



<b><u>Decision Ref:</u></b>	2019-0284
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Tracker Mortgage
<b><u>Conduct(s) complained of:</u></b>	Failure to provide correct information Failure to provide product/service information
<b><u>Outcome:</u></b>	Upheld

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

**Background**

This complaint concerns the Provider's administration of a mortgage application from the Complainants in late 2017.

**The Complainants' Case**

The Complainants sought to apply for a 12 year mortgage loan from the Provider.

The Complainants state that:

- they had agreed an interest rate fixed at 2% for the first ten years ,
- this 2% rate would result in monthly payments of €938 for ten years;
- they filled out and signed application forms /questionnaires on that basis;
- the Complainants were informed that there had been a difficulty inputting the information onto the Provider's system, and so a new application form had to be prepared. The Complainants believe this to have been a smokescreen, designed to induce them into signing a different application from the one they had agreed upon;
- they were then asked to sign a new application form / questionnaire which contained different answers;
- they were then told the interest rate that was available to them was ECB + 2%, and not 2% fixed for 10 years.

The Complainants state that this constituted an attempt to mislead them, and that the Provider reneged on its offer of a 10 year fixed rate of 2%.

The Provider has apologised for what it has described as “human error”. It has offered €1,500 as a goodwill gesture. It notes that the application was never progressed to approval. It does not believe it is liable for any costs incurred by the Complainants due to their downsizing efforts, while the application was being progressed.

The complaint is that the Provider acted wrongfully insofar as it misled the Complainants and then attempted to have them submit a new application that was different from the application that had been discussed and which did not include the interest rate that they had been told would be available to them.

The Complainants would like to receive compensation for the distress and inconvenience this has caused them, in addition to their out of pocket expenses for beginning the process of downsizing, in expectation of a mortgage loan that did not materialise.

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

The Provider has accepted that incorrect information was given to the Complainants regarding the mortgage interest rate that would be available to them. It has confirmed that a 2% fixed rate, was not a rate that the Provider was offering at the time.

It has explained that the applicable tracker rate was ECB + 2%, and the ECB rate at the time was 0%, so the effective rate was 2% when the application was being progressed. It has accepted that its agent gave incorrect information to the Complainants, it has apologised for this but it states that this was simply down to human error and it was not a deliberate attempt to mislead them.

### **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

/Cont'd...

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 5 September 2019, 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 Complainants were in discussions with an agent of the Provider in late 2017 regarding a mortgage application. It was their intention to downsize, by selling their current home and taking out a mortgage with the Provider for their new home. In preparation for this move, the Complainants met and corresponded with an agent of the Provider. In an email dated **28 November 2017** the Provider's agent advised the Complainants that

*"The rate being offered is 2% fixed for 10 years and after the 10 years you can select the best rate on the day for the remainder".*

There is no doubt that the Complainants understood they were being offered a 10 year fixed rate of 2%.

A Statement of Suitability signed by the Complainants and the Provider's agent dated 1 December 2017 contains the following information:

*"Are you interested in a fixed rate mortgage whereby you pay a set amount per month for an agreed period of time? **Yes** [emphasis added]"*

The Complainants' mortgage application form (2 December 2017) indicates the type of interest rate required, as fixed for a period of ten years.

An email from the Provider's agent to the Complainants on 8 January 2018 reads as follows:

*"Everything looks fine now but there was just a technical issue which was stopping us from proceeding to valuation but it should be resolved this afternoon. Every customer has a customer number but somehow [the Second Named Complainant] had 2. [The Second Named Complainant] is on the mortgage and on your current account but it's like she is two separate customers. When I keyed in the application it went under her customer number attached to the current account which then caused a problem because the system wouldn't recognise that she already has a mortgage. I'm in the process of rekeying the application under the correct customer number which should allow us to proceed. I've also attach the current account to the mortgage so that there won't be any issues again going forward."*

/Cont'd...

The Complainants state that on 26 January 2018, the Provider's agent told them that they had to re-enter the application on the system due to an issue with the Second Named Complainant's information. An email from the Provider's agent states

*"It looks like they are going to have to delete the application, delete the extra information associated with [the second named Complainant] and I will rekey it fresh. Since it is a rekey it will go through quicker and also they will see that it has been valued and assessed so yous [sic] won't have to wait as long for the solicitor to receive the loan offer pack..."*

The Complainants make it clear that they now believe that this issue in relation to the Second Named Complainant's information, was a ruse to simply get them to sign new documentation. The Provider's final response letter (19 April 2018) states that the *"mortgage application was not approved in principle"*. The Provider's submissions to this office (13 November 2018) state that the first application was "declined" and the underwriting department requested that a new application be submitted. The system log sheds no further light on this matter.

In any event, a new Statement of Suitability was signed by the Complainants and the Provider's agent on 30 January 2018. In this form the answer to the question:

*"Are you interested in a fixed rate mortgage where you pay a set amount per month for an agreed period of time?"*

was now set out as **"No"**.

A new mortgage application was filled out which indicated the type of interest required, as a variable interest rate.

It seems that the answers to these new statement of suitability and application forms were filled in by the Provider's agent "from memory".

Although both new forms were signed by the Complainants, I do not consider it appropriate to level any criticism at them for failing to notice at that time that these key entries were different. They understood they were signing the same forms again, and if there were any material changes (as there in fact were) they were entitled to expect that the Provider would specifically draw their attention to them.

By email dated **7 February 2018**, the First Named Complainant emailed the Provider's agent stating:

*"I have a problem with this offer because from the meetings we had with my wife and I we were both on the understanding that the mortgage was to be on a fixed rate of 2.00% for 10 years [...] It was not made clear that if the ECB rate increases so will the fixed rate..."*

The Provider's agent responded the following day to explain that:

/Cont'd...

*“Your original application was sent to underwriting and I completed the second mortgage suitability before you came in and from memory to try and save you time so must of [sic] been an oversight. I apologise again for any miscommunication or oversight”.*

The mortgage loan offer letter that issued on 8 February 2018 describes the interest rate as:

*“A variable rate which is 2.00% above [the Provider’s] European Central Bank Rate, currently 0.00%, until 31/3/2028, to give a current rate payable of 2.00%”.*

This clearly does not accord with the Complainants’ understanding of the interest rate they had previously been given to understand would be made available to them, (and as confirmed in the email from the Provider’s agent of 28/11/17).

The Complainants ultimately did not proceed with their house move. They contend that they did not move house, due to this issue with the Provider, and that the expenses they incurred in preparing for a move, including professional fees as well as the cost of furniture items that they gave away, should be reimbursed to them by the Provider, in addition to compensation for the distress caused to them.

### **Analysis**

It is somewhat understandable why, as things turned out, the Complainants harbour suspicions that the “customer number” issue that arose in January 2018 was, as they describe it, a “smokescreen” designed to induce them to change their applications.

However, there is simply no evidence to substantiate this accusation. The explanation for having to submit a renewed application given by the Provider’s agent in January 2018 is accepted as a credible one. There is no doubt however that the Complainants were given significantly wrong information in relation to the interest rate they would be offered.

There is also no doubt that the second application forms contained materially different information from the first set of forms, and that this was the due to the Provider’s agent either filling in the information incorrectly, or failing to realise what he had told the Complainants prior to the first application being submitted. Neither explanation is acceptable.

Whatever the reason for the discrepancies, the Complainants ought to have been specifically referred to the differing aspects between application 1 and application 2. This was a glaring error on the part of the Provider’s agent. Luckily, the Complainants had the presence of mind to see that the interest rate they were finally being offered, was not the rate that they had understood they would be offered. The consequences could have been much more serious if they had not noticed and if they had drawn down a mortgage that ultimately proved to be unsuitable and, potentially, considerably more expensive.

The conduct of the Provider in this case, in furnishing incorrect information regarding an applicable interest rate and then providing the Complainants with forms to sign which were

/Cont’d...

materially different from their first forms, are very serious failures. I am not however satisfied that the Complainants are entitled to reimbursement of the expenses to the extent that they claim. The Complainants chose to give away furniture when they had not yet received a loan offer. I am not satisfied that the Provider can be fixed with this loss. In relation to the professional fees associated with preparing for a sale, while the interest rate that was ultimately offered was not attractive to them, it was still ultimately their choice not to proceed with the house move, to downsize. However, I do take these events into account in assessing what I consider to be the appropriate compensation due to the Complainants.

I am firmly of the opinion that the inconvenience and stress occasioned to the Complainants by the Provider's conduct, merits very considerable compensation. The Provider initially offered the Complainants €1,500 in its final response letter, in recognition of these events, and then improved this offer to €2,000 in its submissions to this office. I do not however, believe these offers to be commensurate with the seriousness of the Provider's failings or with the level of inconvenience/distress visited upon the Complainants.

### **Conclusion**

- My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is upheld on the grounds prescribed in **Section 60(2)(g)**.
- Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to make a compensatory payment to the Complainants in the sum of €7,500, (seven thousand five hundred Euro) to an account of the Complainants' choosing, within a period of 35 days of the nomination of account details by the Complainants to the provider. I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in **Section 22** of the **Courts Act 1981**, if the amount is not paid to the said account, within that period.
- The Provider is also required to comply with **Section 60(8)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

**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.**

**MARYROSE MCGOVERN  
DIRECTOR OF INVESTIGATION, ADJUDICATION AND LEGAL SERVICES**

27 September 2019

/Cont'd...

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.

