



<u>Decision Ref:</u>	2021-0520
<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**

The complaint relates to a mortgage loan account held by the Complainants with the Provider. The mortgage loan that is the subject of this complaint was secured on the Complainants' private dwelling house.

The loan amount was €260,000 and the term of the loan was 35 years. The **Letter of Offer of Mortgage Loan** dated **12 February 2005** detailed that the loan type was an "Annuity" loan. The mortgage loan was drawn down on **01 March 2005** on a variable interest rate of 3.30%.

The Complainants' Case

The Complainants outline that they have held a mortgage loan with the Provider since **February 2005**. The Complainants maintain that they "*were not informed of the option to get a tracker rate which [they] now understand was lower than the variable rate [they] were given*". The Complainants submit that if they had been so informed, they would have chosen the lower rate.

The Complainants submit that the Provider has “*now confirmed that had [they] requested a tracker it would have been granted*”. The Complainants submit that they “*should have been given all options re: tracker rate, fixed rate or remain on a variable rate.*” The Complainants assert that they were only given fixed or variable rate options.

The Complainants contend that they were “*deliberately misinformed*” when they took out their mortgage. The Complainants submit that they were never advised of all the options either in writing or on the phone and also were “*never directed to the website or [Provider] branches*” except in the letter dated **02 March 2005** which referred to variable interest rates only. The Complainants disagree with the Provider’s submission that the variable interest rate option referred to in that letter was also meant to refer to the tracker option.

The Complainants submit that on **12 July 2006**, their mortgage loan account was placed on a fixed interest rate at their request. The Complainants submit that the fixed interest rate reverted to a variable rate in **July 2009**. The Complainants assert that there is no evidence to show that they were informed of all their interest rate options when obtaining the mortgage or when fixing the interest rate.

The Complainants are seeking the following:

- (a) That the tracker interest rate prevailing in **July 2006** is applied to their mortgage loan account; and
- (b) A refund of overpayment of interest on the mortgage loan account backdated to **July 2006**.

The Provider’s Case

The Provider outlines that the Complainants sought finance for the purchase of a property in the sum of €260,000.00. The Provider submits that it approved their loan application and issued a **Letter of Offer** dated **12 February 2005** which provided for a standard variable interest rate. The Provider submits that there is no entitlement to a tracker interest rate in the Complainants’ mortgage loan documentation.

The Provider submits that its records show that there were several conversations with the Complainants on **21 February 2005** in relation to interest only repayments and a moratorium. The Provider states that the **Letter of Offer** was signed and accepted by the Complainants on **22 February 2005**.

The Provider details that a range of options were available at the time of the Complainants' application for a mortgage loan including standard variable rates, fixed rates and tracker interest rate options. The Provider submits that all interest rates *"were publicly advertised through [its] website and [its] Branches"*.

The Provider asserts that the *"decision as to what interest rate applies to a Mortgage Loan Account rests solely with the customer"* and the Provider's staff *"do not advise [its] customers on the suitability of interest rates or which rate option to choose"*.

The Provider details that it received a letter from the Complainants on **10 July 2006** requesting a 3-year fixed interest rate of 4.85% to be applied to the mortgage loan account. The Provider submits that it wrote to the Complainants by letter dated **14 July 2006** confirming that a 3-year fixed interest rate of 4.85% had been applied to the mortgage loan account. The Provider states that it does not hold any records of notes of meetings or discussions with the Complainants in **2006** *"to demonstrate that the Complainants applied for or enquired as to the availability of the Tracker interest rate before requesting a 3 year Fixed rate"*.

The Provider submits that tracker interest rate options were available to new and existing customers from **late 2002** up until **late 2008**. The Provider asserts that it has no record of the Complainants requesting to apply a tracker interest rate to their mortgage loan account during that period.

On **24 June 2009**, the Provider submits that it issued a fixed interest rate rollover letter to the Complainants notifying them of the expiry of the fixed interest rate period and note that if the Complainants did not select a rate, the standard variable rate would automatically apply. The Provider states that as no selection was made by the Complainants, the standard variable rate of 2.25% was applied to the mortgage loan account, in line with **Condition 3.2** of the **General Terms and Conditions**.

The Complaint for Adjudication

The complaint for adjudication is that the Provider failed to offer the Complainants a tracker interest rate on their mortgage loan account in **July 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.

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 review and set out 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**.

The Complainants firstly approached the Provider to apply for a mortgage loan in **2006**. The Provider subsequently issued a **Letter of Loan Offer** dated **12 February 2005** to the Complainants. The **Particulars of Offer of Mortgage Loan** detailed as follows:

<i>“Mortgage Loan Amount</i>	<i>€260,000.00</i>
<i>Loan Term</i>	<i>35 years/420 months</i>
<i>Loan Type</i>	<i>Annuity</i>

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Applicable Interest Rate (as Offer Date) 3.30% varying – includes margin of 0.00% over Standard Home Mortgage Variable rate. APR 3.343%”

The relevant sections of the **General Terms and Conditions of Offer of Mortgage Loan** detailed as follows:

“3.2 FURTHER FIXED INTEREST RATE OPTIONS/CHOICE

The Bank in its sole discretion, at the end of any fixed interest rate period, may provide any further fixed interest rate period, but if it elects not to do so or the Bank offers the Customer a fixed interest rate choice at the end of any fixed interest rate period and the Customer fails to exercise this choice then the Mortgage Loan will convert to a variable interest rate Mortgage Loan.

...

3.5 VARIABLE INTEREST RATE MORTGAGE LOAN

In the case of a variable interest rate Mortgage Loan the interest rate applicable, at any time, will vary according to the prevailing rates set generally by the Bank from time to time, subject to these conditions.”

Part 5- Statutory Notices and Other Notices states as follows:

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

The Provider has submitted **internal notes** dated **21 February 2005** in evidence, which show that that the Complainants were in contact with the Provider to request interest only repayments for two years, the details of which are as follows:

“I was just speaking to the clients and they are looking for 2 years interest only. I advised that I would contact you and revert...”

I note that further **internal notes** from the same date details as follows:

“no to interest only

...

Spoke to [Complainants] re the interest only

...

Client is happy to go ahead”

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I have been provided with a letter sent from the Complainants to the Provider dated **21 February 2005**, which details as follows:

“Further to our telephone conversation earlier today, we would like to request that our mortgage repayments do not request for a period of three-months following the issuing of payment...”

The **Acceptance and Consent** was signed by the Complainants and witnessed by their solicitor on **22 February 2005** on the following terms:

“I/We accept the conditions of this Offer and agree to mortgage the property to the Bank as Security for the Mortgage Loan.”

It is clear to me that the **Letter of Loan Offer** dated **12 February 2005** provided for a standard variable interest rate of 3.30%. The nature of the Provider’s standard variable rate was one that could be adjusted by the Provider as opposed to a tracker interest rate that fluctuated in line with the variations to the European Central Bank refinancing rate.

The Provider’s internal notes dated **21 February 2005** show that the Complainants requested a 2-year interest only repayment period to be applied to their mortgage loan account. The Complainants also sought a 3-month payment moratorium from the Provider.

I further note from the **mortgage loan account statements** furnished in evidence that the loan was drawn down in full on **01 March 2005**.

The Provider subsequently wrote to the Complainants on **02 March 2005** as follows:

“I refer to your Home Mortgage and advise that a cheque for €260,000.00 in respect of full final payment has been debited to your account today (total now drawn €260,000.00) and details of which are:-

- *Term is 35 years/420 months. Final Payment due 01/03/2040.*
- *Interest rate. Variable Rate is 3.30%..including interest adjustment of 0.00%*

...

A variable interest rate move in line with the general movement of interest rates and changes will be published in the daily press and on notices in Branches.

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...

You may fix your interest rate and repayment at any time during the life time of your loan..."

I note from the **mortgage loan account statements** furnished in evidence that loan repayments commenced on **11 July 2005** and the applicable variable interest rate had increased to 4% on **21 June 2006**.

The Complainants wrote to the Provider by way of letter dated **10 July 2006**, which detailed as follows:

"To whom it may concern

Further to a telephone conversation of earlier today, we would like to request the three- year fixed interest rate on our mortgage, with immediate effect (which we understand is currently 4.85%)"

It would appear that the Complainants made contact with the Provider in order discuss their interest rate options. I have not been provided with any details of the telephone conversation which appears to have taken place on **10 July 2006**. This is disappointing.

In response to the Complainants' request, the Provider wrote to the Complainants by way of letter dated **14 July 2006**, which detailed as follows:

"With reference to your recent request, I confirm that a fixed interest rate of 4.8% (including the existing interest adjustment of 0.00%) will apply to your mortgage loan for a period of 3 years. The Monthly repayment for the period of the fixed interest rate will be €1,294.72 and will be revised on its expiry in accordance with the rate then applicable."

The correspondence exchange between the parties shows that the Complainants wrote to the Provider to request to fix the interest rate on their mortgage loan account in **July 2006** for a 3-year period, and the Provider duly complied with this request.

I note from the **mortgage loan account statements** furnished in evidence that a fixed interest rate of 4.85% was applied to the mortgage loan account on **14 July 2006**.

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Prior to the expiry of the fixed interest rate period, the Provider wrote to the Complainants by way of letter dated **24 June 2009**, which detailed as follows:

“The fixed rate period on your above home mortgage expires on 14/07/2009 and I should be obliged for your further instructions as to the rate you wish to avail of from that date. In the absence of any reply the [Provider’s] current Standard Variable Rate (plus the existing agreed adjustment of 0.00%) will be applied but may subsequently be revised at your request to any fixed rate option available in the future. The payments quoted below do not include any PPP cover which you may have taken upon drawdown of the mortgage.

*Here is a sample of the rates currently on offer from [the Provider]. To avail of a fixed rate please complete the attached tear-off section below and return it to [the Provider] at the above address immediately. **Please note that the rates quoted are valid as of to-days date and are subject to variation prior to the rollover date above.***

<u>Rate</u>	<u>%</u>	<u>APR%</u>	<u>Repayment</u>
PDH LTV Var <=50%	2.250	2.2820	934.22
PDH LTV Var >50%<=80%	2.450	2.4840	959.73
PDH LTV Var >80%	2.650	2.6880	985.64
Standard Variable Rate	2.250	2.280	934.22
1 Year Fixed	2.850	2.3250	1011.93
3 Year Fixed	3.190	2.4810	1057.48
5 Year Fixed	3.860	2.8320	1150.35
10 Year Fixed	4.650	3.7760	1264.92
[..]			”

I have not been provided with any evidence that would indicate that the Complainants selected any of the interest rates offered by the Provider by signing and returning the relevant section of the above letter to the Provider. Consequently, the Complainants’ mortgage loan account converted to the Provider’s standard variable interest rate of 2.25% on **14 July 2009**.

The Complainants appear to be of the view that the Provider only provided fixed and variable rate options when they contacted the Provider in **July 2006** and that they were “*misinformed*” as to the availability of tracker interest rate options at inception of the loan.

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The Provider explains that its staff do not give advice on interest rates, but rather provide information on the interest rates available on request, either at application stage or at any time during the lifetime of the mortgage loan. In addition, the Provider contends that its available mortgage interest rates were publicly available on its website and in its branches.

It is important to note that while tracker interest rate options may have been on offer by the Provider in **2005** and **2006**, the Provider was under no obligation to offer the Complainants a tracker rate interest option or offer advice in relation to tracker interest rates. The decision as to which interest rate best suited the Complainants' circumstances rested solely with the Complainants. The Provider offered the Complainants a standard variable interest rate loan and the Complainants accepted this.

The Complainants subsequently decided to apply a 3-year fixed interest rate to their mortgage loan account, which was a decision that they freely made in **July 2006**. In circumstances where tracker interest rates were also available as part of the Provider's suite of mortgage products at that time, the Complainants were also free to explore the option of applying a tracker interest rate with the Provider. However, it was the Complainants who approached the Provider to specifically explore fixed interest rate options. Even if the Complainants had applied for a tracker interest rate in **2006**, it would have been a matter for the Provider as to whether it wished to accede to such a request as it had no contractual obligation to apply a tracker interest rate to the mortgage loan.

The mortgage loan agreement contained no contractual entitlement on the part of the Complainants to a tracker interest rate at any stage during the lifetime of the loan. Any such right would need to be specifically outlined in the mortgage loan documentation. However, no such right was contained in the **Letter of Loan Offer** which was signed by the Complainants on **22 February 2005**. When the Complainants chose to apply a 3-year fixed interest rate to their mortgage loan, **General Condition 3.2** of the **Letter of Loan Offer** applied which outlined the rate of interest that would apply to the loan at the end of a fixed interest rate period. This condition provides that a further fixed interest may apply or if the customer fails to exercise their choice, then the rate will convert to a variable interest rate.

If the Complainants were dissatisfied that the terms and conditions did not provide for a tracker interest rate from the date of drawdown or if they were dissatisfied with the interest rate that would apply at the end of a particular interest rate period, namely any fixed rate period, the Complainants could have decided to decline the Provider's loan offer. However, the Complainants did not do so.

In light of all the foregoing, I accept that there was no obligation on the Provider to offer the Complainants a tracker interest rate option in respect of their mortgage loan in **July 2006**.

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.

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