that *“One would have to ask, are there SOPs or practices in relation to how post is managed within the Bank, especially registered post? If so, were these not complied with? ... This would also make one question, what other procedures do not live up to the expected standard?”* She further submits that this *“clear[ly] demonstrates that [the Provider] do not appear to comply with good practice all of the time, and therefore calls into question their ability to [be] so definitive in my case.”*

The Complainant states that the Provider’s response to her complaint is *“selective and evasive”* and does not address many of the issues she has raised.

The Complainant is seeking the following:

- a) That mortgage loan account ending **5521** is switched to the tracker interest rate prevailing at the date of drawdown;
- b) A refund of the difference in interest charged and the interest rate which would have been charged at the tracker interest rate backdated to the date of drawdown; and
- c) Appropriate compensation.

The Provider’s Case

The Provider details that at the time the Complainant applied for her mortgage loan in **January 2007**, a full range of interest rates were available to choose from for new and existing customers, which included a standard variable rate, various fixed rates and tracker interest rate options. It states that all rates were publicly advertised through its website and branches, and that its staff do not advise customers on interest rates and which option to choose; rather its staff provide information on the interest rates available on request, either at application or at any time during the life of the mortgage loan. It states that when an application is approved, the interest rate is detailed in the Letter of Loan Offer, which the customer may then choose to accept or decline. It states that for the avoidance of doubt, this is what occurred in respect of this mortgage loan account. The Provider also states that the Complainant had the benefit of independent legal advice and accepted the rates and terms of the Letter of Loan Offer. The Provider submits that tracker rate products were available from the Provider from **early 2004** until **late 2008**.

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The Provider submits that the Complainant signed and submitted a mortgage loan application on **2 January 2007** in which a variable rate was selected. It submits that in order to avail of a fixed interest rate, a separate application for a fixed rate was required to be completed. It states that also on **2 January 2007** the Complainant completed a separate application which included a fixed interest rate for the first 3 years of the mortgage term.

The Provider submits that it issued a **Letter of Loan Offer** to the Complainant on **23 January 2007**, for a loan amount of €180,000, on an initial fixed rate of interest of 4.83% for a period of 3 years. It details that the Complainant signed and accepted the **Letter of Loan Offer** in the presence of her solicitor on **20 February 2007** and the mortgage was drawn down on **6 March 2007** on a fixed rate of 5.05%. The Provider states that the Complainant was free to accept or reject the loan offer made by the Provider, and in completing the drawdown of funds she clearly demonstrated her acceptance of the terms and conditions of the mortgage loan.

The Provider submits that in *“the strongest possible terms”* it rejects the Complainant’s submission that the Provider’s *“mortgage advisor”* advised her to apply for a fixed rate option. It states that *“There was no incentive for Bank staff not to make Tracker Interest rates available to customers in 2007.”* The Provider submits that it has reviewed the mortgage loan account and there is no evidence to suggest that the Provider’s mortgage advisor advised that a fixed interest rate *“was a better option”* for the Complainant. It states that it is satisfied that the Complainant received *“correct information”* from the Provider’s mortgage advisor and that *“standard practice was adhered to”*. It details that *“it was and remains standard practice of the Bank’s mortgage application process in our Branches that all interest rate options available at the time are provided to customers ... The key features and benefits of each interest rate option would have been explained to the Complainant.”*

The Provider further states that it was not *“the practice or policy of the Bank to offer advice on interest rates. The Bank’s policy and practice was to provide information on all interest rates available at that time to customers. Ultimately the final decision as to which rate to avail of rests with the customer”*.

The Provider submits that it received a letter of complaint from the Complainant dated **15 March 2017**. The Provider submits that it responded to the Complainant on **6 April 2017**. The Provider submits that it issued a letter dated **6 June 2017**. The Provider submits that it does acknowledge that its letter dated **6 April 2017** *“did not sufficiently address the specific circumstances that the Complainant outlined in her in letter of 15 March 2017, in relation to the issues surrounding the alleged advice the Complainant received.”*

The Provider states that it received a follow-on letter from the Complainant dated **18 April 2017** and issued a further letter to the Complainant on **6 June 2017**. It states that it feels that its letter of **6 June 2017** addressed the issues raised by the Complainant. It states that it *“would like to apologise for the initial oversight of not addressing all issues raised by the Complainant. It was never the Bank’s intention to misrepresent the Complainant’s request and we apologise if it appeared this way.”*

The Provider further submits in its letter dated **6 June 2017** it stated that the Complainant’s letter dated **18 April 2017** was received by the Provider on **31 May 2017**. It states however that after investigating the matter the Provider accepts that the letter was received on **24 April 2017** but *“regrettably the Bank has been unable to determine the reason as to why the Tracker Examination Complaints team did not receive the Complainant’s letter until 31 May 2017.”*

The Provider submits that it would like to offer its sincere apologies for the delay in responding to the Complainant, the failure to issue the relevant regulatory letters required and for not addressing the issues raised surrounding the advice the Complainant received in its initial Final Response letter. The Provider has offered €3,000 as a gesture of goodwill to the Complainant.

The Complaints for Adjudication

The conduct complained of is as follows;

- (a) The Provider *“subtly”* advised the Complainant against applying for a tracker rate of interest therefore causing her to make a decision based on inaccurate information; and
- (b) The Provider misrepresented the Complainant’s initial letter of complaint and failed to provide the Complainant with a satisfactory response.

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.

Following the issue of my Preliminary Decision, the Complainant made a further submission by way of email to this office dated **21 September 2021**, a copy of which was transmitted to the Provider for its consideration. The Provider has not made any further submission.

Following the consideration of the Complainant's additional submission and all of the submissions and evidence furnished by both parties to this office, 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 details of certain interactions between the Complainant and the Provider in **2007**, when the mortgage loans were applied for and drawn down, and in **2017** when she complained to the Provider.

A **Home Loan Application Form** was completed and signed by the Complainant on **2 January 2007**. In response to "**Loan Type**" the Complainant ticked "**Repayment/Annuity**". In response to "**Interest Rate**" the Complainant ticked "**Variable**". The other options were tracker, fixed, or split.

An **Application for a Fixed Rate Mortgage** was also signed by the Complainant on **2 January 2007** which detailed as follows:

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I/We wish to apply for a fixed rate of 4.75% for the first 3 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 [REDACTED] (if the loan is approved).

It further details as follows:

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.

I acknowledge that unfortunately, [the Provider] cannot inform customers of changes of interest rate prior to issuing their loan cheque.

...

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.

...

WARNING

STANDARD LENDING TERMS AND CONDITIONS APPLY."

An email dated **3 January 2007** has been furnished in evidence with the sender and recipient details redacted. The email details the following:

"FOR THE ATTENTION OF THE LOANS DEPT. RE [THE COMPLAINANT] RE [PROPERTY ADDRESS] MARKET VALUE 400K (PURCHASE PRICE 200K) SITE WITH PLANNING

WITH REFERENCE TO THE ABOVE [COMPLAINANT] IS A [JOB TITLE] EXCELLENT JOB, SALARY, PROSPECTS ETC. SHE WILL EARN E55K

THIS YEAR. SHE WILL NOT BUILD FOR A COUPLE OF YEARS SHE JUST WANTS TO SECURE THE SITE FOR NOW

I WOULD HAVE ABSOLUTELY NO HESITATION IN RECOMMENDING SANCTION AT 3 YEAR FIXED RATE 4.75%"

/Cont'd...

I note that tracker interest rates were on offer generally by the Provider when the Complainant applied for the mortgage loan in **January 2007**.

The Complainant has submitted that at a meeting with the Provider's mortgage advisor, she was *"informed that a fixed rate mortgage was a better option than a tracker mortgage, given my mortgage related to the purchase of a site, and a subsequent likely application for a top up to build."*

The Provider's mortgage advisor stated by email dated **29 November 2018**:

With reference to [the Complainant] this mortgage was drawn down in April 2007. I am afraid that I have no recollection of the particular case ... The Standard Procedure at Interview then as now was to discuss all available Rates with the Customer and abide with the Customers request. I would clearly take exception at any suggestion of trying to steer the Customer away from a Tracker Mortgage. Why would I do that?"

The Provider's mortgage advisor further stated by email dated **7 May 2019** as follows:

"Again I start by saying that I have no recollection of the particular case ... I would not have said that a Tracker Rate (or any other Rate would be appropriate or not appropriate for a self-build). I would have explained each offering available at the time.

...

Notes taken at Interview would be incorporated into any recommendation of the Loan on the system. The Loan was drawn down 12 years ago and obviously no notation other than what is on the System would exist".

No evidence has been provided to me of any discussions or dialogue between the Provider and the Complainant in **January/February 2007**. The Provider maintains that there are *"no file notes of any meetings and/or discussions held between the Bank and the Complainant in the Branch between January and February 2007"*.

It appears from the Complainant's submissions that she is of the view that had she not been advised against selecting a tracker interest rate at that meeting, she would have proceeded to make an application for a tracker interest rate loan from the outset. I am of the view that it was reasonable for the Complainant to believe that she was receiving advice from the Provider's representative at that time.

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However, given that the representative was a person employed by the Provider and selling the Provider's mortgage products, I am of the view that there was no reason for the Complainant to expect that any advice or information given to her was independent. If the Complainant wanted independent advice about rates available in the market or the market generally, the Complainant could only get that advice from an independent third-party advisor.

Furthermore, the fact that tracker interest rate options were available generally as part of the Provider's suite of products at the time, did not oblige the Provider to offer the Complainant a tracker interest rate on this loan application. There is also nothing to suggest that if a request was submitted by the Complainant seeking the application of a tracker interest rate to the mortgage loan that this would have resulted in the Provider acceding to that request and issuing a Letter of Offer on that basis. It is important for the Complainant to understand that there was no obligation on the Provider, contractual or otherwise, to give the Complainant the option of a tracker interest rate on her mortgage loan when she made her application to the Provider in **January 2007**.

If the Complainant wished to pursue the potential option of applying for a tracker interest rate mortgage loan at the time in **January 2007**, the Complainant could have indicated to the Provider that she had a preference for a tracker rate. It does not appear however that the Complainant did so. The Complainant applied for a mortgage loan on a fixed interest rate 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 loan were explained to her.

A **Network Recommendation document** dated **23 January 2007** has been furnished in evidence which outlines:

*"...
Recommended.

Other Details
...
Approval recommended for loan of 180K to purchase site only at 3 year fixed rate.
..."*

The **Loan Offer** dated **23 January 2007** details as follows:

*"Type of loan:
Total Amount of loan: €180,000.00*

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Monthly Repayment (Yrs 1-3):	€889.02 (See Important Note)
Interest Rate (Yrs 1-3):	4.83% (See Important Note)
After 3 years:	Variable Base (currently 04.75)
Repayment Period (Years):	35 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 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.”

...”

The **General Conditions** detail 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 member 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.*

The **Acceptance Form** was signed by the Complainant on **20 February 2007** on the following terms:

1. *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 is replacement of all previous offer letters;*
 - ii. *the General Conditions for [the Provider];*
 - 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.

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2. I consent to my spouse giving his/her consent as referred to in the [Provider's] standard Form of Mortgage.
3. I/We authorise [the Provider] to disclose to my Spouse's Solicitor full details of the mortgage debt and security held by the [Provider] in relation thereto.
4. I/We irrevocably authorise and direct my/our Solicitor to give the undertakings contained."

The **Issue of Loan Cheque** dated **6 March 2007** details as follows:

"I refer to our letter of the 23/01/2007. 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:

Total	<u>€180,000.00</u>
Net loan	€180,000.00

Term of Loan:	35 years Approx
Rate of Interest:	5.05% Base Rate Yrs 1-3
After 3 years the Interest Rate will be:	Variable Base Rate (currently 4.75%)(APR 5.0%)

Daily Interest: €24.90

Monthly Repayment:	€914.19
Monthly [Life Assurance] Premium	<u>€20.10</u>
Total Monthly Repayment	€934.29

...

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."

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

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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 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 Complainant signed a **Fixed Rate Mortgage Conversion Form** on **6 April 2010** which details as follows:

Declaration

I/~~We~~ wish to apply to convert the balance of my/our loan account to a fixed rate of 4.05% for the next 3 year(s) my mortgage

*I/~~We~~ understand that when this fixed rate period has expired the loan will **convert to the applicable variable rate then prevailing**"*

...

This document forms part of the application for a mortgage, the conditions of which are outlined in the mortgage deed, the loan offer and cheque issue letters. declaration of which also govern this document."

Having considered the evidence before me, including the mortgage loan documentation, it is my view 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 from the **2013 Annual Loan Statement** that the interest rate was switched to the variable rate of 4.33% when the fixed interest rate period expired on **30 April 2013**.

The Complainant signed a **NEW BUSINESS FIXED RATE APPLICATION FORM** on **12 October 2015** which details as follows:

Declaration

I/~~We~~ wish to apply for a fixed rate for the first 5 year(s) of my/~~our~~ mortgage

/Cont'd...

*I/~~We~~ understand that when this fixed rate period has expired the loan will **convert to the applicable variable rate** then prevailing*

...

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 I/we understand the workings of the Fixed Rate facility and the consequences of any payment made to the account during the fixed rate period and wish to proceed with this application”.

As outlined above 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 entitlement to a tracker interest rate at the end of a fixed interest rate period.

I note that the Complainant wrote the Provider on **15 March 2017** as follows:

*“I took a mortgage out with [the Provider] in **2007**. At that time, I recall discussing the interest rate options with my mortgage broker [Name and branch], which included tracker, variable and fixed.*

He advised me that a fixed rate mortgage was a better option for me given that my mortgage related to a site, which I took.

Given the recent issues arising with Tracker Mortgages, I am wondering now if I was given the correct advice at the time or subtly advised against taking a tracker.

It is for that reason, and in the current climate of the Tracker Mortgage Redress that I would kindly request my file to be reviewed.”

The Provider sent the Complainant a **Final Response Letter** on **6 April 2017** which detailed as follows:

“...

We refer to your letter dated the 15th March and received by [redacted] on the 24th March 2017. In your letter you have requested your account to be examined as part of the Tracker Mortgage Review required by the Central Bank of Ireland. We have fully investigated the case and we are now in a position to issue [the Provider’s] final response on this matter.

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...

In view of the signed documentation as outlined above, there is no entitlement to a tracker interest rate on mortgage account [ending] 5521. [Provider] tracker interest rates were available on private dwelling houses between [mid] 2004 to [late] 2008 and it was the obligation of the customer to apply for their preferred interest rate. There is no evidence or documentation on file confirming that you applied for a tracker interest rate or that you were not permitted to avail of a tracker interest rate.

..."

The Complainant sent a letter in response to the Provider dated **18 April 2017** as follows:

"I refer to your letter dated 6th April. I have read your response and I believe it does not address the concern I raised in my letter dated the 15th of March 2017 ... I am wondering now if I was given the correct advice at the time or subtly advised against taking a tracker ... I made no assertions that I applied for a tracker interest rate or that I was not permitted to avail of a tracker interest rate. Yet your assessment seems to have been conducted on this basis.

...

I would ask you once again to review my file to see if the advice given to me at the time, was the correct advice, as I am concerned I may have been subtly advised against a tracker rate and therefore made my decision on inaccurate information?"

In her post Preliminary Decision submission dated **21 September 2021**, the Complainant states that the *"rationale behind the request at the outset to the [the Provider] was based on issues arising with Tracker Mortgages more broadly, which made [the Complainant] wonder if [she] was given the correct advice at the time or subtly advised against taking a tracker."* The Complainant also states that her complaint to this office *"resulted from the way [the Provider] responded to this request prior to acknowledging their mistake, and subsequently due to how it was handled"*.

The Provider sent a further **Final Response Letter** to the Complainant on **6 June 2017** to address the Complainant's concern as to whether she was given the correct advice in relation to the interest rate options when she applied for her mortgage loan in **2007**. The Final Response Letter dated **6 June 2017** details as follows:

"We refer to your letter dated the 18th April 2017 and received by [the Provider] on the 31st May 2017.

/Cont'd...

...

In addition the Bank would point out that our staff do not offer advice in relation to interest rates, but do inform our customers of the options available to them either at the application stage or at any time during the life of the Mortgage Loan. The final decision rests with the customer to make regarding the rates that apply to their mortgage.

...”

It is clear that the Provider’s Final Response Letter of **6 April 2017** did not adequately address the Complainant’s query as to whether she was given the correct advice in relation to the interest rate options, which is disappointing. However, I note that this was subsequently clarified in the Provider’s Final Response Letter of **6 June 2017** and the Provider offered a gesture of goodwill to the Complainant in respect of its failings in this regard.

I also note from the evidence that the Complainant’s letter to the Provider dated **18 April 2017** was delivered and signed for on **24 April 2017** by the Provider, and not on **31 May 2017** as stated by the Provider in its letter of **6 June 2017**. The Provider has acknowledged this error but is unable to determine the reason why the Complainant’s letter was not received by the relevant Provider department until **31 May 2017**. While this is disappointing, I accept that administrative errors of this nature can occur.

In her post Preliminary Decision submission dated **21 September 2021**, the Complainant submits that she does not dispute the facts contained in my Preliminary Decision dated **15 September 2021** “*however, [the Complainant] believe[s] that there is an error of fact in regard to how [her] complaint has been viewed by [this] office. Therefore, [the Complainant] request[s] that it is reviewed from the perspective of a complaint about a response to information, rather than from the perspective of whether or not [she] was entitled to a tracker mortgage or not, as this is not, and was never, disputed*”.

As outlined in my Preliminary Decision, having considered the evidence and submissions from both parties, I am satisfied that, despite the initial failure by the Provider to provide an adequate response to the Complainant, the Provider did ultimately respond satisfactorily to the Complainant. The Provider was not obliged to provide advice to the Complainant in relation to specific interest rates as the final decision as to which interest rate applied to the mortgage loan account rests with the Complainant. I acknowledge that the Complainant has no issue with the facts contained in my Preliminary Decision but that she is seeking for the complaint to be reviewed “*from the perspective of a complaint about a response to information*”.

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I remain satisfied that I have considered the evidence and submissions in this complaint sufficiently and appropriately in order to determine this complaint, including whether the Provider misrepresented the Complainant's initial letter of complaint and failed to provide the Complainant with a satisfactory response.

I have been provided with no evidence that the Provider "subtly" or otherwise advised the Complainant against selecting a tracker interest rate during the mortgage application process in **2007**. It is clear to me that the Complainant applied for a mortgage loan on a fixed interest rate and the Provider offered the Complainant a fixed interest rate, which was accepted by the Complainant, having acknowledged that the terms and conditions of the mortgage loan were explained to her by her solicitor. If it was the case that the Complainant was of the view that the fixed interest rate loan was not suitable for her, then 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. The Provider informed the Complainant of the availability of tracker interest rate options in **2007**, notwithstanding that there was no obligation on the Provider in **2007** or indeed at any stage during the life of the mortgage to offer a tracker interest rate to the Complainant on her mortgage loan. However, the Complainant chose not to explore the tracker interest rate options with the Provider on that occasion.

It is important for the Complainant to understand that her mortgage loan is governed by the Letter of Loan Offer and terms and conditions attaching to the Letter of Loan Offer that was issued to her, none of which contain a contractual entitlement to a tracker interest rate. The evidence shows that the choice to take out the mortgage loan on the terms and conditions offered by the Provider in **2007** was a choice that was freely made by the Complainant.

It is difficult to understand how it would have been of benefit to the Provider's mortgage advisor to seek to dissuade the Complainant from applying for a tracker rate of interest. Furthermore, I can see no reason why a fixed rate would be more suitable than a tracker or variable interest rate simply because the mortgage was for a self-build home.

In her post Preliminary Decision submission dated **21 September 2021**, the Complainant submits that she would like to "*see proof of where [she] made a request for compensation and/or remuneration as set out in the preliminary decision*". In this regard, I refer the Complainant to the complaint form signed and dated **23 June 2017** which she submitted to this office by post.

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Under the heading “*How do you want the Financial Provider to put things right?*” on page 4 of the complaint form, the Complainant details as follows:

“...I would like to be given the option to have the tracker rate available at that time to be retrospectively applied to my account. If this means I would have paid less I would like to be compensated appropriately”.

I note that by letter dated **25 November 2019** the Provider offered the Complainant the sum of €3,000 as a gesture of goodwill in recognition of “*the delay in responding to the Complainant, the failure to issue the relevant regulatory letters required and for not addressing the issues raised surrounding the advice the Complainant received in the Bank’s initial Final Response Letter*”. It does not appear that the Complainant has accepted this offer. I understand that the offer of €3,000 remains open to the Complainant to accept.

In light of the foregoing, I consider this offer in the sum of €3,000 to be a reasonable attempt to resolve this complaint in the context of the Provider’s errors. Therefore, 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**

29 October 2021

/Cont’d...

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.

