



<b><u>Decision Ref:</u></b>	2020-0114
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Repayment Mortgage
<b><u>Conduct(s) complained of:</u></b>	Delayed or inadequate communication Failure to provide product/service information
<b><u>Outcome:</u></b>	Rejected

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

This complaint concerns the Provider's administration of a joint mortgage loan account held by the Complainants.

**The Complainant's Case**

The First Complainant submits that upon moving house in December 2017 they took out a new joint mortgage loan account (ending in 285) with the Provider for about €450,000, in order to avail of the Provider's 2% cashback offer.

The First Complainant submits that they held an existing joint tracker interest rate mortgage loan account with the Provider from their previous house and availed of the tracker portability offer.

The First Complainant submits that at the time of taking out the new mortgage loan account (ending in 285), the second mortgage loan account held with the Provider from their previous premises was changed to a higher interest rate of 1.8%.

The First Complainant submits that the Provider has refused to apply the 2% cashback offer to their new mortgage loan account, due to them having the second mortgage loan account on the same property, which is set at a tracker interest rate.

The First Complainant submits that as the new mortgage loan account is not set against a tracker interest rate, the Provider should apply the 2% cashback offer to that account, effective from the draw down date.

The First Complainant submits that they were aware they could not avail of the 2% cashback offer on their previous tracker mortgage but it was their understanding that by taking out the new mortgage loan account they would be able to avail of the upfront 2% cashback on that new account.

The First Complainant submits that they were not informed by the Provider that since they had an existing tracker interest rate mortgage loan account on the same property they would not qualify for the 2% cashback offer on the full amount of the new mortgage loan account.

The First Complainant submits that had they been advised of this rule prior to taking out the new mortgage loan account they would have made a different product choice such as surrendering their existing tracker mortgage to avail of the 2% cashback offer on the full amount of the mortgage, which would have been about €525,000.

The First Complainant submits that the Provider has failed to respond to the issues raised within his complaint email dated 12 July 2018.

The complaint is that the Provider has wrongfully or unreasonably refused to apply the 2% cashback offer to the Complainants mortgage loan account ending in 285.

The Complainants want the Provider to deposit the 2% cashback amount of €9,000 – €10,500 into their nominated account.

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

The Provider states that the Complainants were advised prior to signing their acceptance of the loan offer that they were entitled to the 2% monthly cashback offer, and not the 2% cashback at drawdown offer.

The Provider has furnished email correspondence in this regard, in addition to the mortgage loan documentation, all of which I have set out in my analysis below.

The Provider submits that the Complainants have received 2% cashback on a monthly basis.

### **The Complaint for Adjudication**

The complaint for adjudication is that the Provider has wrongfully or unreasonably refused to apply the 2% cashback drawdown offer to the Complainants' mortgage loan account.

## **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 30 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.

Following the issue of my Preliminary Decision, the Complainants made a further submission under cover of their e-mail to this Office dated 6 February 2020, a copy of which was transmitted to the Provider for its consideration.

The Provider has not made any further submission.

Having considered these additional submissions and all of the submissions and evidence furnished to this office, I set out below my final determination.

A Letter of Approval dated 1 November 2017 (pertaining to loan ending 340) sets out terms and conditions of a mortgage loan offer. Section 2 of the Special Conditions set out what is described as a "Monthly Mortgage Cashback Offer", whereby the customers receive "cashback" on their monthly repayments, subject to certain conditions (direct debit from a certain account etc).

It does not offer the Complainants 2% cashback at drawdown:

*"2.Monthly Mortgage Cashback Offer*

- a. *[The Provider] will pay the applicant 'cashback' of 2% of the monthly repayment specified in this Letter of Approval (as may be changed from time to time in accordance with the mortgage conditions), or other monthly repayment (which may be more than or less than the scheduled monthly repayment) which [the Provider] has agreed in writing to accept from the applicant, in relation to the mortgage loan referred to in this Letter of Approval and received from the applicant..."*

A Letter of Approval dated 2 November 2017 (pertaining to loan ending 285) contains an identical description of the cashback offer (that is a 2% cashback on a monthly basis, as opposed to being paid to the customers at drawdown). This account was subject to a tracker rate of interest that will *"not exceed 1.80% over the European Central Bank Refinancing Rate..."* The Letter of approval states:

*"4.Monthly Mortgage Cashback Offer*

- a. *[The Provider] will pay the applicant 'cashback' of 2% of the monthly repayment specified in this Letter of Approval (as may be changed from time to time in accordance with the mortgage conditions), or other monthly repayment (which may be more than or less than the scheduled monthly repayment) which [the Provider] has agreed in writing to accept from the applicant, in relation to the mortgage loan referred to in this Letter of Approval and received from the applicant..."*

Both loan offer letters were signed and accepted by the Complainants on 21 November 2017.

The Complainants also received the Provider's mortgage information guide which advises on page 9 under the heading *"Some important information on the mortgage that gives you more"* sets out that:

*"... 2% cashback at drawdown excludes tracker portability or negative equity customers (including any additional funds..."*

Apart from the mortgage guide received by Complainants (which, I accept, could still leave them with some questions as it contains a lot of information) and apart from the mortgage terms and conditions (which, I accept, are clear in setting out 2% monthly cashback as opposed to 2% cashback on drawdown) the Complainants also received an email on 15 November 2017 (prior to signing their acceptance of the mortgage offer). This email was in response to the Complainants email of the same day which asked *"I'd like to set up the new current account in order to facilitate the 2% cash back offers"*.

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The Provider responded as follows:

*“Just to clarify on cash back offers, you can only avail of the 2% monthly cash back until 31 December 2027 in conjunction with having Direct Debit paid from [Name of Current Account] not the 2% cashback at drawdown.”*

The Complainants suggest that the Provider is in breach of a number of the provisions of the Consumer Protection Code (CPC) (namely 2.1, 2.2, 2.3, 2.6 and 3.20). They submit that the Provider seeks to impose adverse terms on them by reason of them having a tracker mortgage account. In my Preliminary Decision I stated that the evidence does not support the Complainants’ contention in this regard.

The Complainants, in their post Preliminary Decision submission dated 6 February 2020, have stated that the above is incorrect, the Complainants state that:

*“[the Provider] are then manifestly in breach of the CPC- including paragraphs 3.19 and 3.20”.*

Section 3.19 of the CPC 2012 states that:

*“A regulated entity is prohibited from bundling except where it can be shown that there is a cost saving for the consumer”.*

While section 3.20 sets out that:

*“Prior to offering, recommending, arranging or providing a bundled product, a regulated entity must provide the consumer with the following information on paper or on another durable medium:*

- a) the overall cost to the consumer of the bundle;*
- b) the cost to the consumer of each product separately;*
- c) how to switch products within the bundle;*
- d) the cost to the consumer of switching products within the bundle;*
- e) how to exit the bundle; and*
- f) the cost to the consumer of exiting the bundle”*

Having considered the submission I do not find that the Provider has engaged in “bundling” the Complainants’ mortgage accounts. The definition of ‘bundling’ as set down in the CPC is:

*“the packaging of two or more distinct products into a bundle, where each of these products can be purchased separately from or through the regulated entity”.*

The Complainants, having been presented with different rates and product options, made the personal decision as to what to choose.

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Ultimately the Complainants chose an arrangement which was:

*“to retain the relatively small tracker mortgage, but at a higher interest rate of 1.8% above ECB (previously +0.8%), and a second mortgage of c€450k” .*

The Provider has furnished a complete set of documentation from which the Complainants could not reasonably have been in doubt as to what they were being offered. Furthermore, the Provider is entitled to offer different products to customers who are in different circumstances. The Complainants’ characterisation of not receiving 2% cashback on drawdown as being subjected to *“an additional charge of c.9k”* is not supported by the evidence and documentation.

As I have mentioned above, the Complainants had access to the Provider’s mortgage information guide. In this guide on page 31 under the heading *“Important Information”* it reiterates the point that:

*“...2% cashback at drawdown excludes tracker portability or negative equity customers (including any additional funds)...”*

While I note that the mortgage information guide specifies under the ‘important information’ sections that the 2% cashback at draw down is not available to a number of customers due to certain exclusions. I believe that promotional material included in the guide could have more clearly highlighted the existence of such exclusions.

It would have been prudent of the Provider to place more prominent notices on the promotional material, such as to draw an applicant’s attention to the exclusions included within the information guide.

In my Preliminary Decision I stated that I did not believe that the Complainants were provided with incorrect or misleading information in relation to the nature of the cashback offer and that I could not accept the First Complainant’s contention that *“my clear understanding was that I would retain the tracker using the portability option, and receive the 2% cashback upfront on the second mortgage...”*

The Complainants, in their post Preliminary Decision submission of 6 February 2020, state:

*“refusing to apply the 2% offer to the second mortgage ending \*\*\*\* is wholly invalid”.*

As I have set out above, the mortgage guide, the mortgage terms and conditions and the specific advice given to the Complainants by email on 15 November 2017 are all consistent in describing a 2% monthly cashback offer, as opposed to 2% cashback at drawdown.

For the reasons set out 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.

**GER DEERING  
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

10 March 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.**