



<b><u>Decision Ref:</u></b>	2021-0529
<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 €120,000.00 and the term of the loan is 25 years. The **Amended Loan Offer** dated **10 May 2006** detailed that the interest rate applicable to the loan was a variable interest rate of 3.75%.

**The Complainants' Case**

The Complainants outline that they took out a mortgage loan with the Provider in **June 2006**.

The Complainants submit that they asked the branch manager of the Provider *"for a tracker rate and [were] told when [their] mortgage application was accepted that [they were] on a variable rate; as trackers were given out at the managers discretion"*.

The Complainants submit that they did not realise exactly how much they were going to lose out on by accepting the variable rate. The Complainants contend they were not given

a tracker rate which was on offer and *“should have been offered the best rates available at the time”*.

The Complainants contend that they were *“denied the option to choose a tracker mortgage, as this product was only available at the discretion of the Branch manager”*. The Complainants submit that the Provider failed to provide them with the correct information regarding the products available on the market at the time of their application in **2005/2006**. The Complainants assert that the option of a tracker mortgage was neither offered nor explained during the application process.

The Complainants note that a variable interest rate and a tracker interest rate were available at the time of drawdown however *“within a short period of time the property market had collapsed and the tracker rate dropped dramatically”*, which would have *“meant huge savings for [them] had [they] been on a Tracker rate”*.

The Complainants state that they did not receive a tracker rate application form in their application pack. The Complainants submit that they wanted to avail of a tracker rate but were denied this option. The Complainants contend that they had an entitlement to information on all mortgage products at that time, and that the Provider was obliged to provide them with this information to make an informed decision on the product which best met their needs.

The Complainants are seeking the following:

- (a) Recalculation of the current interest rate applicable to their mortgage loan account;  
and
- (b) A refund of the overpayment of interest since drawn down in **May 2006**.

### **The Provider's Case**

The Provider outlines that the Complainants first applied for a mortgage loan on **02 September 2005** and that the interest rate options available at the time were fixed, variable and tracker.

The Provider submits that a loan offer issued to the Complainants on **13 September 2005**, which provided for a loan amount of €140,000.00 on a variable base rate of 3.25%.

The Provider details that a tracker interest option was one of the options for staff to quote during initial mortgage meetings. The Provider outlines that it was standard practice to

explain all the various rates of interest that were available to the Complainants during the mortgage application process.

It submits that *“the decision as to which rate to opt for rested solely with the Complainants and they applied for the Variable Base Rate”*. The Provider asserts that there was no policy in place which provided that tracker interest rates were only provided to customers at a manager’s discretion. It submits that it has no record of a request being received from the Complainants for a tracker interest rate to be applied to mortgage loan account ending **9520** *“or such a request being subsequently denied by Bank staff”*.

The Provider submits that the Complainants sent a letter dated **09 May 2006** to the Provider which references a discussion with a branch manager. The Provider contends that there is *“no indication in the letter of the Branch Manager or any other [Bank] employee having advised the Complainants that the Tracker interest rate was not available for them to choose.”*

The Provider outlined that it issued an **Amended Loan Offer** dated **10 May 2006** to the Complainants which provided for a lower loan amount of €120,000.00 and a variable interest rate of 3.75%, due to the increase in the variable base rate. The Provider notes that the Complainants signed and accepted the loan offer on **12 May 2006**.

The Provider details that it offered tracker interest rates from **early 2004** up until **late 2008** to new and existing customers. It submits that *“it is not the practice or policy of the Bank to offer advice to customers on interest rates”*. The Provider states that the full range of interest rate options were publicly advertised on its website and in all of its branches.

The Provider outlines that the mortgage loan was drawn down on **13 June 2006** on a variable base rate of 3.75% and the account remained on a variable base rate until **31 March 2019**, when the Complainants chose to apply for a fixed interest rate.

### **The Complaint for Adjudication**

The complaint for adjudication is that the Provider failed to permit the Complainants to avail of the option of a tracker interest rate when they applied for mortgage loan account ending **9520**.

## 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 25 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 **2005** and **2006**.

The Complainants completed a **Home Loan Application Form**, which was signed by the Complainants on **02 September 2005**. **Section E** of the **Home Loan Application Form** is titled "*Loan Details*" under which the "*Loan Type*" is detailed as follows:

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

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

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

*\*\* 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 have chosen from a variable interest rate, fixed interest rate or a split mortgage. The Provider in its submissions explains that the *“mortgage application form at the time of the Complainants application in September 2005 had not been updated since the introduction of Tracker interest rates, however this does not mean [its] customers could not apply for a Tracker interest rate.”* It is disappointing that the application form had not been updated by the Provider however it would appear that the Provider’s standard practice at the time was for all available interest rate options to be discussed at the application stage.

I note that all of the available interest rates, to include tracker interest rates, were publicly advertised by the Provider at the time as well as in its branches.

The Provider subsequently issued a **Loan Offer** to the Complainants dated **13 September 2005** which details as follows:

*“I am pleased to inform you that [the Provider] has approved a Repayment Home Loan of €140,000.00 towards the purchase at a cost of €445,000.00 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>€140,000.00</i>
<i>...</i>	
<i>Interest Rate (Variable):</i>	<i>3.25%</i>
<i>Interest Rate Basis</i>	<i>Variable Base Rate</i>
<i>Repayment Period (Years):</i>	<i>25 Approx.”</i>

It is clear that the **Loan Offer** dated **13 September 2005** envisaged that a variable interest rate would apply to the Complainants' mortgage loan account. The Complainants chose not to accept this loan offer. The Complainants sent a letter to the Provider dated **09 May 2006** which details as follows:

*"We [the Complainants] wish to amend our original Loan Approval From €140,000 over 25 years to €120,000 over 25 years as discussed with [employee name] from your offices".*

On foot of the Complainants' request, the Provider subsequently issued an **Amended Loan Offer** to the Complainants dated **10 May 2006**, which details as follows:

*"I am pleased to inform you that [the Provider] has approved a Repayment Home Loan of €120,000.00 towards the purchase at a cost of €445,000.00 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>€120,000.00</i>
...	
<i>Interest Rate (Variable):</i>	<i>3.75%</i>
<i>Variable Rate Basis</i>	<i>Variable Base Rate</i>
<i>Repayment Period (Years):</i>	<i>25 Approx."</i>

**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".*

The Complainants signed the **Acceptance Form** attached to the **Amended Loan Offer** on **12 May 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;*

/Cont'd...

- (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 **10 May 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 Complainants subsequently drew down the mortgage loan on **13 June 2006** on a rate of 3.75%.

Having considered the Complainants' mortgage loan documentation, it is clear to me that the Complainants applied for a variable interest rate on their mortgage loan in **September 2005** having completed the **Home Mortgage Application Form** and the Provider subsequently offered them a variable interest rate of 3.75% by way of an **Amended Loan Offer** dated **10 May 2006** which was accepted and signed by the Complainants on **12 May 2006**.

I also have not been provided with any evidence to suggest that the Complainants completed a "tracker form" which appears to have been required if the Complainants wished to explore the option of applying for a tracker interest rate.

It is important for the Complainants to be aware that although tracker interest rates were on offer generally by the Provider as part of its suite of products when the Complainants applied for their mortgage loan in **2005**, there was no contractual or regulatory obligation on the Provider to provide the Complainants with information on the tracker interest rate offering at that time.

There is no evidence to suggest that the Complainants were informed by the Provider that a tracker interest rate was not available at the time of their mortgage loan application. Moreover, it is difficult to understand how it would have been of benefit to the Provider's employees to seek to deny the Complainants from applying for a tracker rate of interest. If the Complainants wanted to avail of a tracker interest rate at the time, they could have explored the tracker interest rate offering with the Provider. Further, 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.

The choice as to which interest rate to apply for, rested solely with the Complainants. If it was the case that, upon considering the particulars of the **Amended Loan Offer**, the Complainants were of the view that a variable 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.

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**

17 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

/Cont'd...



**(b) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.**

