



<b><u>Decision Ref:</u></b>	2022-0301
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Tracker Mortgage
<b><u>Conduct(s) complained of:</u></b>	Failure to offer a tracker rate at point of sale
<b><u>Outcome:</u></b>	Rejected

#### **LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

#### **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 is secured on the Complainant's private dwelling house.

The loan amount was €185,000.00 and the term of the loan was 35 years. The **Loan Offer** dated **25 November 2005** detailed that the interest rate applicable to the mortgage loan was a variable interest rate of 3.25%.

Mortgage loan account ending **9387** was drawn down on **20 February 2006**.

#### **The Complainant's Case**

The Complainant submits that when she applied for her mortgage loan in **2005**, she was told by an employee of the Provider that the Provider was "*not doing Tracker Mortgages anymore.*" The Complainant submits that she has "*since learned that [she] could have availed of a tracker mortgage and therefore [her] repayments would have been considerably cheaper.*"

The Complainant strongly disagrees with the Provider's submission that it was standard procedure to inform all customers of all interest rates that were available at the time of application. The Complainant asserts that she "*sought professional*" advice from the Provider and was only offered fixed, variable or split mortgage options. The Complainant submits that she made an informed decision at the time based on those options.

The Complainant is seeking compensation for not being offered a tracker interest rate when she applied for her mortgage loan in **2005**

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

The Provider submits that the Complainant completed and signed a Home Loan Application Form on **08 November 2005** and selected the variable interest rate option. The Provider states that its mortgage application form had not been updated since the introduction of tracker interest rates in **2004**, "*however this did not mean customers could not apply for a Tracker interest rate*". The Provider submits that if the Complainant wished to apply for a tracker interest rate, she was required to complete a separate application to apply for a tracker mortgage rate.

The Provider submits that it issued a **Loan Offer** dated **25 November 2005** to the Complainant for €185,000.00 repayable over 35 years on the Provider's variable base interest rate of 3.25%. The Provider states that the Complainant drew down the mortgage loan account on **20 February 2006** on the Provider's variable base interest rate of 3.50%.

The Provider details that the full range of interest rate options available from the Provider in **2005** included fixed, variable and tracker interest rates together with split loan options. The Provider submits that a first-time buyer information booklet was made available to the Complainant when she was applying for the mortgage loan and it contained information in relation to the availability of various interest rates, including tracker interest rates. The Provider states that tracker interest rates were widely available in **2005** and publicly advertised.

The Provider maintains that it is not the practice or policy of the Provider to offer advice to customers on interest rates, however, its staff "*do provide information to customers on all available interest rate options at the time of application*" and on request during the lifetime of the mortgage loan. In response to the Complainant's submission that she was informed that the Provider was "*not doing Tracker Mortgages anymore*", the Provider states that the staff involved in the Complainant's Loan Application have "*denied that in 2005 a customer would have been informed that the Bank was no longer doing Tracker Interest rates*".

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The Provider submits that it has no record of a request for a tracker interest rate being received from the Complainant or such a request being subsequently denied. The Provider asserts that it has acted in good faith throughout the term of the mortgage loan and that the Loan Offer *“which was accepted by the Complainant was issued in line with the instruction received from the Complainant.”*

### **The Complaint for Adjudication**

The complaint for adjudication is that the Provider incorrectly failed to advise or offer the Complainant the option of a tracker interest rate when she applied for her mortgage loan in **2005**.

### **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 **09 August 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.

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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 **2005**.

The Complainant completed a **Home Loan Application Form**, which was signed by the Complainant on **08 November 2005**. **Section E** of the **Home Loan Application Form** is titled "*Loan Details*" and states as follows:

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

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

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

*\*\* If choosing a fixed rate, please complete the section below which outlines terms of conditions associated with fixed rate loans."*

The **Home Loan Application Form** shows that the Complainant chose a variable interest rate. The Complainant could have selected a variable interest rate, a fixed interest rate or a split mortgage. The Provider explains in its submissions that the **Home Loan Application Form** used by the Complainant in **2005** had not been updated since the introduction of tracker interest rates and therefore a tracker interest rate was not included as an option in the application form. It is disappointing that the **Home Loan Application Form** had not been updated by the Provider, however I note that the Complainant was free to explore the option of availing of a tracker interest rate with the Provider. I note that all of the available interest rates, to include tracker interest rates, were publicly advertised by the Provider at the time as well as in its branches.

The Provider has submitted the following table in evidence which details the range of tracker interest rates that were on offer to new customers between **March 2005** and **June 2006**, subject to certain eligibility and lending criteria:

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01/03/2005	ECB: 2.00%	Loan Amount	Standard Tracker	>=€250k	>=€300k	>=€375k			
		LTV %	<=100%	<=75%	<=75%	<=75%	<=75%		
		Margin	1.25%	1.10%	1.05%	0.99%			
		Rate	3.25%	3.10%	3.05%	2.99%			
05/05/2005	ECB: 2.00%	Loan Amount	Standard Tracker	>=€250k	>=€300k	>=€300k	>=€375k	>=€750k	
		LTV %	<=100%	<=75%	<=75%	>75%	<=75%	<=75%	
		Margin	1.25%	1.10%	1.05%	1.15%	0.99%	0.85%	
		Rate	3.25%	3.10%	3.05%	3.15%	2.99%	2.85%	
09/06/2005	ECB: 2.00%	Loan Amount	Standard Tracker	>=€250k	>=€300k	>=€300k	>=€375k	>=€750k	>=€1.25m
		LTV %	<=100%	<=75%	>75%	<=75%	<=75%	<=75%	<=75%
		Margin	1.25%	1.10%	1.15%	1.05%	0.99%	0.85%	0.80%
		Rate	3.25%	3.10%	3.15%	3.05%	2.99%	2.85%	2.80%
23/08/2005	ECB: 2.00%	Loan Amount	Standard Tracker	>=€250k <€300k	>=€300k <€375k	>=€300k no max	>=€375k <€750k	>=€750k <€1.25m	>=€1.25m
		LTV %	<=100%	<=75%	<=75%	>75% <=92%	<=75%	<=75%	<=75%
		Margin	1.25%	1.10%	1.05%	1.15%	0.99%	0.85%	0.80%
		Rate	3.25%	3.10%	3.05%	3.15%	2.99%	2.85%	2.80%
07/09/2005	ECB: 2.00%	Loan Amount	Standard Tracker	>=€250k <€300k	>=€300k <€375k	>=€250 no max	>=€375k <€750k	>=€750k <€1.25m	>=€1.25m
		LTV %	<=100%	<=80%	<=80%	>80% <=92%	<=80%	<=80%	<=80%
		Margin	1.25%	1.10%	1.05%	1.15%	0.99%	0.85%	0.80%
		Rate	3.25%	3.10%	3.05%	3.15%	2.99%	2.85%	2.80%
06/12/2005	ECB: 2.25%	Loan Amount	Standard Tracker	>=€250k <€300k	>=€300k <€375k	>=€250 no max	>=€375k <€750k	>=€750k <€1.25m	>=€1.25m
		LTV %	<=100%	<=80%	<=80%	>80% <=92%	<=80%	<=80%	<=80%
		Margin	1.25%	1.10%	1.05%	1.15%	0.99%	0.85%	0.80%
		Rate	3.50%	3.35%	3.30%	3.40%	3.24%	3.10%	3.05%
31/01/2006	ECB: 2.25%	Loan Amount	Standard Tracker	>=€250k	>=€250k <€375k	>=€375k <€750k	>=€250k	>=€750k	
		LTV %	<=100%	>80% <=92%	<=80%	<=80%	<=60%	<=80%	
		Margin	1.25%	1.10%	1.05%	0.99%	1.00%	0.80%	
		Rate	3.50%	3.35%	3.30%	3.24%	3.25%	3.05%	
03/03/2006	ECB: 2.50%	Loan Amount	Standard Tracker	>=€250k	>=€250k <€375k	>=€375k <€750k	>=€250k	>=€750k	
		LTV %	<=100%	>80% <=92%	<=80%	<=80%	<=60%	<=80%	
		Margin	1.25%	1.10%	1.05%	0.99%	1.00%	0.80%	
		Rate	3.75%	3.60%	3.55%	3.49%	3.50%	3.30%	
09/06/2006	ECB: 2.75%	Loan Amount	Standard Tracker	>=€250k	>=€250k <€375k	>=€375k <€750k	>=€250k	>=€750k	
		LTV %	<=100%	>80% <=92%	<=80%	<=80%	<=60%	<=80%	
		Margin	1.25%	1.10%	1.05%	0.99%	1.00%	0.80%	

The Provider subsequently issued a **Loan Offer** to the Complainant dated **25 November 2005**, which details as follows:

*“Dear [the Complainant]*

*I am pleased to inform you that as a member of the [name of scheme] [the Provider] has approved a Repayment Home Loan of €185,000.00 towards the purchase of the above property at a cost of €203,500.00 subject to the following terms and the attached General Conditions.*

...

*Type of Loan:*

*Total Amount of Loan:*

...

*Interest Rate (Variable)*

*Interest Rate Basis:*

*Repayment Period (Years):*

*Repayment*

*€185,000.00*

*3.25%*

*Variable Base Rate*

*35 Approx”*

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

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*“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.”*

**Condition 9** of the **General Conditions for [Provider’s] Home Loans** states as follows:

*“Fixed Rate Loans: When the fixed rate period ends, the interest rate will convert to a variable rate, and if [the Provider] is then offering a Fixed Home Loan rate for a defined period, the borrower may opt to convert to a fixed rate for that period, and defer conversion to a variable rate....”*

**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 Provider has submitted a **first-time buyer information booklet** into evidence which was available to the Complainant at the time of the mortgage application and which details as follows:

*“Important Things to Think About*

*Rate: Probably the most important aspect of a mortgage is its rate. This represents how much you’ll be paying the lender in interest each month for borrowing the money in your mortgage.*

*These are three basic types of rate: fixed, variable and tracker.”*

This Office does not appear to have been furnished with the signed **Acceptance Form** attached to the **Loan Offer**. However, the **mortgage account statements** which have been furnished in evidence show that the Complainant drew down the mortgage loan in full on **20 February 2006**.

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It is clear that the **Loan Offer** dated **25 November 2005** envisaged that a variable 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 in the European Central Bank main refinancing rate. Rather, the Provider could increase the applicable variable interest rate at its discretion. There is no evidence to suggest that the Complainant approached the Provider prior to the drawdown of the mortgage loan to seek to amend the applicable variable interest rate on the mortgage loan. The **mortgage loan statements** provided in evidence indicate that the loan was drawn down in full on **20 February 2006** on an interest rate of 3.50%.

The Complainant is of the view that the Provider failed to inform her about the availability of tracker interest rates when applying for her mortgage loan in **2005**. In this regard, the Complainant is of the view that an employee of the Provider offered her "*professional advice*" at the time of the application for the mortgage loan and that she was only offered fixed and variable interest rate options as well as a split mortgage loan option. It is important to note that if the Complainant wanted independent advice about interest rates available in the market or the market generally, the Complainant could only get that advice from an independent third-party advisor as opposed to the Provider. There is no evidence to suggest that the Complainant was informed that the Provider was not offering tracker interest rates at that time, as has been suggested by the Complainant.

The Complainant also submits that the Provider failed to offer her a tracker interest rate option at the time of the application for the mortgage loan. While tracker interest rates were on offer by the Provider and were publicly advertised at that time, the Provider was not under any contractual or regulatory obligation to offer the Complainant a tracker interest rate. Having considered the Complainant's mortgage loan documentation, it is clear to me that the Complainant applied for a variable interest rate mortgage loan in **November 2005** having completed the **Home Loan Application Form**. The Provider subsequently offered the Complainant a variable interest rate by way of **Loan Offer** dated **25 November 2005** which was accepted by the Complainant. I have not been provided with any evidence to suggest that the Complainant completed an **Application to Apply for a Tracker Mortgage Rate** which appears to have been required if the Complainant wished to explore the option of applying for a tracker interest rate in **2005**.

The choice as to which interest rate to apply for, rested solely with the Complainant. If it was the case that, upon considering the particulars of the **Loan Offer** dated **25 November 2005**, the Complainant was of the view that a variable interest rate loan was not suitable to her, then the Complainant could have decided not to accept the Loan Offer and draw down the loan in **February 2006**. Instead, the Complainant could have sought an alternative interest rate with the Provider or with another mortgage provider. However, she did not do so.

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It is important for the Complainant to understand that her mortgage loan is governed by the Loan Offer and terms and conditions attaching to the Loan Offer that was issued to her, none of which contain a contractual entitlement to a tracker interest rate. The evidence shows that the choice to take out the mortgage loan on the terms and conditions offered by the Provider in **2005** was a choice that was freely made by the Complainant.

In light of the foregoing, this Office is satisfied that the Provider has acted in accordance with its contractual obligations to the Complainant pursuant to the mortgage loan documentation.

For the reasons set out 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**

31 August 2022

**PUBLICATION**

**Complaints about the conduct of financial service providers**

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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.