



<b><u>Decision Ref:</u></b>	2021-0513
<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
<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 account that is the subject of this complaint is secured on the Complainants' private dwelling house.

The loan amount is €450,000 and the term of the loan is 35 years. The **Loan Offer** dated **13 June 2006** detailed that the interest rate applicable to the loan was a variable interest rate of 3.75%. The mortgage loan account was redeemed on **02 October 2018**.

**The Complainants' Case**

The Complainants submit that when applying for their mortgage with the Provider in **2006**, their mortgage loan application form was "*completed for [them] by the manager in [the Provider] who was a family friend*". The Complainants contend that at the time they "*assumed [they] were being sold the best possible mortgage*" and went ahead and signed, "*not realising it was a variable rate until a year later*". The Complainants maintain that they believed that they had been "*sold a tracker mortgage*".

The Complainants detail that “*on realising*” that they were in fact on a variable interest rate, they were informed by an employee of the Provider that they “*must not have qualified for [a tracker rate]*”.

The Complainants are seeking the following:

- (a) to be reimbursed for all overpayments in interest; and
- (b) for a tracker interest rate to be applied to their mortgage loan account.

### **The Provider’s Case**

The Provider submits that the Complainants applied for a mortgage loan by completing and signing a **Home Loan Application Form** on **10 June 2006**. The Provider notes that the available interest at this time were “*Variable, Tracker, Fixed or Split*”. The Provider asserts that “*the availability of these rates would have been explained to the Complainants during the mortgage application process*”.

The Provider details that the **Home Loan Application Form** requires customers to complete a separate fixed or tracker application form if they are choosing either a fixed or tracker interest rate respectively. The Provider asserts that the Complainants “*applied for a Variable interest rate*”. The Provider submits that it has “*no record of a Tracker interest rate request by way of the loan application form, a Tracker interest rate application form or otherwise being received from the Complainants or subsequently being declined*”.

The Provider outlines that it issued a **Loan Offer** for the sum of €450,000 to the Complainants on **13 June 2006**. The Provider details that the interest rate was confirmed in the **Loan Offer** as a variable rate of 3.75%, and the “*interest rate basis was confirmed as Variable Base Rate*”. The Provider maintains that the interest rate provided for in the **Loan Offer** was the Provider’s variable base rate, as had been requested by the Complainants. In addition, the Provider contends that the Complainants “*had no contractual right or entitlement to a Tracker interest rate*”.

The Provider outlines that the Complainants subsequently “*responded on 16 June 2006 with a signed acceptance form*” which stated that the Complainants “*accepted the offer of an advance made by the [Provider] on the terms and conditions*” set out in the **Acceptance Form**. The Provider notes that the Complainants “*drew down their loan in June 2006 on the basis of a Variable Base Rate*”.

The Provider submits that it introduced tracker rates of interest in **early 2004** and these rates were *“widely available to both new and existing Home Loan customers”* until **late 2008**, when the Provider withdrew tracker rates from the market. The Provider notes that the Complainants could have applied for a tracker rate of interest *“at application stage or at any time”* up until the Provider’s withdrawal of tracker rates from the market in **late 2008**.

In addition, the Provider asserts that it has no record of the Complainants contacting it *“at any time following draw down or in advance of their complaint made on 8 September 2016, to query the interest rate that was applied”* to their mortgage loan account.

In relation to the Complainants’ contention that they assumed that they were being sold the *“best possible mortgage”*, the Provider submits that it *“can confirm that it was and remains standard practice for the [Provider’s] mortgage application process in [its] Branches that all interest rate options available at the time are provided to customers”*. The Provider contends that it *“is not the practice or policy of the [Provider] to offer advice to customers on interest rates”*. The Provider further asserts that its staff *“provide information on all rates to customers, both at application stage and separately during the lifetime of the mortgage loan as requested”*.

The Provider submits that it is satisfied that the documentation relating to the Complainants’ mortgage loan account was *“sufficiently clear and transparent as to their interest rate entitlements”*.

### **The Complaint for Adjudication**

The complaint for adjudication is that the Provider failed to apply a tracker rate of interest to the Complainants’ mortgage loan account on drawdown in and around **June 2006**.

### **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 23 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 set out and review the relevant provisions of the Complainants' mortgage loan documentation. It is also necessary to consider details of certain interactions between the Complainants and the Provider in 2006.

I note that the Complainants completed a **Home Loan Application Form**, which was signed by the Complainants on **10 June 2006**. **Section E** of the **Home Loan Application Form** is titled "*Loan Details*" under which the Complainants outlined that the amount of the "*Loan Required*" was €450,000 and the term of the loan required was 35 years. The "*Loan Type*" section of the application form detailed as follows:

**"LOAN TYPE (please tick one)**      *Repayment/Annuity* ✓      *Endowment*  
*Pension*

**INTEREST RATE**      *\*Variable* ✓      *\*\* Tracker*      *\*\*\*Fixed*      *or Split*

*\* Variable interest rates increase and decrease with changes in market rates.*

*\*\*Tracker Interest rates increase and decrease with changes in market rates. If choosing Tracker, please complete the Tracker form enclosed.*

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*\*\* If choosing a fixed rate, please complete the section below which outlines terms of conditions associated with fixed rate loans."*

The **Home Loan Application Form** shows that the Complainants chose a variable interest rate. It is clear that the Complainants could choose from a variable interest rate, tracker interest rate, fixed interest rate or a split mortgage. The "interest rate" section of the application form also noted that a separate "tracker form" had to be completed if the Complainants selected a tracker rate of interest. The Complainants submit that an employee of the Provider completed the application form on their behalf however it is important to note that the choice as to which interest rate to apply for rested solely with the Complainants. The option of a tracker rate was available for selection by the Complainants at the time of their mortgage loan application, however they chose to apply for a variable interest rate loan.

The Provider subsequently issued a **Loan Offer** to the Complainants dated **13 June 2006** which details as follows:

*"I am pleased to inform you that [the Provider] has approved a Repayment Home Loan of €450,000.00 towards the purchase at a cost of €1,200,000.00 subject to the following terms and the attached General Conditions.*

<i>Type of Loan:</i>	<i>Repayment</i>
<i>Total Amount of Loan:</i>	<i>€450,000.00</i>
<i>...</i>	
<i>Interest Rate (Variable):</i>	<i>3.75%</i>
<i>Interest Rate Basis:</i>	<i>Variable Base Rate</i>
<i>Repayment Period (Years):</i>	<i>35 Approx."</i>

**Condition 2.2** of the Provider's Mortgage Conditions states as follows:

*"The interest rate on the Loan may be increased or reduced by [Provider] from time to time, however no change in the interest rate will be applied to the Loan during any period when the interest rate is a fixed rate."*

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

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

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The Complainants signed the **Acceptance Form** attached to the **Loan Offer** on **16 June 2006** 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."*

It is clear that the **Loan Offer** dated **13 June 2006** envisaged that a variable interest rate would apply to the Complainants' mortgage loan account. The variable interest rate in the Complainants' mortgage loan documentation made no reference to varying in accordance with variations in the European Central Bank refinancing rate. The mortgage conditions attached to the loan offer clearly set out the nature of the variable interest rate to be one which may be increased or decreased by the Provider at any time.

The Complainants subsequently drew down the mortgage loan on **24 July 2006** on a variable interest rate. The Complainants' mortgage loan account remained on a variable interest rate until **2017**, at which time the Complainants sought to apply a fixed interest rate.

I have been provided with a **Home Loan Rate Conversion Form Variable Rate to Fixed Rate** form, which was completed by the Complainants on **10 July 2017**, which states as follows:

*"I/We wish to apply to convert the interest rate on the balance of my/our existing loan account to a fixed rate for the next 1 year(s) of my/our mortgage.*

*I/We understand that as (an) existing mortgage customer(s), it is the fixed rate available for existing mortgages which will be applied to my account.*

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*I/We understand that when this fixed rate period has expired the interest rate on my/our loan will **convert to the applicable variable rate** then prevailing.*

...

*I/We wish to confirm that I/We understand the workings of the Fixed Rate mortgage and the consequences of any payment made to the account during the fixed rate period and wish to proceed with this application.”*

The Provider issued a letter to the Complainants dated **21 July 2017**, which states as follows:

*“Thank you for your recent application to fix the rate on your account at 3.50% over 1 year. We confirm that your account has been converted to this rate as requested.”*

The Provider also issued a letter to the Complainants dated **07 July 2018**, which states as follows:

*“At the end of this month the fixed rate of your loan will expire. Your repayment will revert back automatically to the current variable rate, you are not required to do anything.”*

I note that the Complainants mortgage loan account subsequently reverted to the Provider’s standard variable rate and remained on that rate until the mortgage loan account was redeemed on **02 October 2018**.

The Complainants appear to be of the view that the Provider sold them a tracker mortgage loan in **June 2006** and therefore a tracker rate of interest should have been applied to the mortgage loan at draw down.

Having considered the Complainants’ mortgage loan documentation, it is clear to me that the Complainants applied for a variable interest rate mortgage loan in **June 2006**, having completed the **Home Mortgage Application Form** and the Provider subsequently offered them a variable interest rate of 3.75% by way of **Loan Offer** dated **13 June 2006**. If the Complainants wished to apply for a tracker interest rate, they could have indicated that they wished to apply for a tracker interest rate on their application form and completed the associated tracker mortgage application form when dealing with the Provider’s representative. However, the Complainants did not do this.

If it was the case that, upon considering the particulars of the **Loan Offer**, the Complainants were of the view that a variable interest rate loan was not suitable to them,

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then the Complainants could have decided not to sign the **Acceptance Form** and draw down the loan. Instead, they could have sought an alternative rate with the Provider or with another mortgage provider.

Furthermore, if the Complainants wanted independent advice about interest rates available in the market, it was a matter for the Complainants to get that advice from an independent third-party advisor.

I note that tracker interest rates were on offer generally by the Provider as part of its suite of products at the time of the Complainants' mortgage loan application in **June 2006**, however there was no contractual or other obligation on the Provider to offer the Complainants a tracker interest rate on their mortgage loan account in **2006** or indeed at any other time during the term of the loan.

For the reasons outlined in this Decision, 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**

15 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—**

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**(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.**

