



<b><u>Decision Ref:</u></b>	2021-0519
<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 that is the subject of this complaint is secured on the Complainants' principal private residence.

The loan amount is €315,000.00 and the term of the loan is 35 years. The **Amended Loan Offer** dated **22 March 2008** detailed that the interest rate applicable to the loan was a fixed interest rate of 4.88% which would convert to a variable interest rate thereafter.

**The Complainants' Case**

The Complainants outline that they were informed that "*the tracker mortgage was not available to [them]*" when they applied for their mortgage loan in **February 2008**, however they have since discovered that tracker mortgages were available from the Provider up until **October 2018**.

The Complainants submit that had they known that a tracker interest rate mortgage was available at the time of their mortgage loan application, they would have taken that option.

The Complainants maintain that they never disputed that they initially signed the original application and selected a fixed interest rate however, they assert that they *“were never offered the Tracker rate by the mortgage advisor at application stage or throughout the whole process despite asking for same”*.

The Complainants submit that the application form was completed by an employee of the Provider and they *“signed the application form in the sections which were clearly marked and highlighted by the mortgage advisor”*.

The Complainants are seeking the following:

- (a) That the Provider apply a tracker interest rate to their mortgage loan account; and
- (b) Repayment of the difference in interest paid.

### **The Provider’s Case**

The Provider outlines that the Complainants completed and signed a **Home Loan Application Form** on **11 February 2008**, which *“included various rate options for them to apply for, including Variable, Fixed, Tracker and Split Interest Rates”*. The Provider submits that the Complainants selected the fixed interest rate option on the application form.

The Provider details that the Complainants also completed and signed an **Application for a Fixed Rate Mortgage Form** for a *“3 Year Fixed Rate of 4.98%”* on **11 February 2008**.

The Provider submits that it issued a **Loan Offer** to the Complainants on **04 March 2008** for a loan amount of €315,000.00, with a fixed interest rate of 4.98% for the first three years and a variable base rate to apply thereafter.

The Provider outlines that on **14 March 2008**, the Complainants requested to cancel their mortgage and amend the interest rate to a *“1 Year Fixed Rate of 4.74%”*. The Provider submits that an **Amended Loan Offer** issued to the Complainants on **14 March 2008** for a loan amount of €315,000.00, with a fixed interest rate of 4.74% for the first year and a variable base rate to apply thereafter. The Provider states that the Complainants accepted the **Amended Loan Offer** on **22 March 2008**.

The Provider submits that the Complainants’ mortgage loan account ending **7241** was never on a tracker interest rate and there was no contractual entitlement to a tracker interest rate.

The Provider asserts that it was *“standard practice to explain all interest rates to customers during the Mortgage application process”*. The Provider submits that if the Complainants wanted a tracker interest rate, it would have been explained to them, that a separate tracker mortgage application form was required to be completed. The Provider outlines that the tracker interest rate at the time was *“5.25% being a margin of 1.25% over ECB”*.

The Provider explains that it introduced tracker interest rate products in **early 2004** and they were widely available to new and existing customers until **late 2008**. The Provider notes that tracker interest rates were publicly advertised on its website and in all of its branches. The Provider submits that it was open to the Complainants to apply for a tracker interest rate at the time of their loan application in **February 2008** however they did not do so. The Provider also notes that it has no record *“to show that the Complainants ever requested or were denied a Tracker Mortgage during the application process”*. The Provider states that it was not the practice or policy of the Provider to offer advice to customers on interest rates.

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 misadvised the Complainants in relation to the option of a tracker interest rate when they were applying for their mortgage loan account in or around **February 2008**

### **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.

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 2008.

I note that the Complainants completed a **Home Loan Application Form**, which was signed by the Complainants on **11 February 2008**. **Section E** of the **Home Loan Application Form** is titled "*Loan Details*" under which the "*Loan Type*" is detailed as follows:

<b>"LOAN TYPE (please tick one)</b>	<i>Repayment/Annuity</i>	<i>Endowment</i>
<i>Pension</i>		
<b>INTEREST RATE</b>	<i>*Variable</i>	<i>** Tracker</i>
		<i>***Fixed ✓</i>
		<i>or Split</i>

*\* 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.*

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

The Complainants also completed an **Application for a Fixed Rate Mortgage** on **11 February 2008** which detailed as follows:

*"I/We wish to apply for a fixed rate of 4.98% 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)*

...

*I/We confirm that we understand the workings of the Fixed Rate and wish to proceed with this application."*

The **Home Loan Application Form** shows that the Complainants chose a fixed interest rate. The Complainants also completed the relevant **Application for a Fixed Rate Mortgage** form and in doing so, confirmed that they understood the details of the fixed interest rate. It is clear that the Complainants could have chosen 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 fixed interest rate loan.

The Provider subsequently issued a **Loan Offer** to the Complainants dated **04 March 2008** which details as follows:

*"I am pleased to inform you that [redacted product type][the Provider] has approved a Repayment Home Loan of €315,000.00 towards the purchase at a cost of €315,000.00 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>€315,000.00</i>

/Cont'd...

...

<i>Interest Rate (Yrs 1-3):</i>	<i>4.98%</i>
<i>After 3 years:</i>	<i>Variable Base (currently 05.25%)</i>
<i>Repayment Period (Years):</i>	<i>35 Approx."</i>

I note that the Provider also enclosed a **Suitability Statement** which provided that the Complainants had selected a fixed interest rate.

The Provider's internal notes show that the Complainants sought to amend the particulars of the loan offer. The Provider's internal note details as follows:

*"clients wish to cancel the [redacted product type] and also amend their fixed rate from 3 yrs to a 2 yr fixed rate, the written request re [illegible] and the new 1 yr fixed rate form will both follow in the post. Thanks..."*

The Provider subsequently issued an **Amended Loan Offer** to the Complainants dated **14 March 2008**, which details as follows:

*"I am pleased to inform you that [redacted product type][the Provider] has approved a Repayment Home Loan of €315,000.00 towards the purchase at a cost of €315,000.00 subject to the following terms and the attached General Conditions.*

...

<i>Type of Loan:</i>	
<i>Total Amount of Loan:</i>	<i>€315,000.00</i>
...	
<i>Interest Rate (Fixed for Year 1):</i>	<i>4.74% (See Important Note)</i>
<i>After 1 year</i>	<i>Variable Base (currently 05.25%)</i>
<i>Repayment Period (Years):</i>	<i>35 Approx.</i>

*Important Note on Fixed Rate:*

*The fixed rate show 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...."*

**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".*

/Cont'd...

**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 Complainants signed the **Acceptance Form** attached to the **Amended Loan Offer** on **22 March 2008** 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 **Amended Loan Offer** dated **14 March 2008** envisaged that a fixed interest rate would apply to the Complainants' mortgage loan account for one year and thereafter convert to a variable interest rate. 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 **Amended 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 **06 May 2008** on a rate of 4.88%. The Complainants' mortgage loan account moved to a variable interest rate of 2.63% on **31 May 2009**, at the end of the fixed interest rate period and has remained on a variable interest rate since then.

Having considered the Complainants' mortgage loan documentation, it is clear to me that the Complainants applied for a fixed interest rate on their mortgage loan in **February 2008**, having completed the **Home Mortgage Application Form** and the Provider subsequently offered them a fixed interest rate of 4.98% for three years by way of **Loan Offer** dated **04 March 2008**. The Complainants chose not to accept that offer and requested the Provider to amend the interest rate. The Provider subsequently issued an **Amended Loan Offer** dated **14 March 2008** which provided for a fixed interest rate for one year which was accepted and signed by the Complainants on **22 March 2008**. 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 then 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** or indeed the **Amended Loan Offer**, the Complainants were of the view that a fixed interest rate loan was not suitable to them, 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. I have been furnished with no evidence to support the Complainants' contention that they were misadvised in relation to the availability of tracker interest rates when they submitted their **Home Mortgage Application Form** in or around **February 2008**. 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 as opposed to an employee of the Provider.

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 **February 2008**, 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 **2008** or indeed at any other time during the term of the loan.


For the reasons set out 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—

**(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.**