



<b><u>Decision Ref:</u></b>	2022-0205
<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 Failure to offer a tracker rate throughout the life of the mortgage
<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 Complainant with the Provider. The mortgage loan account which is the subject of the complaint is secured on the Complainant's private dwelling house.

The loan amount was €150,000.00 and the term of the loan was 15 years. The **Letter of Approval**, which was signed by the Complainant on **29 March 2005**, provided for an "endowment" variable rate home loan of 2.69% for a period of 12 months, with the Provider's standard variable interest rate to apply thereafter. The mortgage loan was redeemed on **15 December 2011**.

**The Complainant's Case**

The Complainant submits that, on the day her mortgage loan was approved by the Provider, she asked a representative of the Provider whether she could apply for a tracker interest rate. The Complainant states that the representative of the Provider "*made a phone call to an unknown person & informed me that the tracker mortgages had ended the week before*". The Complainant states that she now knows this was not the case and is of the view that she "*should be compensated*".

The Complainant asserts that she was "*misled*" by the Provider and that she had no option "*but to accept the rate*" offered by the Provider in the Letter of Approval. The Complainant submits that she was "*under pressure at that point to accept*" as her family home had just been sold and she was "*in the process of purchasing a new home*" for herself and her children. The Complainant maintains that she was left "*in considerable financial stress*" and was "*trying to make ends meet*".

The Complainant submits that she was not offered a tracker interest rate at the time of the mortgage loan application nor was she offered a tracker interest rate at any stage in the future "*even though it still existed*". The Complainant states that the Provider gave her "*all sorts of excuses*" every time she requested a tracker interest rate and only ever offered her variable interest rates or fixed interest rates. The Complainant details that she made a request for a tracker interest rate on **26 November 2008** but was once again informed by the Provider that it had stopped offering tracker interest rates. The Complainant details that all of this "*is the absolute fact of what happened*" to her and that she feels "*justified*" in her request for compensation.

The Complainant questions why she was not informed, on the day she applied for the loan, that "*it was the Banks "policy" to only offer tracker interest rates to mortgages with a minimum balance of €150,000.00*". The Complainant is of the view that the Provider's representative who she was dealing with when applying for the mortgage loan must have been "*dealing with hundreds of customers on a weekly basis and would be well informed of their "policies"*".

The Complainant submits that it is very "*convenient*" for the Provider to not hold any records of a meeting held with her in **2005** in relation to her request for a tracker mortgage. The Complainant notes that the Provider has admitted that she was "*misinformed*" and notes that the Provider apologised "*for not offering or informing [the Complainant] of not being eligible at that time and for the "misinformation" provided*".

The Complainant is seeking the following:

- a) A tracker interest rate applied to the mortgage loan account; and
- b) Compensation.

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

The Provider outlines that the Complainant submitted an application for credit on **14 February 2005** seeking *"a Variable Rate, New Business (Interest Only) Home Loan facility"*.

The Provider submits that a **Letter of Approval** was issued on **10 March 2005** which provided for a loan in the sum of €130,000.00 repayable over a term of 15 years on a variable interest rate of 2.69%. The Provider explains that the Complainant was not offered a tracker interest rate when she applied for a mortgage loan in **2005** *"because at that time it was the Bank's policy to only offer tracker interest rates to mortgages with a minimum balance of €150,000.00"*.

The Provider submits that the mortgage loan is described as an *"Endowment"* loan in the Letter of Approval, however the Provider states that the mortgage loan was not an endowment loan. The Provider explains that its *"IT system required interest only loans to be input as endowment loans in order to avail of interest only capability in calculating mortgage repayments."*

The Provider submits that it has *"no records of a meeting with the Complainant in 2005 in relation to the mortgage loan application"*. The Provider details that it also has *"no records of requests from the Complainant for a tracker rate prior to her letter of November 2008."*

The Provider states that the Complainant wrote to the Provider on **26 November 2008** *"requesting to have her Interest only loan switched to Capital and Interest repayments."* The Provider asserts that it amended the Complainant's mortgage loan account, effective from **05 December 2008**, and notes that it was not in a position to offer the Complainant a tracker interest rate in **November 2008** *"because the Bank ceased offering the option to switch to a tracker rate from a variable rate (for customers who did not have a tracker entitlement in their mortgage terms and conditions) from [mid] 2008."*

The Provider states that it apologises *"for not informing the Complainant in its response that she could not avail of a tracker rate as the time had passed when customers could switch from the variable to the tracker rate."* The Provider states that it acknowledges that the Complainant was *"misinformed"* as to the reason why her mortgage loan account was not eligible for a tracker interest rate in **2008**. The Provider notes that it has apologised to the Complainant *"for this misinformation"*.

### **The Complaint for Adjudication**

The complaint is that the Provider incorrectly failed to offer the Complainant a tracker interest rate when she applied for her mortgage loan account in **2005**, or at any point thereafter.

### **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 **21 April 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.

Following the issue of the Preliminary Decision, the Complainant made a further submission by e-mail to this Office on **10 May 2022**, a copy of which was exchanged with the Provider.

Having considered the additional submission of the Complainant and all submissions and evidence furnished by both parties to this Office, I set out below the final determination of this Office.

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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 and consider details of certain interactions between the Complainant and the Provider between **2005** and **2011**, when the mortgage loan was redeemed.

The Complainant completed and signed an **Application for Credit** on **14 February 2005** which details as follows:

" ...

**2. Details of Mortgage Required**

**Type of Loan:**

<i>Amount of Loan required</i>	<i>EUR 120,000.00</i>
<i>Purchase price/Value of property</i>	<i>EUR 455,000.00</i>
<i>Loan type</i>	<i>Variable Rate Home Loan, New Business (Interest Only)</i>
<i>Repayment Term required</i>	<i>15 Years</i>

" ..."

I note that there are amendments made by hand to the loan application which amended the loan amount to "130K" and the purchase price/value of the property to "445K".

The Provider subsequently issued a **Letter of Approval** dated **10 March 2005** to the Complainant, which details as follows:

" ...

<i>Loan Type</i>	<i>Endowment Variable rate Home Loan</i>
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<i>Purchase Price/Estimated Value:</i>	<i>EUR 445,000.00</i>
<i>Loan Amount:</i>	<i>EUR 130,000.00</i>
<i>Interest Rate:</i>	<i>2.69%</i>
<i>Term:</i>	<i>15 year(s)</i>
<i>Monthly Instalment:</i>	<i>EUR 291.42</i>
<i>..."</i>	

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The Provider has explained that although described as “Endowment” in the **Letter of Approval**, the Complainant was not offered an endowment loan. The Provider details that in **2005** its IT system required interest only loans to be inputted as endowment loans in order to avail of interest only capability in calculating mortgage repayments.

The relevant section of the **Special Conditions** of the **Letter of Approval** outline as follows:

*“A. THE INTEREST RATE APPLICABLE TO THIS LOAN WILL, FOR A PERIOD OF 12 MONTHS FROM THE DATE OF THE ISSUE OF THE LOAN, BE THE NEW BUSINESS VARIABLE RATE. THIS RATE CURRENTLY EQUATES TO THE INTEREST RATE SHOWN ABOVE. THE NEW BUSINESS VARIABLE RATE, BEING A VARIABLE RATE, MAY CHANGE FROM TIME TO TIME AND WITHOUT REGARD TO THE STANDARD VARIABLE RATE OR ANY VARIATIONS THEREOF, DURING THE 12 MONTH PERIOD FROM THE DATE OF CHEQUE ISSUE IN ACCORDANCE WITH THE MORTGAGE CONDITIONS. ON EXPIRY OF THE 12 MONTH PERIOD, THE NEW BUSINESS VARIABLE RATE WILL CEASE AND THE INTEREST RATE APPLICABLE TO THIS LOAN SHALL REVERT TO THE PREVAILING STANDARD VARIABLE RATE APPLICABLE TO LOANS OF THIS TYPE.*

*...”*

The information relating to Housing Loans within the meaning of the **Consumer Credit Act 1995** details as follows on the back of each page of the Letter of Approval:

*“... ”*

**VARIABLE RATE LOANS**

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

**ENDOWMENT HOME LOANS**

**WARNING**

***“THERE IS NO GUARANTEE THAT THE PROCEEDS OF THE INSURANCE POLICY WILL BE SUFFICIENT TO REPAY THE LOAN IN FULL WHEN IT BECOMES DUE FOR REPAYMENT.”***

*The early surrender of the Insurance Policy in respect of your Endowment Loan may result in a return to you which would be less than you have paid in premia and other charges.*

*...”*

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The **General Mortgage Loan Approval Conditions** detail the following warning in relation to variable rate loans:

*IF THE LOAN IS A VARIABLE RATE LOAN THE FOLLOWING APPLIES:*

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

The Complainant signed the **Acceptance of Loan Offer** section of the **Letter of Approval** on **29 March 2005**, which was witnessed by a solicitor, on the following terms:

“ ...

1. *I/we the undersigned accept the within offer on the terms and conditions set out in*

- i. Letter of Approval*
- ii. the General Mortgage Loan Approval conditions*
- iii. the [the Provider] Mortgage Conditions*

*copies of the above which I/we have received, and agree to mortgage the property to [the Provider] as security for the mortgage loan.*

...

4. *My/our Solicitor has fully explained the said terms and conditions to me/us.*

...”

The **Letter of Approval** provided for an interest only loan on a variable interest rate of 2.69% for a period of 12 months, which would then convert to the prevailing standard variable interest rate for the remainder of the term of the loan. The variable rate, in the Complainant’s mortgage loan documentation, made no reference to varying in accordance with variations in the ECB refinancing rate. Rather it was a variable rate which could be adjusted by the Provider. I accept that the Complainant’s mortgage loan commenced as an interest-only mortgage loan where the monthly repayments paid off the interest and not the capital balance, as opposed to an endowment mortgage as I have not been provided with any evidence of an investment policy or endowment policy for the term of the mortgage.

The **mortgage loan account statements** show that the mortgage loan was drawn down on **21 April 2005**.

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The Provider has submitted into evidence a copy of a published marketing document entitled **Lending Interest Rates**, which is noted as being “effective from 27 January 2005” and which details the following interest rates available from the Provider at the time of the Complainant’s mortgage loan application, subject to certain eligibility criteria:

<b>“Rates applicable to new Home Loans</b>	<b>Rate</b>	<b>APR</b>
• 1 year Discounted Variable Rate	2.69%	3.50%
• 1 Year Discounted Variable Rate (when borrowing <50% of the property value)	2.49%	3.50%
• 1 Year Fixed Rate	2.74%	3.50%
• 2 Year Fixed Rate	3.55%	3.60%
• 3 Year Fixed Rate	3.70%	3.70%
<b>Tracker Mortgage (Home Loan &amp; Residential Investment Property)</b>	<b>Rate</b>	<b>APR</b>
• Loan Amount €150,000 - €249,999	3.40%	3.50%
• Loan Amount of €250,000 or more	3.10%	3.10%”

I note that tracker interest rates were on offer generally by the Provider when the Complainant applied for the mortgage loan in **February 2005**. However, tracker interest rates were only available in respect of mortgage loans in the amount of €150,000.00 or more. In circumstances where the Complainant applied for a mortgage loan in the sum of €130,000.00, the Complainant was not eligible to be offered a tracker interest rate. In this regard, I accept that the Provider operates as a business and is entitled to set certain lending and eligibility criteria in relation to its product offerings.

It would appear that the Complainant made a request to switch the applicable interest rate on her mortgage loan account from a variable interest rate to a fixed interest rate on **15 February 2006** by sending the following request through the Provider’s internal mortgage service request platform:

*“Request for*

*Fixed rate Expiry Letter*

*Variable to Fixed Letter*        *x*

*Send Fixed Rate Contract*

*1 Yr x 2Yr x 3Yr x 5Yr x 10 Yr x”*

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The Provider subsequently wrote to the Complainant by way of letter dated **21 February 2006** which details as follows:

*"I refer to your recent request in relation to the above numbered mortgage account.*

*In accordance with your recent request attached is a listing of [the Provider's] current fixed rate options. Please tick the desired rate and return your signed fixed rate options request to Mortgage Services*

...

*PLEASE TICK BESIDE THE DESIRED OPTION*

...

<i>Variable rate Mortgage currently</i>	<i>3.70%</i>	<i>€598.75</i>
<i>1 Year fixed rate Mortgage currently</i>	<i>3.75%</i>	<i>€514.17</i>
<i>2 Year fixed rate Mortgage currently</i>	<i>3.99%</i>	<i>€540.17</i>
<i>3 Year fixed rate Mortgage currently</i>	<i>4.15%</i>	<i>€557.17</i>
<i>5 Year fixed rate Mortgage currently</i>	<i>4.29%</i>	<i>€572.67</i>
<i>7 Year fixed rate Mortgage currently</i>	<i>4.55%</i>	<i>€600.83</i>
<i>10 Year fixed rate Mortgage currently</i>	<i>4.70%</i>	<i>€617.08"</i>

There is no evidence to show that the Complainant selected a fixed interest rate and in those circumstances the mortgage loan account remained on a standard variable interest rate.

The Complainant wrote to the Provider on **26 November 2008** as follows:

*"To Whom it Concerns*

*I currently have an endowment int. only mortgage. I wish for those re-payments to change from this to Capital Interest. If possible a tracker rate to apply..."*

The Provider submits that it made a commercial decision to withdraw tracker interest rates from the market in **mid-2008** and ceased offering tracker interest rates to existing customers seeking to switch from another interest rate to a tracker interest rate.

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The Provider wrote to the Complainant on **15 December 2008**, outlining as follows:

“ ...

*We have now amended your mortgage as follows:*

<i>*Product Type</i>	<i>Variable Rate Home Loan</i>
<i>Term remaining</i>	<i>137 months</i>
<i>Due date:</i>	<i>21/12/2008</i>
<i>New repayment</i>	<i>€1,266.94</i>
<i>**Balance outstanding</i>	<i>€130,422.55</i>
<i>***Loan type:</i>	<i>Annuity</i>
<i>*Interest rate:</i>	<i>4.94%</i>

*The above repayment includes TRS and insurance where relevant.*

*I hope this is to your satisfaction. If you have any questions, please phone [redacted contact details].*

*\*\*\*Endowment Mortgages are also displayed as Loan type Interest Only”.*

“ ...”

It would appear that the Complainant wrote to the Provider on **26 November 2008** to request that the mortgage loan be switched from interest only repayments to capital and interest repayments. However, the Complainant also requested that a tracker interest rate be applied “*if possible*”. The Provider responded to the Complainant on **15 December 2008** noting the new capital and interest monthly repayment however did not clearly inform the Complainant that it would not be able to action her request to apply a tracker interest rate because the Provider had already withdrawn tracker mortgages from its product offering. While it is disappointing that the Provider did not reply to the Complainant’s request in a comprehensive manner, I accept that it was not possible for the Provider to apply a tracker interest rate to the Complainant’s mortgage loan account in **November 2008** as tracker interest rates were no longer available as part of its suite of products.

The **mortgage account statements** submitted in evidence show that the interest rate changed to a standard variable interest rate of 4.94% effective from **05 December 2008**. I note that the mortgage loan account remained on a standard variable rate until it was redeemed on **15 December 2011**.

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The evidence shows that the Complainant signed an **Application for Credit** seeking to apply for a variable rate home loan and the Provider subsequently issued a **Letter of Approval** offering a variable interest rate home to the Complainant as requested. The choice to take out the mortgage loan on the terms and conditions offered by the Provider was a choice that was freely made by the Complainant. The Complainant accepted the Provider's loan offer by signing the **Acceptance of Loan Offer** on **29 March 2005**. If the Complainant was not satisfied with the terms of the mortgage loan agreement, the Complainant could have declined the Provider's loan offer and explored other interest rate options with the Provider or indeed with another financial service provider.

While I appreciate that the Complainant may have wished to have a tracker interest rate applied to her mortgage loan, it was a matter of commercial discretion for the Provider as to whether it wished to accede to any such request. That said, I have not been provided with any evidence to suggest that the Complainant applied for a tracker interest rate as part of her application for a mortgage loan in **2005**. In any event, it appears from the Provider's lending criteria that the Complainant was not eligible to be offered a tracker interest rate given the loan amount was for less than €150,000.00. I accept that this was a commercial decision that the Provider was legitimately entitled to make.

The evidence shows that the Complainant requested a tracker interest to be applied to the mortgage loan in **November 2008**. However, in circumstances where the Complainant did not have a contractual entitlement to a tracker interest rate at any stage during the term of the mortgage loan, the Provider was under no contractual or regulatory obligation to offer the Complainant a tracker rate of interest at that time.

The Provider has however recognised certain "*shortcomings*" in its service to the Complainant "*for (i) not informing the Complainant that she could not avail of a tracker rate in its correspondence of November 2008 and (ii) for the misinformation in its Final Response issued in June 2018.*" As such, the Provider offered the Complainant a goodwill payment of €1,500.00 because of its "*shortcomings*".

The Complainant, in her post Preliminary Decision submission dated **10 May 2022**, states that the Provider "*should increase the amount of €1500*" it is offering as the Provider "*has admitted they made a mistake in dealing with some aspect of [the Complainant's] mortgage loan.*" The Complainant is of the view that the goodwill payment of €1,500.00 "*is quite a paltry sum.*"

While the Complainant does not appear to have accepted this goodwill offer, I understand that this offer remains open to the Complainant to accept.

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In light of all the foregoing, I consider the Provider's offer of €1,500.00 to be a reasonable attempt to resolve this complaint.

For the reasons set out in this Decision, I do not uphold this 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**

21 June 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

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(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.