



<b><u>Decision Ref:</u></b>	2020-0261
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Tracker Mortgage
<b><u>Conduct(s) complained of:</u></b>	Refusal to move existing tracker to a new mortgage product 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**

This complaint relates to a mortgage loan account held by the Complainants with the Provider. The mortgage loan was secured on the Complainants' private dwelling house (the "secured property").

The loan amount is €161,000 and the term of the loan is 35 years. The particulars of the mortgage loan offer dated **18 September 2006** were accepted by the Complainants on **5 October 2006**. The Complainants' mortgage loan account ending **8889** was drawn down on a fixed interest rate of 3.9%. The Complainants' mortgage loan account is currently on a tracker interest rate of ECB + 0.90% and has been since **November 2007**.

##### **The Complainants' Case**

The Complainants are two sisters who hold a joint mortgage with the Provider. The First Complainant provided the deposit for the purchase of the secured property. Both Complainants contributed towards the mortgage payments until the Second Complainant moved out of the secured property in **mid-2013** to reside with her partner and from that point no longer contributed to the mortgage payments or any associated bills. The Second Complainant has stated that she "*has no wish to be associated with the house*". The First

Complainant states that she got married in **late 2013** and now resides in the secured property with her husband which they view as their family home. The First Complainant explains that *"it was always the intention that this would be [her] house, as [she] paid the deposit on the house at the time of obtaining the mortgage"* and her sister's *"wages were not taken into account"*. The First Complainant has also *"spent a lot of time and money refurbishing"* the secured property.

The First Complainant submits that she attended at a local branch of the Provider on many occasions to enquire about removing the Second Complainant's name from the mortgage and title of the secured property. The First Complainant explains that at the time the Complainants obtained the mortgage loan *"it was a simple process to have a person's name removed from title. All you needed was a letter of consent from the lender"*.

The First Complainant submits that following subsequent meetings with the Provider, she was informed that in order to remove the Second Complainant's name from the title documents she *"would have to obtain a brand new mortgage with [the Provider] (if [she] satisfied their conditions) and that [she] would have to bear all associated costs again such as Solicitors fees, land registry fees etc"*. The First Complainant further submits that she was advised that if she were to proceed with this course of action, it would not be possible for her to retain the tracker interest rate which currently applies to mortgage loan account ending **8889** and instead would be placed on a variable interest rate.

The Complainants contend that this is unreasonable as they never missed a mortgage repayment. Further, the First Complainant states that if she had to sell the secured property now she would not get the price that the Complainants paid for it as it is in negative equity. The First Complainant asserts that all the Complainants want is *"for everything to be right in legal terms insofar as if [the Second Complainant] tried to obtain a mortgage in the future, it will show up that she is already on a mortgage"*. The First Complainant is concerned that if she does nothing and decides to sell the secured property in years to come, the Second Complainant may be liable for tax despite the fact that she does not live there.

The Complainants are seeking the following:

- a) The Provider to provide a letter of consent to enable the transfer of the mortgage and title deeds into the sole name of the First Complainant; and
- b) Retain the tracker interest rate on mortgage loan account ending **8889** following the transfer of the mortgage and title deeds into the sole name of the First Complainant and that no change be made to the current mortgage repayments.

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

The Provider submits that the removal of a party from a jointly held mortgage account is a *“material change that could potentially impact the security held by the Bank and may also increase the risk to the Bank, as only one person remains on the home loan and that person is solely responsible for the maintenance of same”*. The Provider explains that it must satisfy itself that the borrower proposing to continue with the mortgage in their sole name is in a viable position to do so. The Provider further notes that in *“the interests of being fair and consistent to all of our customers all such requests must be dealt with in line with the Bank's existing credit policy”*. In this regard, the Provider submits that there are both legal and lending considerations to be addressed.

As regards the legal considerations, the Provider states that in order to remove the Second Complainant from the mortgage, it would also be required to remove the Second Complainant from the mortgage deed/legal charge. The Provider asserts that in order to vacate the legal charge registered over the secured property, the Provider would require that the *“funds pertaining to same would be first discharged”*. The Provider explains that the First Complainant, who proposes to proceed with the mortgage in her sole name, is required to obtain the funds in her sole name and then *“use those funds to redeem the existing borrowing held in joint names. The joint signed legal charge can then be vacated and the sole name legal charge registered”*.

As regards the lending considerations, the Provider submits that when *“a party is proposing to be removed from [a] jointly held borrowing, a new application is required from the sole mortgage applicant”* which is then assessed by the Provider's underwriting department in accordance with the Provider's *“prevailing lending criteria”*. The Provider states that there is no guarantee that any such application will be approved and it retains commercial discretion in this regard.

The Provider submits that in this case, the First Complainant must make a new mortgage application if she wishes to take the borrowing on in her sole name. The Provider explains that any new application in the First Complainant's sole name will be deemed to be a *“new borrowing”* and *“prevailing interest rate options will apply”* therefore the First Complainant will not be in a position to retain the tracker rate that currently applies to the jointly held mortgage.

The Provider states that while it is mindful of the Complainants current circumstances, *“it is clearly outlined in the terms and conditions of their existing joint named borrowing that both parties are jointly and severally liable for the debt”*. Therefore, the Provider considers that both Complainants will remain liable for the debt until such time as the joint mortgage is redeemed in full.

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### **The Complaint for Adjudication**

The Complaint for adjudication is that the Provider acted wrongfully and unreasonably in the manner in which it has dealt with the Complainants' request to transfer the mortgage and title deeds into the sole name of the First Complainant.

### **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 **08 July 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 acted wrongfully and unreasonably in the manner in which it has dealt with the Complainants' request to transfer the mortgage and title deeds into the sole name of the First Complainant. In order to determine this, 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

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between the Provider and the Complainants, in particular the interactions between the First Complainant and the Provider between **2013** and **2015**.

By way of **Loan Offer Letter** dated **18 September 2006** (the “**Loan Offer**”) the Complainants entered into a loan agreement with the Provider for the amount of €161,000 for a period of 35 years.

The particulars of the Loan Offer are set out below;

<b><u>“Purpose of Loan:</u></b>	<b>:House Purchase</b>
<b><u>Repayment Details</u></b>	<b><u>Loan Account</u></b>
<i>Mortgage Account Number</i>	<b>: [ending 8889]</b>
<i>Loan Type:</i>	<b>: Fix 3.9% Until 300907-Rvts to ECBR+1.15</b>
<i>Loan Amount</i>	<b>: Capital and Interest</b>
<i>Interest Rate</i>	<b>: €161,000.00</b>
<i>Interest Type</i>	<b>: 3.9%</b>
<i>Term</i>	<b>: Fixed</b>
<i>Monthly Repayment</i>	<b>: 35 years</b>
<i>Retention Amount</i>	<b>: €703.24 from 18/10/2006</b>
	<b>: €726.10 from 18/10/2007</b>
	<b>: €0.00</b>

I understand that the Complainants’ mortgage drew down on a fixed interest rate of **3.90%** fixed until **30 September 2007**. As outlined in the Loan Offer, the Complainants’ mortgage account would default to a tracker interest rate of ECB base rate + 1.15% margin on expiry of the fixed interest rate period.

The **Specific Loan Offer Conditions** attached to the Loan Offer detail as follows;

*“A copy of the Comprehensive Household Buildings Insurance policy document is to be forwarded to [the Lender] prior to requesting the loan funds. This policy document must confirm the following details : a) that the policy is in the name(s) of the Borrower(s) and [the Lender’s] interest has been noted [...]*

*The Borrower(s) must have a suitable Life Assurance policy in the amount and term of the loan....*

*[The First Complainant’s] employer’s external company accountant is required to confirm [the First Complainant’s] salary as [...] and that her position is full time and permanent.*

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*[The Second Complainant's] employer is required to confirm that she successfully completed her probationary period and is full time and permanent.*

*...The rate of interest applicable to this loan will be fixed for the fixed term specified in the loan offer...."*

The First Complainant submits at the outset that while both Complainants submitted supporting financial documentation to the Lender when seeking mortgage approval, she understood that mortgage approval was granted based on her income alone. The Provider has indicated that it reviewed the original mortgage application and has established that the application was submitted in joint names with supporting financial documentation (P60s, payslips etc.) from both Complainants. It is clear from the **Specific Loan Offer Conditions** that the personal circumstances of both Complainants, in particular their employment status, were taken into account when the Lender issued the Loan Offer. In accordance with the **Specific Loan Offer Conditions**, the Complainants were obliged to take out a life assurance policy and a buildings insurance policy in their joint names for the term of the loan. The evidence shows that the Complainants applied for a joint mortgage loan and that is what they were offered and granted by the Lender.

The **General Terms and Conditions** attaching to the Loan Offer detail as follows;

*"[...]*

#### **5. The Security**

*The Company will be provided with the following security in the Company's preferred form:-*

- (a) A first ranking Legal Charge/Standard Security/Mortgage over the Property.*
- (b) Life Policy(ies) and/or Repayment Vehicle(s) assigned to or deposited with the Company as additional security where specifically requested by the Company.*
- (c) Life Cover for the full amount of the Loan is required on the life of the principal Borrower and Life Cover for the full amount of the Loan is strongly recommended on the lives of all Borrowers".*

The **Loan Offer- General Terms and Conditions** which are supplemental to and form part of the Loan Offer which comprises of the **Specific Loan Offer Conditions** and **General Terms and Conditions** as outlined above state as follows;

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"[...]

### **5. Security**

- (a) *The Loan must be secured by a first legal all sums due Mortgage on the Property(ies) offered as Security on each of them.*
- (b) *...The Lender is not responsible for the Borrower's Solicitor's fees or charges. The completion of the Security is to be arranged by and be the responsibility of the Borrower's Solicitor.*

### **25. Joint Borrowers**

- (a) *Where a Mortgage is granted by two or more persons, then all such persons shall be **jointly and severally liable** for any indebtedness secured by the Mortgage."(my emphasis)..."*

The **Loan Acceptance** was signed by the Complainants on **5 October 2006**. The Loan Acceptance acknowledges the Complainants' understanding and acceptance of the **General Terms and Conditions** and **Specific Loan Offer Conditions**. The **Loan Acceptance** signed by the Complainants also states the following;

*"I/We fully understand and accept the specific nature of this Purchase Mortgage. I/We further understand that any outstanding debt owing (whether owing now or in the future) to [the Lender] by me/us at any given time is secured on the Property and the subject of the Tracker Mortgage and **must be repaid in full before the relevant title deeds can be returned or the relevant mortgage deed released.**" (my emphasis)*

The **Loan Acceptance** also states;

*"I/We confirm that I/we understand that the Purchase mortgage and all associated rights and interest (including the loan and any other debt secured thereby and the interest in related insurances and assurances) will be freely transferable by [the Lender] on such terms as [the Lender] may think fit as part of a loan transfer and mortgage securitisation scheme."*

On **1 October 2007**, upon expiry of the initial fixed rate period, the Complainants' mortgage account moved to a tracker interest rate of ECB + 1.15%. On **29 November 2007**, the Complainants elected to transfer their mortgage account to a lower tracker interest rate of ECB + 0.90% by signing and submitting the **letter of authority**.

The **letter of authority** signed by both Complainants on **29 November 2007** notes as follows;

*"...We wish to transfer the above Loan Account to a Tracker Mortgage Product.*

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We wish to transfer our existing mortgage to the following Tracker Mortgage Loan to Value band. (Please Select below). We understand that the LTV band selected is based on the current loan balance (to be transferred to the Tracker Mortgage) expressed as a percentage of the current market value of the property (per a recent valuation report).

<b>Loan to Value</b> (% of property value against amount to be borrowed)	<b>% Margin above the ECB rate for the life of the Tracker Mortgage</b>
Greater than 80%	0.90% ( )

We are an existing borrower with [the Lender] and we have executed a mortgage over the Security Address, noted above, by virtue of a mortgage dated the 12<sup>th</sup> day of October 2006 and the Relevant Loan Offers applicable to each loan secured by the mortgages against this Security Address.

We hereby give consent to the variation of the terms of the Loan Offer dated the 12/10/2006 in accordance with the terms of the within letter and in particular the application of the Terms and Conditions of the Tracker Mortgage Product to the Loan Account and I give this consent for the purposes of Section 3 of the Family Home Protection Act 1976 as amended by Section 54 of the Family Law Act 1995.

We confirm that we have read and fully understand the Terms and Conditions of the Tracker Mortgage Product (a copy of which is attached to this letter) and the terms of the Tracker Mortgage Product shall apply to existing loan/s under the account number, noted above, which are accordingly varied and in the event of any inconsistency between the terms of the Tracker Mortgage Product and the existing Loan Offer Product, the terms of the Tracker Mortgage Product shall prevail.

We understand that [the Lender] recommend[s] that we obtain independent advice on the matter and in any event we are not relying on advice received from [the Lender], its Servants or Agents.

We confirm that we have not taken out any additional mortgage or charge on the premises. We confirm that there is no change in our circumstance since the time of taking out the loan originally, i.e. we are in exclusive possession and occupancy of the premises no voluntary Deed has been entered into e.g. house placed in a single name, and we have not carried out any works or alterations to the premises which would require Planning Permission and/or Building Regulations.....”

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I understand that the Complainants' mortgage loan account has remained on the tracker interest rate of ECB + 0.90% since **November 2007**.

The Complainants are joint borrowers in respect of mortgage loan account ending **8889**. As outlined above, in circumstances where the Second Complainant moved out of the secured property in **June 2013** and since then has no longer contributed to the mortgage repayments, the Complainants sought to remove the Second Complainant's name from the mortgage and title. It is unclear when exactly the Complainants first approached the Provider to request that the Second Complainant be removed from the mortgage and title. I understand that enquiries of this nature were made by the Complainants to the Provider between **mid-2013** and **mid-2015**.

The Complainants contend that at the time they drew down the mortgage with the Lender in **October 2006**, they were informed that all they needed was a letter of consent from the Lender to have a person's name removed from the title deeds. I have not been provided with any evidence to substantiate the Complainants' submission that information of this nature was given by the Lender. The **letter of authority** signed in **2007**, outlines "*no voluntary Deed has been entered into e.g. house placed in a single name*". It appears that it may have been possible in **2007** to enter into a voluntary deed to place the mortgage loan in a single name.

In any event, this complaint arises on foot of enquiries made by the Complainants to the Provider between **mid-2013** and **mid-2015**.

The First Complainant submits in her letter to the Provider dated **13 April 2015** that she attended at a local branch of the Provider on a few occasions to enquire about removing the Second Complainant's name from the mortgage and title (after the Second Complainant moved out of the secured property) and was advised by the Provider that she would have to "*obtain a brand new mortgage*" and bear all the associated costs. The First Complainant states that she was further advised that the consequences of this would be that she would be unable to retain the current tracker interest rate applicable to mortgage loan account ending **8889** as these products are no longer on offer from the Provider. The Provider maintains that the removal of the Second Complainant from the mortgage represents a break in the existing mortgage contract between the parties.

The Provider explains that tracker interest rate products were available from the Provider under the Lender's brand from **early 2004** until **late 2008**, when they were withdrawn from the market. In this regard, the Provider has detailed that in line with its credit policy, customers looking to transfer an existing mortgage from joint names to a sole name basis are required to complete a new loan application that will be assessed by the Provider. In

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this case, it is envisaged that the First Complainant will need to provide up to date supporting documentation detailing her current financial and personal circumstances in order for the Provider to be in a position to accurately assess the new application under the Provider's standard mortgage, affordability and underwriting criteria. The Provider previously detailed to the First Complainant in its letter of **17 June 2015** and in its submissions that a mortgage adviser in the First Complainant's local branch will be able to assist the First Complainant in completing the mortgage application and explaining the requisite supporting documentation needed by the Provider to assess her application based on her individual circumstances.

The First Complainant has not yet submitted any new mortgage application to the Provider. The First Complainant appears to take issue with the fact that the Provider requires her to secure a new mortgage in her sole name and successfully undergo the relevant lending assessment. It is important for the Complainants to understand that the mortgage loan at issue is a joint mortgage and in accordance with the terms and conditions which they agreed to, both Complainants are jointly and severally liable for the debt until such time as the mortgage is redeemed in full. I believe that it is not unreasonable for the Provider to maintain its position that, once the existing borrowing held in joint names is redeemed in full, only then can the Complainants' jointly signed legal charge be vacated. It is my view that this contractual position is clearly set out in the **Loan Offer - General Terms and Conditions**.

There is nothing in the terms and conditions applicable to the Complainants' mortgage loan that obliges the Provider to consent to the "*removal*" of one of the borrowers from the title of the secured property or from the obligations of the mortgage loan contract, at the Complainants' request. It is important for the Complainants to understand that what they are seeking to do is to vary the contract that they entered into in **September 2006**. There is no contractual or other obligation on the Provider to accede to that request or provide the "*consent*" that they are seeking from the Provider.

I am of the view that it is not unreasonable for the Provider to require the First Complainant to submit an application for a new mortgage and up to date vouching documentation in circumstances where she now wishes to hold a mortgage loan in her own name only. The Provider has advised the First Complainant that it could consider an application for a new mortgage jointly with her husband. The First Complainant has expressed in her submissions that she "*does not see why [her] husband should have to go on title*".

Having considered the documentation provided in evidence by both the Complainants and the Provider, I do not accept that the Provider acted incorrectly or unreasonably in its management of the Complainants' request to "*transfer*" the joint mortgage into the sole

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name of the First Complainant. It appears to me that the First Complainant has three options, (1) retain the existing mortgage jointly with her sister which is currently on a tracker interest rate of ECB + 0.90%, (2) apply for a new mortgage in her sole name at current rates, or (3) apply for a new joint mortgage with her husband at current rates. If the First Complainant opts for either options (2) or (3), the Complainants' existing mortgage loan will be required to be redeemed out of the proceeds of any new mortgage. I can understand why the First Complainant is reluctant to redeem a mortgage where the interest rate is effectively 0.90%. However this is a decision for the Complainants to make.

In light of all the foregoing, I do not uphold the 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**

31 July 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.**