



<u>Decision Ref:</u>	2021-0486
<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 Failure to offer a tracker rate throughout the life of the mortgage
<u>Outcome:</u>	Rejected

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

This complaint relates to a mortgage loan account held by the Complainant with the Provider. The mortgage loan account which is the subject of the complaint was secured on the Complainant's residential investment property.

The loan amount was €290,000 and the term of the loan was 30 years. The Letter of Approval which was signed by the Complainant on **30 August 2006** outlined the loan type as *"3 Year Fixed Rate Home Loan"*.

The Provider transferred its interest in the mortgage loan account to a third-party provider on **1 February 2019**.

The Complainant's Case

The Complainant is represented by a third party representative.

The Complainant submits that he applied for a mortgage loan with the Provider through a third-party broker in **2006**. The Complainant states that because *"he suffers from acute dyslexia"*, he had the third-party broker complete the mortgage loan application form on his behalf.

The Complainant submits that, both the variable and tracker options were selected on the application form and *“it is clear from this application that a variable tracker mortgage was requested”*. He further submits that in light of his dyslexia, *“it was agreed that communications would be of a verbal nature going forward”*. The Complainant submits that the Provider has *“acknowledged that a Tracker Mortgage Rate was verbally agreed but they subsequently advised that a verbal agreement/discussion does not constitute an offer of a Tracker mortgage”*. The Complainant asserts that he is of the opinion that the application form was *“a legal document”* and any changes made to the document should have been advised to the Complainant.

The Complainant submits that the purchase of the initial property fell through, as did the purchase of two subsequent properties. The Complainant states that on each occasion he met with the broker to go through the property details and the mortgage required to complete the purchase.

Once a property was secured, the Complainant submits that he signed the *“Acceptance of Loan Offer”* document on **30 August 2006**. The Complainant details that the **Letter of Approval** provided for a 3-year fixed interest rate of 4.69% instead of a tracker rate of interest. The Complainant explains that *“the documentation was signed by [him] but was never read by him due to his Dyslexia nor was it explained to him by the Solicitor”*. He submits that he *“signed for the mortgage in good faith believing that he was getting the agreed Tracker Mortgage”*. The Complainant states that the Provider should have contacted the broker or his solicitor at this time to inform them of the *“major change to the cost of the mortgage”*.

The Complainant submits that he subsequently learned from his accountant in **2008** that his mortgage loan account was operating on a fixed interest rate and not a tracker interest rate. The Complainant states that both he and his accountant met with a manager of one of the Provider’s branches to discuss this. The Complainant submits that the manager *“was in agreement that an error had taken place”* and advised him that the matter would be investigated.

The Complainant states that the Provider failed to investigate the matter, although he made *“numerous”* visits to the Provider’s branch and sent a number of emails in relation to the issue. The Complainant submits that on his fourth visit to the Provider’s branch, he was advised that he was not eligible for a tracker mortgage and was offered a standard variable interest rate. Consequently, he details that in **January 2009**, he requested that the interest rate be amended from a fixed rate to a standard variable rate after a staff member gave the Complainant details of how to proceed and the costs involved.

The Complainant submits that due to work and family commitments, he was not in a position to continuously chase the Provider in relation to the status of the investigation, and his complaint was “suspended” by the Provider in **July 2013** because he did not respond to the Provider’s correspondence. The Complainant states that in **2016**, he resumed his efforts to resolve the issue and he submitted a freedom of information request to the Provider. He submits that the documentation he received from the Provider pursuant to this request made it clear that “no action was ever taken by [the Provider] to investigate”.

The Complainant asserts that the Provider’s failures have caused him substantial financial loss, which has resulted in the Complainant’s ill health. The Complainant further asserts that his family have been subjected to unnecessary stress as a result.

The Complainant is seeking that that the Provider either:

(a)

1. *“Refund the interest charged. €54,357 up to 26th February 2016 and additional excess from 26th February 2016 to time of agreement.*
2. *Convert the mortgage to a Tracker Mortgage as previously agreed.*
3. *Cancel any excess interest applied to this mortgage as a result of arrears.*
4. *Capitalise the arrears into existing mortgage”.*

Or

(b)

1. *“Accept the sale proceeds of the property in full and final settlement*
2. *[The Complainant] to continue with payments of revised Tracker Mortgage repayments until property is sold.”*

The Provider’s Case

The Provider details that the Complainant submitted a mortgage loan application through a third-party broker. The Provider states that the application form received was for a mortgage loan of €240,000. The Provider submits that the Complainant selected the “Variable”, “Tracker” and “Fixed” interest rate options in the application form.

The Provider details that it received an email on **15 May 2006** from the Complainant’s broker requesting that the application form be amended as sought to purchase a different property and increase the amount he could borrow “to the maximum amount possible”.

The Provider submits that a further email was received from the Complainant's broker on **10 July 2006** confirming that the Complainant had secured a property with a purchase price of €380,000 and he sought a mortgage loan for the amount of €290,000.

The Provider states that on **4 August 2006**, it requested confirmation from the Complainant's broker as to the interest rate sought, as the application form had three different interest rates selected. The Provider details that it was *"instructed on 4 August 2006 by the Mortgage Intermediary on behalf of the Complainant that the term of the mortgage was to be for 30 years with a 3 year fixed interest rate to be applied."*

The Provider states that a Letter of Approval issued on **4 August 2006** which provided for a three-year fixed interest rate of 4.69%. The Provider details that it issued a letter to the Complainant on **17 October 2006** indicating that the fixed interest rate had increased to 4.79%. The Provider submits that the mortgage loan was drawn down on **18 October 2006**. The Provider states that *"The Loan Agreement contains no entitlement to a tracker interest rate to be offered or made available to the Complainant at any stage during the term of the loan."*

The Provider details the Complainant had indicated that he understood and accepted the terms of the Letter of Approval by signing the Acceptance of Loan Offer on **30 August 2006** with *"the benefit of financial and legal advice when entering into the Loan Agreement with the Bank."* The Provider states that it *"does not accept any complaint that the terms of the agreement between the Bank and the Complainant were in any way different to those terms which were agreed and signed in the Loan Agreement."*

The Provider does not accept that a tracker interest rate was omitted from the Letter of Approval in error. In this regard, the Provider submits that it considered the Complainant's application and subsequent amendments and offered him a three-year interest fixed rate. The Provider states that *"The terms and conditions of the Loan Agreement are clear. The Complainant does not have an entitlement to a tracker interest rate to be offered or made available to him at any stage during the term of the loan."* In particular, the Provider highlights **Special Condition A** and **General Conditions 5.1** and **5.4** of the Letter of Approval to assert its submission that the Complainant had no entitlement to a tracker interest rate.

In relation to the Complainant's submissions that he made a complaint in **2008** in relation to a tracker interest rate not being offered to him, the Provider states that it *"has no record on its file of any complaint made by the Complainant in 2008. In the absence of any letter or record of a complaint in 2008, there was no subsequent investigation made by the Bank in respect of this alleged complaint"*.

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In response to the Complainant's submission that he met with a manager in one of its branches in **2008** to complain that a tracker rate was not applied to his mortgage, the Provider states that it *"has no record of this alleged meeting or of any alleged complaint made by the Complainant to any employee of the Bank's [location] branch in 2008 and/or 2009."*

The Provider details that it received correspondence from the Complainant on **26 January 2009** requesting to break out of the fixed interest rate period and apply a variable interest rate. The Provider submits that there was no *"reference or complaint made by the Complainant at this stage or in this correspondence about the Complainant's mortgage not being on a tracker interest rate."* The Provider details that a variable interest rate was applied to the Complainant's account from **1 February 2009**.

The Provider states that the Complainant referred to an entitlement to a tracker interest rate in a communication with its Arrears Support Unit on **26 May 2013**. The Provider details that it attempted to contact the Complainant but was unable to reach him and therefore issued a letter dated **26 July 2013** detailing that if the Complainant wished to *"re-activate the case"*, he could do so by contacting the Provider.

The Provider details that it subsequently received correspondence from the Complainant dated **12 February 2015**, requesting a tracker interest rate.

The Provider further states that it was not made aware that the Complainant had any learning/reading difficulties when the mortgage loan was being processed and this *"was not communicated to the Bank by the Complainant, his Broker and/or the Mortgage Intermediary and/or his solicitor."* The Provider further states that it *"had no direct interaction with the Complainant when negotiating the terms of the mortgage."*

The Provider submits that the mortgage loan was transferred to a third-party financial service provider on **1 February 2019**.

The Complaints for Adjudication

The complaints for adjudication are as follows:

- (a) the Provider failed to apply a tracker interest rate to the Complainant's mortgage loan account in **2006**, as requested on the application form;
- (b) the Provider failed to offer the Complainant a tracker interest rate in **2008**, when he first notified the Provider of its failure to apply a tracker interest rate;

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- (c) the Provider failed to properly investigate the Complainant's complaint from **2008** to **2016**.

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 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 the application for the mortgage loan was submitted by the Complainant to the Provider through a third-party broker. As this complaint is made against the Respondent Provider only, it is the conduct of this Provider and not the Broker which will be investigated and dealt with in this Decision.

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In order to determine the 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 from **2008 to 2016**.

An **Application Form** has been submitted in evidence which was signed by the Complainant however it is undated. The "*Details of Mortgage Required*" section of the Application Form details that the Complainant requested a loan in the amount of €230,000 over a term of 30 years. Under the "*Type of loan required*" section, the Complainant appears to have ticked both the "*Variable*" and "*Tracker*" options while also inserting "3" under the "*Fixed*" option.

I note that the Complainant is of the opinion that the application form was a "*legal document*" which forms part of his mortgage loan documents. In this regard, I would highlight the "*Declarations and Signatures*" section of the Application Form which states as follows:

"This form must not be construed as an offer on behalf of the lender and any advances offered may be revised or cancelled before the advance is paid.

...

I/We understand that I am/ we are not guaranteed access to the lowest cost mortgage available in the market."

In light of the above, I do not consider the Application Form to equate to a formal loan offer, nor an offer of a tracker rate of interest.

The Complainant's broker sent an email to the Provider dated **15 May 2006**, which details as follows:

"Applicant now wishes to change the property being purchased to a RIP deal. The purchase price is 300K and he is [looking] for the max he can borrow, he is looking to purchase [property address]. He will let the property for an average of 1,400 pm as area very popular for holiday lettings."

The Complainant's broker sent a further email dated **10 July 2006**, which details as follows:

"This file is with [Provider] and approved for funds €291,130.

Applicants have finally secured a property, [property address] [sic]

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[illegible] €380k seeking funds 290k

They have €100k in savings and their car loan has been cleared in full

Can you please locate file and advise if ok to proceed with new property and new loan amount €290k, also can you confirm what is o/s for loan offer to issue."

I note that while the above note suggests that there was more than one applicant involved in the mortgage loan application, a mortgage loan offer was ultimately issued in the sole name of the Complainant.

The Provider's internal diary note dated **4 August 2006**, which reflects a communication with the Complainant's broker, details as follows:

"Can you please confirm rate, term and solicitor details for the above application?

...

Details are as follows:^^^Loan Type: Repayment^Interest Rate: % Fixed 3 Years^Mortgage Term: 30^Mortgage Value: 291130"

The Provider issued a **Letter of Approval** dated **04 August 2006** to the Complainant for mortgage loan account ending **3454** which details as follows:

<i>"Loan Type:</i>	<i>3 Year Fixed Rate Home Loan</i>
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<i>Purchase Price / Estimated Value:</i>	<i>EUR 380,000.00</i>
<i>Loan Amount:</i>	<i>EUR 290,000.00</i>
<i>Interest Rate:</i>	<i>4.69%</i>
<i>Term:</i>	<i>30 year(s)"</i>

Condition A of the **Special Conditions** attaching to the **Letter of Approval** dated **04 August 2006** details as follows:

"Special Conditions

- 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."*

General Condition 5 of the **General Mortgage Loan Approval Conditions** provides that:

"CONDITIONS RELATING TO FIXED RATE LOANS

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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 the 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 the amount 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 sum to a Borrower at its then current New Business Fixed Rate with a maturity date next 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.""

An **Acceptance of Loan Offer** in respect of the mortgage loan was signed by the Complainant on **30 August 2006** 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’s] 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 statements** indicate that the mortgage loan was drawn down on **18 October 2006**. Prior to drawing down the loan, the Provider issued a confirmation letter to the Complainant dated **17 October 2006** further outlining details of the mortgage loan. The confirmation letter showed that the fixed interest rate had increased to “4.79%” and the total monthly repayment was “EUR 1,519.77”.

The Complainant asserts that he signed the **Acceptance of Loan Offer** “*in good faith*” on the understanding that a tracker interest rate would apply to his mortgage loan account. The Complainant submits that “*the documentation was signed by [him] but was never read by him due to his Dyslexia nor was it explained to him by the Solicitor*”. It is clear to me that the **Letter of Approval** provided for a three-year fixed interest rate of 4.69% (which had increase to 4.79% at the time of draw down) with the Provider’s variable rate to apply thereafter. The variable rate in the Complainant’s 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. By signing the **Acceptance of Loan Offer**, the Complainant acknowledged that his solicitor had fully explained the terms and conditions of the mortgage loan agreement to him. It was a matter for the Complainant to seek independent legal and/or financial advice before agreeing to the terms of the **Letter of Approval** dated **04 August 2006**. The Provider cannot be held accountable for any advice given, or not given, by the Complainant’s solicitor.

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I have not been furnished with any documentary evidence of any discussions which may have taken place between the Provider and the Complainant during the application stage in relation to interest rate options or any evidence to reflect that the Provider was aware of the Complainant's reading difficulties. In circumstances where the Complainant was engaging with a third -party broker with respect to the mortgage loan application, there was no requirement on the part of the Provider to communicate directly with the Complainant during the application process or advise on the interest rate options available.

The Provider was informed by the Complainant's broker that a three-year fixed interest rate mortgage loan for a term of 30 years was required, and the Provider subsequently offered a mortgage loan of this nature to the Complainant. It is important to highlight that the Provider was under no obligation to offer the Complainant any mortgage or any particular type of mortgage in **2006**.

It was a matter for the Provider to decide firstly, if it was willing to offer the Complainant a mortgage upon assessing the mortgage loan application and secondly, how that offer would be structured. The Provider ultimately offered the Complainant a 3-year fixed interest rate mortgage loan which would convert to the Provider's standard variable rate on expiry of the fixed interest rate period and the Complainant accepted this loan offer.

The Complainant details that he made a complaint to Provider in **2008** however the Complainant maintains that the Provider failed to adequately investigate his complaint. I have not been provided with any documentary evidence by either party to indicate that a complaint was made by the Complainant in **2008**. Moreover, I have not been provided with any evidence to suggest that a meeting took place between the parties in **2008** during which the Complainant requested a tracker interest rate to be applied to his mortgage loan account. In order for the Provider to be in a position to implement any interest rate change outside the terms of the Letter of Approval, the Complainant would have been required to provide his written consent to the Provider.

I note however that the Complainant contacted the Provider by way of letter dated **26 January 2009** requesting to break out of the fixed interest rate period early and move to a variable interest rate. The letter dated **26 January 2009** details as follows:

"To whom it may concern,

I would like to break out of my fixed term mortgage. Enclosed, please find a cheque for €100.00 for the breakout fee as advised by one of your employees. I would like to switch my mortgage to a normal variable mortgage.

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Also, I would like to give my Authorisation for my wife [name] to gain access to any information/dealings that may be required on my behalf in regard to the above property.”

The Provider responded to the Complainant by way of letter dated **29 January 2009** as follows:

“Dear [Complainant]

I refer to your recent query which has passed to me for attention.

Please find attached your cheque for €100. We do not require this fee when you are changing from a fixed to a variable rate.

There is currently no penalty for you to switch your mortgage to a variable rate. Your request for this amendment is being processed and you will receive notification in the coming days.”

The mortgage loan statements provided in evidence indicate that a variable interest rate was applied to the mortgage account from **1 February 2009**.

Upon reviewing the considerable number of submissions in respect of this complaint, I note that the earliest communication wherein the Complainant raises the issue of a tracker interest rate entitlement with the Provider was in a letter to the Provider’s appeals board in respect of a request to restructure his mortgage loan on **26 May 2013** as follows:

“To whom it may concern,

I am writing in relation to a letter I received offering a moratorium on my mortgage. I attended a meeting along with my accountant at your [location] branch and we met [named representative].

During the meeting we had agreed that an interest only agreement would be the best solution in my circumstances. I currently pay €1000 p/m and an interest only option would give me the chance to pay off a small amount each month off the arrears as well as pay the interest only. [Named representative] also agreed that a 6 month option is not viable in my situation as my business is currently under severe financial pressure and agreed that a minimum of one year option would be more suitable.

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This is the second meeting with the [location] branch. A few months prior I met a [named representative]. Both managers agreed to send me out a full copy of my original contract. To this date I have not received it and no explanation has been given as to why it has not been sent out to me. My accountant sent emails to [named representative] and to date has had no reply on the matter of my contract. I believe I am entitled to a tracker mortgage and I want to know why I am not on a tracker mortgage? We need the full copy of the contract to resolve this matter."

The Provider's internal notes indicate that the Provider's representatives attempted to contact the Complainant by telephone on **25 June 2013** to no avail and subsequently issued a letter on to the Complainants on **01 July 2013**. I have not been provided with a copy of this letter.

However, the Provider's internal communications indicate that the Provider attempted to contact the Complainant on the following dates:

25 June 2013

"[Named representative], can you contact this customer regarding the issues in his letter on the tracker mortgage. I have forwarded his appeal to the Underwriting Manager here."

1 July 2013

"[Named representative], can you send out a contact letter to [The Complainant], I have been trying to contact him on his preferred method of contact but never manage to get to talk to him, also there is no facility to leave a message."

The Provider issued a further letter to the Complainant dated **23 July 2013**, detailing as follows:

"Dear [Complainant],

Further to my recent correspondence, I wish to advise that I am still investigating the matter.

I would like to thank you for your continued patience in allowing us the time to fully investigate the matter. I assure you that I will be in contact with you as soon as my investigations are complete.

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Every effort will be made to agree to a fair and reasonable resolution with you. However, if you remain dissatisfied with the Bank's proposed resolution of your complaint you may refer the matter to the Financial Services Ombudsman for adjudication.

The Ombudsman may be contacted at the following address:

[Address of this office]."

The Provider issued a subsequent letter dated **26 July 2013**, detailing as follows:

"Dear [Complainant]

I would like to refer you to the letter dated 25th June 2013 asking you to contact [Provider's representative] of our Asset Management Unit (AMU).

As [Provider's representative] has not received communication from you, it is at this point that I must advise you that we cannot proceed with your request to Appeal the restructure and the Bank must close your case on this basis.

However, should you wish to proceed the Bank can re-activate the case at your request, please contact [Provider's representative] on [telephone number].

If you remain dissatisfied with the Bank's response you may refer the matter to the Financial Services Ombudsman for adjudication.

The Ombudsman may be contacted at the following address:

[Address of this office]."

In considering the interactions between the parties, it not clear whether the Complainant's correspondence of **26 May 2013** was intended to be a letter of complaint or a request to the Provider to issue a copy of the mortgage loan agreement. The evidence shows that the Provider attempted to contact the Complainant by telephone, being his preferred method of communication, but was unable to reach him or leave a voicemail. In circumstances where the Provider was unable to make contact with the Complainant by telephone, it issued follow up correspondence on **26 July 2013**. If it was the case that that the Complainant was dissatisfied with the Provider's response, he had the option of following up with the Provider or alternatively he could make a complaint to this office.

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The Complainant acknowledges in his own submissions that *“He lost heart with this David and Goliath conflict, believing he would not get any satisfaction and stopped chasing The Bank”* and the investigation was suspended in **July 2013** because he had not responded to the Provider. It was at all times open to the Complainant to re-engage with the Provider in an attempt to resolve matters.

It appears that the Complainant did not re-engage with the Provider until **12 February 2015**, on which date the Complainant asserted his entitlement to a tracker interest rate. An exchange of correspondence subsequently took place between the parties with the Provider again informing the Complainant that he had the right to make a complaint to this office if he was not satisfied with the Provider’s response. The Complainant made a complaint to this office in **March 2018**. Having carefully considered the communications between the parties, I accept that the Provider met its obligations under the **Consumer Protection Code 2012** in relation to its communications with the Complainant.

The Provider made numerous attempts to contact the Complainant to discuss his concerns but was unable to make contact with the Complainant in order to do so and attempt to resolve matters. Therefore, I do not believe that it can be said that the Provider failed to fully investigate the Complainant’s complaint.

Having considered the Complainant’s mortgage loan documentation and the interactions between the parties, it is evident that the Complainant did not have a contractual entitlement to a tracker interest rate at inception of the mortgage loan in **2006** or at any stage during the term of the mortgage loan, in particular in **2008**, as asserted by the Complainant. The interest rate applicable to the Complainant’s mortgage loan account at draw down in **2006** was a three-year fixed interest rate, after which a variable interest rate would apply. The evidence shows that the Complainant in fact decided to break away early from the fixed interest rate in **early 2009**, and a variable interest rate was applied specifically upon the Complainant’s request. If the Complainant was not happy with the terms of the **Letter of Approval** dated **04 August 2006**, including the applicable interest rate, the Complainant could have decided not to accept the offer made by the Provider, or he could have sought clarification from his broker and/ or his solicitor about the type of interest rate applicable to the mortgage. In circumstances where the Complainant was engaging with a third-party broker with respect to the mortgage loan application, there was no requirement for the Provider to communicate directly to the Complainant during the application stage. Further, there was no requirement for the Provider to advise the Complainant on details of the mortgage loan. It was a matter for the Complainant to seek independent legal and/or financial advice before entering into the mortgage loan agreement with the Provider.

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The Provider offered the Complainant a three-year fixed rate and that is the interest rate that was accepted by the Complainant, having acknowledged that the terms and conditions of the loan agreement had been fully explained to him by his solicitor.

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**

7 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.