



<b><u>Decision Ref:</u></b>	2020-0284
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Tracker Mortgage
<b><u>Conduct(s) complained of:</u></b>	Failure to offer a tracker rate at point of sale 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 two mortgage loan accounts ending **3386** and ending **8431** held by the Complainant with the Provider as follows;

- The loan amount for mortgage loan account ending **3386** was £45,000 and the term of the loan was for 20 years. The Offer of Advance, which was signed by the Complainant on **11 June 1999**, outlined the interest rate type as the Provider's "*Variable Home Loan Rate*". The mortgage loan account was drawn down on **28 October 1999** on a one year discounted variable home loan rate which reverted to the Provider's variable rate thereafter.
- The loan amount for mortgage loan account ending **8431** was £18,000 and the term of the loan is 20 years. The Offer of Advance, which was signed by the Complainant on **9 November 2001**, outlined the interest rate type as the Provider's "*Variable Home Loan Rate*". The mortgage loan account was drawn down on **13 December 2001** on a discounted variable home loan rate until **31 August 2002**, at which time it reverted to the Provider's variable rate.

Both mortgage loan accounts are secured on the Complainant's private dwelling house.

### **The Complainant's Case**

The Complainant submits that he was "*denied a tracker mortgage*" when he drew down mortgage loan account ending **3386** in **1999**. He details that he "*was told [he] had to take the variable rate...instead of a tracker [rate].*"

The Complainant outlines that when he applied for a "*top up*" on his mortgage loan in **2001** he "*was made by the manager at the time to take out a second mortgage.*" He states that this "*has resulted in [him] having to pay two mortgage protection policies for the last twenty years which appears to [him] to have been totally unjust.*"

The Complainant details that he requested a reduction in the interest rates applying to both mortgage loan accounts in **2015** as he felt the amount of interest he was paying was "*way too high in this day and age*" but received no response. The Complainant states that he received a letter from the Provider in **July 2017** "*about competitive rates*" but the Provider "*did nothing about it*".

The Complainant is seeking the following;

- (a) Compensation for being overcharged high rates of interest on both mortgage loan accounts since the inception of each account; and
- (b) Compensation for paying two mortgage protection policies since **2001**.

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

The Provider details that the Complainant applied for a mortgage in the amount of £45,000 over a term of 20 years by completing and signing a mortgage loan application form on **18 May 1999**. The Provider states that the mortgage application "*did not provide for the selection of a specific interest rate type or a specific interest rate product*". The Provider submits that an **Offer of Advance** was issued to the Complainant detailing the interest rate applicable, and the Complainant subsequently signed and accepted the **Offer of Advance** on **11 June 1999**.

The Provider outlines that mortgage loan account ending **3386** drew down on **28 October 1999** on a one year discounted variable interest rate which was to apply until **1 November 2000**. The Provider explains that its discounted variable home loan rate at the time, was a discount of -0.20% on the Provider's standard variable rate.

The Provider submits that "*tracker interest rate products were not available*" when the Complainant applied for mortgage loan account ending **3386** in **1999**. The Provider explains that "*[t]racker products were available for selection from [the Provider] from 2001 until [late] 2008 when they were withdrawn from the market.*"

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The Provider details that the Complainant applied for an additional advance of £18,000 over a term of 20 years by completing and signing a further mortgage loan application form on **12 October 2001**. Again, the Provider states that that the mortgage application *“did not provide for the selection of a specific interest rate type or a specific interest rate product”*. The Provider submits that an **Offer of Advance** was issued to the Complainant detailing the interest rate applicable and the Complainant subsequently signed and accepted the **Offer of Advance** on **9 November 2001**.

The Provider outlines that mortgage loan account ending **8431** drew down on **13 December 2001** on a discounted variable interest rate which was to apply until **31 August 2002**. The Provider explains that its discounted variable home loan rate at the time was a discount of 1.11% on the Provider’s standard variable rate.

The Provider submits that tracker interest rates were available for selection *“subject to lending criteria, eligibility and terms and conditions”* in **2001**. The Provider asserts that it was the Complainant’s choice to opt for a discounted variable rate in relation to each of his mortgage accounts and this was detailed in his loan documentation. The Provider details that its *“staff were not authorised to provide advice or recommendations to customers as to what interest rate option or product to select.”* It further outlines that *“staff were trained to provide information in relation to the various interest rate options that were available when such information was requested.”* The Provider details that the *“suitability requirements for mortgages were introduced in the Consumer Protection Code 2006 (‘CPC 2006’) which entered [into] force on 1 July 2007.”* It outlines that *“there was no legal or regulatory requirement in 1999 or 2001 to ensure that products were suitable for a customer”* and states that it is satisfied that the mortgage accounts which drew down *“were in line with the mortgage applications that the [Complainant] made to the Bank.”*

The Provider submits that *“there was no reference to a tracker interest rate in either of the customer’s Offers of Advance”*. The Provider further states that both **Offers of Advance** *“did not contain any condition or reference specifying that a tracker interest rate would be made available to the customer when the initial discounted variable interest rate periods ended, or on another future date.”* The Provider relies on the **Special Conditions** of the **Offers of Advance** on both mortgage accounts to support this. The Provider also relies on **General Condition 2** of both **Offers of Advance** to support its assertion that a variable rate, which the Provider could adjust, was clearly intended to apply to both mortgage accounts rather than a tracker interest rate which is linked to the European Central Bank (ECB) base rate.

The Provider explains that it was necessary for the Complainant to draw down a separate mortgage account when he applied for additional borrowings in **2001** because it *“could not*

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add additional loan funds to an existing borrowing which had already been drawn down, nor did the Bank's mortgage system allow for additional loan funds to be added to a mortgage account once the originally agreed mortgage loan amount had been drawn down." It details that the underlying security was the same for both mortgage accounts and relies on **General Condition 3(a)** of the **Offer of Advance** dated **6 November 2001** to support this. The Provider details that while both mortgage accounts were linked and related to the same mortgage secured on the Complainant's property, each loan account was issued to the Complainant on "*different terms and conditions, as detailed in the separate Offer of Advance and Offer of Additional Advance for each sub-account*". The Provider submits that the Complainant accepted and signed a separate Offer of Advance "*for each borrowing*" with the benefit of independent legal advice "*and in doing so the customer accepted the different terms and conditions applicable to each sub-account*".

The Provider does not agree with the Complainant's contention that the requirement to take out two mortgage protection policies is unjust. The Provider details that "*[e]ach of the customer's Mortgage Protection Policies were a requirement for his mortgage borrowings with the Bank*". In this regard, the Provider submits that both mortgage application forms signed by the Complainant in respect of the different borrowings state that it was conditional that the Complainant provide additional security to the Provider in the form of an "*acceptable mortgage protection policy providing sufficient death cover for the amount and term of the loan*". In addition, the Provider details that this requirement for mortgage protection assurance was also detailed in **General Condition 4(d)** of the **Offer of Advance** in respect of mortgage account **3386**, and **General Condition 3(d)** and the **Special Conditions** in the **Offer of Additional Advance** in respect of mortgage account **8431**.

### **The Complaints for Adjudication**

The complaints for adjudication are as follows;

- (a) The Provider incorrectly refused the Complainant a tracker interest rate option on his mortgage loan account ending **3386** in **1999** and mortgage loan account ending **8431** in **2001**; and
- (b) The Complainant was wrongfully required to take out a second mortgage loan account for the additional funds in **2001**, and consequently he is paying for two mortgage protection policies.

### **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

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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.

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.

Following the issue of my Preliminary Decision, the following submissions were received from the parties:

1. E-mail submission from the Complainant dated **17 July 2020**; and
2. Letter from the Provider dated **28 July 2020**

Copies of these additional submissions were exchanged between the parties.

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

In order to determine this complaint, it is necessary to review and set out the relevant documentation relating to the Complainant's mortgage loan accounts. It is also necessary to consider the details of certain interactions between the Complainant and the Provider since the inception of both mortgage loans.

**The first issue to be determined is whether the Provider incorrectly failed to offer the Complainant a tracker rate option when the Complainant applied for mortgage loan account ending 3386 and mortgage loan account ending 8431.**

i. **Mortgage loan account ending 3386**

The Complainant applied for a mortgage in the amount of £45,000 by completing and signing a **Mortgage Application Form** on **18 May 1999**. I note that the application form does not contain a section in relation to the selection of a particular rate of interest. **Part C** of the application form is headed "*Your Mortgage Requirements*" and notes the amount of the loan as £45,000 and the repayment period as 20 years. The type of mortgage selected is "*Repayment*". The application form states that "*[i]f you choose a fixed rate mortgage please specify the fixed period required*", however the answer box has been left blank.

The Provider issued an **Offer of Advance** dated **25 May 1999** to the Complainant which detailed as follows;

<i>"1. Amount of Credit Advanced:</i>	<i>£45,000.00</i>
<i>2. Period of agreement:</i>	<i>20 years 0 months</i>
<i>...</i>	
<i>Interest Rate:</i>	<i>4.8500%</i>
<i>...</i>	
<i>Amount and Term of Mortgage Protection:</i>	<i>£45,000.00/ 20 years</i>
<i>Life or Lives Assured:</i>	<i>[the Complainant]</i>
<i>...</i>	

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

The **Special Conditions** attached to the **Offer of Advance** detail as follows;

*"...  
The interest rate as quoted represents a reduction of 0.20% on the present [Provider] Variable Home Loan Rate. The [Provider] Variable Home Loan Rate less 0.20% will apply for 12 months from the date of initial drawdown of your mortgage after which time your interest rate will revert to the then [Provider] Variable Home Loan Rate."*

The **Special Conditions** also detail that the "*monies will be released in 2 stage payments*" with the first stage payment to be in the amount of £20,000, followed by the second stage payment in the amount of £25,000.

**Condition 2** of the **General Conditions** attached to the **Offer of Advance** details as follows;

*"...The monthly repayments will vary if changes in the Home Loan Interest Rate occur. Variations in [Provider] Home Loan Rate may occur at any time and notice of each variation will be published at least once in a national daily newspaper..."*

**Condition 4 (a)** of the **General Conditions** attached to the **Offer of Advance** details as follows;

*"Before the Advance is drawn down the following requirements must be complied with:*

*.....*

*The mortgage which must be on the Bank's standard form must be a first legal mortgage and will secure the following: (i) The advance together with interest thereon at the Home Loan Interest Rate (varying) and..."*

The Complainant signed the **Acceptance and Authority** attached to the **Offer of Advance** on **11 June 1999**, in the presence of his solicitor, on the following terms;

*"1. I/We the undersigned accept the within Offer of Advance on the terms and conditions set out above and overleaf and in the Bank's standard form of Mortgage..."*

It is clear from the **Offer of Advance** that the Provider offered the Complainant a discounted variable interest rate of 4.85% for a period of 12 months after which the interest rate would revert to the Provider's "*Variable Home Loan Rate*". The Provider refers to its variable home loan rate as its "*standard variable rate*" in its submissions. Whilst I note that there is no mention as to what the Provider's variable interest rate would be in the loan documentation, the **Offer of Advance** clearly sets out the nature of the variable rate to be one which may be increased or decreased by the Provider at any time. Therefore I accept that the standard variable rate is the same as the "*Variable Home Loan Rate*", that is a rate that can be adjusted by the Provider.

The particulars of the **Offer of Advance** including the applicable interest rate, were accepted by the Complainant by signing the **Acceptance and Authority** which was also signed and witnessed by the Complainant's solicitor who, by doing so, confirmed that she had explained the nature and contents of the Offer of Advance to the Complainant. The first stage payment of £20,000 was subsequently drawn down on **28 October 1999** under mortgage loan account ending **3386** and the second stage payment of £25,000 was drawn down on **22 January 2001**. The initial discounted interest rate period ended in **October 2000** at which time mortgage loan account ending **3386** reverted to the Provider's standard variable rate for the remainder of the term of the loan.

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The Complainant is of the view that he was “denied a tracker mortgage” when he drew down mortgage loan account ending **3386** in **1999**. It is important for the Complainant to understand that there is no reference whatsoever to a tracker rate of interest in the loan documentation that issued to him and which was accepted by him. The Complainant was offered a variable rate which could be increased or decreased by the Provider at any time. If it was the case that the Complainant was not satisfied with the interest rate that was offered by the Provider, the Complainant was under no obligation to accept the **Offer of Advance**. Moreover, I understand that tracker interest rate products were not available from the Provider in **1999** when the Complainant applied for a mortgage loan as such products only became available for selection from the Provider in **2001**. Therefore, I accept that the Provider was not in a position to offer the Complainant a tracker interest rate option during the mortgage loan application process in **1999** because such rates had not even been introduced at that time.

ii. **Mortgage loan account ending 8431**

The Complainant applied for additional borrowings in the amount of £18,000 by completing and signing a **Home Loan Application for Additional Mortgage Form** on **12 October 2001**. **Part F** of the application for an additional mortgage is headed “*Home Loan Requested*” wherein the Complainant selected the option of a repayment mortgage. The “*Interest Option Required*” section of the application form offered a variable rate or a fixed rate for selection. The Complainant selected a variable rate. The Complainant also selected that that term of the additional mortgage would coincide with the term of the existing mortgage.

The Provider subsequently issued an **Offer of Additional Advance** dated **6 November 2001** to the Complainant which detailed as follows;

“1. Amount of Credit Advanced:	£18,000.00
2. Period of agreement:	20 years 0 months
...	
Interest Rate:	3.9900%
Amount and Term of Mortgage Protection Policy:	£18,000/ 20 years 0 months
Live or Lives Assured:	[the Complainant]

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



The **Special Conditions** attaching to the **Offer of Additional Advance** detail as follows;

“...

*The interest rate as quoted represents a reduction of 1.11% on the present [Provider] Variable Home Loan Rate. The [Provider] Variable Home Loan Rate less 1.11% will apply from initial date of drawdown of your mortgage until 31<sup>st</sup> August 2002 after which time your interest rate will revert to the then [Provider] Variable Home Loan Rate.*

*An additional life policy of £18,000 over twenty years to be in place prior to drawdown.”*

**Condition 2** of the **General Conditions** attached to the **Offer of Additional Advance** details as follows;

“...

*The monthly repayments will vary if changes in the Home Loan Interest Rate occur. Variations in [Provider] Home Loan Rate may occur at any time and notice of each variation will be published at least once in a national daily newspaper...”*

The Complainant signed the **Acceptance** attached to the **Offer of Additional Advance** on **9 November 2001**, in the presence of his solicitor, on the following terms;

*“1. I/We the undersigned accept the within Offer of Advance on the terms and conditions set out above and overleaf.”*

It is clear from the **Offer of Additional Advance** that the Provider offered the Complainant a discounted variable interest rate of 3.99% until **31 August 2002** after which the interest rate would revert to the Provider’s “*Variable Home Loan Rate*”. The Provider refers to its variable home loan rate as its “*standard variable rate*” in its submissions. The **Offer of Additional Advance** clearly sets out the nature of the variable rate to be one which may be increased or decreased by the Provider at any time. Again, I accept that the standard variable rate is the same as the “*Variable Home Loan Rate*”, that is a rate that can be adjusted by the Provider.

The particulars of the **Offer of Additional Advance** to include the applicable interest rate, were accepted by the Complainant by signing the **Acceptance** which was also signed and witnessed by the Complainant’s solicitor. Mortgage loan account ending **8431** was subsequently drawn down on **12 December 2001**. The initial discounted interest rate period ended on **31 August 2002** after which time mortgage loan account ending **8431**

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reverted to the Provider's standard variable rate and has since remained on this interest rate.

At the time the Complainant applied for the additional borrowings in **2001**, tracker interest rate products were on offer from the Provider. However, the Provider offered the Complainant its variable home loan interest rate in respect of the "top up" loan which could be increased or decreased by the Provider at any time. I note that there is no reference whatsoever to a tracker rate of interest in the loan documentation that issued to the Complainant in respect of mortgage loan account ending **8431**. Therefore the Complainant did not have a contractual entitlement to a tracker mortgage on foot of the **Offer of Additional Advance**. The Complainant appears to be of the view that he was told by the Provider that he had to "take the variable rate...instead of a tracker rate". It is important for the Complainant to understand that the decision as to what interest rate to select rested with him based on what suited his individual circumstances at the time. The Provider was under no obligation, contractually or otherwise, to offer the Complainant a tracker interest rate. If it was the case that the Complainant was of the view that the variable interest rate offered to him by way of the **Offer of Additional Advance** was not suitable for him, then the Complainant could have decided not to accept the **Offer of Additional Advance** and instead seek an alternative rate with the Provider or indeed another lender. However there is no evidence that the Complainant did so. Therefore, I have been provided with no evidence that the Complainant was compelled in any way to accept the variable interest rate that was offered to him.

The Complainant maintains that he requested a reduction in the interest rates applying to both mortgage loan accounts in **2015** but received no response from the Provider. The Provider states that it "has no record of having been contacted by the customer in September 2015 in relation to a request for a reduction of the interest rate on both mortgage sub-accounts. We apologise if the customer did contact the Bank and did not receive a response."

That said, I have reviewed a letter dated **21 September 2015** addressed to one of the Provider's branches and signed by the Complainant which has been submitted in evidence and furnished to the Provider. The letter dated **21 September 2015** refers to both mortgage loan account numbers and details as follows;

*"Dir Sir/Madam,*

*I wish to lodge an appeal about the amount of interest I am paying on the above mortgages. I am paying over 4 % on the above mortgages which I feel is way too high in this day and age especially when fixed rate mortgages and new mortgages have a lot lower interest rate. I feel I should only be one to two per cent.*

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*If you look back over my records you can see I have always paid my mortgage and you can also see the amount of interest I have paid to date on the above mortgages.*

*I am a loyal customer of yours for over twenty five years and have stayed with you through the good times and the bad. I hope you will look favourably on my request...."*

It is unfortunate that the Provider has not made any comments in relation to the contents of the above letter however I do not think that the Provider's observations in this regard are necessary to determine the complaints for adjudication. While the Complainant does not request the Provider to change the interest rate applicable to both mortgage loan accounts to another specific interest rate it is clear he is requesting a reduction in the interest rate that he is paying. The Complainant suggests that he feels that he should be paying "*one to two per cent*". If I am to accept that the Provider received the letter dated **21 September 2015**, then receipt of the letter would have warranted some form of contact by the Provider to the Complainant to clarify his request and furnish an appropriate response. However, the Provider submits that it has no record of receiving correspondence of this nature in **September 2015**. As such, I understand that both mortgage loan accounts remained on the Provider's standard variable home loan rate in accordance with the terms of the **Offer of Advance** and **Offer of Additional Advance**. The Complainant does not appear to have followed up on the matter.

The Complainant states as follows in his post Preliminary Decision submission dated **17 July 2020**;

*"I can't see how you could not accept that from 2015 I had contacted the bank on numerous occasions requesting a review of the rate I was paying and never got a response."*

For the avoidance of any doubt, I accept that the Complainant issued a letter dated **21 September 2015** to the Provider's branch seeking a reduction in interest from 4% to 1% - 2%. However that does not mean that the Provider was obliged to accede to the Complainant's request for a reduction in interest.

I further note that the Provider issued a letter to the Complainant dated **5 July 2017** noting the Complainant's current mortgage details at the time, and invited the Complainant to contact the Provider by telephone or to contact his local branch "*to discuss any alternative rates which may be more appropriate for you or could provide you with additional savings*". I have received no evidence of the Complainant having contacted the Provider on foot of this letter. Rather, the Complainant states that he received a letter from the Provider in **July 2017** "*about competitive rates*" but the Provider "*did nothing about it*". It

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is important for the Complainant to understand that it was up to him to respond to this communication by contacting the Provider to discuss and/or make changes to his mortgage arrangements if he so wished.

The above letters do not form part of the substantive complaints for adjudication, however, I consider it important to address those letters to fully understand the history of both mortgage loan accounts in light of the Complainant's request for compensation for "overcharging of mortgage rates" since the inception of both mortgage loan accounts.

I have been provided with no evidence that the Provider overcharged interest on the Complainant's mortgage loan accounts.

**The second issue to be determined is whether the Provider wrongfully required the Complainant to draw down a second mortgage loan account in October 2001, resulting in the Complainant drawing down two separate mortgage protection assurance policies.**

The Complainant takes issue with the fact that he was required to draw down a second mortgage loan account in relation to his additional borrowings. As outlined above, the Complainant applied for additional borrowings in **October 2001**. An **Offer of Additional Advance** dated **6 November 2001** subsequently issued to the Complainant, the terms of which were accepted by the Complainant on **9 November 2001**, and mortgage loan account ending **8431** was drawn down on **12 December 2001**. **General Condition 3(a)** of the **Offer of Additional Advance** dated **6 November 2001** provides that;

*"Where the existing Legal Mortgage is in favour of [Provider] (the Bank) it shall be available to the Bank for the Additional Advance as provided in the said Mortgage".*

Accordingly, I understand that both the original mortgage loan and the additional mortgage loan were secured against the Complainant's private dwelling house. The Provider has explained that its mortgage system did not allow for the additional borrowings to be added to the Complainant's original mortgage loan account ending **3386** which had already been drawn down some two years previous. It is clear from my review of the Complainant's loan documentation, as set out above, that the Complainant was required to undergo a separate underwriting process when drawing down the additional funds by completing a new application form and signing and accepting a separate offer of advance. I accept that in order to facilitate the drawdown of the additional borrowings, the Complainant was required to open a second mortgage loan account subject to credit criteria, eligibility and terms and conditions and that it was not possible to simply add the additional loan funds to his existing mortgage loan account. It is important for the Complainant to understand that the **Offer of Additional Advance** in relation to the additional borrowings issued to the Complainant on different terms and conditions to the

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original mortgage loan account ending **3386** which the Complainant accepted and agreed to. In particular, the interest rate applying to both loan amounts differed therefore the drawdown of the additional funds necessitated the opening of a second mortgage account ending **8431**.

The Complainant contends that, by having to draw down a second mortgage loan account, he has ended up paying for two separate mortgage protection assurance policies since **2001**. In this regard, it is important to consider the terms and conditions in relation to the requirement to draw down separate mortgage protection assurance policies in respect of each mortgage loan account.

**i. Mortgage loan account ending 3386**

The Complainant signed a declaration attaching to the **House Mortgage Application Form** on **18 May 1999** accepting the following;

*“The security for the loan will be a first legal mortgage over the property shown in Part D of the application. The Lender’s standard mortgage document will be used and the mortgage will be as security for my/our House Loan(s) and in addition, for all my/our present and future liabilities to the Lender howsoever incurred.*

*Additional security will be:*

*....*

*(a) in the case of a repayment mortgage, an assignment of an acceptable mortgage protection policy providing sufficient death cover for the amount and term of the loan or.....”*

The particulars of the **Offer of Advance** dated **25 May 1999** include the following reference to the amount and term of mortgage protection;

*“Amount and Term of Mortgage Protection: £45,000.00/ 20 years  
Life or Lives Assured: [the Complainant]”*

**General Condition 4(d)** of the **Offer of Advance** dated **25 May 1999** in respect of mortgage loan account ending **3386**, details as follows;

*“4) Before the Advance is drawn down the following requirements must be complied with;*

*...*

*(d) Mortgage Protection Assurance/Level Term Assurance: In the case of non-endowment linked mortgages, Mortgage Protection Assurance or Level*

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*Term Assurance in the amount and for the term of the advance as specified overleaf must be effected and the benefit thereof assigned to the Bank. The Policy(ies) will be held by the Bank."*

It is clear from the **House Mortgage Application Form** that the Complainant accepted that additional security in the form of an acceptable mortgage protection policy was a prerequisite to the drawdown of mortgage loan account ending **3386**. In addition, the Complainant signed and accepted the conditions attaching to the **Offer of Advance** whereby he agreed, in the presence of his solicitor, to assign the benefit of a mortgage protection assurance policy in the amount of £45,000.00 for a term of 20 years in line with the particulars of the **Offer of Advance**.

ii. **Mortgage loan account ending 8134:**

**Part F** of the **Home Loan Application for Additional Mortgage** signed by the Complainant on **12 October 2001** for mortgage loan account ending **8134** details as follows;

"...

***Your Life Assurance Requirements***

***It may be necessary to increase the amount of your existing life cover over this additional borrowing.***

*Would you like to receive advice on our range of mortgage protection plans?"[my emphasis]*

I note that the Complainant did not tick the box to request to receive advice on the Provider's range of mortgage protection plans however it is clear that the additional mortgage application alerted the Complainant that it may be necessary for him to increase the amount of his existing life cover.

The **Special Conditions** of the **Offer of Additional Advance** dated **6 November 2001**, detail as follows;

*"An additional life policy of £18,000 over twenty years to be in place prior to [drawdown]."*

**General Condition 3(d)** of the **Offer of Additional Advance** dated **6 November 2001**, details as follows;

*"Before the Additional Advance is drawn down the following requirements must be complied with:*

...

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*(d) Mortgage Protection Assurance/Level Term Assurance – In the case of non-endowment linked mortgages, Mortgage Protection Assurance or Level Term Assurance in the amount and for the term of the Advance as specified in this document must be effected and the benefit thereof assigned to the Bank. The policy(ies) will be held by the Bank.”*

The **Special Conditions** of the **Offer of Additional Advance** are clear and unambiguous as to the onus on the Complainant to put in place an additional life policy in the amount of £18,000 for a term of 20 years. Equally, the **General Conditions** are clear as to the requirement for mortgage protection assurance or level term assurance in respect of the additional borrowings. As outlined above, the Complainant accepted the **Offer of Additional Advance** dated **6 November 2001** and the conditions referred to therein by signing the **Acceptance** in the presence of his solicitor. Therefore, I accept that the Complainant was informed that an additional life policy was necessary during the application process for the additional borrowings and when the Provider issued the **Offer of Additional Advance** which the Complainant duly accepted. If the Complainant was not satisfied with drawing down the additional borrowings subject to this requirement, he was could have decided not to sign the **Offer of Additional Advance** and draw down the additional mortgage loan however the Complainant did not do so. I note the amount of cover sought in relation to life cover by the Provider did not exceed the amount borrowed by the Complainant.

Having considered the mortgage loan documentation in respect of both mortgage loan accounts, I do not accept that the Provider incorrectly failed to offer the Complainant a tracker rate option at the inception of either of the mortgage loan accounts. In addition, I do not believe that the Provider wrongfully required the Complainant to draw down a separate mortgage loan account when he applied for additional borrowings in **October 2001**. Further, I do not believe that the Complainant was unjustly required to take out two separate mortgage protection assurance policies in respect of each mortgage loan account.

For the above reasons, 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.**

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**GER DEERING**  
**FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

26 August 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.