



<b><u>Decision Ref:</u></b>	2021-0399
<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 Complainants with the Provider. The mortgage loan account which is the subject of the complaint was secured on the Complainants' private dwelling house.

The loan amount was €80,000 and the term of the loan was 20 years. The Letter of Approval which was signed by the Complainants on **29 July 2004** outlined the loan type as "*1 Year Fixed Rate Home Loan*".

The Complainants redeemed the mortgage loan on **3 June 2009**.

**The Complainants' Case**

The Complainants submit that they verbally requested a tracker rate of interest during the application process for a mortgage loan with the Provider. The Complainants state that the Provider issued them with a mortgage loan in **November 2004** on an initial 1-year fixed interest rate of 2.74%.

The Complainants state that they were advised by a representative of the Provider in one of its branches that they could not avail of a tracker interest rate because the mortgage was for a "*self-build with multiple draw downs*". They submit that they have since learned that the Provider was offering tracker mortgages to new customers from **early 2004**.

The Complainants detail that *“The fact that they have no record of these conversations, and the fact that [they] were provided with incorrect advice, should not count against [them], but instead reflects badly on the provider.”*

In response to the Provider’s assertion that it had a policy in place that tracker interest rates would only be offered where the mortgage was above a threshold of €150,000, the Complainants submit that the Provider has *“provided no evidence supporting the existence of this limit policy in their response, other than their assertion that it existed in their letter of 2/10/19”*.

The Complainants submit that they approached the Provider in **2005** to increase their borrowings above the original €80,000 that was drawn down however they were *“told by the provider that this could not be done”* and the Provider *“forced”* them to draw down a second mortgage loan. The Complainants state that *“when [they] finally redeemed the mortgages with [the Provider], the redemption figure was €160,003.50 - well in excess of the €150,000 limit”*. The Complainants query whether this *“was another attempt by the provider to artificially exclude [the Complainants] from eligibility for a tracker.”*

When the initial fixed rate period expired in **November 2005**, the Complainants submit that the Provider sent them a list of interest rate options which included fixed and variable rate options only. They submit that the Provider did not offer them the option of a tracker rate at that time.

In response to the Provider’s submission that the threshold for eligibility for a tracker interest rate was removed on **10 April 2006**, the Complainants detail that they *“received no such option in any correspondence from [the Provider]”*. The Complainants maintain that *“in the absence of an explicit application from [the Complainants], any letter sent by [the Provider] to [the Complainants] after 30/06/06, should have offered a tracker rate to [the Complainants]”* as they were eligible for a tracker rate of interest, and this was the more favourable rate.

The Complainants are seeking the following:

- (a) A tracker rate to be applied to their mortgage loan account as requested in **November 2004**; and
- (b) Redress and compensation for the interest overpayments on their mortgage loan account. The Complainants submit that they have suffered an estimated financial loss of €2,400.

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

The Provider states that it issued a **Mortgage Quotation letter** to the Complainants on **22 June 2004** detailing fixed and variable interest rates available for their consideration.

The Provider submits that the Complainants completed a Mortgage Application on **8 July 2004** seeking a 1 -year fixed interest rate mortgage loan in the amount of €80,000. The Provider states that it issued a **Letter of Loan Approval** dated **20 July 2004** to the Complainants for a 1-year fixed rate home loan of 2.74%.

The Provider details that it *"has no record of the Complainants' alleged request for a tracker interest rate in 2004"*. The Provider submits that it was its policy to offer tracker interest rates on mortgages with a minimum balance of €150,000. The Provider explains that given the Complainants' mortgage loan was for €80,000, they were not eligible for a tracker interest rate.

The Provider outlines that **Special Condition A** and the **General Conditions 5.1, 5.2 and 5.4** of the loan offer are *"clear and there is no entitlement to a tracker interest rate in the Complainants' Loan Agreement"*.

The Provider submits that the Complainants *"indicated that they understood and accepted the terms and conditions of their Loan Agreement"* by signing the **Acceptance of Loan Offer** on **29 July 2004** in the presence of their solicitor.

The Provider details that a letter was issued to the Complainants confirming the details of their mortgage on **23 November 2004** and the Complainants drew down the first staged payment of their loan in the amount of €30,000 on **24 November 2004**. The Provider details that the applicable interest rate at drawdown was a fixed interest rate of 2.74%.

The Provider states that it issued correspondence to the Complainants dated **24 October 2005** prior to the expiration of the 1-year fixed rate period on **23 November 2005** detailing the available interest rate options at that time. The Provider submits that *"In accordance with the terms and conditions of their mortgage, the Complainants were offered the option of a variable interest rate or a variety of further fixed interest rates."* The Provider details that a tracker interest rate was not included in the rate options letter that issued as the Complainants' mortgage loan documentation contained no contractual entitlement to a tracker interest rate. The Provider also explains that the Complainants' mortgage balance *"did not exceed the required €150,000 minimum loan balance as per the Bank's policy at that time."*

The Provider submits that in circumstances where it did not receive a response from the Complainants regarding their preferred interest rate option, a variable interest rate of 3.55% was applied to the mortgage account on **24 November 2005**.

The Provider states that the Complainants' solicitor requested redemption figures from the Provider on **12 May 2009** which the Provider supplied by way of letter dated **15 May 2009**. The Provider submits that it received a cheque for the outstanding loan balance on **21 May 2009** which was applied to the Complainants' account. The Provider details that the Complainants' account was redeemed in full on **3 June 2009**.

The Provider states, in relation to its tracker interest rate policy, that it introduced tracker interest rates for new mortgage business on in **early 2004** with a minimum balance of €150,000. It submits that it *"amended its policy and removed any minimum mortgage balance required for customers to be eligible for a tracker interest rate"* in **mid-2006**. The Provider states that later in **2006** it *"introduced a policy of offering a tracker rate of interest to its existing customers who were maturing from a period of a fixed rate of interest although their loan contract did not specify an entitlement to be offered a tracker rate at maturity"*.

The Provider details that from **late 2006** it *"introduced for new applicants initial fixed rate periods accompanied by an offer of a tracker interest rate on expiry of the initial fixed interest rate period"*. The Provider states that if the Complainants had requested to switch from the variable interest rate (which their mortgage account defaulted to on **24 November 2005**) to another interest rate after **mid- 2006**, *"a tracker interest rate would have been one of the interest rate options available to them at that time because of the Bank's updated policy to no longer apply a minimum threshold."*

The Provider details that the mortgage loan conditions gave the Complainants *"no right to a tracker interest rate"* and the *"only contractual right they ever had was to a variable interest rate, and they were offered this."*

### **The Complaints for Adjudication**

The complaints for adjudication are as follows:

- (a) The Provider refused the Complainants' request for a tracker rate at the time they applied for a mortgage loan in **2004**.
- (b) The Provider failed to offer the Complainants a tracker rate when the initial 1-year fixed interest rate period expired in **2005**.

/Cont'd...

**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 Complainants were 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 11 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 the complaint, it is necessary to review and set out the relevant provisions of the Complainants’ mortgage loan documentation. It is also necessary to consider the details of certain interactions between the Complainants and the Provider in or around **November 2005**.

The Provider states that it issued a **Mortgage Quotation letter** to the Complainants on **22 June 2004** detailing the following interest rates available for their consideration:

<i>“Product</i>	<i>Rate</i>
<i>1 Year Fixed Rate Home Loan</i>	<i>2.54%</i>
<i>2 Year Fixed Rate Home Loan</i>	<i>3.45%</i>
<i>3 Year Fixed Rate Home Loan</i>	<i>3.94%</i>
<i>5 Year Fixed Rate Home Loan</i>	<i>4.44%</i>

*Variable Rate Home Loan*                      2.69%  
*Variable Rate Home Loan*                      3.55%

An **Application for Credit** was signed by Complainants on **8 July 2004**. The Application for Credit details that the amount of loan required as €80,000, and the Loan Type as “1 Year Fixed Rate Home Loan” repayable over a term of 20 years.

The Provider subsequently issued a **Letter of Approval** dated **20 July 2004** to the Complainants which details as follows:

“

<i>Loan Type:</i>	<i>1 Year Fixed Rate Home Loan</i>
-------------------	------------------------------------

*Purchase Price/Estimated Value:*      *EUR 200,000.00*  
*Loan Amount:*                                *EUR 80,000.00*  
*Interest Rate:*                                *2.74%*  
*Term:*    *20 year(s)”*

The **Special Conditions** attached to the **Letter of Approval** detail as follows:

*“A. GENERAL MORTGAGE LOAN APPROVAL CONDITION 5 “CONDITIONS RELATING TO FIXED RATE LOANS” APPLIES IN THIS CASE. THE INTEREST RATE SPECIFIED ABOVE MAY VARY BEFORE THE DATE OF COMPLETION OF THE MORTGAGE.*

*...*

*F. GENERAL MORTGAGE LOAN APPROVAL CONDITION 2.5 RELATING TO STAGE PAYMENTS APPLIES. ANY FEES TO BE DEDUCTED FROM THE LOAN CHEQUE AS SPECIFIED IN THESE CONDITIONS WILL BE DEDUCTED FROM THE FIRST STAGE PAYMENT.*

*SCHEDULE FOR STAGE PAYMENTS :-*

- 1. WALLPLATE                      EUR30000.00*
- 2. HOUSE ROOFED & SEALED      EUR30000.00*
- 3. 1ST FIX COMPLETE            EUR12000.00*
- 4. On Completion      EUR8000.00”*

/Cont’d...



**General Condition 5** of the **General Mortgage Loan Approval Conditions** attaching to the Letter of Approval details as follows:

***“CONDITIONS RELATING TO FIXED RATE LOANS***

*5.1 The interest rate applicable to this advance shall be fixed from the date of the advance for the period as specified on the Letter of Approval, and thereafter will not be changed at intervals of less than one year.*

*5.2 The interest rate specified in the Letter of Approval may vary before the date of completion of the Mortgage.*

*5.3 Whenever repayment of a loan in full or in part is made before expiration of the Fixed Rate Period the applicant shall, in addition to all other sums payable as a condition of and at the time of such repayment, pay whichever is the lesser of the following two sums:*

- (a) a sum equal to one half of interest (calculated on a reducing balance basis) which would have been payable on the principal sum desired to be repaid, for the remainder of the Fixed Rate Period, or*
- (b) a sum equal to [the Provider’s] estimate of the loss (if any) occasioned by such early repayment, calculated as the difference between on the one hand the total amount of interest (calculated on a reducing balance basis) which the applicant would have paid on the principal sum being repaid to the end of the Fixed Rate Period at the fixed rate of interest, and on the other hand the sum (if lower) which [the Provider] could earn on a similar principal sum to that being repaid if [the Provider] loaned such a sum to a Borrower at its then current New Business Fixed Rate with a maturity date nearest to the end of the Fixed Rate Period of the loan, or part thereof, being repaid.*

*5.4 Notwithstanding Clause 5.1 [the Provider] and the applicant shall each have the option at the end of each fixed rate period to convert to a variable rate loan agreement which will carry no such redemption fee”.*

The **General Mortgage Loan Approval Conditions** also outline:

*“IF THE LOAN IS A VARIABLE RATE LOAN THE FOLLOWING APPLIES:*

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

/Cont’d...

The **Acceptance of Loan Offer** was signed by the Complainants on **29 July 2004** on the following terms:

*“1. I/we the undersigned accept the within offer on the terms and conditions set out in*

- i. Letter of Approval*
- ii. the General Mortgage Loan Approval conditions*
- iii. the [Provider] Mortgage Conditions*

*copies of the above which I/we have received, and agree to mortgage the property to [the Provider] as security for the mortgage loan.*

*...*

*4. My/our Solicitor has fully explained the said terms and conditions to me/us.”*

The mortgage loan account statements provided in evidence indicate that the mortgage loan account ending **9802** was drawn down on **24 November 2004** in staged payments on the following drawdown dates:

24 November 2004	€30,000
10 March 2005	€30,000
10 June 2005	€12,000
09 September 2005	€7,999.99

It is clear that the Letter of Approval dated **20 July 2004** envisaged a 1-year fixed interest rate home loan of 2.74%, with a variable interest rate to apply thereafter. The variable interest rate in the Complainants’ mortgage loan documentation made no reference to varying in accordance with variations in the ECB refinancing rate, rather, it was a variable rate which could be adjusted by the Provider. The Complainants accepted the Letter of Approval having confirmed that the Letter of Approval and the mortgage conditions had been explained to them by their solicitor.

I note that the Complainants assert that they were advised by a representative of the Provider during the application process that they could not avail of a tracker interest rate because the mortgage was for a *“self-build with multiple draw downs”*.

/Cont’d...



This office requested the Provider to provide full details of any conversations which took place between the Provider's representative and the Complainants during the mortgage application process in **2004**. The Provider states that *"Due to the passage of time, the Bank does not have a record of any conversation(s) which may have taken place between a representative of the Bank and the Complainants during their mortgage application process in 2004."* I note that in circumstances where the contractual relationship with the Complainants in respect of the mortgage loan account the subject of this complaint ended when the loan was redeemed in full in **June 2009**, there was no legitimate business reason for the Provider to retain the documentation on file for an extended period of time.

The Provider has given the following explanation in relation to its policy on its tracker interest rate offerings:

- " • The Bank introduced tracker interest rate loans for new mortgage business [in early 2004] with a minimum mortgage loan balance of €150,000. This meant that, in addition to the other fixed and variable rates which the Bank was then offering as an initial rate of interest to mortgage loan applicants, the Bank could offer an applicant a tracker rate of interest which would vary in accordance with variations in the ECB refinancing rate.*
- [In early 2006], the Bank amended its policy and removed any minimum mortgage balance required for customers to be eligible for a tracker interest rate.*
- In [mid 2006], in a further development of its tracker interest rate offering, the Bank introduced for new applicants initial fixed rate periods accompanied by an offer of a tracker interest rate on expiry of the initial fixed interest rate period. A customer who selected such a loan had a contractual entitlement to, or to be offered, a tracker interest rate on maturity of the fixed rate period. This meant that the letter which automatically issued to such customers in the month prior to expiry of their fixed rate period would include, as one of the interest rates offered for the period after expiry, a tracker interest rate.*
- Shortly prior to this, [in mid-2006], the Bank introduced a policy of offering a tracker rate of interest to its existing customers who were maturing from a period of a fixed rate of interest although their loan contract did not specify an entitlement to be offered a tracker rate at maturity (this initiative was taken against the backdrop of the competitive mortgage market at that time).*

/Cont'd...

*Therefore, a tracker interest rate was included in the list of options in the automated options letter issued to a customer in the month prior to the date of maturity of the fixed rate period. Between [mid 2006] and [mid 2006] while the options letter included the offer of a tracker interest rate, in the absence of a customer selection, the variable rate was applied to the mortgage as the default interest rate. From [mid 2006] until the [mid 2009], in the absence of a customer selection the tracker interest rate was applied to the mortgage as the default interest rate”.*

The Provider has also submitted a copy of a document titled **Lending Interest Rates** in evidence which were effective from “*start of business on the 20/07/2004*”. This document details that the following interest rate were available to new customers:

<b>“Rates applicable to new Home Loans</b>	
1 Year Discounted Variable Rate	2.69%
1 Year Discounted Variable Rate (where borrowing <50% of the property value)	2.49%
1 Year Fixed Rate	2.74%
2 Year Fixed Rate	3.55%
<b>Tracker Mortgage (Home Loan and Residential Investment Property)</b>	
Loan Amount €150,000- €249,999	3.40%
Loan Amount of €250,000 or more	3.10%”

I note that it was the Provider’s policy to not offer tracker interest rates on mortgage loans to new customers where the mortgage balance was less than €150,000. The Complainants applied for a mortgage loan in the amount of €80,000 therefore I accept that it was within the Provider’s commercial discretion to not offer a tracker interest rate to the Complainants. The Lending Interest Rates document also shows that tracker interest rates were only available in respect of mortgage loans for €150,000 or more. The Complainants were offered a 1-year fixed interest rate of 2.74% which is in line with the lending rates that were effective from **20 July 2004**.

Prior to expiry of the fixed interest rate period in **November 2005**, the Provider issued a letter to the Complainants dated **24 October 2005**, detailing as follows:

*“Dear [Complainants]*

*I am writing to inform you that the Fixed Rate Period On Your Above mortgage account is due to expire on 24/11/05.*

/Cont’d...

*In keeping with the terms of your loan, you now have the option to convert your loan back to a variable interest rate loan, currently 3.55%. [The Provider] also offers you the opportunity of fixing your interest rate for a further period and I enclose details of the fixed rates currently available.*

*It is important to note that if we do not receive a written instruction from you in relation to the above on or before the 24/11/05 your loan will convert to a variable interest rate loan, currently 3.55%.”*

The **rate options form** included with the correspondence of **24 October 2005** detailed the following rates available for selection by the Complainants:

*“PLEASE TICK BESIDE THE DESIRED OPTION*

*Account Number [ending 9802]*

<i>Approximate Repayment</i>		<i>Eur€</i>
<i>Variable rate Mortgage currently</i>	<i>3.55%</i>	<i>€541.97</i>
<i>1 Year fixed rate Mortgage currently</i>	<i>3.25%</i>	<i>€530.27</i>
<i>2 Year fixed rate Mortgage currently</i>	<i>3.39%</i>	<i>€535.71</i>
<i>3 Year fixed rate Mortgage currently</i>	<i>3.55%</i>	<i>€541.97</i>
<i>5 Year fixed rate Mortgage currently</i>	<i>3.79%</i>	<i>€551.46</i>
<i>7 Year fixed rate Mortgage currently</i>	<i>3.99%</i>	<i>€559.44</i>
<i>10 Year fixed rate Mortgage currently</i>	<i>4.39%</i>	<i>€575.64”</i>

In circumstances where the Provider received no response from the Complainants, the interest rate on the Complainants’ mortgage loan account defaulted to the Provider’s variable interest rate of 3.55% on **24 November 2005**. I note that this was in line with **General Condition 5.4** of the **General Mortgage Loan Approval Conditions**, as outlined above.

The Complainants submit that they approached the Provider in **2005** to increase their borrowings above the original €80,000 that was drawn down however the Provider “forced” them to draw down a second mortgage loan. It is important to note that it would have been a matter for the Provider to decide whether to offer additional borrowings to the Complainants and decide how any additional loan would be structured. It was also a matter for the Complainants to decide whether to accept such an offer.

/Cont’d...

The mortgage loan statements submitted in evidence show that the Complainants subsequently redeemed the mortgage loan account the subject of this complaint on **3 June 2009**.

The fact that the Provider was offering tracker interest rates to new or existing mortgage customers in **2004**, at the same time of the Complainants' mortgage application, did not create an obligation, contractual or otherwise, on the part of the Provider to offer a tracker interest rate to the Complainants on the mortgage loan account. Further, it was the Provider's policy to only offer tracker interest rates on mortgage loans with a minimum mortgage balance of €150,000. The Complainants applied for a loan in the amount of €80,000 which was far below the minimum mortgage balance of €150,000 which was required to be eligible for a tracker rate offering.

While the Complainants may consider the minimum balance amount to be "*arbitrary*", I accept that the Provider is a business therefore it was within the Provider's commercial discretion to set the eligibility criteria that it deemed appropriate in relation to its tracker interest rate offering.

It is clear to me that the Complainants applied for a mortgage loan and the Provider offered the Complainants a fixed interest rate, which was accepted by the Complainants, having acknowledged that the terms and conditions of the mortgage loan were explained to them by their solicitor. If it was the case that the Complainants were of the view that the fixed interest rate loan was not suitable for them, then the Complainants could have decided not to accept the loan offer and ultimately draw down the loan. They could, instead, have sought an alternative rate with the Provider or indeed with another mortgage provider. However, the Complainants did not do so.

The Complainants' mortgage loan is governed by the Letter of Approval and terms and conditions attaching to the Letter of Approval, none of which contain a contractual entitlement to a tracker interest rate be it at the end of a fixed interest rate period or at any stage during the term of the mortgage loan. The evidence shows that the choice to take out the mortgage loan on the terms and conditions offered by the Provider in **2004** was a choice that was freely made by the Complainants.

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**

3 November 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.