



<u>Decision Ref:</u>	2022-0320
<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 €55,000.00 and the term of the loan was 22 years. The **Amended Loan Offer** dated **30 May 2005** detailed that the interest rate applicable to the loan was a variable base interest rate of 3.25%.

The Complainant's Case

The Complainant submits that when she applied for her mortgage loan with the Provider in **May 2005**, she asked to be put on a tracker interest rate as she "*had heard it was a good Rate to be on*".

The Complainant states that she was informed by an employee of the Provider that a tracker interest rate "*would not be suitable for [her]*" and that she was being put on a variable rate of interest. The Complainant submits that no other interest rate options were discussed.

The Complainant maintains that her mortgage loan account should have been put on a tracker interest rate. The Complainant questions that if she had been offered a fixed interest rate, variable interest rate, tracker interest rate or split mortgage, as per the Provider's submissions, then *"why would [she] ask to be put on the Variable Rate, which at that time in 2005 was the higher rate for [her] mortgage loan."*

The Complainant submits that because the Provider failed to offer her a tracker mortgage in **May 2005**, she will have repaid the Provider *"half of the €55,000 loan in interest"* by the time her mortgage loan matures in **June 2027**. The Complainant states that she feels that she was *"fobbed off"* when she requested a tracker interest rate.

The Complainant is seeking the following:

- (a) a tracker interest rate be applied to her mortgage loan account; and
- (b) a refund of overpaid interest on the mortgage account, backdated to **May 2005**.

The Provider's Case

The Provider submits that the Complainant applied for a mortgage loan in **March 2005** and the interest rate options available at the time were *"fixed, variable, tracker and split"*. The Provider states that it was standard practice to explain all interest rates to customers during the mortgage application process. The Provider also explains that the *"full range of interest rate options were publicly advertised through the Bank's website"*.

The Provider states that the Complainant completed a Home Loan Application Form and that the interest rate options included on the application form were variable interest rates, fixed interest rates and split loan options. The Provider submits that that mortgage application form at the time of the Complainant's application *"had not been updated since the introduction of the Tracker interest rates to include the Tracker interest rate option, however this did not mean that the Complainant could not apply for Tracker interest rate"*. The Provider explains that the Complainant could have applied for a tracker interest rate by completing a separate Application to Apply for a Tracker Mortgage Rate. The Provider submits however that the Complainant indicated her preference for a variable interest rate option by ticking that option on the Home Loan Application Form.

The Provider outlines that it issued a Loan Offer to the Complainant on **8 April 2005**, for a loan in the sum of €55,000.00 repayable over a term of 22 years on a variable interest rate of 3.25%. The Provider states that it subsequently issued an Amended Loan Offer dated **30 May 2005** to the Complainant which provided for a mortgage loan amount of €55,00.00, on variable interest rate of 3.25% which did not include the *"Homebond condition"*. The

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Provider submits that the Amended Loan Offer dated **30 May 2005** did not provide the Complainant with any contractual entitlement to a tracker interest rate. The Provider notes that the mortgage loan was drawn down on **03 June 2005**.

The Provider submits that tracker interest rates were widely available for both new and existing home loans from **early 2004** until **late 2008**. The Provider states that it *“is not practice or policy of the Bank to offer advice to customers on interest rates, including for example the appropriateness of any particular interest rate type for any particular customer”*. The Provider maintains that its staff provide information regarding all applicable rates available to customers, both at application stage and separately during the lifetime of the mortgage loan as requested. The Provider submits that ultimately, the decision as to which interest rate to select rested solely with the Complainant.

The Provider submits that it refutes the Complainant’s submission that an employee of the Provider informed her that tracker interest rates were not available or that a tracker interest rate was not suitable for her. The Provider also states that it has no record of the Complainant having been declined a tracker interest rate.

The Provider submits that it is satisfied that the documentation relating to the Complainant’s mortgage loan account ending **0792** was *“sufficiently clear and transparent as the [the Complainant’s] interest rate entitlements.”*

The Complaint for Adjudication

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

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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 **26 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.

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 **Home Loan Application Form** which has been submitted in evidence has been signed but not dated by the Complainant. However, I understand from the parties’ submissions that that the **Home Loan Application Form** was completed at some stage in **2005**. **Section E** of the **Home Loan Application Form** is titled “*Loan Details*” which details as follows:

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

** 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. It is clear that the Complainant could have chosen from a variable interest rate, 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

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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 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. It appears from the Complainant's own evidence that she was aware of the tracker interest rate product.

The Provider issued a **Loan Offer** dated **08 April 2005** to the Complainant which detailed as follows:

"I am pleased to inform you that [the Provider] has approved a Repayment Home Loan of €55,000.00 towards the purchase at a cost of €220,000.00 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>€55,000.00</i>
<i>...</i>	
<i>Interest Rate (Variable):</i>	<i>3.25%</i>
<i>Interest Rate Basis</i>	<i>Variable Base Rate</i>
<i>Repayment Period (Years):</i>	<i>22 Approx."</i>

It is clear that the **Loan Offer** dated **08 April 2005** envisaged that a variable interest rate would apply to the Complainant's mortgage loan account. There is no evidence to suggest that the Complainant accepted and signed the **Loan Offer** dated **08 April 2005**.

The Provider explains that due to the removal of a condition in relation home bond insurance, the Provider subsequently issued an **Amended Loan Offer** to the Complainant dated **30 May 2005**, which details as follows:

"I am pleased to inform you that [the Provider] has approved a Repayment Home Loan of €55,000.00 towards the purchase at a cost of €220,000.00 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>€55,000.00</i>
<i>...</i>	
<i>Interest Rate (Variable):</i>	<i>3.25%</i>
<i>Interest Rate Basis</i>	<i>Variable Base Rate</i>
<i>Repayment Period (Years):</i>	<i>25 Approx."</i>

Condition 3 of the **General Conditions for [Provider's] Home Loans** states 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”.

It is clear that the **Amended Loan Offer** dated **30 May 2005** envisaged that a “*variable base rate*” would apply to the Complainant’s mortgage loan account. The nature of the 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. The **annual loan statements** submitted in evidence show that the Complainant subsequently drew down the mortgage loan on **03 June 2005** on an interest rate of 3.25%.

Having considered the Complainant’s mortgage loan documentation, it is clear to me that the Complainant applied for a variable interest rate in respect of her mortgage loan in **2005**, having completed the **Home Mortgage Application Form** and the Provider subsequently offered her a variable base interest rate of 3.25% by way of an **Amended Loan Offer** dated **30 May 2005** which was accepted by the Complainant by drawing down the loan. 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**. It is important for the Complainant to be aware that although tracker interest rates were on offer generally by the Provider as part of its suite of products when she applied for her mortgage loan in **2005**, there was no contractual or regulatory obligation on the Provider to provide the Complainant with information on the tracker interest rate offering at that time.

The Complainant submits that she was informed by an employee of the Provider at the application stage that a tracker interest rate was not suitable for her. There is no evidence to suggest that the Complainant was informed by the Provider of this. There was no obligation on the Provider to offer the Complainant a tracker interest rate on the mortgage loan, even where she requested a mortgage loan on a tracker rate. If the Complainant was not happy to proceed with the mortgage application which requested a variable interest rate or with the loan offer which subsequently offered the variable rate to her, then the Complainant could have declined that offer. However, she proceeded to accept the Loan Offer on the terms & conditions set out on the Loan Offer dated **30 May 2005** and draw down the loan on that basis.

For the reasons set above, I do not uphold this complaint.

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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.



Handwritten signature of Jacqueline O'Malley in black ink.

**JACQUELINE O'MALLEY
HEAD OF LEGAL SERVICES**

20 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—

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(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.

