



<b><u>Decision Ref:</u></b>	2021-0401
<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
<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 that is the subject of this complaint is secured on the Complainants' principal private residence.

The loan amount was €175,000, repayable over a term of 25 years. The **Mortgage Loan Offer Letter**, which was signed by the Complainants on **29 May 2006**, outlined that the interest rate applicable to the loan was the Provider's discounted tracker rate of ECB + 0.95% for the first 2 years of the loan with a tracker interest rate of ECB + 1.25% to apply thereafter.

**The Complainants' Case**

The Complainants submit that they drew down mortgage loan account ending **9308** with the Provider on a tracker interest rate in **2006**. The Complainants note that in circumstances where their initial discounted tracker interest rate period was due to expire, they decided to meet with representatives of the Provider in **2008** to "*discuss [their] mortgage*".

The Complainants assert that *“the [Provider] told [them] that they had stopped doing tracker mortgages”* and advised them to opt for the Provider’s variable rate *“as it was a great mortgage”*.

The Complainants also assert that the Provider informed them that if they opted for the variable rate on the day of the meeting, the Provider would offer them a *“special rate”*. The Complainants submit that they selected this *“special rate”* as the Provider *“told [them] it was a great offer”* and the Complainants note that they trusted this advice. In this regard, the Complainants submit that they were provided with *“misleading”* information and that they were *“[wrongly] advised”*.

The Complainants submit that while watching television programmes on mortgages during the subsequent years, they *“realised that [they] should not have come off the tracker mortgage [they] were on”*.

The Complainants submit that they feel the Provider *“made a fool out of [them]”* and cost the Complainants *“a lot of money over the years”*.

The Complainants are seeking the following:

- (a) A tracker interest rate to be reinstated on their mortgage loan account; and
- (b) Compensation for the Provider’s asserted failure.

### **The Provider’s Case**

The Provider submits that it issued a **Mortgage Loan Offer Letter** to the Complainants, dated **24 May 2006**, which provided for a loan in the amount of €175,000, which was repayable over a term of 25 years. The Provider notes that the interest rate applicable to this loan was a tracker rate of interest of ECB + 1.25%, which was *“discounted for a period of 24 months by 0.30%”*. The Provider submits that the Complainants signed and accepted this **Mortgage Loan Offer Letter** on **29 May 2006** and subsequently drew down mortgage loan account ending **9308** on **13 October 2006**.

The Provider notes that prior to the expiry of the discounted tracker rate period, it issued a **Product Review Notice** together with a **Mortgage Form of Authorisation (MFA)** to the Complainants on **15 September 2008**. The Provider submits that the **Product Review Notice** detailed the various interest rate options available to the Complainants on the expiry of the discounted tracker interest rate period, which included a tracker rate option of ECB + 1.25%.

The Provider asserts that the Complainants were “free not to select an option and to allow the mortgage loan account to roll to a tracker rate of ECB + 1.25%” in accordance with the terms of their **Mortgage Loan Offer Letter**.

The Provider submits however that “[i]n this instance the Complainants did not select their preferred option by signing and returning the MFA”. The Provider explains that the Complainants sought an alternative rate “[i]n lieu of selecting one of the interest rate options provided for in the Product Review Notice”. The Provider maintains that the Complainants approached the Provider at that time “with the express intention of achieving the lowest rate possible”.

The Provider submits that a “Special Rate Request” for a discounted variable rate of 5.40% was approved in respect of the Complainants’ mortgage loan account by the Provider’s pricing unit on **29 September 2008**.

The Provider asserts that it subsequently issued a MFA to the Complainants on **30 September 2008**, which offered a discounted standard variable rate of 5.40% (standard variable rate of 5.65% discounted by 0.25%). The Provider notes that this MFA was signed and completed by the Complainants on **06 October 2008**. The Provider submits that this MFA “altered the underlying terms and conditions of [the Complainants’] original agreement and superseded the tracker rate”.

In addition, the Provider notes that the special discounted rate of 5.40%, which was accepted by the Complainants on **06 October 2008**, was a lower rate of interest than the tracker rate offered by the Provider in the Product Review Notice of **15 September 2008**.

The Provider submits that the Complainants definitively relinquished their entitlement to a tracker rate of interest by signing the **MFA in October 2008**.

Further, the Provider asserts that it “does not hold any records” of any meeting that was purportedly held between its representatives and the Complainants in **2008**. The Provider submits that, from reviewing internal records, that “it is reasonable to infer that the Complainants approached the Provider in 2008 seeking a further discounted variable rate, noting that the Complainants were considering changing Financial Lender in pursuit of a better variable rate”. The Provider notes that it has reviewed its records and cannot find any record of providing “misleading information” to the Complainants or that the Complainants were “wrongly advised” to change their mortgage loan interest rate. In addition, the Provider states that it has “no record of suggesting that a discounted variable rate would have to be agreed to during any alleged meeting”.

The Provider contends that it *“was entirely a matter for the Complainants to choose the rate that best suits their needs at any given time”*. The Provider submits that the Complainants decided to accept the discounted variable rate *“entirely of their own volition”*.

The Provider highlights that that the tracker interest rate included in the **Product Review Notice** was not selected by the Complainants, and instead they *“accepted the discounted variable rate having clearly engaged in some research of comparable products across other Providers”*.

Further, the Provider submits that it is satisfied that, as the discounted variable rate was requested by the Complainants, *“they were aware of the consequences of moving to the discounted variable rate in October 2008”*.

The Provider submits that the Complainants’ mortgage loan account ending **9308** has remained on the Provider’s standard variable rate since this time.

### **The Complaint for Adjudication**

The complaint for adjudication is that the Provider misled the Complainants into switching from a tracker rate of interest to a discounted variable rate of interest in **October 2008**.

### **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 12 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 set out and review the relevant provisions of the Complainants' mortgage loan documentation. It is also necessary to consider details of any interactions between the Complainants and the Provider in **2008**.

The Provider issued a **Mortgage Loan Offer Letter** dated **24 May 2008** to the Complainants which details as follows:

<i>1. Amount of Credit Advanced</i>	<i>€175,000</i>
<i>2. Period of Agreement</i>	<i>25 Years</i>
<i>3. Number of Repayment Instalments</i>	<i>Instalment Type</i>
<i>24</i>	<i>Variable at 3.450%</i>
<i>276</i>	<i>Variable at 3.750%</i>
<i>...</i>	
<i>11. Type of Loan:</i>	<i>Repayment</i>
<i>12. Interest Rate:</i>	<i>3.450% Variable"</i>

**Special Condition (a)(iii)** of the **Mortgage Loan Offer Letter** states as follows:

*“(a) subject to part (b) of this condition, the interest rate applicable to the loan is a variable interest rate and may vary upwards or downwards. The interest rate shall be no more than 1.25% above the European Central Bank Main Refinancing Operations Minimum Bid Rate (“Repo Rate”) for the terms of the loan. Variation in interest rates shall be implemented by the Lender not later than close of business on the 5<sup>th</sup> working day following a change in the Repo Rate by the European Central Bank. Notification shall be given to the borrower of any variation in interest rate in accordance with General Condition 6(b) of this Offer letter. In the event that, or at any time, the Repo rate is certified by the Lender to be unavailable for any reason the interest rate applicable shall be the Lender’s prevailing Homeloan variable rate.*

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*(b) For the first 24 months from the date of draw down of the loan the interest rate as outlined in (a) above shall be discounted by 0.30% and shall be no more than 0.95% above the Repo rate and shall be subject to the terms and conditions outlined in (a) above. At the end of the said 24 month discount period the Interest rate applicable to the loan shall revert to the rate as outlined in (a) above i.e. not more than 1.25% above the Repo rate.*

*The discount set out in this special condition is the discount which would apply if the loan were drawn down today. There is no guarantee that this discount will be available when the loan is in fact drawn down. The actual discount that will apply shall be the discount then offered by the Lender at the date of drawdown."*

The Complainants signed the **Borrower's Acceptance and Consents** section of the **Mortgage Loan Offer Letter** on **29 May 2006** on the following terms:

*"1. I confirm that I have read and fully understand the Consumer Credit Act notices, set out above, and the terms and conditions contained in this Offer Letter and I confirm that I accept this Offer Letter on such terms and conditions."*

I note from the mortgage statements submitted in evidence that mortgage loan account ending **9308** was drawn down on **16 October 2006**.

It is clear to me that the **Mortgage Loan Offer Letter** dated **24 May 2008** envisaged that a discounted tracker interest rate of ECB + 0.95% would apply to the Complainants' mortgage loan for the first 2 years of the term of the loan, with a tracker interest rate of ECB + 1.25% to apply thereafter.

Prior to the expiry of the discounted tracker interest rate period, the Provider issued a **Product Review Notice** to the Complainants on **15 September 2008**, which states as follows:

*"I am writing to let you know that your current rate of 5.200% will expire on 13/10/2008. We have a number of attractive mortgage products and I am pleased to offer you the following range of options: -*

<b>Description</b>	<b>Rate</b>	<b>*Projected Standard Repayment</b>
TRACKER VARIABLE ECB + 1.25%	5.500%	€1,072.23
2 Year Fixed	6.140%	€1,135.69

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3 Year Fixed	6.040%	€1,125.66
5 Year Fixed	5.990%	€1,120.66
H/L VARIABLE LTV>80%<500K VRP5	5.560%	€1,086.95

*\*This is an estimated figure only and may be higher on the actual date that the rate is changed on your account.*

*To avail of your selected option, please **tick** the relevant rate on the enclosed Mortgage Form of Authorisation. Please **sign and date this form** and return it to us at [address redacted] before 13/10/2008. Unfortunately, we cannot hold the above choices of rates open after this date.*

***If you would like to discuss the best option for you, please do not hesitate to contact me or any member of my branch team. I would be more than happy to discuss the various options available to you.***

*If I do not hear from you by 13/10/2008, your homeloan will, in accordance with your loan offer, automatically move to the variable rate of 5.500%....”*

I note that a tracker variable rate of ECB +1.25% was offered to the Complainants on the expiry of the discounted tracker variable rate, in line with **Special Condition (a)(iii)** of the **Mortgage Loan Offer Letter**.

It appears that the Complainants did not select an interest rate from the rates offered in the **Product Review Notice** dated **15 September 2008** as the Complainants did not return the signed **MFA** that was enclosed with the **Product Review Notice**.

The Provider’s internal notes dated **29 September 2008** suggest that the Complainants made a “*special rate request*” to the Provider as the notes detail as follows:

*“Subject: Special Rate Request*

*...*

*Pricing Unit have approved Variable rate 5.40%*

*a discount of 0.35% for term*

*[Provider] do not pay switch/legal fees*

*[Provider’s] 2 yr fixed rolls to a Standard Variable currently*

*5.50%*

*Regards”*

It appears that the Provider approved a discounted variable interest rate of 5.40% (standard variable rate less 0.35%) for the Complainants on **29 September 2008**.

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Two **MFA**s have been submitted in evidence by the Provider. It is unclear whether the two MFAs are one and the same or two separate documents.

The Complainants completed a **MFA** on **6 October 2008**, which states as follows:

***"1. Changing from one Interest Rate to Another***

*I wish to apply for the interest rate indicated below for my Mortgage Loan. I understand this rate will apply to my Mortgage Loan from the expiry date of my current fixed rate period (if applicable).*

✓ *Standard variable Rate 5.4%*

...

*I agree to the following terms:*

(i) *The interest rate I have chosen on this form will apply to my Mortgage loan from the expiry date of my current fixed rate (if applicable).*

...

*These terms replace any similar terms in my Home Loan Letter of Offer.*

*I confirm that my Home Loan Letter of Offer as amended by this Authorisation remains in force."*

It appears that a further **MFA** was signed by the Complainants on the same date, **6 October 2008**, which details as follows:

*"I wish to apply for the interest rate indicated below for my Mortgage Loan (the "Loan") upon the expiry of my/our existing rate. (Please Note: If you move out of a fixed rate before the expiry of the fixed rate period, you may be liable to pay a funding sum to the lender. See full conditions overleaf.)*

<i>Selected Rate</i>	<i>Description</i>	<i>Rate</i>
✓	H/L VARIABLE LTV 50-80% >500K	5.400%"

The **Acknowledgement and Agreement** section of this **MFA** was signed and accepted by the Complainants on **06 October 2008** on the following terms:

*"I acknowledge that following the acceptance by the Lender of this application, the terms and conditions applicable to the Loan shall be amended/ varied by the terms and conditions set out in this Form of Authorisation, and I accept the said conditions and agree to be bound by them. I acknowledge and agree that:-*

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...

4. *if I have applied to convert to a Home Loan Variable rate the payment rate on the Loan may be adjusted by the Lender from time to time.*

5. *Save as set out in this Form of Authorisation, all the terms and conditions applicable to the Loan remain unchanged."*

I note that the Complainants' mortgage loan account ending **9308** has remained on this variable rate product.

Having considered the evidence before me, it is clear that the Complainants were offered a tracker interest rate of 5.50% (ECB +1.25%) on the expiry of the discounted tracker interest in **2008**. I have not been provided with any evidence to suggest that the Provider "*misled*" the Complainants in any way, as regards their choice of interest rates at the end of the discounted tracker interest rate period. The evidence shows that a **Product Review Notice** issued on **15 September 2008** notifying the Complainants that their mortgage loan account would default to a tracker rate. The Complainants were free to allow their mortgage loan account default to this tracker interest rate, in line with the terms and conditions of their mortgage loan. However, the Complainants chose not to allow their mortgage loan default to a tracker interest rate and instead proactively sought an alternative interest rate from the Provider and a special request rate was agreed on **29 September 2008**. It is important to note that it was entirely a matter for the Complainants to decide what interest rate best suited their needs and circumstances at that time.

The Complainants did not sign the **MFA** to implement this rate change until **06 October 2008**. During this intervening period, the Complainants were free to decline this special rate, being a discounted variable interest rate of 5.40%, and have their mortgage loan default to a tracker interest rate of 5.50% on **13 October 2008**. However, the Complainants did not do so and instead signed the **MFA**, directing that a variable interest rate had been applied to their mortgage loan account. The Complainants acknowledged that the variable interest rate that they were applying to their mortgage "*may be adjusted by the lender from time to time*". This can be clearly distinguished from a tracker interest rate, which varies in accordance with the ECB refinancing rate.

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

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**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**

4 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.