



<u>Decision Ref:</u>	2022-0262
<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

Background

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

The loan amount was €137,080.00 and the term of the loan was 35 years. The **Loan Offer** dated **02 February 2006** provided for a variable interest rate of 3.50%. The mortgage loan was drawn down on **30 March 2006**.

The Complainant's Case

The Complainant submits that he applied for a mortgage loan with the Provider in **December 2005**. The Complainant states that during the application stage of the mortgage loan process, he was provided with a quotation for fixed and variable interest rates which were presented as the "only" interest rate options available.

The Complainant submits that he visited one of the Provider's branches on numerous occasions between **2006** and **2017** to query why he cannot benefit from a tracker interest rate. The Complainant explains that the Provider advised him that he is not entitled to a

tracker interest rate because he agreed to a variable interest rate when he applied for and drew down his mortgage loan.

The Complainant states that he never received any documentation or information from the Provider in relation to tracker interest rates. The Complainant asserts that “*every single month*” he made a request to apply for a tracker interest rate, but the Provider declined all his requests.

The Complainant submits that “*According to the Regulations of the Central Bank of Ireland, this type of interest rate existed at that time and after*”. The Complainant maintains that he was “*totally misinformed*” by the Provider when he applied for his mortgage loan because the Provider failed to offer him a tracker interest rate.

The Complainant is seeking the following:

1. That a tracker interest rate be applied to his mortgage loan account;
2. A “*recalculation of the interest*”; and
3. A refund of the interest overcharged from inception of the mortgage loan to present.

The Provider’s Case

The Provider submits that when the Complainant completed the Home Loan Application Form in **December 2005**, the form had not been updated to reflect the introduction of tracker interest rates. The Provider outlines that the interest rate options available at the time the Complainant applied for a mortgage loan were fixed, variable, tracker and split interest rates. The Provider explains that the Complainant could have applied for a tracker interest rate by completing a separate form. The Provider submits that this would have been explained to the Complainant at the time.

The Provider details that the Complainant applied for a variable interest rate by completing a Home Loan Application Form. The Provider states that it subsequently issued a Loan Offer to the Complainant on **02 February 2006** which offered a loan amount of €137,080.00, repayable over a term of 35 years on a variable interest rate of 3.50%.

The Provider explains that it introduced tracker interest rates in **early 2004** and they were widely available to new and existing home loan customers until **late 2008**. The Provider submits therefore that the Complainant could have applied for a tracker interest rate at any time up until **late 2008**.

The Provider outlines that it is not its standard practice or policy to offer advice to customers on interest rates, including for example, the appropriateness of any particular interest rate for any particular customer. The Provider details that at application stage, the Provider's staff provide information regarding all rates that are available to customers.

The Provider states that the full range of interest rate options were publicly advertised on the Provider's website and in the Provider's branches. The Provider also states that information in relation to the range of interest rates was available upon request from the Provider's staff. The Provider also submits that information on available interest rate options during the lifetime of a mortgage loan is provided to customers as requested.

The Provider maintains that ultimately, *"the decision as to which interest rate is most suitable for a customer based on their individual financial circumstances, rested with the customer."*

The Provider states that it has no record of any discussions with the Complainant in relation to a request for a tracker interest rate in **2006** or at any time thereafter. Equally, the Provider submits that it has no record of any request for a tracker interest rate being denied. The Provider asserts that tracker interest rates were *"widely available at that time"* and the Provider *"could not have advised the Complainant on numerous occasions as he alleges, that these interest rates were not available, as it was not the case"*. The Provider states that this was also completely contrary to the publicly advertised and available interest rate options.

The Complaints for Adjudication

The complaints for adjudication are that:

- a) the Provider incorrectly failed to offer the Complainant a tracker rate of interest on his mortgage loan account during the application stage of the mortgage loan in **December 2005**; and
- b) the Provider incorrectly advised the Complainant that he was not entitled to a tracker interest rate on numerous occasions between **2006 to 2017**.

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

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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 **14 July 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.

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 **2005** and **2017**.

The Complainant completed and signed a **Home Loan Application Form** on **02 December 2005**. **Section E – Loan Details** of the **Home Loan Application Form** details as follows under the heading "*interest rate*":

****Variable ✓ or **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."*

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The Complainant selected the variable interest rate option in the **Home Loan Application Form**.

The Provider subsequently issued a **Loan Offer** dated **02 February 2006** to the Complainant which details as follows:

“...

<i>Type of Loan:</i>	<i>Repayment</i>
<i>Total Amount of Loan:</i>	<i>€137,080.00</i>
<i>Cheque Issue Amount:</i>	<i>€137,080.00</i>
<i>Monthly Repayment</i>	<i>€566.54</i>
<i>Interest Rate (Variable)</i>	<i>3.50%</i>
<i>Interest Rate Basis</i>	<i>Variable Base Rate</i>
<i>Repayment Period (Years)</i>	<i>35 Approx</i>

...”

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.*

...”

The **Acceptance Form** attached to the **Loan Offer** was accepted and signed by the Complainant on **7 February 2006** on the following terms:

“1. 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;*

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- (ii) *the General Conditions for [the Provider] Home Loans;*
- (iii) *the [Provider's] Mortgage Conditions;*
- (iv) *the [Provider's] 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 **Loan Offer** dated **02 February 2006** envisaged that a variable interest rate of 3.50% would apply to the Complainant's mortgage loan. 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 European Central Bank main refinancing rate. Rather, it was a variable interest rate that could be adjusted by the Provider from time to time.

The **mortgage loan account statements** furnished in evidence show that the mortgage loan was drawn down on **30 March 2006**.

Having considered the Complainant's mortgage loan documentation, it is clear that the Complainant applied for a variable interest rate mortgage loan in **December 2005**, having completed the **Home Mortgage Application Form** and the Provider subsequently offered him a variable interest rate of 3.50% by way of **Loan Offer** dated **02 February 2006**. The Complainant made the choice to accept and sign the **Loan Offer**. If it was the case that, upon considering the particulars of the **Loan Offer**, the Complainant was of the view that a variable interest rate loan was not suitable to him, then the Complainant could have decided not to sign the **Acceptance Form** and draw down the loan. Instead, he could have sought an alternative rate with the Provider or with another mortgage provider.

Furthermore, if the Complainant wanted independent advice about interest rates available in the market, it was a matter for the Complainant to get that advice from an independent third-party advisor. I accept that it was not the Provider's role to offer advice to the Complainant with respect to interest rate options.

The Complainant submits that he made numerous requests to have a tracker interest rate applied to his mortgage loan between **2006** and **2017** but was informed by the Provider that such a tracker interest rate was not available. I note that tracker interest rates were on offer generally by the Provider as part of its suite of products at the time of the Complainant's mortgage loan application in **December 2005**, however there was no contractual or other obligation on the Provider to offer the Complainant a tracker interest rate when he applied for his mortgage loan in **2005** or indeed at any other time during the term of the loan. I have not been provided with any evidence to suggest that the Complainant enquired as to the availability of tracker rates on mortgage loan account

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ending **7740** or sought to apply a tracker interest rate from **2006** up to the date tracker interest rates were withdrawn from the market by the Provider in **late 2008**. There is also no evidence to suggest that the Complainant was informed by the Provider that a tracker interest rate was not available at the time of his mortgage loan application or at any point thereafter.

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 agreement only contained a contractual entitlement to the Provider's variable base interest rate.

The Provider was under no obligation to offer the Complainant a tracker interest rate when he was applying for his mortgage loan in **2006** or thereafter up to **2017** as he has suggested.

For the reasons outlined above, 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**

8 August 2022

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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.