



<u>Decision Ref:</u>	2021-0502
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Tracker Mortgage
<u>Conduct(s) complained of:</u>	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 is secured on the Complainants' principal private residence.

The loan amount was £21,700.00 and the term of the loan was 20 years. The **Particulate of Mortgage Loan** dated **3 December 1992** provided for an Annuity Fixed Rate Home Loan with an interest rate of 11.70% for a period of five years. The mortgage loan account was drawn down in **February 1993**.

The Complainant's Case

The Complainant submits that she was not asked by the Provider whether she would like to change the applicable interest rate on her mortgage loan account to a tracker rate and she was not given a tracker interest rate when she requested one in **2005**.

The Complainant states that she always made mortgage repayments in cash at the branch which was near her place of work. The Complainant explains that she was out of work due to illness for a long time. The Complainant submits that she found it hard to pay the mortgage and as a result she had to feed herself on €34.00 a week or did not eat at all for a period of three to four years.

The Complainant notes that during this time, she rang the Provider to ask could she switch her mortgage loan account to a tracker rate as she thought it would help. The Complainant submits that the Provider declined her request.

The Complainant outlines that she received letters asking her to sign for 5 or 7 years on a fixed rate. The Complainant states that if she had been given a tracker interest rate, it would have saved a lot of suffering during the time she was out of work due to her illness. The Complainant submits that she was left with no choice to change to a fixed rate and if she had not made the mortgage repayments, she would have lost her home.

The Complainant submits that she cannot recall what year but that she paid a December repayment at the end of November so she could have some money for Christmas. The Complainant submits that she subsequently received an arrears letter for the December payment. The Complainant submits that she had made the payment at the counter and when she received the letter from the Provider, she realised she had not taken a receipt. The Complainant submits that the Provider checked the CCTV and informed her that she did not make a second payment. The Complainant submits that she made the second payment as her *"word was not taken"*. The Complainant submits that if the Provider had any consideration, it would have reduced the payments when she had asked.

The Complainant *"would like to know why [she] was not asked would [she] like to change to tracker or given one when [she] asked for it."*

The Provider's Case

The Provider submits that the Complainant drew down a mortgage loan account on **17 February 1993** on an Annuity Fixed Rate Home Loan for a term of 20 years in the amount of £21,700.00. The Provider submits that a fixed interest rate of 11.7% applied for a period of five years.

The Provider maintains that it did not offer the Complainant a tracker interest rate in **1992** as it did not offer tracker interest rates at that time to its customers. The Provider states that **Special Condition A** of the **Loan Offer** deals with the applicable interest rate. The Provider states that it launched tracker interest rate products for new customers in **2004**. The Provider submits that it ceased offering tracker interest rates to existing customers in **2009**.

The Provider asserts that the **Loan Offer** did not contain any condition entitling the Complainant to a tracker interest rate. The Provider submits that the Complainant indicated that she understood and accepted the terms and conditions of the loan agreement by signing the **Acceptance of Loan Offer** on **14 December 1992**.

The Provider submits that it issued a letter to the Complainant prior to the expiry of the five-year fixed interest rate in **February 1998**. The Provider submits that the Complainant chose a fixed interest rate of 6.9% for a period of seven years. The Provider submits that it issued a letter to the Complainant prior to the expiry of the seven-year fixed interest rate period in **February 2005**. It states that the Complainant chose a further fixed interest rate of 4.44% for a period of five years. The Provider submits that it issued a letter to the Complainant prior to the expiry of the five-year fixed rate in **February 2010**. It states that the Complainant chose another fixed interest rate of 5.25% for a period of two years.

The Provider maintains that it began offering tracker interest rates in options letters to existing customers on the expiry of fixed and discounted rate periods who did not have a contractual entitlement to a tracker interest rate from **mid-2006 to mid-2009**. The Provider submits that when it issued options letters to the Complainant in **1998, 2005 and 2010**, it was not offering tracker interest rates to existing customers who did not have a contractual entitlement to tracker interest rates.

The Provider submits that it does not have any evidence of any documentation or telephone records relating to the Complainant's request for a tracker interest rate. The Provider also submits that it has not located any record of the Complainant requesting a reduction on her mortgage repayments. The Provider states that on **24 November 2005**, the Complainant requested a breakdown of monthly repayments. The Provider submits that it issued a letter dated **15 December 2005** to the Complainant with a breakdown of monthly mortgage repayments.

In **November 2011**, the Provider notes that the Complainant requested details of the amount to be paid in order to redeem the mortgage loan account. The Provider confirms that the mortgage was redeemed on **8 November 2011**.

The Complaints for Adjudication

The complaints for adjudication are as follows:

- (a) The Provider failed to offer the Complainant a tracker interest rate in respect of her mortgage loan account throughout the lifetime of the loan; and

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(b) The Provider refused the Complainant's request to apply a tracker interest rate to the Complainant's mortgage loan account in or around **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 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 18 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.

In order to determine this complaint, it is necessary to review and set out the relevant provisions of the Complainant's loan documentation. It is also necessary to set out the interactions between the Complainant and the Provider in and around **2005** when the Complainant contends that she made a request for a tracker interest rate.

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The Provider sent a **Loan Offer** dated **3 December 1992** to the Complainant which detailed as follows:

“Loan Type: ANNUITY FIXED RATE HOME LOAN

Loan Amount: £21,700.00

...

Term: 20 years

Interest Rate: 11.7000”

The **Special Conditions** to **Loan Offer** detail as follows:

“A. THE INTEREST RATE APPLICABLE TO THIS ADVANCE SHALL BE FIXED FOR A PERIOD OF 5 YEARS FROM THE DATE OF THE ADVANCE AND THEREAFTER MAY NOT BE CHANGED AT INTERVALS OF LESS THAN 1 YEAR. (N.B THE INTEREST RATE SPECIFIED ABOVE IN THIS APPROVAL MAY VARY BEFORE THE DATE OF THE COMPLETION OF THE MORTGAGE I.E THE DATE THE CHEQUE ISSUES).”

The Complainant signed and accepted the **Acceptance of Loan Offer** on **14 December 1992** which detailed as follows:

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

- (i) the Offer*
- (ii) the Particulars of Mortgage Loan*
- (iii) the Special Conditions (if any) overleaf*
- (iv) the General Mortgage Loan Approval Conditions*
- (v) the [Provider] Mortgage Conditions copies of which I/we have received.*

2. I/we have been advised by my/our Solicitor in relation to the said terms and conditions.

It is clear that the **Loan Offer** envisaged a fixed interest rate of 11.700% for a period of five years. I accept that the Complainant could not have been offered a tracker interest rate during the mortgage loan application process, which took place in **December 1992**, in circumstances where a tracker interest rate option was not available from the Provider until **early 2004**.

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The Complainant signed the **Acceptance of Loan Offer** having confirmed that her solicitor advised her in relation to the terms and conditions of the loan offer on **14 December 1992**. From the **mortgage statements** furnished in evidence by the Provider, I note that the mortgage loan was drawn down on **17 February 1993**.

Prior to the expiry of the 5-year fixed interest rate period, the Provider issued an **options form** to the Complainant which detailed the following available interest rate options at the time:

“--- Variable rate Mortgage currently; 7.50% £182.56
--- 1 year fixed rate Mortgage currently; 7.00% £176.96
--- 2 year fixed rate Mortgage currently; 6.50% £171.46

--- 3 year fixed rate Mortgage currently; 6.60% £172.55
--- 5 year fixed rate Mortgage currently; 6.85% £175.30
--- 7 year fixed rate Mortgage currently; 6.90% ✓ [amount redacted]
--- 10 year fixed rate Mortgage currently; 7.25% £179.75”

The Complainant signed the options form on **5 February 1998** and selected a 7-year fixed interest rate. The **mortgage statements** show that the Complainant made monthly repayments of £175.84 from **March 1998**. Tracker interest rates were not on offer by the Provider in **1998** therefore a tracker interest rate option was not included in the **options form** sent to the Complainant.

Prior to the expiry of the 7- year fixed interest rate period, the Provider issued an **options form** to the Complainant which detailed the following available interest rate options at the time:

“--- Variable Rate - Currently; 3.55%
--- 1 year fixed rate - Currently; 3.60%
--- 2 year fixed rate - Currently; 3.74%
--- 3 year fixed rate - Currently; 3.95%
✓ 5 year fixed rate - Currently; 4.44%
--- 7 year fixed rate - Currently; 4.99%”

I note that the Complainant signed the **options form** on **3 February 2005** and selected to apply a fixed interest rate of 4.44% for a period of five years.

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While I acknowledge that tracker interest rates were on offer by the Provider at that time, the Provider was under no obligation, contractual or otherwise, to offer the Complainant a tracker interest rate in **2005**.

On foot of a request made by the Complainant to the Provider in **November 2005** for a breakdown of her monthly repayments, the Provider wrote to the Complainant on **15 December 2005** confirming monthly repayments of €192.26. The letter also detailed as follows:

"I trust this is to your satisfaction and should you have any further queries, please do not hesitate to contact Mortgage Services on [phone number]"

The Complainant asserts that she made a request to the Provider to move to tracker interest rate in and around **2005** however she has not provided specific details of when the request was made other than it was made by way of a telephone call. The Complainant maintains that the Provider refused the request.

This office requested the Provider to provide a recording and/or transcript of all telephone calls between the Provider and the Complainant between **2004** and **2010** in respect of any requests made by the Complainant to amend the interest rate on her mortgage loan account.

The Provider has stated that it is unable to provide these *"due to a number of constraints, including the passage of time and technical limitations of the Bank's historic telephone recording system which is no longer in use, and on which calls of were recorded, the Bank is not in a position at this time to locate any existing relevant recording"*

Neither the Provider nor the Complainants have submitted any documentary evidence to show that a request for a tracker interest rate was made as described by the Complainant. Therefore, I am unable to comment further on any such request in the absence of any contemporaneous notes or other documentation demonstrating that this request was made or the date on which it was purportedly made. In any event, even if the Complainant had requested a tracker interest rate, it was within the Provider's commercial discretion to decide whether to accede to such a request in circumstances where the terms of the Complainant's fixed term mortgage loan did not contain a contractual entitlement to a tracker rate of interest.

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Prior to the expiry of the 5- year fixed interest rate period in **2010**, the Provider issued an **options form** to the Complainant which detailed the following available interest rate options at the time:

“--- LTV Variable Rate ** - Currently: 3.5500%
--- 2 Year Fixed Rate - Currently: 3.5500%”

The Complainant signed the options form on **1 February 2010** and selected a 2-year fixed interest rate. I note that the Provider had withdrawn tracker interest rates from its suite of mortgage products in **2010** therefore the Complainant was not offered a tracker rate at that time. In any event, the Complainant did not have a contractual entitlement to a tracker interest rate on the expiry of the fixed interest rate period in **February 2010**, or at any other time, and therefore there was no obligation for the Provider to offer a tracker interest rate at that time.

The Provider has furnished in evidence a **Tracker Interest Rates Offered as a Matter of Bank Policy**. I have set out a relevant extract from the Provider’s policy below:

“From [late] 2004 to [mid] 2008, the Bank provided a facility to switch an existing account to a tracker rate....

[in mid 2006] the Bank introduced a policy offering a tracker rate of interest to 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).

Therefore, a tracker mortgage 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. In absence of customer selection, the variable rate was applied to the mortgage.

...

The Bank ceased offering new tracker rate loans [mid 2008]. It also ceased offering a switch to a tracker rate from another variable rate on that dated[sic]...After [mid 2009] the Bank continued to offer and/or apply tracker interest rates to maturing loans where customers had a contractual right to a tracker rate. “

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I note that the Provider's policy outlines that existing customers were offered a tracker interest rate, even in circumstances where they did not have a contractual or other entitlement to same, from **mid-2006** to **mid-2009**. Therefore, I accept that there was no obligation for the Provider to include a tracker interest rate option in the **options forms** sent to the Complainant in **2005**, on the expiry of the fixed interest rate period. It is also clear from the evidence that the Complainant was not offered a tracker interest rate on the expiry of fixed interest rate periods in **1998** and **2010**, in circumstances where tracker interest rates were not available from the Provider, nor was it the Provider's policy to offer tracker mortgage rates at this time.

The Provider sent a redemption quote dated **4 November 2011** to the Complainant in response to a request from the Complainant as to the amount needed to clear the mortgage. I note from the **mortgage loan statements** that the mortgage loan account was redeemed on **8 November 2011**.

Having considered the mortgage loan documentation it is evident that the Complainant did not have a contractual, or other, entitlement to a tracker interest rate at any stage during the lifetime of the loan. Equally, there was no obligation on the part of the Provider to offer the Complainant a tracker interest rate during the lifetime of the loan.

For the reasons set out 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

10 December 2021

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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.

