



<u>Decision Ref:</u>	2022-0316
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Tracker Mortgage
<u>Conduct(s) complained of:</u>	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 Complainants with the Provider. The mortgage loan that is the subject of this complaint was secured on the Complainants' private dwelling house.

The loan amount was €240,000.00 and the term of the loan was for 30 years. The particulars of the **Loan Offer** dated **14 February 2003** provided for a 1-year fixed interest rate of 3.39%, with the Provider's "*Variable Base*" to apply thereafter. The mortgage loan was drawn down in **April 2003**.

The Complainants' Case

The Complainants submit that they drew down a mortgage loan with the Provider in **April 2003** on a 1-year fixed interest rate of 3.09%.

On the expiry of the 1-year fixed interest rate period in **April 2004**, the Complainants submit that they "*enquired about all the rates available to [them]*" and they were informed about "*the variable rate*" and a range of fixed interest rates. The Complainants detail that they were never told that they "*...had the option to switch to a Tracker*

Mortgage” on the expiry of the fixed interest rate period. The Complainants state that they enquired whether they could “switch” to a tracker interest rate but were informed that tracker mortgages were reserved for “new business only”.

On **28 April 2004**, the Complainants detail that they chose a further 1-year fixed interest rate of 3.15% “hoping there would be changes in the Tracker mortgages” and that they “would become available to existing customers”. The Complainants submit that on the expiry of the 1-year fixed interest rate period in **May 2005**, the mortgage loan account defaulted to a variable interest rate of 3.25%. The Complainants state that on **1 December 2005**, they completed a fixed interest rate application form and selected a 1-year fixed interest rate of 3.69% to be applied to their mortgage loan account. The Complainants state that “When this rate expired in December 2006 [they] enquired about [their] options once more”. The Complainants state that given interest rates were increasing, they decided to fix the interest rate on their mortgage loan in **April 2007** for a 3-year period.

The Complainants detail that in **June 2007**, they approached the Provider to “top up [their] original mortgage account but [they] were told this was not possible”. The Complainants submit they had to take out a further loan. During their meeting with the Provider, the Complainants state they “also enquired about switching [their] original mortgage to a Tracker Mortgage” but they were told that this was not possible. The Complainants feel that they were given “incorrect information at this meeting”.

The Complainants state that when the 3-year fixed interest rate period expired on their mortgage loan account in **April 2010**, the interest rate converted to a variable interest rate of 3.23%.

The Complainants maintain that towards the end of each fixed interest rate period, they made enquiries with the provider as to “what the best option would be with regard to interest rates”. The Complainants state that if they were permitted to apply a tracker interest rate to their mortgage loan account, they would have done so. The Complainants submit however that they “enquired on numerous occasions about switching to a tracker mortgage but were misled by mortgage advisors”.

The Complainants state that the Provider “clearly stated in their Final Response Letter that there is entitlement to convert your loan account [ending **5886**] to a Tracker Interest Rate”.

The Complainants submit that they “cannot accept that [the Provider] state they have no record of a Tracker Rate being requested.” The Complainants detail that “There does not seem to be sufficient information on their system regarding the content in the conversations [the Complainants] had with [the Provider’s] staff.”

The Complainants “believe that [they] should be compensated & put on a tracker mortgage.”

The Provider’s Case

The Provider submits that under the terms of the Loan Offer dated **14 February 2003** and the General Conditions, the Complainants were not contractually entitled to be offered a tracker interest rate at the end of a fixed interest rate period.

The Provider states that the Complainants completed a Home Loan Application on **3 February 2003**, seeking mortgage finance in the sum of €240,000.00 over a period of 30 years. The Provider further states that at the time of the application, there were three types of interest rate options available for selection: fixed, variable, or split.

The Provider details that the Complainants chose a 1-year fixed interest rate period. The Provider further details that in the “*Declaration*” section of the Home Loan Application, it “clearly states”:

*“I/We understand that when this fixed rate period has expired the loan will **convert to the applicable variable rate** (emphasis added) then prevailing.”*

The Provider explains that on foot of the Complainants’ request, the Provider issued the Complainants with a Loan Offer dated **14 February 2003** that provided for a 1-year fixed interest rate of 3.39% with a “*Variable Base Rate*” to apply on the expiry of the fixed interest rate period. The Provider explains that tracker interest rates were not available as part of its product offering in **2003**.

The Provider submits that on **28 April 2004** the Complainants opted to fix their mortgage loan account for a further period of 1-year. The Provider notes that a Fixed Rate Mortgage Conversion Form was signed by the Complainants which stated that on the expiry of the fixed interest rate period, “*the loan will revert to the applicable variable rate then prevailing.*”

The Provider outlines that a further 1-year fixed interest rate of 3.15% was applied to the Complainants’ mortgage loan on **05 May 2004**. The Provider states that this fixed interest rate period expired on **31 May 2005** and the Complainants’ mortgage loan converted to the variable base rate of 3.25%, which was “*in line with the completed Fixed Rate Mortgage Conversion Form.*”

The Provider submits that the Complainants signed a Fixed Rate Mortgage Application Form on **01 December 2005** to apply a 1-year fixed interest rate of 3.69% to their mortgage loan, which stated that on the expiry of the fixed interest rate period, *“the loan will convert to the applicable variable rate then prevailing”*.

The Provider notes that a 1-year fixed interest rate of 3.69% was applied to the Complainants' mortgage loan account on **12 December 2005**. The Provider explains that on expiry of the fixed interest rate period on **31 December 2006**, the mortgage loan account converted to a variable base rate of 4.75%.

The Provider outlines that on **30 March 2007**, the Complainants signed a further Fixed Rate Mortgage Conversion Form to apply a 3-year fixed interest rate of 5.05% to their mortgage loan. The Provider submits that the Fixed Rate Mortgage Conversion Form provided that the *“loan will convert to the applicable variable rate then prevailing”* on the expiry of the fixed interest rate period.

The Provider states that on **30 April 2010**, upon expiry of the 3-year fixed interest rate period, the mortgage loan account converted to a variable base rate of 3.23% which was *“in line with the completed Fixed Rate Mortgage Conversion Form.”*

The Provider asserts that *“It is clear from the Loan Offer Letter, the General Conditions and from each Fixed Rate Mortgage Application Form which Complainants completed when applying for their various Fixed interest rate periods, that upon expiry of the Fixed interest rate period, Mortgage Loan Account ending 5886 would revert to the prevailing variable rate”*.

The Provider submits that the terms and conditions applicable to the Complainants' mortgage loan account, were provided to the Complainants before they accepted the offer of a mortgage loan and before funds were drawn down. The Provider submits therefore that it was clear that the Complainants did not have any contractual right to a tracker interest rate at the end of any fixed interest rate period before drawing down the mortgage loan.

The Provider states that its tracker interest rates were *“widely available”* from **early-2004** to **late-2008**. The Provider explains that the Complainants could have applied for a tracker interest rate at any time up to **13 October 2008**, *“but instead opted to remain on the fixed interest rate up to its expiry in 2010.”* The Provider states that when the Complainants fixed rate period ended in **2010**, the tracker rate product had already been withdrawn from the market so *“it was no longer an option”* for the Complainants to apply for a tracker interest rate.

The Provider states that it is satisfied that the terms and conditions contained in the mortgage loan documentation were sufficiently clear and transparent and did not provide the Complainants with any entitlement to a tracker interest rate on their mortgage loan account at any stage during the term of the mortgage loan.

The Provider submits that given the Complainants had no contractual entitlement to a tracker interest rate, it did not, *“nor was it obliged to,”* inform them at any point between **early-2004** to **late-2008** *“that by opting for a fixed rate they would lose any entitlement to a tracker interest rate.”* The Provider further submits that when the Complainants applied for their fixed interest rate periods in **April 2004**, **December 2005** and **March 2007**, tracker interest rates were available as part of the Provider’s product offering however the Provider maintains that it has no records of a request for a tracker interest rate being made by the Complainants.

The Provider details that it has always been its practice *“to provide details to customers of all the interest rates available when requested to enable customers to make an informed decision.”* The Provider further details that its staff *“do not offer advice in relation to interest rates, but only provide information on interest rate options available to Customers.”* The Provider submits that *“The decision on which interest rate option to choose, from the rates available, remains the decision of the customer alone.”* The Provider further submits that its interest rates are *“widely advertised”* and are available through its website and on display in its branches.

The Provider states that there was a typographical error in its Final Response Letter dated **17 October 2018** where it states, *“In view of the documentation and information as outlined above, there is entitlement to convert [the Complainants’] loan account [ending 5886] to a Tracker Interest Rate”.*

The Provider outlines that this statement should have read, *“In view of the documentation and information as outlined above, there is no entitlement to convert [the Complainants’] loan account [ending 5886] to a Tracker Interest Rate”.* The Provider further outlines that the context of the preceding paragraphs, and the sentence immediately after the typographical error, make it clear that the Provider is confirming that the Complainants had no entitlement to a tracker interest rate on their mortgage loan account. The Provider states that the sentence immediately after the typographical error stated as follows: *“The loan drew down prior to the introduction of Tracker Rates and there is no evidence or documentation on file confirming you ever requested or were not permitted to avail of this Interest Rate during the period available.”*

The Complaints for Adjudication

The complaints for adjudication are as follows:

- a) The Provider incorrectly failed to offer the Complainants a tracker interest rate on the expiry of the fixed interest rate periods on their mortgage loan account between **April 2004** and **June 2007**; and
- b) The Provider incorrectly failed to inform the Complainants of the availability of tracker interest rates when the Complainants enquired about tracker interest rates between **April 2004** and **June 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 Complainants were 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 **18 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.

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 Complainants' mortgage loan documentation. It is also necessary to consider the details of certain interactions between the Complainants and the Provider between **2003** and **2007**.

The Complainants completed a **Mortgage Loan Application Form** on **03 February 2003**. The **Mortgage Loan Application Form** contained three interest rate options: "fixed", "variable", or "split". The Complainants selected a fixed interest rate on the **Mortgage Loan Application Form**.

The Provider subsequently issued a **Loan Offer** dated **14 February 2003** to the Complainants. The Loan Offer details as follows:

"Type of loan:	Repayment
Total Amount of loan:	€240,000.00
Cheque Issue Amount:	€240,000.00
Monthly Repayment: (Fixed for Year 1)	€1,063.02 (See Important Note)
Interest Rate: (Fixed for Year 1)	3.39% (See Important Note)
After 1 year:	Variable Base (currently 04.10%)
Repayment Period (Years):	30 Approx.

Important Note On Fixed Rate:

The fixed rate shown is the current rate. If there is an interest rate change before the main loan cheque is issued, the rate will be altered to the fixed rate on offer at the date of cheque issue, and this is the rate that will apply to the loan account. If no fixed rate is available at that time, the variable rate will apply."

The **General Conditions for [the Provider's] Home Loans** attached to the **Loan Offer** dated **14 February 2003** detail as follows:

"...

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: *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 for a defined period the borrower may opt to convert to a fixed rate for that period, and*

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defer conversion to a variable rate. In either case, any margin specified in the offer letter will be applied to the interest rate on the loan.

If the loan is repaid in whole or in part before the end of the fixed rate period, then an additional interest charge on the principal sum repaid will be made at the end of the month in which the repayment takes place, as follows:

► *For 1 or 2 years fixed: three months interest*

► *For 3 or more years fixed: six months interest.*

The charge will not be applied if another main residence is being purchased by the borrower and the existing fixed rate loan balance is transferred to it with the agreement of [the Provider].”

I have not been provided with the Complainants’ signed acceptance of the Loan Offer dated **14 February 2003**. However, it does not appear to be disputed between the parties that the Complainants accepted this Loan Offer on the terms and conditions set out in the Loan Offer and drew down the loan.

The **Annual Loan Statements** provided in evidence indicate that the mortgage loan was drawn down on **14 April 2003** on a fixed interest rate of 3.09% as the applicable fixed interest rate had reduced since the issuing of the **Loan Offer** and the draw down date.

It is clear to me that the **Loan Offer** dated **14 February 2003** provided for a 1-year fixed interest rate of 3.39% and on expiry of the fixed interest rate period, a variable interest rate would apply unless the Provider offered a further fixed interest rate period, and the Complainant chose to apply a further fixed interest rate period. The “*variable*” interest rate in the Complainants’ mortgage loan documentation made no reference to varying in accordance with variations in the ECB refinancing rate. As the tracker mortgage product was not available as part of the Provider’s suite of products until **mid-2004**, the Complainants could not have been offered a tracker interest rate option when the mortgage loan was incepted.

The Provider has submitted an internal document into evidence which appears to have been circulated to staff members at this time and details as follows:

“...

[The Provider] have launched a Home Loan Tracker mortgage. This mortgage will be available to both New and Existing members of [the Provider]. It is available from [March 2004].

...

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Who can apply?

Our Tracker of ECB + 1.25% is open to all our mortgage [customers].

How can they apply?

For New [Customer], they should complete a Tracker application form along with their Homeloan application...

For Existing [Customer], they need to complete a Tracker application form and this must be sent to the Loans Team and they will convert it.

Tracker forms will be in offices early next week....”

It appears that it was open to the Complainants to complete a Tracker Application Form if they wished to apply for a tracker interest rate after this product was launched by the Provider in **March 2004**. However, I have not been provided with any evidence that the Complainants applied for a tracker interest rate at this time. Rather, upon the expiry of the 1-year fixed interest rate period in respect of the Complainants' mortgage loan on **30 April 2004**, the mortgage loan converted to the prevailing variable interest rate which was 3.25% at the time.

However, the evidence shows that the Complainants completed a **Fixed Rate Mortgage Conversion Form** on **28 April 2004** which details as follows:

“Declaration

I/We wish to apply to convert the balance of my/our loan account to a fixed rate for the next 1 year(s)

*I/We understand that when this period has expired the loan will **revert to the applicable variable rate then prevailing.***

Important

I/We understand that in the event of there being a change in interest rates prior to the conversion of the loan then [the Provider] reserves the right to withdraw the Fixed Rate currently available, and to apply whatever appropriate Fixed Rate is available at that time. In the event of no other Fixed Rate being available, the appropriate variable rate will apply.

[...]

This document forms part of the existing documentation governing this loan, the conditions of which are outlined in the Mortgage Deed, the Loan Offer and Cheque Issue Letters.”

The Provider wrote to the Complainants by way of letter dated **05 May 2004** to confirm that their mortgage loan account had been converted to a fixed interest rate as requested from **05 May 2004**. The letter dated **05 May 2004** details as follows:

“Thank you for your recent application to fix the rate on your account at 3.15% over 1 year. I am writing to you to confirm that your account has been converted to this rate as requested.”

Upon the expiry of the 1-year fixed interest rate period in respect of the Complainants’ mortgage loan on **31 May 2005**, the mortgage loan converted to the prevailing variable interest rate which was 3.25% at the time.

The Complainants completed a further **Fixed Rate Mortgage Conversion Form** on **01 December 2005** which details as follows:

“Declaration

We wish to apply for a Fixed Rate of 3.69[%] for the first one year(s) of our mortgage.

*We understand that when this fixed rate period has expired the loan will convert to the applicable variable rate then prevailing. The **variable interest rate basis** will be specified in the Loan Offer letter issued by [the Provider] (if the loan is approved).*

[...]

This document forms part of an application for a mortgage as set out in a separate full application from, the conditions of which and the declaration thereon also govern this document.”

The Provider wrote to the Complainants by way of letter dated **12 December 2005** which details as follows:

“Thank you for your recent application to fix the rate on your account at 3.69% over 1 year. I am writing to you to confirm that your account has been converted to this rate as requested.”

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Upon expiry of the fixed interest rate period on **31 December 2006**, the mortgage loan account converted to the applicable prevailing variable interest rate of 4.75%.

The Provider has submitted a copy of its internal system note dated **30 March 2007** which states the following:

“Reason

Mtg a/c query

...

Description

Cust sending fixed rate form”

The Complainants subsequently furnished a letter to the Provider dated **30 March 2007** enclosing a **Fixed Rate Mortgage Conversion Form**. The letter details as follows:

*“Enclosed please find **Fixed Rate Mortgage Conversion Form**.*

Please forward confirmation of the new fixed rate (5.05%) with my new instalment at your earliest convenience.”

The **Fixed Rate Mortgage Conversion Form** which was completed by the Complainants on **30 March 2007** and details as follows:

“Declaration

I/We wish to apply to convert the balance of my/our loan account to a fixed rate of 5.05% 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**.*

Important

I/We understand that in event of there being a change in interest rates before [the Provider] have converted our loan rate, [the Provider] will apply the fixed rate currently available. If there is no other fixed rate available, the appropriate variable rate may apply.

[...]

This document forms part of the existing documentation governing this loan, the conditions of which are outlined in the mortgage deed, the loan offer and cheque issue letters.”

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The **Annual Loan Statements** submitted in evidence show that a fixed interest rate of 5.00% was applied to the mortgage loan account on **31 March 2007**, however the fixed interest rate was subsequently reduced to 4.99% on **30 April 2007**. The Complainants' mortgage loan account remained on a 3-year fixed interest rate until **April 2010**, at which stage it converted to the prevailing variable interest rate.

The Complainants are of the view that the Provider did not offer them the option of a tracker interest rate and did not inform them of the availability of tracker interest rates on the expiry of the relevant fixed interest rate periods between **April 2004** and **June 2007**.

Having considered the evidence before me, it is evident that the Provider was under no obligation, contractual or otherwise, to offer a tracker interest rate to the Complainants upon the expiry of the fixed rate periods in **2004, 2005, 2006** or in **2007** prior to the Complainants selecting a 3-year fixed interest rate period. In accordance with the terms and conditions of the **Loan Offer** dated **14 February 2003**, the Complainants were entitled to a further fixed interest rate, if available on the expiry of the fixed interest rate period, or the Provider's prevailing variable interest rate if a further fixed interest rate was not available or not selected by the Complainants.

The evidence shows that on the expiry of the initial fixed interest rate period in **April 2004**, the Complainants' mortgage loan converted to the prevailing variable interest rate however the Complainants decided to apply a further 1-year fixed interest rate shortly afterwards. On the expiry of the further fixed interest rate period in **May 2005**, the Complainants' mortgage loan converted to the prevailing variable interest rate at the time. The Complainants subsequently chose to apply a further 1-year fixed interest rate period to their mortgage loan in **December 2005**. On expiry of the fixed interest rate period in **December 2006**, the Complainants' mortgage loan converted to the prevailing variable interest rate at the time. The Complainants subsequently chose to apply a 3-year fixed interest rate period to their mortgage loan in **April 2007**. I am therefore satisfied that the Complainants' mortgage loan account has acted in line with the terms and conditions of the **Loan Offer** dated **14 February 2003**, in terms of the applicable interest rate.

Although tracker interest rates were on offer generally by the Provider as part of its suite of products from **early-2004**, there was no obligation on the Provider to provide the Complainants with information on its tracker interest rate offerings at that time. The decision as to which interest rate best suited the Complainants was entirely a matter for the Complainants. If the Complainants wanted information about the tracker interest rates available from the Provider, the Complainants could have contacted the Provider to explore their interest rate options. However, I have not been provided with any evidence

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to suggest that the Complainants proactively applied for a tracker interest rate on the expiry of any of the fixed interest rate periods or on any occasion between **2004** and **2007**.

While the Complainants could have explored potential tracker interest rate options with the Provider from **2004** up until tracker interest rates were withdrawn from the market by the Provider in **late 2008**, the Complainants did not have a contractual or any other entitlement to a tracker interest rate on their mortgage loan account on the expiry of any fixed interest rate period or indeed at any time during the term of the loan. Accordingly, there was no contractual or other obligation on the Provider to offer the Complainants a tracker interest rate on their mortgage loan account.

For the reasons outlined above, 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**

9 September 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.