



<b><u>Decision Ref:</u></b>	2020-0007
<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 throughout the life of the mortgage
<b><u>Outcome:</u></b>	Rejected

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

**Background**

The complaint relates to two mortgage loan accounts held by the Complainants with the Provider. The mortgage loans which are the subject of the complaint are secured on the Complainants' private dwelling house.

The Letter of Approval in respect of mortgage loan account ending **6653** which was signed on **6 December 1999** outlined the Loan Type as "*One Year Fixed Rate Home Loan*". The loan amount was £110,000.00 and the term was 20 years.

The Letter of Approval in respect of mortgage loan account ending **2538** which was signed on **9 December 2002** outlined the Loan Type as "*Equity Release Variable Rate Secured Personal Loan*". The loan amount was €50,000.00 and the term was 17 years.

**The Complainants' Case**

The Complainants accepted a loan as set out in the Letter of Approval dated **13 October 1999** for mortgage loan account ending **6653** by signing an Acceptance of Loan Offer on **6 December 1999**. The particulars of the mortgage loan offer detailed that the interest rate applicable was a one year fixed rate of 3.85%. On the expiry of the initial one year fixed

interest rate period, the mortgage loan account ending **6653** converted to a variable interest rate.

The Complainants applied for a top up loan in **2002**. They accepted the second loan as set out in the Letter of Approval dated **5 December 2002** for mortgage loan account ending **2538** by signing an Acceptance of Loan Offer on **9 December 2002**. The particulars of the mortgage loan offer detailed that the interest rate applicable was a variable rate of 4.70%.

The Complainants outline that they contacted the Provider in **January 2008** to advise that a third party financial service provider had offered them a *“financial inducement”* to *“change mortgages”* from the Provider to the third party provider. The Complainants state that, in response, the Provider *“offered [the Complainants] a tracker rate mortgage”* and their understanding of this offer *“was that both mortgages would be subject to [a] tracker rate”*.

The Complainants detail that a tracker interest rate was applied to account ending **6653** in **January 2008**, however the top up account ending **2538** remained on a variable interest rate. The Complainants state that they *“cannot understand why this condition would apply as the terms for both mortgages are the same”*. They further submit that the Provider has furnished *“no correspondence”* in relation to the *“rate switch”* that took place in **January 2008**.

The Complainants submit that the Provider has failed to explain why the mortgage loan account ending **2538** is not eligible for a tracker rate and they *“feel that mortgage [account number ending] 2538 should be subject to same conditions as mortgage [account number ending] 6653.”*

The conduct complained of is that the Provider failed to apply a tracker interest rate to mortgage loan account ending **2538** in **January 2008**.

The Complainants want a tracker interest rate to be applied to mortgage loan account ending **2538**.

### **The Provider’s Case**

The Provider submits that the Complainants have two mortgage loans with the Provider, as follows;

#### **(1) Mortgage loan account ending 6653**

The Provider submits that following a loan application by the Complainants, a **Letter of Approval** issued to and was accepted and signed by the Complainants in **December 1999**. It states that the Letter of Approval predated the launch of tracker

rates in **January 2004** and did not contain a contractual entitlement to a tracker rate on the expiry of the fixed rate period or at any point during the term of the mortgage.

The Provider submits that the Complainants drew down mortgage loan account ending **6653** for £110,000.00/€139,671.19 on a 1 year fixed rate of 3.85%. The loan was repayable over a period of 20 years.

The Provider outlines that on the expiry of the fixed rate on **10 December 2000** the mortgage loan defaulted to a variable rate of 6.14% and it remained on the variable rate until **28 January 2008** when it was switched to the tracker variable rate. The Provider submits that mortgage loan account ending **6653** has since remained on the tracker variable rate of ECB + 0.95%.

**(2) Mortgage loan account ending 2538**

The Provider submits that following a loan application, a **Letter of Approval** issued to and was accepted and signed by the Complainants for mortgage loan account ending **2538** in **December 2002**. The Provider outlines that the loan was an Equity Release Loan for €50,000.00 which was drawn down on a variable rate of 4.70% and the loan was repayable over a period of 17 years.

The Provider states that mortgage account ending **2538** has remained on a variable rate since it was drawn down.

The Provider submits that a note on its system illustrates that the Complainants were in contact with its Business Development & Retention Team in **January 2008**. It details that the note, dated **28 January 2008**, states that the Complainants were offered an interest rate by another financial service provider which was lower than the interest rate applied to their mortgage loan accounts held with the Provider. It states that the Complainants requested redemption figures for the mortgage accounts as they were unhappy the Provider could not match the interest rate offered by the third party provider. The Provider submits that following engagement with the Provider's Business Development & Retention Team, the Provider offered the Complainants the following;

- A tracker rate of 4.95% (ECB + 0.95%) on mortgage loan account ending **6653**;
- An interest rate reduction of 0.40% on mortgage account ending **2538**

The Provider submits that an equity release loan has been part of its suite of lending products since **2002** and predates the Provider offering of tracker mortgage facilities in **2004**. The Provider states that when introducing tracker rate lending in 2004, it made a commercial decision not to make tracker rates available in respect of equity release loans. It submits that at no time has the Provider had equity release loans with a tracker interest

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rate and as such, the option of a tracker interest rate was not available with respect to this loan, at any time.

The Provider states that its records show that the Complainants contacted the Provider on **29 January 2010** regarding the interest rates that the mortgage accounts were operating on as they believed both mortgage accounts had been changed to a tracker rate in **2008**. The Provider refers to correspondence it issued dated **4 February 2008** which informed the Complainants of the details pertaining to the rate reduction on the mortgage loan account ending **2538**. It states that the correspondence issued clearly makes reference to a Variable Rate Home Loan, and not a Tracker Rate Home Loan. The Provider states that further to this, annual mortgage statements have issued which highlight the rate of interest both mortgage accounts were operating on. It outlines that the interest rates for each mortgage account were not moving in correlation with each other and therefore, it shows that it was not and is not the same product with the same interest rate as advised by the Complainants.

The Provider submits that although the Complainants' mortgage loan accounts ending **6653** and **2538** were charged on one property, this does not mean that the terms for both mortgage loans are the same as claimed by the Complainants. It states that each loan was issued with separate loan approval with its own individual terms and conditions. The Provider states that it is satisfied that it was made clear to the Complainants that mortgage loan account ending **6653** was a separate loan to mortgage loan account ending **2538**.

#### **The Complaint for Adjudication**

The complaint for adjudication is that the Provider failed to apply a tracker mortgage interest rate to the Complainants' mortgage loan account ending **2538** in **January 2008**.

#### **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

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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 **03 January 2020**, 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.

The issue to be determined is whether the Provider failed to apply a tracker mortgage interest rate to the Complainants' mortgage loan account ending **2538** in **January 2008**. In order to determine this, it is necessary to review and set out the relevant provisions of the Complainants' mortgage loan documentation with respect to both mortgage loan accounts **6653** and **2538**. It is also necessary to consider the details of certain interactions between the Complainants and the Provider in January 2008.

***Mortgage loan account ending 6653***

The **Letter of Approval** dated **13 October 1999** details as follows;

<i>Loan Type:</i>	<i>1 Year Fixed Rate Home Loan</i>
<i>"Purchase Price/Estimated Value:</i>	<i>IR€ 161,000.00</i>
<i>Loan Amount</i>	<i>IR€ 110,000.00</i>
<i>Interest Rate:</i>	<i>3.85%</i>
<i>Term:</i>	<i>20 year(s)"</i>

The **Special Conditions** to the Letter of Approval detail as follows;

***"Special Conditions***

- A. *General Mortgage Loan Approval condition 5 "conditions relating to Fixed Rate loans" applies in this case. The interest rate specified above may vary before the completion of the mortgage."*

**General Condition 5** of the **General Mortgage Loan Approval Conditions** outline;

***“CONDITIONS RELATING TO FIXED RATE LOANS***

*5.1 The interest rate applicable to this advance shall be fixed from the date of the advance for the period as specified on the Letter of Approval, and thereafter will not be changed at intervals of less than one year.*

*5.2 The interest rate specified in the Letter of Approval may vary before the date of completion of the Mortgage.*

*5.3 Whenever repayment of a loan in full or in part is made before the time agreed the applicant shall, in addition, pay a sum equivalent to one half of the amount of interest which would have been payable on the principal sum repaid, for the remainder of the fixed rate period, or*

*[The Provider’s] estimate of the loss (if any) occasioned by such early repayment, calculated as the difference between the interest which would have been payable on the principal sum repaid for the remainder of the fixed rate period and the gross redemption yield (semi-annual basis) obtaining on the principal sum repaid, from a marketable Government security, in the currency of the loan, with a maturity date next nearest the end of the fixed rate period, whichever is the lesser.*

*5.4 Notwithstanding Clause 5.1, [the Provider] and the applicant shall each have the option at the end of each fixed rate period to convert to a variable rate loan agreement which will carry no such redemption fee.”*

The **General Mortgage Loan Approval Conditions** also outline;

*IF THE LOAN IS A VARIABLE RATE LOAN THE FOLLOWING APPLIES:*

*“THE PAYMENT RATES ON THIS HOUSING LOAN MAY BE ADJUSTED BY THE LENDER FROM TIME TO TIME.”*

The **Acceptance of Loan Offer** was signed by the Complainants and witnessed by a solicitor on **6 December 1999**. The Acceptance of Loan Offer states as follows:

- “1. I/we the undersigned accept the within offer on the terms and conditions set out in*
- i. Letter of Approval*
  - ii. the General Mortgage Loan Approval Condition*
  - iii. [the Provider’s] Mortgage Conditions.*

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*copies of the above which I/we have received, and agree to mortgage the property to [the Provider] as security for the mortgage loan.*

...

*4. My/our Solicitor has fully explained the said terms and conditions to me/us."*

It is clear that the Letter of Approval envisaged a one-year fixed rate of 3.85% and thereafter the option of a variable rate. The variable rate in this case was a variable rate which could be adjusted by the Provider. As tracker interest rates were not part of the Provider's suite of products in 1999, it was not possible for the mortgage loan documentation which issued at that time to include a contractual entitlement to a tracker interest rate.

***Mortgage loan account ending 2538***

The **Letter of Approval** dated **5 December 2002** details as follows;

<i>Loan Type:</i>	<i>Equity Release Variable Rate Secured Personal Loan</i>
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<i>"Purchase Price/Estimated Value:</i>	<i>EUR 250,000.00</i>
<i>Loan Amount</i>	<i>EUR 50,000.00</i>
<i>Interest Rate:</i>	<i>4.70%</i>
<i>Term:</i>	<i>17 year(s)"</i>

The **Special Conditions** to the Letter of Approval detail as follows;

*"C. Please note the equity release loan conditions contained in the general mortgage loan approval conditions."*

**General Condition 11** of the **General Mortgage Loan Approval Conditions** outlines the **Conditions relating to "[Name of Product]" Equity Release Loans**. There was no specific condition in the **Conditions relating to "[Name of Product]" Equity Release Loans** in relation to the interest rate applicable to the loan.

The **General Mortgage Loan Approval Conditions** outlined;

*IF THE LOAN IS A VARIABLE RATE LOAN THE FOLLOWING APPLIES:*

*"THE PAYMENT RATES ON THIS HOUSING LOAN MAY BE ADJUSTED BY THE LENDER FROM TIME TO TIME."*

The **Acceptance of Offer** was signed by the Complainants on **9 December 2002**.

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It is clear that the Letter of Approval envisaged a variable interest rate loan which could be adjusted by the Provider. As tracker interest rates were not part of the Provider's suite of products in 2002, it was not possible for the mortgage loan documentation which issued at that time to include a contractual entitlement to a tracker interest rate.

***Mortgage Loan Accounts ending 6653 and 2538***

The Complainants have detailed that they contacted the Provider's Business Development and Retention Unit in **January 2008** in relation to both mortgage loan accounts ending **6653** and **2538**. They have outlined that their reason for contacting the Provider was because they were considering moving their mortgage loans to an alternative Provider.

I am disappointed that the telephone recording from **January 2008** which was requested from the Provider has not been submitted in evidence. However I accept the Provider's submission that this has arisen because of technical constraints and the passage of time.

The Provider has furnished in evidence a **contact record** dated **28 January 2008** which outlines as follows;

<b><i>"Type of Figures Required:</i></b>	<i>Redemption Figures</i>
<b><i>Reason for Request:</i></b>	<i>Refinancing with other institution</i>
<b><i>Is customer taking out another mortgage?</i></b>	<i>Yes ([Third party provider name])</i>
<b><i>Any particular reason why customer is not remaining with [Provider]?</i></b>	
<b><i>Comments:</i></b>	<i>Customer is unhappy I couldn't match the rate offered by [Third party Providers] and wants the figure to review his options."</i>

The Provider has also furnished a copy of the **interest rate reduction request form** for the mortgage loan account ending **2538**. It appears that this form was completed internally by an employee of the Provider. The Provider submits that this form is dated **28 January 2008**, however I note that the form supplied in evidence is undated. The form details as follows;

<b>Account No</b>	<b>Product</b>	<b>SVR or Tracker</b>	<b>Balance</b>	<b>Existing Rate</b>	<b>New Rate</b>
[Account ending] 2538	[Named Product]	SVR	38,869	5.35%	4.95%

...

<b>Rationale for reduction</b>	[Complainant] was looking for a better rate on the [Named Product] she is already on a 4.95% on his homeloan account
<b>Bank customer indicated defecting to:</b>	[Named third party providers]
<b>Interest rate offered by competitor</b>	[Named third party provider] = €1,000 + 4.8%; [Named third party provider] = 4% 1 <sup>st</sup> year, then 4.75% in the 2 <sup>nd</sup> year ; otherwise 4.6%

The Provider subsequently wrote to the Complainants on **31 January 2008** to set out the redemption figures for both mortgage loan accounts, as follows;

*“Thank you for your recent request for the amount you need to pay to clear your mortgage. Here are the details.*

<b>Loan Number</b>	<b>Amount €</b>	<b>Daily accrual</b>	<b>Inclusive of fixed rate exit fee</b>
[Account ending] 2538	38,884.59	5.18	0.00
[Account ending] 6653	98,276.02	13.41	0.00

The Provider has informed this office that its rationale for offering a tracker interest rate of 4.95% (ECB + 0.95%) to the Complainants on mortgage loan account ending **6653** on **28 January 2008** was because during the period from June 2006 to July 2008, the Provider “in providing a list of rate options to certain existing customers considering changing their

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*mortgage loan accounts (but not an equity release account), a tracker interest rate was included in the options provided by the Bank.”* As such, when the Complainants indicated that they were looking for a better rate and were considering redeeming that mortgage loan with the Provider and taking out a mortgage loan with another third party provider, the Provider as a matter of policy and using its commercial discretion, offered the Complainants a tracker interest rate of 4.95% (ECB + 0.95%) on mortgage loan account ending **6653** in **January 2008**. The Provider was under no contractual or other obligation to make this offer to the Complainants

The Complainants accepted that offer and a tracker rate of interest was applied to the mortgage loan account ending **6653** from **28 January 2008**.

The mortgage loan at issue in this complaint is mortgage loan account ending **2538**. The Complainants submit that they believe they ought to have been offered a tracker interest rate for account ending **2538** in January 2008 as they were offered a tracker interest rate for the account ending **6653**. They submit that they “cannot understand” why account ending **2538** is still on a variable rate as “the terms for both mortgages are the same”.

As outlined above, there was no contractual entitlement to a tracker interest rate on the mortgage loan ending **2538**. The fact that the Provider offered the Complainants a tracker interest rate for the mortgage loan account ending **6653** at that time, did not create an obligation (contractual or otherwise) on the Provider to offer or provide a tracker rate to the Complainants on mortgage loan account ending **2538**. It was a matter that was within the Provider’s commercial discretion as to whether to offer a tracker interest rate on mortgage loan ending **2538**. I accept that the Provider did not do so because the Provider had made the commercial decision not to offer a tracker interest rates on its equity release mortgage loan product. This was a decision that the Provider was entitled to make. Furthermore, the evidence does not support the Complainants’ position that the terms for both mortgage loans are the same. The Complainants’ two mortgage loan accounts were drawn down at two different points in time (1999 and 2002), they commenced on different interest rates (fixed rate and variable rate) and were subject to different terms and conditions

The Provider applied a reduction of 0.40%, from 5.35% to 4.95%, to the variable rate on the Complainants’ mortgage loan account ending **2538** from 29 January 2008. The Provider wrote to the Complainants in relation to the mortgage loan account ending **2538** on **4 February 2008** as follows;

*“You have instructed us to change your mortgage based on your needs and circumstances which is in line with our lending policy. Your loan details are as follows;*

- *Product Type: Variable Rate Home Loan*

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- *Term remaining:* 143 Months
- *Due date:* 19/02/2008
- *New repayment:* €358.61
- *\*Balance outstanding* €38,540.54
- *\*Loan type:* Annuity
- *Interest rate:* 4.95%

It is possible that this correspondence may have led to some confusion on the part of the Complainants, as the rate applicable to each mortgage loan account was 4.95% at that point in time. However this was coincidental and occurred because the tracker rate of 4.95% (ECB + 0.95%) and the variable rate of 4.95% happened to align at that particular point in time. However in this regard, the letter clearly outlines that the product type applicable to mortgage loan account ending **2538** is a Variable Rate Home Loan.

Furthermore, I note that the 'Rate History' documents furnished in evidence shows that the variable rate applicable to mortgage loan account ending **2583** increased to 5.04% in **February 2008**, and from that point on the rates applicable to mortgage loan accounts ending **6653** and **2583** did not align again. As such, it should have been clear to the Complainants that the rates on both mortgage loan accounts were different. By way of example, the details below are extracted from the Rate History documents to show the different rates applied to the mortgage loans for the period between January 2008 and February 2009.

<b>Date</b>	<b>Rate Applied 6653</b>	<b>Rate Applied 2583</b>
January 2008	4.95% (ECB + 0.95)	4.95%
February 2008		5.04%
April 2008		5.29%
July 2008	5.20%	5.54%
November 2008	4.70%	5.04%
December 2008	4.20%	4.54%
January 2009	3.45%	3.79%
February 2009	2.95%	3.29%
April 2009	2.45%	2.79%
June 2009	1.95%	2.29%
February 2009	2.95%	3.29%

The Provider has submitted that annual mortgage statements were issued to the Complainants which highlight the interest rate both mortgage accounts were operating on. It also refers to letters issued to the Complainants by the Provider's Collections Department in **2013** which reflect the interest rate the accounts were operating on in the top right

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corner. I note that the Provider has not furnished in evidence any of the documents referred to, which it seeks to rely on. Therefore, I have not taken these into account in arriving at my decision.

As I have stated there was no obligation on the Provider to offer the Complainants a tracker interest rate on mortgage loan account ending **2538** in **January 2008** or at any other time. The fact that the Provider offered the Complainant the application of a tracker rate for mortgage loan account ending **6653** of ECB + 0.95%, which was available for that mortgage product did not create an obligation on the Provider to offer the same rate on the Complainants' separate mortgage loan account ending **2538**. The Provider was not offering tracker interest rates on equity release products and rather offered the Complainants' a discount of 0.4% on the variable interest rate. The Complainants accepted that offer. The Complainant have no contractual or other entitlement to a tracker rate of interest on mortgage loan account ending **2538**.

For the reasons set out 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.**

**GER DEERING  
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

27 January 2020

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.