



<b><u>Decision Ref:</u></b>	2021-0461
<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 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' private dwelling house.

The loan amount was €312,000 repayable over a term of 30 years. The **Letter of Offer** dated **14 October 2004** provided for a fixed interest rate of 2.74% to apply for the first 12 months of the loan, which would thereafter convert to the Provider's standard variable rate.

**The Complainants' Case**

The Complainants submit that they drew down their mortgage loan account ending **7114** in **October 2004** on an initial 12-month fixed interest rate of 2.74%. The Complainants contend that the Provider did not offer them the option of a tracker interest rate at the time of their application.

The Complainants assert that on the expiry of the initial fixed interest rate period in **November 2005**, the Provider issued them with a letter outlining the interest rate options available to them at that time. The Complainants note that this letter contained fixed and variable interest rate options but did not include the option of a tracker interest rate.

The Complainants submit that their loan agreement states that they would revert to a variable rate following expiration of the fixed rate period but *“It does not state if that is a SVR variable rate or a Tracker variable rate.”* The Complainants state that they have not been offered a tracker interest rate at any time during the term of their loan.

The Complainants submit that their original **Letter of Offer** was flawed insofar as Part 3 of the **European Standardised Information Sheet** relating to interest rates was *“incomplete”* and *“[t]here were no Terms and Conditions attached”* to the **Letter of Offer**.

The Complainants submit that they obtained a top-up loan with the Provider in **2007** and assert that on the expiry of the initial fixed rate period, this loan converted to a tracker interest rate. The Complainants contend that *“neither loan offer contains the term ‘Tracker Variable Rate’”* and this has led them to question why the original loan, on the expiry of the fixed interest rate period in **November 2005** *“did not revert to a tracker rate as it did on the Top-up loan”*.

Furthermore, the Complainants assert that they have been *“treated in both a bullying and cynical manner by [the Provider]”*. The Complainants further assert that their efforts to resolve these issues have either been *“ignored or deliberately place in limbo by [the Provider]”*.

The Complainants are seeking:

- (a) For a tracker interest rate to be applied to their mortgage loan account backdated to the expiry of the fixed interest rate period in **November 2005**; and
- (b) Redress and compensation.

### **The Provider’s Case**

The Provider details that the Complainants applied for a home mortgage loan in the amount of €312,000 over a term of 30 years on **17 September 2004**. The Provider submits that the Complainants *“did not request a tracker interest rate in respect of their mortgage”* at application stage.

The Provider submits that the Complainants availed of the services of a third-party broker during the application stage of their mortgage. The Provider submits that they *“did not contact broker customers until mortgage funds were drawn down. As such, and as in all broker applications, the customers’ broker also received a copy of the **Letter of Loan Offer** and all associated terms and conditions.”*

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The Provider states that it issued a **Letter of Loan Offer** to the Complainants on **14 October 2004** for the sum of €312,000 repayable over a term of 30 years. The Provider outlines that this **Letter of Loan Offer** stipulates that a fixed interest rate of 2.74% would apply for the first 12 months of the loan, which would thereafter convert to the Provider's standard variable rate if the Complainants did not elect to apply an alternative rate.

The Provider submits that the Complainants signed and accepted the **Letter of Loan Offer** on **01 November 2004**.

The Provider asserts that it *"does not agree with [the Complainants'] submission that they were provided with an incomplete copy of the Terms and Conditions in their Letter of Loan Offer dated 14 October 2004"*. The Provider details that the Specific and General Terms and Conditions all form part of the Complainants' loan agreement with the Provider. The Provider further details that the *"Specific Terms and Conditions were contained within the Loan Offer document and the Standard Mortgage General Terms and Conditions were issued as a booklet which was supplemental to and formed part of [the Complainants'] Letter of Loan Offer"*.

The Provider notes that Part 3 of the **European Standardised Information Sheet**, which was furnished to the Complainants together with their **Letter of Loan Offer**, was in fact incomplete and it did not explain what would transpire upon expiry of the fixed interest rate period. However, the Provider asserts that the **European Standardised Information Sheet** *"did not form part of the [Complainants'] Letter of Loan Offer"*. The Provider states that *"the purpose of the ESIS document was to summarise the information contained in the customers' Letter of Loan Offer"* and the Provider highlights that the **European Standardised Information Sheet** explicitly stated that *"this document does not constitute a legal binding offer"*.

The Provider submits that on the expiry of the initial fixed rate period in **November 2005**, tracker interest rates were available for selection. However, the Provider notes that its practice at the time was that *"the range of interest rate options that were available to customers, subject to credit criteria, eligibility and terms & conditions, were outlined to customers"*. The Provider notes that for this reason, it *"provided information to customers, when requested, in relation to the various interest rate options that may have been available at that time"*. The Provider notes that in its letter to the Complainants dated **14 November 2005**, the Provider invited the Complainants to contact it with any specific queries that they may have had at the time.

Furthermore, the Provider asserts that the Complainants' **Letter of Loan Offer** "*did not provide a contractual entitlement*" to the Complainants that they would be able to avail of a tracker interest rate upon the expiry of the initial fixed rate period, or at any point thereafter.

The Provider contends that it simply provided the product and that its staff "*were not authorised and did not provide advice to customers as to what interest rate to select*".

The Provider notes that it was offering tracker interest rates from **early-2004** until **late-2008**, at which point it withdrew its tracker mortgage rates from the market.

In addition, the Provider submits that it disagrees with the Complainants' assertion that it treated the Complainants in "*both a bullying and cynical manner*" or that the Complainants attempts to resolve their issues were either "*ignored or deliberately placed in limbo by [the Provider]*". In this manner, the Provider states that it is "*satisfied*" that the information in respect of the Complainants' mortgage loan was "*sufficiently clear and transparent*" to allow the Complainants to "*make informed choices*" in respect of the interest rate applying to their mortgage.

### **The Complaints for Adjudication**

The complaints for adjudication are as follows:

- (a) The Provider incorrectly failed to offer the Complainants a tracker interest rate at the time of their mortgage loan application in **2004**; and
- (b) The Provider incorrectly failed to offer the Complainants a tracker interest rate on the expiry of the initial 1- year fixed interest rate period in **November 2005**.

### **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.

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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 1 November 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.

Before dealing with the substance of the complaint, I note that the Complainants engaged the services of a third-party broker during the application process for their mortgage loan. As this complaint is made against the respondent Provider only, it is the conduct of the Provider and not the broker which will be investigated and dealt with in this Decision.

Therefore, the conduct of the third-party broker engaged by the Complainants, does not form part of this investigation and Decision for the reasons set out above.

The Complainants completed and signed an **Application Form** on **18 August 2004**. Under the section titled "*Details of Mortgage Required*" on the Application Form, the Complainants noted that they required a mortgage for a sum of €312,800, repayable over a term of 30 years. I note that one of the questions on the **Application Form** is "*Type of loan required*" and four options are listed to include "*Variable*", "*Fixed*", "*Tracker*" and "*Split*". The Complainants indicated on this form that they wished to apply for a fixed interest rate for a period of 1 year.

The Provider issued a letter to the Complainants' solicitors on **14 October 2004** which details as follows:

*"We enclose herewith the original loan offer letter, the Specific Terms and Conditions, the General Terms and Conditions and the Loan Acceptance for your attention. Please note that the Loan Acceptance should be signed and dated by the applicants".*

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A copy of the loan offer was also sent to the Complainants and a third-party guarantor under cover of letter dated **14 October 2004** which details as follows:

*"I am delighted to enclose your loan offer, the original of which has been forwarded directly to your solicitor.*

*To ensure the smooth issue of your loan cheque the loan conditions attached must be complied with. Please note that your loan cheque can only be issued after all such conditions have been complied with".*

The **Loan Offer Letter** dated **14 October 2004** that issued to the Complainants from the Provider details as follows:

<i>"...Loan Amount:</i>	<i>€312,000.00</i>
<i>Interest Rate:</i>	<i>2.74%</i>
<i>Interest Type:</i>	<i>FIXED FOR 012MONTHS and variable thereafter</i>
<i>Term:</i>	<i>30 YRS</i>
<i>Monthly Loan Repayment</i>	<i>€1272.06 for the following 12 months</i>
	<i>€1402.37 for the following 348 months*</i>

*[...]*

*\* Based on a calculation using the current [Provider's] variable rate"*

The **Loan Offer Letter** also states as follows:

***"WARNING***

***...***

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

The **Specific Loan Offer Conditions** detail as follows under the heading 'What requires no further action':

*"The rate of interest applicable to this loan will be fixed [for] the fixed rate term specified in the loan offer letter.*

*The fixed rate quoted shall be subject to variation prior to drawdown in accordance with any variations in the fixed rate offered by the Company to new applicants for similar loans."*

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The **Standard Mortgage General Terms and Conditions (effective from 18/02/2004)** appended to the **Loan Offer Letter** provide as follows:

***“1. Introduction***

*(a) These General Terms and Conditions apply in all circumstances for [the Provider’s] Standard Mortgage. The Loan Offer comprises the Specific Loan Offer Conditions and these General Terms and Conditions. In the event of any conflict or inconsistency between the two, the Specific Loan Offer Conditions shall apply.*

...

***14. Interest Rate***

*(a) Subject to subsection (b), all loans are subject to the prevailing interest rate at the date the loan is drawn down. Subsequently, the interest rate may vary in accordance with the terms and conditions of the Loan Offer.*

*(b) In the case of a fixed interest rate Mortgage, the following conditions will apply:-*

- (i) The rate of interest applicable to the loan will be fixed at the rate and for the period specified in the Loan Offer;*
- (ii) The Borrower on the expiry of the Fixed Rate Period may, by prior notice in writing to [the Provider], opt to choose a further fixed rate of interest for a certain period if such an option is made available by [the Provider] and on terms and conditions as may be specified by [the Provider].*

*Where such an option is not made available by [the Provider] or, if available, where the Borrower fails to exercise the option, the interest rate applicable will be a variable rate of interest which may be increased or decreased by [the Provider] at any time, and in this respect, the decision of [the Provider] will be final and conclusively binding on the Borrower.”*

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The Complainants signed the **Loan Acceptance** section of the **Loan Offer Letter** on the following terms:

*“(a) I/We acknowledge receipt of the General Terms and Conditions and Specific Conditions attached to the Loan Offer. I/We have had the Loan Offer, the Specific Loan Offer Conditions and the General Terms and Conditions explained to me/us by my/our Solicitor and I/we fully understand them. I/We hereby accept the Loan Offer on the terms and conditions specified. I/We undertake to complete the Mortgage Deed as soon as possible.”*

The Complainants accepted and signed the **Loan Acceptance Form** on **01 November 2004** and the mortgage loan statements provided in evidence indicate that the mortgage was drawn down on **19 November 2004**.

The Complainants appear to submit that they never received the terms and conditions attaching to the **Loan Offer Letter**. It is clear to me that a copy of the terms and conditions was issued to the Complainants’ solicitor under cover of letter dated **14 October 2004**. Furthermore, the Complainants signed the Loan Acceptance acknowledging that their solicitor had explained the terms and conditions and that they fully understood them.

The **European Standardised Information Sheet** attached to the Complainants’ mortgage loan documentation details the following:

<b>3. Interest Rate</b>	<i>Interest Rate: 2.74%</i> <i>Interest Type: FIXED FOR 012MONTHS and variable thereafter</i>  <i>“(a) In the case of a fixed interest rate Mortgage, the following conditions will apply:-</i> <i>(i) The rate of interest applicable to the loan will be fixed at the rate and for the period specified in the Loan Offer;</i> <i>(ii) The Borrower on the expiry of Fixe” [sic]</i>
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...

**IN THE EVENT OF INCONSISTENCIES BETWEEN THE INFORMATION PROVIDED IN THIS INFORMATION SHEET AND THE TERMS OF THE LOAN OFFER, THE TERMS OF THE LOAN OFFER SHALL PREVAIL.**

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**...WARNING**

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

I note that there appears to be some text missing from **Part 3 (a) (ii)** of the **European Standardised Information Sheet**. The Complainants appear to take issue with the fact that this section of the **European Standardised Information Sheet** is incomplete. It is important to note that the **European Standardised Information Sheet** does not constitute a legally binding offer and does not form part of the Complainants' **Loan Offer Letter**. It is the Loan Offer Letter that was signed by the Complainants on **01 November 2004** which forms the contractual basis of the mortgage loan agreement between the parties.

In addition, the **European Standardised Information Sheet** states as follows:

*“This document does not constitute a legally binding offer.*

*The figures are provided in good faith and are an accurate representation of the offer that the lender would make under current market conditions based on the information that has been provided. It should be noted, however, that the figures could fluctuate with market conditions.*

*The provision of this information does not oblige the lender to grant a credit”.*

It is clear to me that the **Loan Offer Letter** provided that a fixed interest rate of 2.74% would apply for the first 12 months of the mortgage loan, with the Provider's variable rate to apply thereafter, unless the Complainants, by prior notice in writing to the Provider, opted to apply a further fixed interest rate than on offer by the Provider to their mortgage loan account. The nature of the variable rate referred to in the Loan Offer Letter was one that could be adjusted by the Provider at any time as opposed to one that varied in accordance with the European Central Bank (ECB) main refinancing interest rate.

Prior to the expiry of the 12- month fixed interest rate period, the Provider issued a letter to the Complainants dated **14 November 2005** enclosing a Letter of Authority/ Acknowledgement. The letter dated **14 November 2005** details as follows:

**“YOUR FIXED RATE TERM IS ABOUT TO EXPIRE**

*Dear Customer(s),*

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On the **22<sup>nd</sup> November 2005** the current fixed rate of 2.74% on your mortgage will expire and you may at that time choose to transfer your mortgage to either a variable rate or a new fixed rate term. The choice is yours.

The fixed rate options available at present are as follows:

Rate options	Rate %	Loan Repayment per month	Insurances per Month	Repayment per month excluding TRS
1 Year Fixed	N/A			
2 Year Fixed	3.39	1,385.71	0.00	1,385.71
3 Year Fixed	3.53	1,409.49	0.00	1,409.49
4 Year Fixed	N/A			
5 Year Fixed	3.99	1,489.15	0.00	1,489.15
10 Year Fixed	4.49%	1,578.32	0.00	1,578.32

...

If you decide that a fixed rate option is best for you, simply complete the enclosed Letter of Authority and return it to us. We will then transfer your existing mortgage to the option chosen. Should you have any specific queries in relation to refixing your mortgage, please contact us directly at [telephone number].

If you choose the variable rate option you do not need to contact us as your loan will automatically revert to a variable rate.

...

The current variable rate may be increased or reduced by [the Provider] from time to time, subject to prior notice being given, in the event of any change in the rate.”

The Complainants completed and signed the **Letter of Authority** on **18 November 2005** wherein they indicated their preference for a 3-year fixed interest rate of 3.53%. I note that the Complainants were offered a 1-year, 2-year, 3 -year,4-year,5-year and 10-year fixed interest rate. This **Letter of Authority** further notes:

*“I/We acknowledge the following Fixed rate Mortgage conditions:*

**1. FIXED TERM DETAILS**

*The rate of interest applicable to this loan will be fixed for the period specified.*

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**3. TRANSFER FROM FIXED RATE TO VARIABLE RATE AT THE END OF FIXED NOTICE**

*On the expiry of the fixed term I/we may, by prior notice in writing to the Company, opt to choose a further fixed rate of interest for a certain period, if such an option is made available by [the Provider]. Where such an option is not available or I/We fail to exercise the option if available, the interest rate applicable will be a rate of interest which may be increased or reduced by [the Provider] from time to time and at any time in line with market interest rates (the variable rate)."*

It appears from the mortgage loan account statements submitted in evidence that the Complainants' mortgage loan account switched to a fixed interest rate of 3.53% from **01 December 2005**.

Having considered the Complainants' mortgage loan documentation, it is clear to me that the Complainants had the option to select a tracker interest rate in the **Application Form** which they completed as part of the mortgage loan application process in **August 2004**. If the Complainants had a preference for a tracker interest rate to apply to their mortgage loan account from inception, the Complainants could have applied for a tracker interest rate at the outset or explore the tracker interest rate options available to them with the Provider. However, rather than selecting a tracker rate of interest, the Complainants selected a 1- year fixed interest. The Provider subsequently issued a **Loan Offer Letter** dated **14 October 2004** to the Complainants offering a 1-year fixed interest rate of rate of 2.74% which they duly accepted. The Complainants were free to decline this loan offer if they felt that a fixed interest rate was not suitable for them.

The Complainants also appear to be of the view that the Provider incorrectly failed to offer them a tracker rate of interest upon the expiry of the 1-year fixed interest rate period. It is clear to me that the **Loan Offer Letter** dated **14 October 2004** stipulated that the interest rate on the Complainants' mortgage loan account would convert to the Provider's standard variable rate on the expiry of the initial fixed interest rate period unless the Complainants opted for a further fixed interest rate, if available from the Provider. There is no reference whatsoever to an entitlement to a tracker interest rate at the end of the initial fixed interest rate period, or indeed at any stage during the term of the mortgage loan. It is evident from the **Letter of Authority**, signed by the Complainants on **18 November 2005**, that the Complainants were offered a range of fixed interest rates on the expiry of the initial fixed interest rate period, in line with **General Condition 14** as outlined above. The Complainants did not have a contractual or other entitlement to a tracker interest rate on their mortgage loan account and accordingly there was no contractual or other obligation on the Provider to offer the Complainants a tracker interest rate in **November 2005**.

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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**

1 December 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.