



<u>Decision Ref:</u>	2022-0134
<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

This complaint relates to two mortgage loan accounts held by the Complainant with the Provider, as follows:

1. Mortgage loan account ending **8834** was secured on the Complainant's principal private residence. The loan amount was €33,000 and the term of the loan was 20 years. The **Amended Letter of Loan Offer** dated **25 November 2002** was accepted by the Complainant on **18 December 2002**. The interest rate applicable to the mortgage loan was a 1-year variable discount rate of 3.85% with the mortgage loan to convert to the variable base rate thereafter. The mortgage loan account was fully redeemed on **8 June 2006**.
2. Mortgage loan account ending **0044** was secured on the Complainant's principal private residence. The loan amount was €80,000 and the term of the loan was 20 years. The **Letter of Loan Offer** dated **15 September 2006** was accepted by the Complainant on **25 October 2006**. The interest rate applicable to the mortgage loan was a variable base rate of 4.25%. The mortgage loan account was fully redeemed on **4 May 2010**.

The Complainant's Case

The Complainant outlines that he held two mortgage loan accounts with the Provider, both of which are now redeemed.

The Complainant submits that mortgage loan account ending **8834** was for a loan amount of €33,000.00 and was drawn down on **18 December 2002**. The Complainant submits that when he completed the application form for mortgage loan account ending **8834**, he selected the variable interest rate. The Complainant maintains that this application was "*completed correctly*". The Complainant asserts that when the Provider introduced the tracker mortgage as part of its product offering in **2004**, he was not advised of this interest rate option. The Complainant states that he sold the secured property the subject of mortgage loan account ending **8834** and redeemed the loan on **8 June 2006**. The Complainant states that he subsequently decided to purchase another property which required a mortgage for €80,000.00.

The Complainant states that mortgage loan account ending **0044** was for a loan amount of €80,000.00 and was drawn down on **21 December 2006**. The Complainant asserts that he received no advice from the Provider in relation to the availability of the tracker mortgage product.

The Complainant states that the mortgage loan application was not completed by him, however he did sign the application form and the "*variable mortgage box was selected*" in his absence. The Complainant submits that "*no staff member or the staff member who completed the form took the time to bring me up to speed on the different options*". The Complainant maintains that the decision to choose a variable rate "*was made for [him]*" and that he received no advice.

The Complainant states that this is "*completely inappropriate*" as he was "*capable of completing*" the form. The Complainant submits that "*[a]t no point was a tracker mortgage mentioned*" and that this "*amounted to mis-selling of products*". The Complainant refutes the Provider's submission that, in signing the application, the Complainant agreed to the mortgage loan offer "*as it would not have made any sense whatsoever from a personal or financial point of view to select a variable rate above a tracker rate.*"

The Complainant states that he applied a 3-year fixed interest rate to mortgage loan account ending **0044** from **24 April 2007**, ending on **30 April 2010**. The Complainant states that mortgage loan account ending **0044** was redeemed on **4 May 2010**.

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The Complainant is of the view that if he was advised of the tracker mortgage product, he would have applied a tracker interest rate to each of his mortgage loan accounts. The Complainant maintains that the Provider was negligent in its approach. The Complainant states that he paid a lot more interest on both mortgages and that if proper procedure was followed, he would have converted mortgage loan account ending **8834** to a tracker rate from 2004 and that he would have opted for a tracker interest rate in respect of mortgage loan account ending **0044** from inception.

The Complainant maintains that there was *"a consistent pattern to steer customers toward the variable or fixed rate mortgages"*. The Complainant submits that the Provider has done him a *"disservice"* and cost him a lot of money. The Complainant is of the view that the Provider's actions are *"less than professional"*.

The Complainant asserts that the Provider's actions are *"vexatious [sic] and frivolous"* and is of the view that the Provider adopted a *"careless and flippant attitude"*. The Complainant submits that the Provider had a *"duty of care"* to the Complainant to draw his attention to all options open to him. The Complainant states that he feels *"extremely let down"* by the Provider and that it should be held accountable as he put his *"trust"* in the Provider to *"deliver a comprehensible and transparent service to their customers"*.

The Complainant asserts that solicitors *"only advise about folio no's and ensure all transation [sic] are correct"*. The Complainant states that his solicitor is not a financial advisor but is *"concerned with title deeds and conveyancing matters"*.

The Complainant is seeking the following:

- (a) A refund of all overpaid interest on mortgage loan account ending **8834** from the date on which tracker interest rates were introduced in **2004** up to the date mortgage loan account ending **8834** was redeemed on **8 June 2006** (being the difference between the interest rate that was applied to the mortgage loan and if a tracker interest rate had been applied to the mortgage loan); and
- (b) A refund of all overpaid interest on mortgage loan account ending **0044** between the period from **21 December 2006** to **4 May 2010** (being the difference between the interest rate that was applied to the mortgage loan and if a tracker interest rate had been applied to the mortgage loan).

The Provider's Case

1. Mortgage loan account ending 8834

The Provider submits that the Complainant completed a **Home Loan Application Form** on **30 October 2002** seeking mortgage finance in the sum of €39,060.00 repayable over a term of 20 years. The Provider explains there were three interest rate options available at the time to include fixed, variable, and split loan options. The Provider notes that these interest rates were publicly advertised, and all three options were available for selection by the Complainant. The Provider explains that tracker rates of interest were not available at this time and there *"was absolutely no possibility that Tracker interest rates would have been available to apply for when the Complainant applied for this mortgage loan in 2002"*.

The Provider notes that it issued a **Letter of Loan Offer** dated **8 November 2002** to the Complainant for a loan amount of €39,060.00 repayable over a term of 20 years. The Provider states that the interest rate offered was a 1-year variable discount rate of 3.85%, with the Provider's variable base rate to apply thereafter. The Provider details that it issued an **Amended Letter of Loan Offer** on **25 November 2002** offering the Complainant a *"Repayment Home Loan"* in the amount of €33,000.00 repayable over a term of 20 years and commencing on a 1-year variable discount rate of 3.85%, with the Provider's variable base rate to apply thereafter.

The Provider explains that mortgage loan account ending **8834** was drawn down prior to tracker rates becoming available. The Provider submits that pursuant to the **Amended Letter of Loan Offer**, *"the Complainant was not contractually entitled to a Tracker interest rate or to be offered a Tracker interest rate"* on mortgage loan account ending **8834** when it introduced tracker interest rates as part of its product offering in **2004**. The Provider submits that if the Complainant wished to apply for a tracker interest rate at any stage during the period which tracker rates were available *"a separate Tracker interest rate application form would have been required to be completed."* The Provider asserts that it has no record of *"a request or application for a Tracker interest rate being received from the Complainant or of such a request being subsequently denied."*

The Provider states that the Complainant's solicitor contacted the Provider in **June 2006** requesting a redemption quote which the Provider issued on **7 June 2006**. The Provider notes that the Complainant's solicitor wrote to the Provider enclosing a cheque for €47,396.05 to redeem mortgage loan account ending **8834**.

2. Mortgage loan account ending 0044

The Provider submits that it introduced tracker interest rates in **2004** and were widely available until **2008**. The Provider details that the Complainant signed and submitted a **Home Loan Application Form** on **9 September 2006** seeking mortgage finance of €80,000.00 over 20 years on a variable interest rate. The Provider details that due to an “*administrative error*” the Complainant’s postal address as opposed to the property address was inserted on the **Home Loan Application Form** and the Provider has apologised for this error.

The Provider submits that it has always been its “*practice to provide information details to customers of all the interest rates available when requested to enable customers to make an informed decision*” but that it does not offer advice to customers on interest rates. The Provider asserts that ultimately, “*the decision as to which interest rate to opt for rested solely with the Complainant*”.

The Provider details that a staff member assisted the Complainant with the completion of the **Home Loan Application Form** in **2006** and this was done “*in full consultation with the Complainant and following instruction taken from the Complainant.*” The Provider asserts that it is “*unable to confirm whether the Complainant was present in the branch when the Application Form was signed or if the Application Form was posted out to the Complainant for signing.*” The Provider submits that it is not the Provider’s policy to record how individual mortgage applications are completed but, on occasions where a customer has asked for assistance, the application is “*completed in full consultation with the customer(s) and following instructions taken from the customer(s)*”.

The Provider states that when the Complainant applied for mortgage loan account ending **0044**, four interest rates were available including variable, tracker, fixed and split loan options. The Provider notes that the various interest rates were publicly advertised on the Provider’s website and in all its branches. The Provider submits that if the Complainant wished to apply for a tracker interest rate, he could have done so but that he selected a variable rate on the **Home Loan Application Form**. The Provider notes that it has no record of a request from the Complainant to apply a tracker interest rate to mortgage loan account ending **0044**.

The Provider states that it issued a **Letter of Loan Offer** to the Complainant on **15 September 2006** for a loan amount of €80,000.00 repayable over a 20-year period on variable base interest rate of 4.25%. The Provider submits that it did not issue a **Suitability Statement** to the Complainant, as per the **Consumer Protection Code 2006 (“CPC 2006”)**, because the effective date to begin issuing such statements was **1 July 2007**.

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The Provider asserts that a letter issued to the Complainant on **19 December 2006** confirming the details of the loan to include the term of the loan, the applicable interest rate, and the loan repayments. The Provider maintains that the Complainant “*was under no obligation to accept the terms of the Loan Offer if he was not satisfied with them.*” The Provider states that the Complainant, with the benefit of legal advice, expressly accepted the terms of the **Letter of Loan Offer** on **25 October 2006** and proceeded to draw down the loan. The Provider states that the decision to accept or reject the **Letter of Loan Offer** rested solely with the Complainant.

The Provider details that the Complainant could have applied for a tracker rate at any stage during the period between **2004** to **2008**. The Provider notes that it had no obligation to write to the Complainant when future products became available and that it had adhered to the terms of the mortgage loan contract in full.

The Provider submits that the Complainant completed a **Fixed Rate Mortgage Conversion Form** on **24 April 2007** to apply a 3-year fixed rate of 4.99% to mortgage loan account ending **0044**.

Prior to the expiry of the 3-year fixed interest rate period, the Provider states that it issued a **Fixed Rate Roll Over Letter** to the Complainant on **14 April 2010** which provided the Complainant with the following two options:

- the interest rate would automatically switch to the variable interest rate on expiry of the fixed interest rate period; or
- the Complainant could call the Provider’s branch if he wished to avail of a further fixed interest rate.

The Provider details that in circumstances where no instructions were received from the Complainant, the interest rate on mortgage loan account switched to the applicable variable interest rate of 3.23% on **30 April 2010**.

The Provider explains that it withdrew tracker interest rates from the market in **2008**, and therefore the Complainant had “*no contractual right or entitlement to a Tracker interest rate at the expiry of the Fixed interest rate period*” in **2010**. The Provider relies on **General Condition 9** of the **Letter of Loan Offer** which details what would happen on the expiration of a fixed rate period.

The Provider states that the Complainant's solicitor contacted the Provider in **April 2010** requesting a redemption quote. The Provider notes that the Complainant's solicitor wrote to the Provider on **30 April 2010** enclosing a cheque for €71,701.03 to redeem mortgage loan account ending **0044**.

The Complaints for Adjudication

The complaints for adjudication are:

- (a) the Provider failed to advise the Complainant of and/or offer the Complainant the option of a tracker interest rate on his mortgage loan account ending **8834** when tracker interest rates were introduced to the market in **2004**; and
- (b) the Provider failed to advise the Complainant of and/or offer the Complainant the option of a tracker interest rate when he applied for his mortgage loan account ending **0044** in or around **September 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 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 24 March 2022, 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.

In the absence of additional submissions from the parties, within the period permitted, the final determination of this office is set out below.

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In order to determine this complaint, it is necessary to review and set out the relevant provisions of the Complainant's mortgage loan documentation. It is also necessary to consider details of certain interactions between the Complainant and the Provider from **2002 to 2006**.

I will consider each of the Complainant's mortgage loan accounts in turn below.

1. Mortgage loan account ending 8834

The Complainant completed a **Home Loan Application Form** which was signed and dated on **30 October 2002**. Unfortunately, certain sections detailing the loan details in the **Home Loan Application Form** are illegible. However, it is not disputed that the Complainant selected a variable interest rate. I note that the Provider introduced tracker rates in **2004** therefore it was not possible for the Complainant to choose a tracker interest rate when he applied for his mortgage loan in **2002**.

The Provider issued a **Letter of Loan Offer** dated **8 November 2002** to the Complainant for a loan in the amount of €39,060.00 repayable over a term of 20 years on a 1-year variable discount interest rate of 3.85%, with the variable base rate to apply thereafter. It appears that the Complainant did not accept and sign this loan offer.

The Provider subsequently issued an **Amended Letter of Loan Offer** dated **25 November 2002** to the Complainant which details as follows:

"...

<i>Type of Loan:</i>	<i>Repayment</i>
<i>Total Amount of Loan:</i>	<i>€33,000.00</i>
<i>Cheque Issue Amount:</i>	<i>€33,000.00</i>
<i>Monthly Repayment</i>	<i>€197.37</i>
<i>Interest Rate: Discount Year 1</i>	<i>3.85% (See Important Note)</i>
<i>After 1 year:</i>	<i>Variable Base Rate</i>
<i>Repayment Period (Years)</i>	<i>20 Approx.</i>

Important Note On Variable Discount Rate:

The discount rate shown is the current discount rate. In the event of an interest rate change prior to the completion of this loan (i.e. advance of funds via your homeloan cheque) the rate will be altered to the variable discount rate on offer on the date of completion. If no discount variable rate is available at that time, the prevailing variable rate will apply.

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...”

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

“3. 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.”*

Mortgage Condition 2 of the **Provider’s Mortgage Conditions** details as follows:

“2. How interest on the Loan is calculated and charged.

2.1 *The basis on which the interest rate in the Loan is calculated is stated in the Offer Letter.*

2.2 *The interest rate on the Loan may be increased or reduced by [the 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.*

...”

I do not appear to have been furnished with the signed **Acceptance Form** attached to the **Amended Letter of Loan Offer**. However, I have reviewed the **mortgage account statements** and I note that mortgage loan account ending **8834** was drawn down on **18 December 2002**. There is no dispute between the parties in that regard.

It is clear to me that the **Amended Letter of Loan Offer** dated **25 November 2002** envisaged that a 1-year variable discount interest rate of 3.85% would apply to the Complainant’s mortgage loan account with a “*variable base*” interest rate to apply thereafter. The nature of “*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. The variable interest rate offered to the Complainant was not a tracker interest rate as tracker interest rate products were only introduced to the market by the Provider some 2 years later in **2004**.

Mortgage loan account ending **8834** drew down on the Provider’s variable interest rate of 3.35% and remained on a variable interest rate for the life of the loan. The **mortgage account statements** submitted in evidence show the following changes to the Provider’s variable interest rate during the life of the loan as follows:

- **31 March 2003** variable interest rate decreased from 3.35% to 3.10%.

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- **30 June 2003** variable interest rate decreased from 3.10% to 2.60%.
- **31 December 2003** variable interest rate increased from 2.60% to 3.35%, marking the end of the discounted period.
- **31 March 2004** variable interest rate decreased from 3.35% to 3.25%.
- **31 December 2005** variable interest rate increased from 3.25% to 3.50%.
- **31 March 2006** variable interest rate increased from 3.50% to 3.75% and remained at 3.75% until the mortgage loan account was redeemed on **8 June 2006**.

The Complainant's solicitor sent a letter dated **1 June 2006** to the Provider to request the redemption figure to clear the mortgage loan account. The Provider responded by way of letter dated **5 June 2006**, which notes as follows:

“ ...

The redemption figure stated below is subject to all payments received to date being honoured, including direct debit payments which are credited to customers' accounts by [the Provider] on the call date. The redemption of a Home Loan is also subject to all other related loans secured by this property being redeemed.

The amount required to redeem on 2/06/2006 is EUR 47,366.44 and the daily interest payable each day thereafter is EUR 4.93.

...”

The Complainant's solicitor wrote to the Provider on **7 June 2006** enclosing a cheque in the sum of €47,396.05 and sought confirmation that the mortgage loan account had been redeemed in full. Having reviewed the **mortgage account statements**, I note that the mortgage loan account was fully redeemed on **8 June 2006**.

The Complainant contends that the Provider did not offer and/or advise him of tracker interest rate options in **2004** when the Provider first introduced tracker rate mortgages to the market. In **2004**, the Complainant was availing of the Provider's variable base interest rate in line with the terms and conditions of the **Amended Letter of Loan Offer** dated **25 November 2002**. The **Amended Letter of Loan Offer** dated **25 November 2002** did not contain any contractual entitlement to a tracker interest rate with respect to the Complainant's mortgage loan. Tracker interest rates were not on offer by the Provider as part of its suite of mortgage products when the Complainant applied for his mortgage loan in **October 2002** therefore it would not be possible for the Complainant's mortgage loan to contain a contractual entitlement to such a rate.

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Although tracker interest rates were introduced by the Provider as part of its suite of mortgage products from **early-2004**, there was no obligation on the Provider to provide offer and/or advise the Complainant on its tracker interest rate offering at that time in circumstances where the Complainant had no contractual entitlement to be offered a tracker interest rate. If the Complainant wanted advice about the interest rates available in the market or the market generally in **2004**, the Complainant could only get that advice from an independent third-party advisor. It was a matter for the Complainant to approach to Provider to explore his interest rate options. There is no evidence to suggest that the Complainant proactively enquired as to the availability of tracker rates on mortgage loan account ending **8834** or sought to apply a tracker interest rate from **2004** up to the date the mortgage loan was redeemed **2006**. It is important to note that even if the Complainant had contacted the Provider to request that a tracker interest rate be applied to his mortgage loan account, it was entirely within the Provider's commercial discretion as to whether it wished to accede to that request given the mortgage loan only contained a contractual entitlement to the Provider's variable base interest rate.

2. Mortgage loan account ending 0044

The **Home Loan Application Form** in relation to mortgage loan account ending **0044** shows that the Complainant applied for a loan in the amount of €80,000.00 repayable over a term of 20 years on variable interest rate. The **Home Loan Application Form** details as follows:

"...

E. Loan Details

...

Amount

Loan Required €80,000

Term of Loan 20 Yrs

...

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,*

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If choosing Tracker, please complete the Tracker form

enclosed.

...”

I note that the Complainant signed the **Declarations and Consents** section of the application form on **9 September 2006**, which details as follows:

“I/We hereby apply for [the Provider] loan secured by first legal mortgage on the property described above....

I/We hereby declare

- That I am/we are over 18 years of age.*
- That all statements made and particulars given to you in connection with this application are strictly true to the best of my/our knowledge and belief, and*
- That I/we will inform you of any changes in my/our situation which might affect this application*

...”

The evidence shows that the Complainant signed a home loan application form, choosing a variable interest rate. I note that a tracker interest rate was included as an available option in the home loan application form. While the Complainant does not recall completing the application form, he does not dispute that he signed the application form. If the Complainant wished to apply for a mortgage loan on a tracker interest rate then it was a matter for him to ensure that the option of a tracker rate was selected.

The Provider subsequently issued a **Letter of Loan Offer** dated **15 September 2006** to the **Complainant** which details as follows:

<i>“Type of Loan:</i>	<i>Repayment</i>
<i>Total Amount of Loan:</i>	<i>€80,000.00</i>
<i>Cheque Issue Amount:</i>	<i>€80,000.00</i>
<i>Monthly Repayment</i>	<i>€495.39</i>
<i>Interest Rate (Variable):</i>	<i>4.25%</i>
<i>Interest Rate Basis:</i>	<i>Variable Base Rate</i>
<i>Repayment Period (Years):</i>	<i>20 Approx”</i>

The **General Conditions for [Provider] Home Loans** provide as follows:

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“ ...

- 3. 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.*

...

- 9. Fixed Rate Loans:** *Where a member 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.*

...”

Mortgage Condition 2 of the Provider’s **Mortgage Conditions** provides as follows:

“ ...

3. How interest on the Loan is calculated and charged

3.1 *The basis on which the interest rate in the Loan is calculated is stated in the Offer Letter.*

3.2 *The interest rate on the Loan may be increased or reduced by [the 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.*

...”

The Provider’s **Standard Form of Home Loan Mortgages** has been submitted in evidence and I note that **Paragraph 5** outlines as follows:

“ ...

5. Offer Letter and [the Provider] Mortgage Conditions

This Mortgage incorporates the Offer Letter and [the Provider] Mortgage Conditions and the Borrower and the Spouse agree to be bound by all the obligations on them and the conditions which under those documents. A copy of [the Provider] Mortgage Conditions has been received by the Borrower and the Spouse.

...”

I have been furnished with the Provider's **Memorandum and Rules**. I note that **Section 12** at **page 13** concerns **Loans and Housing Loans** and provides as follows:

"...

(10) A loan shall be repaid with interest at such interest rates and at such times as shall be determined from time to time by the Board.

...

(11) Subject to the conditions, if any, attaching to any loan, the Board may at its absolute discretion –

...

(c) change at any time any rate of interest upon such terms and from such date (whether then already passed or not) as the Board may from time to time determine. [the Provider] shall not be obliged to give written notice of any change under this Rule to any borrower, but, however, in the absence of written notice, notice of any change shall be publicised as follows –

- (i) by a notice exhibited at the chief office, and*
- (ii) by public notice in at least two national daily newspapers*

An accidental omission to send a notice or to publicise a change under (i) or (ii) above shall not affect the validity of the alteration in question.

..."

The Complainant signed the **Acceptance Form** for mortgage loan account ending **0044** on **25 October 2006** on the following terms:

"...

1.1/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;*

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- (ii) the General Conditions for [the Provider];
- (iii) [the Provider] 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 Provider issued a letter dated **19 December 2006** to the Complainant which detailed as follows:

"I refer to our letter of the 15/09/06. I am pleased to inform you that your loan cheque has been forwarded to your solicitors [Redacted]. I understand that an appointment has been made with your solicitor to complete the transaction.

The amount of the cheque will be made up as follows:

Total	<u>€80,000.00</u>
Net Loan Cheque	<u>€80,000.00</u>

<i>Term of Loan:</i>	<i>20 years Approx.</i>
<i>Rate of Interest:</i>	<i>4.75% Base Rate (APR 4.9%)</i>
<i>Daily Interest:</i>	<i>€10.41</i>

...

THE PAYMENT RATES ON THIS HOUSING LOAN MAY BE ADJUSTED BY [THE PROVIDER] FROM TIME TO TIME.

..."

Mortgage loan account ending **0044** was drawn down on **21 December 2006** on a variable base interest rate of 4.750%.

It is clear to me that the **Letter of Loan Offer** dated **15 September 2006** in relation to mortgage loan account ending **0044**, envisaged that a variable base interest rate would apply to the Complainant's mortgage loan account. 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 but rather was one that could be adjusted by the Provider from time to time. The evidence shows that the option of a tracker interest

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rate was available to the Complainant at the time of the loan application however he chose to select a variable interest rate option instead and signed the application form to this effect.

The Complainant subsequently completed and signed a **Fixed Rate Mortgage Conversion Form** on **24 April 2007** to apply to 3-year fixed interest rate to mortgage loan account ending **0044**, which details as follows:

“ ...

Declaration

I/~~We~~ wish to apply to convert the balance of my/~~our~~ loan account to a fixed rate of @ 4.99 €448.45 for the next 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.*

...
...

WARNING

STANDARD LENDING TERMS AND CONDITIONS APPLY.

...”

From review of the **mortgage account statements** for mortgage loan account ending **0044**, I note that the interest rate changed from 5.00% to 4.99% on **30 April 2007**.

Prior to the expiry of the 3-year fixed interest rate period, the Provider issued a letter to the Complainant dated **14 April 2010**, which details as follows:

“ ...

At the end of this month the fixed rate 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 applicable 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*

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on the applicable variable rate as at 14/04/2010 and this rate may be subject to change. Repayment amount detailed below is not inclusive of Tax Relief at Source (TRS).

Option	Interest Rate	Monthly Repayment	Monthly Insurance Premium	Total Monthly Repayment
Variable	2.630	443.00	0.00	443.00

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

...”

The **mortgage account statements** for mortgage loan account ending **0044** show that the interest rate changed from a fixed interest rate of 4.99% to a variable interest rate of 3.23% on **30 April 2010**, which was the Provider’s prevailing variable interest rate on that date.

It is clear from the **General Conditions for [Provider] Home Loans** and the **Fixed Rate Mortgage Conversion Form** that upon expiry of the fixed interest rate period, and in the absence of instruction from the Complainant, mortgage loan account **0044** would switch to the Provider’s prevailing variable interest rate.

The Complainant’s solicitor sent a letter dated **26 April 2010** to the Provider requesting the redemption figure to clear mortgage loan account ending **0044**. The Provider responded by way of letter dated **27 April 2010** noting as follows:

“...

The redemption figure stated below is subject to all payments received to date being honoured, including direct debit payments which are credited to customers’ accounts by [the Provider] on the call date. The redemption of a Home Loan is also subject to all other related loans secured by this property being redeemed.

The amount required to redeem on 27/04/2010 is EUR 71,631.31 and the daily interest payable each day thereafter is EUR 9.96.

...”

/Cont’d...

The Complainant's solicitor wrote to the Provider on **30 April 2010** enclosing a cheque in the sum of €71,701.03 and sought confirmation that the mortgage loan account had been redeemed in full. Having reviewed the **mortgage account statements**, I note that the mortgage loan account ending **0044** was redeemed in full on **4 May 2010**.

The Complainant is of the view that the Provider did not offer the option of and/or advise him of tracker interest rate options when he applied for mortgage loan account ending **0044** in **2006**. The evidence shows that the choice of a tracker interest rate was included in the **Home Loan Application Form** that was signed by the Complainant however the Complainant opted to apply for a variable interest rate. Therefore, I am satisfied that a tracker interest rate option was available to the Complainant to select, however he decided to apply for a different type of interest rate. The Provider subsequently offered the Complainant a variable base interest rate of 4.25% by way of **Letter of Loan Offer** dated **15 September 2006**, as requested by the Complainant and which the Complainant duly accepted.

The decision as to which interest rate best suited the Complainant was entirely a matter for the Complainant. If it was the case that the Complainant was of the view that a variable interest rate loan was not suitable for him, then the Complainant could have decided not to sign the **Acceptance Form** section of the **Letter of Loan Offer** dated **15 September 2006** and ultimately draw down the loan. If the Complainant was not satisfied with the terms and conditions of the **Letter of Loan Offer** dated **15 September 2006**, to include the applicable interest rate, the Complainant could have sought an alternative interest rate from the Provider before drawing down the loan or indeed with another mortgage provider. However, he did not do so.

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.



JACQUELINE O'MALLEY
HEAD OF LEGAL SERVICES

/Cont'd...

19 April 2022

PUBLICATION

Complaints about the conduct of financial service providers

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.

Complaints about the conduct of pension providers

Pursuant to *Section 62* of the *Financial Services and Pensions Ombudsman Act 2017*, the Financial Services and Pensions Ombudsman will **publish case studies** in relation to complaints concerning pension 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.