



<u>Decision Ref:</u>	2021-0508
<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
<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 that is the subject of this complaint is secured on the Complainant's private dwelling house.

The loan amount is €188,000 and the term of the loan is 28 years. The **Amended Loan Offer**, which was accepted by the Complainant on **16 February 2007**, outlines that the interest rate applicable to the loan was fixed at "4.83%" for the first three years of the loan with the Provider's "variable base" rate to apply thereafter.

The Complainant's Case

The Complainant submits that she applied for a mortgage loan with the Provider on **02 February 2005**. The Complainant notes that the Provider issued a **Letter of Loan Offer** on **08 February 2007**, which she signed and accepted on **16 February 2007**.

The Complainant outlines that when she initially approached the Provider to discuss the possibility of applying for a mortgage, she was given "a hand written piece of paper outlining the different types of mortgage available with [the Provider] at that time". The Complainant contends that there was a lack of information and clarification on the part of the Provider in explaining the "differences between Tracker, Variable or Fixed [interest rates] except for [one] hand written slip".

The Complainant submits that, having consulted with work colleagues, she decided to request a tracker interest rate from the Provider at the time of signing the Letter of Loan Offer, instead of the fixed interest rate that she had originally applied for. The Complainant contends that she requested to change the interest rate that was offered to her prior to accepting the Letter of Loan Offer however the Provider told her that the *"paperwork is done you can't change your mind"*.

The Complainant submits that she proceeded to sign the Letter of Loan Offer containing the fixed interest rate and drawdown the loan, as she was informed that the Provider *"could look at"* applying a tracker interest rate to her loan at the end of the 3-year fixed interest rate period. The Complainant asserts that, on foot of this conversation, she was *"sure"* that when the fixed interest rate period expired, she would *"then go onto a Tracker Mortgage"*.

The Complainant contends that prior to the expiry of the 3 -year fixed interest rate period in **February 2010**, she contacted the Provider to enquire as to when a tracker interest rate would be applied to her mortgage loan account. The Complainant submits that she was advised by the Provider that there was never an option *"to go from fixed to tracker"*. The Complainant maintains that she raised this issue on several occasions with an employee of the Provider only to be told *"Oh, for God's sake, that is in the past, you will just have to move on from it now"*.

In addition, the Complainant asserts that the Provider mis-sold her mortgage payment protection insurance in respect of her mortgage loan account. The Complainant submits that mortgage payment protection insurance should not have been sold to her, as she was already covered by a policy provided by her employer. Further, the Complainant contends that she was not properly informed of the differences in her mortgage insurance options.

The Complainant is seeking the following:

- (a) A tracker interest rate to be applied to her mortgage loan account from **March 2007**; and
- (b) A reimbursement for the mortgage payment protection insurance that the Complainant submits was mis-sold to her.

The Provider's Case

The Provider submits that the Complainant began her mortgage loan application process on **22 January 2007**, by completing and signing a **Loan Approval Certificate Application Form** which was subsequently signed by the Provider on **25 January 2007**.

The Provider notes that this resulted in a **Loan Approval Certificate** being issued pending the completion of a **Home Loan Application Form** and the identification of a property to be purchased. The Provider submits that the Complainant completed a **Home Loan Application Form** on **05 February 2007**.

The Provider notes that interest rates available at the time of the Complainant's loan application were clearly set out in Section E of the 'Loan Details' section of the **Home Loan Application Form**. The Provider explains that the interest rates available at the time included variable, tracker, and fixed interest rates as well as split loan options. The Provider maintains that the availability of these interest rates was explained to the Complainant during the mortgage loan application process. The Provider further submits that these interest rate options were publicly advertised and were available in the Provider's branches and on its website

The Provider submits that the **Home Loan Application Form** completed by the Complainant requests customers to also complete a separate **Tracker Application Form** or **Fixed Application Form** if customers wish to apply for a tracker or fixed interest rate. The Provider notes that the Complainant applied for a fixed interest rate as evidenced by the **Home Loan Application Form** and **Application for A Fixed Rate Mortgage Form** which were signed by the Complainant and submitted to the Provider on **05 February 2007**. The Provider explains that the Complainant opted for a 3- year fixed interest rate of 4.83%. The Provider submits that the Complainant also completed and signed an **Application for Self-Build – Interest only facility** on **05 February 2007**, to apply for an interest only facility for the first 12 months of the mortgage. The Provider notes that the Complainant also completed and signed several additional documents on the same date, namely a buildings and contents Insurance form, a direct debit mandate, a declaration under regulation 6(3) of the Life Assurance (Provision of Information) Regulations 2001, a business replacement summary form, and a mortgage payment protection insurance form.

The Provider states that it issued a **Letter of Loan Offer** to the Complainant on **07 February 2007** for a loan in the amount of €188,000 repayable over a term of 28 years. The Provider submits that the Letter of Loan Offer provided for a 3-year fixed interest rate of 4.83%, with the Provider's "*variable base rate*" to apply thereafter. The Provider notes that the Complainant opted to avail of an interest only repayment period for the first 12 months of the loan.

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The Provider explains that it was necessary to issue an **Amended Letter of Loan Offer** as the mortgage loan application was originally submitted without including a payment protection insurance application, as had been requested by the Complainant.

The Provider submits that the **Amended Letter of Loan Offer** issued to the Complainant on **08 February 2007** for a loan amount of €188,000 repayable over a term of 28 years with a fixed interest rate applying for the first three years of the loan and thereafter converting to the Provider's "*variable base rate*". The Provider states that the Complainant signed the **Acceptance Form** which was attached to the **Amended Letter of Loan Offer** on **16 February 2007**.

The Provider states that the "*variable base*" and tracker interest rate "*are two separate interest rate products, which operate in a different manner*". The Provider explains that it can exercise its "*commercial discretion in applying changes to the Bank's Variable Base Rate, while changes in tracker interest rates are strictly as a result of a change in the ECB rate, which can only ever be made by the European Central Bank*".

The Provider asserts that it has "*no record of the alleged discussion on 8 February 2007 as referred to by the Complainant*", where the Complainant was purportedly told that it was too late to request a tracker interest rate instead of a fixed interest rate and that the Provider "*would look at*" the possibility of switching to a tracker interest rate on the expiry of the 3-year fixed interest rate period. The Provider contends that the Complainant had not accepted the **Amended Letter of Loan Offer** at this point and was under no obligation to do so if she was not satisfied with the terms of the loan offer. The Provider submits however that the Complainant accepted the terms of the **Amended Letter of Loan Offer**, over one week later, on **16 February 2007**.

The Provider explains that an interest rate increase occurred in **February 2007** prior to the Complainant drawing down her mortgage loan therefore a fixed interest rate of 5.05% was applied to her mortgage loan to reflect this. The Provider submits that it issued an **Issue of Loan Cheque Letter** to the Complainant on **01 March 2007** releasing the first stage payment of €135,000.

The Provider submits that the Complainant's mortgage loan account was drawn down in line with the terms and conditions of the **Amended Letter of Loan Offer** on **02 March 2007** which the Complainant expressly accepted.

The Provider states that tracker interest rates were widely available at the time of the Complainant's loan application, and it is satisfied that the Complainant was informed of tracker interest rate options at the time of her mortgage loan application. The Provider asserts that the Complainant had no contractual right to a tracker interest rate at the time of drawdown, or at any time thereafter. The Provider submits that its obligation was to honour the terms of the mortgage loan documentation, which it submits it has done and continues to do.

The Provider contends that *"it is not open to the Complainant to seek to now imply a term into that agreement that would confer a right to a Tracker interest rate from the date of drawdown or at any time thereafter"*.

In response to the Complainant's contention that she was *"mis-sold"* mortgage payment protection insurance, the Provider submits that the mortgage payment protection insurance policy is an *"optional policy"* which is introduced and explained as such to all customers during the initial stages of the mortgage loan application process and is *"not a requirement or condition of loan approval"*. During the mortgage loan application process, the Provider notes that the Complainant completed a mortgage payment protection insurance form in which the option to avail of the mortgage payment protection insurance policy was selected by the Complainant. The Provider states that the Complainant was then free to avail of or decline the offer of mortgage payment protection insurance and was provided with a *"30 day cooling off period to review the policy terms and conditions to ensure that she made an informed decision"*. The Provider explains that the Complainant did not cancel the policy during the cooling off period and the mortgage payment protection insurance policy was *"enrolled in association with"* the Complainant's mortgage loan account as instructed by her. The Provider maintains therefore that the Complainant was not mis-sold the mortgage payment protection insurance policy.

The Complaints for Adjudication

The complaints for adjudication are:

- (a) The Provider incorrectly failed to allow the Complainant to opt for a tracker interest rate on mortgage loan account ending **9476** as per her request when she went to sign the mortgage acceptance in **February 2007**;
- (b) The Provider incorrectly failed to apply a tracker interest rate to the Complainant's mortgage loan account ending **9476** when the fixed interest rate period ended in **February 2010**; and

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- (c) The Complainant was mis-sold mortgage payment protection insurance, which was not properly explained to her in **February 2007**.

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 **05 October 2021**, outlining the preliminary determination of this office 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.

Following the issue of my Preliminary Decision, the Complainant made a post Preliminary Decision submission on **09 October 2021**. A copy of the Complainant's additional submission was exchanged with the Provider. The Provider has not made any further submission.

I note at the outset that the Complainant, in her post Preliminary Decision submission dated **09 October 2021**, makes reference to the comments provided by tied agents of the Provider in statements to the Joint Committee on Finance, Public Expenditure and Reform. These statements relate to the nature of the relationship between the Provider and its tied agents in general.

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In circumstances where these statements do not relate specifically to the conduct of the Provider and its tied agent in relation to the Complainant's mortgage loan application, I do not consider such statements to be of relevance to the complaints for adjudication.

Having considered the Complainant's post Preliminary Decision submission and all submissions and evidence furnished by both parties to this office, I set out below my final determination.

In order to determine this complaint, it is necessary to review the Complainant's mortgage loan documentation and consider details of certain interactions between the Provider and the Complainant in **2007**.

The Complainant completed a **Loan Approval Certificate Application Form** on **22 January 2007**, which was signed by the Provider on **25 January 2007**.

The Complainant has submitted a handwritten document in evidence dated **31 January 2007** which she states was given to her by an employee of the Provider. The handwritten document details as follows:

<i>“€180,000 over 25 years</i>		
<i>Standard Tracker Variable</i>	<i>ECB+1.15%</i>	
	<i>= 4.65%</i>	<i>1015.89</i>
<i>1 Year Fixed</i>	<i>4.34%</i>	<i>984.22</i>
<i>2 Year Fixed</i>	<i>4.85%</i>	<i>1036.58</i>
<i>3 Year Fixed</i>	<i>4.85%</i>	<i>1036.58</i>
	<i>20 years</i>	
<i>Variable</i>		<i>1153.39</i>
<i>1 Year Fixed</i>		<i>1123.29</i>
<i>2 Year Fixed</i>		<i>1173.06</i>
<i>3 Year Fixed</i>		<i>1173.06”</i>

The Provider subsequently issued a letter to the Complainant dated **02 February 2007** enclosing a **Loan Approval Certificate**.

The letter dated **02 February 2007** details as follows:

“Any home loan granted to you will be subject to the terms and conditions applicable to [the Provider] Home Loans and specific conditions, if any, agreed regarding the home loan.”

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The Complainant completed and signed a **Home Loan Application Form** on **05 February 2007**. The “*Interest Rate*” section of the application form refers to the following four interest rate options: “*Variable*”, “*Tracker*”, “*Fixed*” and “*Split*”. The application form submitted in evidence shows that the Complainant selected a fixed interest rate. Accordingly, the Complainant completed and signed a separate **Application for a Fixed Rate Mortgage** form on **05 February 2007** which details as follows:

“I/We wish to apply for a fixed rate of 4.83% for the first 3 year(s) of my/our mortgage.

*I/We understand that when this fixed rate period has expired the loan will **convert to the applicable variable rate** then prevailing. The variable interest rate basis will be specified in the loan offer letter issued by [the Provider] (if the loan is approved).*

IMPORTANT

I/We understand that in the event of there being a change in interest rates before [the Provider] have issued our loan cheque, [the Provider] will apply the fixed rate currently available. If there is no other fixed rate available, the appropriate variable rate may apply.”

This **Application for a Fixed Rate Mortgage** signed by the Complainant on **05 February 2007** also states:

“I/We confirm that we understand the working of the Fixed Rate and wish to proceed with this application.”

The Complainant also completed an **Application for Self-Build – interest only facility** on **05 February 2007**, to apply an interest only facility to her mortgage loan account for a period of “*12 months*”.

The Complainant also completed several other forms on **05 February 2007** which have been provided in evidence to include an **Application for Mortgage Payment Protection Insurance**.

The **Application for Mortgage Payment Protection Insurance** asks the question “*Do you require this cover?*” to which the Complainant ticked “*Yes*”, and the Complainant selected her preference cover option.

The Complainant signed the **Application for Mortgage Payment Protection Insurance on 05 February 2007** on the following terms:

“DECLARATION OF GOOD HEALTH

I/We wish to apply for cover and declare that I/we am/are in good health and full time employment [.]

I/We understand that if I am/we are drawing down our loan in stages that cover for my/our full loan repayment will be arranged from the date of first cheque issue. This means in the event of a claim, the full monthly benefit will be paid to my/our mortgage account each month of the claim.

COVER AMOUNT

I/We understand the payment protection cover will not automatically be amended to reflect my/our loan repayment if it changes throughout the term of the loan. If cover exceeds 125% of the loan repayment, I/we understand the maximum benefit payable will be 125% up to a maximum of €2,540.

I/We understand that if I am/we are drawing down our loan in stages, that cover for my/our full loan repayment will be arranged from the date of first cheque issue. This means in the event of a claim, the full monthly benefit will be paid to my/our mortgage account each month of the claim.

Please refer to the summary terms and conditions on the overleaf prior to signing this proposal to ensure that this policy meets your requirements”.

The Provider has submitted a document titled **Mortgage Payment Protection Terms & Conditions** setting out the terms and conditions of the mortgage payment protection insurance policy. The document details as follows:

“This document sets out the cover your policy provides. Please read this document and your certificate so that you know exactly what you are covered for, and keep them in a safe place so that you can refer to them easily if you need to....If you decide you do not want cover, please return the certificate to [Provider] within 30 days of receiving it. We will refund any monthly premium you have paid along as you have not made a claim under the policy.

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If you do not cancel your policy within 30 days of the start date, your policy will remain in force and may only be cancelled by you or us by giving 30 days' notice in writing. We will not refund any of your monthly premiums if your policy is cancelled more than 30 days after the start date".

The "Eligibility" section of the **Mortgage Payment Protection Terms & Conditions** details as follows:

"To receive cover under this policy, you must meet the following conditions on the start date.

[..]

- *You have agreed to pay the monthly premium for cover; and*
- *We have accepted your application cover".*

It is clear to me that at the time of the mortgage loan application, the Complainant also applied for mortgage payment protection insurance underwritten by a third party. The Complainant, in her post-preliminary decision submission dated **09 October 2021**, submits that she was advised by the tied agent of the Provider that given she was the only person paying the mortgage she should take out a mortgage payment protection insurance policy in the event that she "got sick" or was made redundant. The mortgage payment protection insurance was offered by the Provider as an optional policy and is not a requirement of loan approval. The Complainant appears to submit that she was "already covered in work". It was entirely a matter for the Complainant to decide whether she wanted to take out a mortgage payment protection insurance policy at the time. The Complainant was therefore free to accept or decline the offer of a mortgage payment protection insurance policy by the Provider. In circumstances where the mortgage payment protection insurance policy was an optional policy and the Complainant was free to cancel the policy within 30 days from the inception date, the evidence does not support the Complainant's contention that the Provider "mis-sold" mortgage payment protection insurance to her. It was ultimately a matter for the Complainant as to whether she wished to opt for mortgage payment protection insurance or not.

The Provider issued a **Loan Offer** to the Complainant dated **07 February 2007** which states as follows:

"I am pleased to inform you that [the Provider] has approved a Repayment Home Loan of €188,000.00 towards the construction of the above property at a cost of €240,000.00 subject to the following terms and the attached General Conditions.

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<i>"Type of Loan:</i>	<i>Repayment (Including an Interest only period of 12 months)</i>
<i>Total Amount of loan:</i>	<i>€188,000.00</i>
...	
<i>Interest Rate (Yrs 1-3):</i>	<i>4.83% (See Important Note 2)</i>
<i>After 3 years:</i>	<i>Variable Base (currently 04.75%)</i>
<i>Repayment Period (Years):</i>	<i>28 Approx.</i>
...	

(2) Important Note on Fixed Rate:

The fixed rate shown is the current rate. If there is an interest rate change before the main loan cheque is issued, the rate will be altered to the fixed rate on offer at the date of cheque issue, and this is the rate that will apply to the loan account"

The Provider has submitted a screenshot of its internal system in evidence which details as follows:

"Amended Offer

Account Number [ending 9476]

...

Product Type Homeloan

Type of Amendment Input Errors

Should have inputted Payment Protection Policy- single cover 100% [product name] will fax up copy of Application Form"

It appears to me that it was necessary for the Provider to amend the loan offer as the mortgage loan application was originally submitted without including the mortgage payment protection insurance application which had been completed by the Complainant on **05 February 2007**. The Complainant does not appear to have signed the **Loan Offer** dated **07 February 2007**.

The Provider subsequently issued an **Amended Loan Offer** dated **08 February 2007** to the Complainant which details as follows:

"I am pleased to inform you that [the Provider] has approved a Repayment Home Loan of €188,000.00 towards the construction of the above property at a cost of €240,000.00 subject to the following terms and the attached General Conditions.

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Type of loan:	Repayment (Including and Interest only period of 12 months.)
Total Amount of loan:	€188,000.00
...	
Interest Rate (Yrs 1-3):	4.83% (see Important Note 2)
After 3 years:	Variable Base (currently 04.75 %)
Repayment Period (Years)	28 Approx.
...	
(2) Important Note on Fixed Rate:	

The fixed rate shown is the current rate. If there is an interest rate change before the main loan cheque is issued, the rate will be altered to the fixed rate on offer at the date of cheque issue, and this is the rate that will apply to the loan account. If no fixed rate is available at that time, the variable rate will apply. (See General Conditions-9)".

The "Conditions" section of the Amended Loan Offer details as follows:

"Subject to this Offer Letter, dated 08/02/07 17:20, being signed by the borrower(s) in the Acceptance Form and the full signed Offer Letter being returned to [Provider]".

Condition 3 of the **General Conditions for [Provider's] Home Loans** states as follows:

*"**Acceptance of terms and conditions:** By taking the loan from [Provider], the borrower accepts all the terms and conditions set out in the application form, offer letter, these general conditions and the mortgage".*

Condition 9 of the **General Conditions for [Provider's] Home Loans** states as follows:

*"**Fixed Rate Loans:** Where a [customer] applies for a fixed rate, it will be for a set period of time. When the fixed rate period ends, the loan will convert to a variable interest rate. If [the Provider] is then offering a Fixed Home Loan rate for a variety of defined periods, the borrower may opt to convert to a fixed rate again at that point, and defer conversion to a variable rate."*

The Complainant signed the **Acceptance Form** attached to the **Amended Loan Offer** on **16 February 2007** on the following terms:

"I/We, the undersigned, accept the offer of an advance made to me/us by [the Provider] on the terms and conditions set out in:

- (i) this Offer Letter in replacement of all previous offer letters;*
- (ii) the General Conditions for [the Provider] Home Loans;*
- (iii) [the Provider's] Mortgage Conditions;*
- (iv) [the Provider] standard Form of Home Loan Mortgage; and*
- (v) the Rules of [the Provider].*

copies of which I/we have received and in respect of which I/we have been advised upon by my/our solicitor."

The mortgage loan account was subsequently drawn down in stage payments, the first of which was drawn down on **02 March 2007**.

The Complainant maintains that she approached the Provider to explore tracker interest rate options at the time of signing the **Amended Loan Offer** on **16 February 2007**. I have not been provided with any evidence from the parties that would indicate that the Complainant was dissatisfied with the fixed interest rate that was offered to her in the **Amended Loan Offer** dated **08 February 2007**. Further, I have not been provided with any evidence of any interactions that took place between the Provider and the Complainant from the time when the Amended Loan Offer issued on **08 February 2007** to when the Complainant signed and accepted the terms of that loan offer some 8 days later. Rather, the evidence shows that the Complainant decided to proceed with a 3-year fixed interest rate and draw down the mortgage loan.

The Complainant, in her post Preliminary Decision submission dated **09 October 2021**, appears to place great emphasis on "*what went on verbally*" between the parties at the time of the Complainant's application for a mortgage loan however I have not been provided with any evidence of any verbal discussions between the parties. It is important to highlight that it is the **Amended Loan Offer** dated **08 February 2007** that forms the basis of the contractual agreement between the parties as opposed to any verbal discussions that may have taken place.

Prior to the expiry of the 3-year fixed interest rate, the Provider issued a letter to the Complainant on **10 March 2010** detailing the options available to the Complainant at the end of the fixed interest rate period.

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The letter dated **10 March 2010** details as follows:

“Dear [Complainant]

At the end of this month the fixed term of your loan will expire. You now need to make a decision about your monthly repayments. Detailed below are the options available to you:

(1) If you wish to revert back automatically to the current standard variable rate you are not required to do anything. The table below illustrates your repayment details should you choose this option. Please note that these figures are based on the standard variable rate as at 10/03/2010 and this rate may be subject to change...

<i>Option</i>	<i>Interest Rate</i>	<i>Monthly Repayment</i>	<i>Monthly Insurance Premium</i>	<i>Total Monthly Repayment</i>
<i>Variable</i>	<i>2.630</i>	<i>819.76</i>	<i>155.41</i>	<i>975.17</i>

(2) You can fix your rate again. To find out more about these options, please call your local [Provider] branch or alternatively our dedicated mortgage team directly on [telephone number].”

The reverse side of the letter dated **10 March 2010** contains the following warning in respect of variable rate loans:

“Variable Rate Loans

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

I have not been provided with any evidence to indicate that the Complainant contacted the Provider to explore the option of applying a further fixed interest rate period. Accordingly, I note that the Complainant’s mortgage loan account converted to the Provider’s variable rate of 2.63% on **01 April 2010**, as evidenced in the **Annual Loan Statement** submitted in evidence.

I note that the interest rate options offered in the letter dated **10 March 2010** align with the terms and conditions of the Amended Loan Offer in respect of what would transpire at the end of the fixed rate period.

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It is important for the Complainant to be aware that although tracker interest rates were on offer generally by the Provider as part of its suite of products when the Complainant applied for her mortgage loan in **January/ February 2007**, there was no obligation on the Provider to furnish the Complainant with information on the tracker interest rate offering at that time. I note that the **Home Mortgage Application Form** outlined the types of interest rate options available generally on mortgage loans, including the tracker rate. The handwritten document submitted in evidence by the Complainant also outlines the various interest rates available to include a tracker interest rate.

The Complainant, in her post Preliminary Decision submission dated **09 October 2021**, questions whether it is the role of a tied agent to advise on the best interest rate options and the *"most affordable mortgage"*. The role of the tied agent was to sell mortgage products on behalf of the Provider therefore if the Complainant wanted independent advice about rates available in the market or the market generally, the Complainant could only get that advice from an independent third-party advisor.

It is clear to me that the Complainant chose to apply for a fixed interest rate mortgage loan in **February 2007**, having completed the **Home Mortgage Application Form** and the **Fixed Application Form** wherein she confirmed that she understood the nature of the fixed interest rate. If the Complainant wished to apply for a tracker interest rate, she could have indicated that she wished to apply for a tracker interest rate on her application form and completed a **Tracker Application Form**. Upon a review of the Complainant's mortgage loan application, the Provider ultimately issued a loan offer to the Complainant offering a 3-year fixed interest rate of 4.83% with a *"variable base"* interest rate to apply thereafter. The *"variable base"* interest rate in the Complainant's mortgage loan documentation made no reference to varying in accordance with variations in the ECB refinancing rate. Therefore, at the end of the 3-year fixed interest rate period, the Complainant was not entitled to a tracker rate of interest but rather a variable rate of interest that could be adjusted by the Provider.

If it was the case that the Complainant was of the view that a fixed interest rate loan was not suitable for her, then the Complainant could have decided not to sign the Loan Acceptance or ultimately draw down the loan and instead, she could have sought an alternative rate with the Provider or with another mortgage provider. However, the Complainant did not do so.

For the reasons outlined in this Decision and in light of the foregoing, I do not uphold the 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**

13 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.