



<u>Decision Ref:</u>	2022-0263
<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
<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 account that is the subject of this complaint is secured on the Complainant's private dwelling house.

The loan amount was €235,000.00 and the term of the loan was 30 years. The **Loan Offer** dated **18 October 2007** detailed that the interest rate applicable to the loan was a variable interest rate of 5.25%.

Mortgage loan account ending **8474** was drawn down on **17 January 2008**.

The Complainant's Case

The Complainant submits that she submitted a mortgage loan application form to the Provider in **March 2007** to "*get an idea of how much [she] could borrow*". The Complainant states that she only put a deposit on the secured property on **01 September 2007** and then proceeded to draw down her mortgage loan with the Provider in **October 2007**.

The Complainant outlines that she knew nothing about mortgages or interest rates and that she only knew that she wanted to be able to pay off a lump sum, if necessary, and to have flexibility with the repayments.

The Complainant states that in circumstances where a fixed rate mortgage loan was not appropriate for her, she was given the option of a variable interest rate. The Complainant maintains that the Provider did not inform her of its tracker interest rate offering *“or if it was explained”* to her, she has *“no recollection of it”*.

The Complainant submits that she was a *“novice”* in relation to mortgage interest rates and maintains that she was not advised by the mortgage advisor *“to go with the tracker mortgage as at that time in late 2007, the [Provider] would have known that the tracker rate was the better and obvious option for me”*.

The Complainant states that she feels that the Provider *“did not go through correct information and rates available”* and *“therefore may have omitted tracker rate information that would have been crucial”* to the Complainant at the time. The Complainant submits that she feels like she has been let down by the Provider.

The Complainant is seeking the following:

- (a) That a tracker interest rate be applied to the mortgage loan account; and
- (b) Compensation for not receiving a tracker interest rate on the mortgage loan account.

The Provider’s Case

The Provider submits that the Complainant partly completed a Home Loan Application Form on **6 March 2007** and received loan approval in principle for a mortgage loan on **16 March 2007**. The Provider submits that the various interest rate options available to the Complainant were outlined on page 4 of the Home Loan Application Form. The Provider states that the Complainant was informed of all available interest rates during the mortgage loan application process. The Provider notes that the Complainant did not select a particular interest rate on the Home Loan Application Form.

The Provider submits that the Complainant subsequently fully completed a Home Loan Application Form on **9 October 2007**. The Provider outlines that it then issued a Loan Offer dated **18 October 2007** to the Complainant which provided for a variable base interest rate of 5.25%. The Provider submits that the Complainant accepted and signed the Loan Offer and in *“signing the Acceptance Form the Complainants expressly accepted the Bank’s Loan Offer on the basis of the terms and conditions set out in the Mortgage Home Loan*

documentation". The Provider details that the Loan Offer provided for a variable interest rate and made no reference to a tracker interest rate.

The Provider states that it is satisfied that the documentation relating to the Complainant's mortgage loan account ending **8487** was sufficiently clear and transparent as to the Complainant's interest rate entitlements.

The Provider submits that it introduced tracker interest rates in **early 2004** and tracker interest rates were widely available until **late 2008**, when the Provider "*withdrew from the Tracker Mortgage market*".

The Provider maintains that interest rate options were publicly advertised on the Provider's website and available in the Provider's branches. The Provider maintains that it is not the practice or policy of the Provider to offer advice to customers on interest rates. The Provider states that staff provide information on all available rates to customers, both at application stage and during the lifetime of the mortgage loan, as requested. The Provider submits that the "*decision as to which rate to apply for and to ultimately accept if so offered, was the decision of the Complainant alone*".

The Provider submits that the Complainant was entitled to apply for a tracker interest rate up until it withdrew tracker interest rates from its suite of products in **late 2008**. The Provider states however that the Complainant did not request or apply for a tracker interest rate during that time. The Provider submits that it refutes the Complainant's contention that she has been denied her "*contractual right*" to be offered the option of a having a tracker interest rate.

The Complaints for Adjudication

The complaints are as follows:

- (a) The Provider incorrectly failed to advise the Complainant of the option of a tracker interest rate; and
- (b) The Provider incorrectly failed to offer the Complainant a tracker interest rate on her mortgage loan account in **October 2007**.

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

/Cont'd...

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 **15 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 set out and review 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 in **2007**.

The Complainant completed a **Home Loan Application Form** on **9 October 2007**. **Section E** of the **Home Loan Application Form** is titled "*Loan Details*" under which the Complainant detailed that the amount of the "*Loan Required*" was €235,000.00 and the term of the loan required was 30 years. The "*Loan Type*" section of the application form details as follows:

"LOAN TYPE (please tick one)	<i>Repayment/Annuity</i>	<i>Endowment</i>		
	<i>Pension</i>			
INTEREST RATE	<i>*Variable</i>	<i>** Tracker</i>	<i>***Fixed</i>	<i>or Split</i>

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

/Cont'd...

***Tracker Interest rates increase and decrease with changes in market rates. If choosing Tracker, please complete the Tracker form enclosed.*

*** 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** included the option of a variable interest rate, tracker interest rate, fixed interest rate or split mortgage. It does not appear however that this section was completed by the Complainant. The "interest rate" section of the **Home Loan Application Form** noted that a separate "tracker form" had to be completed if the Complainant wished to choose a tracker rate of interest. I have not been provided with any evidence to suggest that the Complainant completed the relevant "tracker form" to apply for a tracker interest rate in **2007**.

The Provider subsequently issued a **Loan Offer** dated **18 October 2007** to the Complainant, which details as follows:

"I am pleased to inform you that [the Provider] has approved a Repayment Home Loan of €235,000.00 towards the purchase of the above property at a cost of €275,000.00 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>€235,000.00</i>
<i>...</i>	
<i>Interest Rate (Variable):</i>	<i>5.25%</i>
<i>Interest Rate Basis:</i>	<i>Variable Base Rate</i>
<i>Repayment Period (Years):</i>	<i>30 Approx."</i>

Condition 2.2 of the Provider's **Mortgage Conditions** states as follows:

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

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".

/Cont'd...

The Complainant signed the **Acceptance Form** attached to the **Loan Offer** on **05 November 2011** 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;*
- (ii) the General Conditions for [the Provider] Home Loans;*
- (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.

....

6. I/We confirm that I/we have read the suitability letter which sets out the reasons why the mortgage options selected by me/us are considered suitable, and agree that the options are appropriate for me/us and suit my/our personal circumstances. I/we also acknowledge that any subsequent changes to any of the options will be made by me/us on an execution-only basis which means that I/we will have selected the revised options without having received any advice as to the suitability of the new options".

The **Loan Offer** dated **18 October 2007** envisaged that a variable base interest rate would apply to the Complainant's mortgage loan account. The variable interest rate in the Complainant's mortgage loan documentation made no reference to varying in accordance with variations with the European Central Bank main refinancing rate. The mortgage conditions attached to the loan offer clearly set out the nature of the variable interest rate to be one which may be increased or decreased by the Provider at any time.

The Complainant subsequently drew down the mortgage loan on **17 January 2008** on a variable interest rate.

Having considered the Complainant's mortgage loan documentation, it is clear that the Complainant was given the option to apply for a fixed interest rate, a variable interest rate and a tracker interest rate by way of the **Home Mortgage Application Form**. The Complainant appears to have expressed that she wanted flexibility in terms of her mortgage loan therefore a fixed rate mortgage was not suitable for her. If the Complainant wished to apply for a tracker interest rate, she could have indicated that she wished to apply for a tracker interest rate on the application form and complete the relevant tracker

/Cont'd...

mortgage application form. However, the Complainant did not do this. Even if the Complainant did specifically apply for a tracker interest rate in **2007**, it was entirely within the Provider's commercial discretion as to whether it wished to accede to the Complainant's request and offer the Complainant a mortgage loan on a tracker interest rate.

It appears that upon assessing the Complainant's mortgage loan application, the Provider issued a **Loan Offer** dated **18 October 2007** offering the Complainant a variable base interest rate of 5.25%. 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 was not suitable to her, then the Complainant could have decided not to sign the **Acceptance Form** and draw down the loan. Instead, the Complainant could have sought an alternative interest rate from the Provider or with another mortgage provider.

However, the Complainant accepted and signed the terms and conditions of the **Loan Offer** on **05 November 2007** noting that the variable interest rate option was suitable for her and that she had been advised upon the terms and conditions of the loan offer by her solicitor.

There is no evidence to suggest that the Complainant was informed by the Provider that a tracker interest rate was not available to her at the time of the mortgage loan application. Rather, a tracker rate option was clearly included as an option in the **Home Mortgage Application Form**. The Provider was under no obligation to offer the Complainant advice with respect to interest rates.

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

9 August 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.