



<u>Decision Ref:</u>	2020-0379
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Tracker Mortgage
<u>Conduct(s) complained of:</u>	Failure to offer a tracker rate throughout the life of the mortgage
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

This complaint relates to mortgage loan account ending **5439** held by the Complainant with the Provider. The mortgage loan account is secured on the Complainant's private dwelling house.

The Complainant has had a number of mortgage loans with the Provider as follows:

- The Complainant drew down mortgage loan account ending **1967** in the amount of €275,000 on **31 July 2006**, on a tracker interest rate. This mortgage loan was redeemed in full in **December 2007** from the proceeds of mortgage loan account ending **2641**.
- The Complainant drew down mortgage loan account ending **2641** in the amount of €240,000 on **10 December 2007**, on a staff discounted variable rate, and a second mortgage loan account ending **2668** in the amount of €67,000, on a tracker interest rate, also on **10 December 2007**. Mortgage loan account ending **2641** was redeemed in full in **April 2009** from the proceeds of mortgage loan account ending **5439**.

- The Complainant drew down mortgage loan account ending **5439** (the mortgage loan account the subject of this complaint) on **20 April 2009**, on the Provider's standard variable rate.

The Complainant's Case

The Complainant outlines that he took out a tracker mortgage with the Provider in **August 2006** and was happy with this product.

The Complainant details that it was suggested to him in **2007** or **2008** by an employee of the Provider to move from a tracker interest rate to the staff discounted rate and that he did not seek to switch from his tracker mortgage. The Complainant outlines that he cannot be certain whether this was a deliberate act on the part of the Provider to remove the product or "*...whether it was merely negligent, ill-thought advice provided by them*". The Complainant details that when he moved "*off the tracker*", it was not explained to him that he would be unable to "*go back on the tracker at a later date*". The Complainant submits that he assumed he would be able to switch back to a tracker product at any time.

The Complainant further outlines that the Provider did not follow all of the correct "*KYC [Know your Customer] and CPC [Consumer Protection Code]*" protocols during the transfer from the tracker interest rate to the staff discounted rate. The Complainant submits that the consequences of switching from the tracker rate to the staff rate were not explained to him in **July 2007**. He submits "*For example, having never availed of such a product before, I was unaware that this incurred benefit in kind taxation. I also assumed I would be able to switch back to the tracker product at any time.*"

The Complainant submits that when "*...it became clear that the beneficial rate was subsequently 'out the money', the Bank*" did not give the Complainant the option to move back to the former tracker rate. The Complainant details that the Provider should have approached him prior to withdrawing tracker interest rates in **October 2008** to see whether or not he would like to make another "*determination on [his] borrowing rate structure*". The Complainant submits that this did not occur and that there was no notice or consultation that the tracker rate would no longer be available. The Complainant details that the tracker interest rate was "*withdrawn, effectively, in secret*".

The Complainant details that there was no consultation nor notice that the tracker interest rate would no longer be available and was withdrawn "*effectively, without notice*" to the Complainant.

The Complainant outlines that not having the opportunity to seek further financial advice prior to the withdrawal of the tracker interest rate in **October 2008** has left him at "*...a*

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significant financial disadvantage". The Complainant details that if he had known that the tracker interest rate was no longer going to be available, then he would have had the opportunity to seek financial advice and make a decision as to whether to revert to his original tracker interest rate or not.

The Complainant contends that the Provider offering him "*the switch back would have been a simple process for [the Provider] by 'topping up' [his] loan account*".

The Complainant details that he understands that tracker rate borrowers who switched from a tracker interest rate to a fixed interest rate, and have since come off the fixed rate are now being "*...recompensed because they were not restored to their original tracker rate*". The Complainant details that he does not see why coming off a staff rate is any different. The Complainant outlines that he has "*...effectively been treated differently from other borrowers merely because [he] was a member of staff*". The Complaint details that he believes that this is an infringement of his consumer and civil rights. The Complainant outlines that he should have been offered the opportunity to revert the mortgage account ending **2641** to the tracker rate when the staff rate was no longer beneficial. He submits that this was "*common practice in the industry*".

The Complainant submits that he was previously an employee of the Provider, and left in **2011**. The Complainant outlines that it did not "*...seem feasible to raise a complaint*" whilst still employed by the Provider.

The Complainant outlines that when he made a complaint to the Provider, it failed to respond to him within 40 working days. The Complainant details that he believes that the Provider does not want to look into his case as it "*will result in a material level of compensation*" being paid to him. The Complainant submits that the Provider refuses to discuss any aspects of the complaint he raised.

The Complainant details that as a result of being charged the higher interest rate, he has forgone personal expenditure, savings and investments as he has attempted to reduce the capital sum owing in order to reduce his interest bill.

The Complainant is seeking to have a tracker interest rate "*restored*" to mortgage loan account ending **5439**.

The Provider's Case

The Provider outlines that the Complainant drew down mortgage loan account ending **1967** on **31 July 2006** in the amount of €275,000 on a tracker interest rate.

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The Provider details that in **2007**, the Complainant sought additional funds in order to complete renovations on his family home. The Provider submits that it issued credit approval in the amount of €316,000 on a tracker interest rate.

The Provider outlines that if this was drawn down, it would repay and replace mortgage loan account ending **1967** in full.

The Provider details that following the issuance of the credit approval on a tracker interest rate, the Complainant did not wish to proceed to drawdown and instead instructed the Provider that he instead wished to avail of a staff discount variable rate home loan. The Provider submits that there was a limit of three times the staff's salary for staff borrowings, so the Complainant sought a second separate loan in order to acquire the additional funds needed.

The Provider outlines that it received an email from the Complainant on **27 June 2007**, which the Provider submits demonstrates that the Complainant was fully aware of benefit in kind taxation prior to drawing down mortgage loan account ending **2641** on the staff discounted rate. The Provider outlines that this email also demonstrates that the Complainant had "*...clearly researched and reviewed the benefits of the staff discount loan and he was of the view that this loan product would be advantageous to him*". The Provider submits that the Complainant, in the course of his role within the Provider, would have been well aware of the products available and the terms and conditions attaching to them as "*...it was necessary to carry out his duties*".

The Provider notes that the email dated **27 June 2007** references a conversation with one of the Complainant's colleagues and details that both the Complainant and that this colleague were employed in the same credit services division within the Provider, and this colleague was not employed as a home loan mortgage advisor. The Provider submits that the Complainant was a "*senior manager*" in the Provider's "*Specialised Credit Services division*" and had clearly carried out his own investigations into the suitability of availing of the staff discount loan and was fully aware of the type of product he drew down.

The Provider submits that on **05 July 2007**, two separate credit approvals issued – mortgage loan account ending **2641** in the amount of €240,000 on the staff discounted variable rate and mortgage loan account ending **2668** in the amount of €67,000 on the ECB tracker interest rate. The Provider details that mortgage loan account ending **2641** was not on a tracker interest rate nor was there any contractual or regulatory entitlement to a tracker interest rate on it.

The Provider outlines that it issued the Complainant with a Financial Summary Document dated **05 July 2007** in respect of mortgage loan account ending **2641** which confirmed that mortgage loan account was a staff mortgage of 3.50%.

The Provider outlines that it issued the Complainant with a facility letter dated **09 July 2007** which confirmed that mortgage loan account ending **2641** was a variable rate loan, and contends that together with the Financial Summary Document, it was sufficiently clear and transparent that the Complainant has no contractual or regulatory entitlement to an ECB tracker interest rate.

The Provider outlines that both mortgage loan account ending **2641** and ending **2668** were drawn down on **10 December 2007**.

The Provider details that as a senior manager in its credit division, the Complainant was fully aware that a new internal credit application had to be approved prior to the issuance of each new loan, prior to the drawdown a Financial Summary document and Facility letter are issued and post drawdown the Complainant was issued with annual bank statements confirming the product and interest rates applied to each loan. The Provider details that the Complainant was fully aware of the product he was availing of.

The Provider details that it ceased offering tracker interest rates as a new product in **October 2008**. The Provider submits that there is no obligation on the Provider to contact all customers when a particular product is being withdrawn in circumstances where the withdrawal does not affect the contractual rights of a customer which are governed by the terms and conditions applicable to a particular mortgage loan. The Provider outlines that post **October 2008**, only customers who had a pre-existing contractual entitlement could avail of a tracker interest rate. The Provider outlines that the Complainant did not have this on mortgage loan account ending **2641**. The Provider submits that as a senior financial services employee, the Complainant "*...will be well aware that lending institutions withdraw products and introduce new products to the market continually*".

The Provider details that in **February 2009**, its standard variable rate decreased and there was a minimum interest rate of 3.5% on staff discount loans, in addition to the fact that benefit in kind taxation was payable, many of its staff were of the view that the staff discounted variable rate was no longer beneficial to them.

The Provider details that in **April 2009** the Complainant sought a new standard variable rate loan as he believed that the staff discount rate was no longer beneficial to him "*...given that the staff discount minimum was 3.5%*". The Provider submits that it was the Complainant's opinion that the staff discounted variable rate was no longer beneficial to him and not based on any advice from the Provider. The Provider outlines that it does not

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offer advice to staff members on benefits or otherwise of staff rates. It details that the decision whether or not to remain on a staff rate is entirely a matter for individual staff members.

The Provider outlines that the Complainant submitted a credit application dated **08 April 2009** which stated that due to recent rate changes, the Complainant was “...looking to change from this position to standard commercial rates”.

The Provider details that the Complainant was not offered a tracker interest rate as the product had already been withdrawn in October 2008. The Provider submits that the Complainant’s credit application was approved and on **20 April 2009**, the Complainant drew down mortgage loan account ending **5439** (the mortgage loan account the subject of this complaint) on the Provider’s standard variable rate. The Provider outlines that mortgage loan account ending **5439** repaid and replaced mortgage loan account ending **2641** in full.

The Provider submits that it notified the Complainant by way of letter dated **18 October 2017** that it intended to transfer mortgage loan account ending **5439** to another Provider

The Complaints for Adjudication

The complaints for adjudication are as follows:

- a) The Provider failed to inform the Complainant in **July 2007** that by applying the staff discounted variable rate to mortgage account ending **2641**, he would be unable to revert that account to a tracker interest rate in the future;
- b) The Provider failed to inform the Complainant when it withdrew tracker interest rates from the market in **October 2008**; and
- c) The Provider failed to offer the Complainant the opportunity to revert his mortgage account ending **2641** to the tracker interest rate when the staff rate was no longer beneficial in **April 2009**.

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 Complainant was given the opportunity to see the Provider’s

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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 7 October 2020, outlining my preliminary determination 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, I set out below my final determination.

In order to determine this complaint it is necessary to review the mortgage loan documentation with respect to mortgage loan account ending **1967, 2641** and **5439** and to set out the interactions between the Provider and the Complainant between **2006** and **2009**.

A Housing Loan Agreement in respect of mortgage loan account ending **1967** issued to the Complainant on **13 July 2006**. The Complainant's mortgage loan documentation comprises of the **Housing Loan Agreement** headed **ECB Tracker Variable Rate Home Loan** and the **General Conditions for Annuity Home Loans**. The following are extracts from the mortgage loan documentation relevant to the Complainant's complaint.

- **The ECB Tracker Variable Rate Home Loan**

The **ECB Tracker Variable Rate Home Loan** issued by the Provider to the Complainant dated **13 July 2006**. The *"important information"* section on **page 1** included the following;

"Amount of credit advanced:

EUR 275,000.00

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*Period of Agreement: 25 years 1 month(s) from drawdown****

Number of Repayment Instalments: 299 plus any final balance.

*Amount of Each Instalment: 299 payment(s) of EUR 1,415.47
1 payment(s) of EUR 1,412.39*

...

APR: 3.81% variable*

...

**Annual Percentage Rate of Charge"*

The "**Schedule**" section on **page 2** of the **ECB Tracker Variable Rate Home Loan** detailed as follows;

"Purpose of the Loan:

Home Purchase, as specified in your Loan Application

Property to be mortgaged (the "Property"):

[the Complainant's named primary residence]

Latest Drawdown Date: 13 October 2006

Rate of Interest: 3.74% per annum, variable. Linked to the ECB Refinance Rate.

...

Security: A first legal mortgage over the Property. (An existing 'all sums' first legal mortgage over the Property in our favour will satisfy this, but you must pay the stamp duty on it (if any) required to cover the increased sum lent)

...

Assignment over Life Insurance.

...

Guarantee EUR 275000.00

Type: Individual guarantee "

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Condition 12.2 of the **General Conditions for Annuity Home Loans** details the followings:

"If the Loan is an ECB Tracker Variable Rate Home Loan, then the interest rate is linked to the ECB Refinance Rate.

The rate of interest specified in the Schedule is the rate applicable to the Loan at the date of the facility letter, and it represents the sum of the ECB Refinance Rate on that date and an agreed margin ("the ECB rate margin"). The ECB Refinance Rate is subject to variation, and the rate of interest applicable to the Loan shall be the ECB rate margin added to the ECB Refinance Rate from time to time, and shall vary accordingly."

I understand that at the time this mortgage loan was drawn down the ECB Base rate was 2.75%. In these circumstances it appears that the applicable tracker interest rate was ECB + 0.99%.

The "**Acceptance and Authority**" section on **page 4** of the **ECB Tracker Variable Rate Home Loan** detailed as follows;

"WARNING – THIS IS AN IMPORTANT LEGAL DOCUMENT AND YOU ARE STRONGLY ADVISED TO SEEK INDEPENDENT LEGAL ADVICE BEFORE YOU SIGN YOUR ACCEPTANCE

*I/We have read and understand the nature and contents of this Loan Agreement
I/We agree to be bound by this Loan Agreement*

Where applicable I/We irrevocably authorise my/our solicitor to give the undertaking(s) referred to in clause 3 of the General Conditions and I/We irrevocably authorise you to pay the Loan through my/our Solicitor (unless another mode of payment is agreed by my/our Solicitor)."

The "**Acceptance and Authority**" has been signed by an "Authorised Official" of the Provider on **13 July 2006**, but does not appear to have been signed by the Complainant. The Provider has not offered this office any reason why it does not hold a signed copy of the **ECB Tracker Variable Rate Home Loan** dated **13 July 2006**. However, it is not disputed between the parties that the terms of this loan were accepted at the time.

The Provider has submitted into evidence an email from the Complainant to the Provider dated **23 May 2007**, which details as follows:

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“ ...

I possibly require to make a change to my mortgage. The reason being two-fold.

- 1. We are extending the property. There is cash available if required.*
- 2. We wish to take advantage of the LTV mortgage”*

...

Therefore, to qualify for LTV mortgage, borrowing to be sub €320k.

Cash will be available if the end valuation does not meet expected value to bring LTV sub 80%.”

The Provider has submitted into evidence a **credit application** dated **11 June 2007** which details the following:

“ ...

Application for EUR 316,000.00 Base Rate Tracker Var. Home Loan [Redacted]

New collateral: Mortgage on real property TEUR 275 guarantee

...

Comments:

...

Branch fully support application for many reasons. [Complainant] is a staff member on very strong salary which is mandated this showing adequate disposable income”.

The Provider has submitted into evidence an email from the Complainant to the Provider dated **27 June 2007**, which details as follows:

“

- 3. With that in mind, I may now need new loan papers. [Redacted Provider Staff Name] (personal credit) has advised me of a staff loan rate which is still in effect and that I should avail of this. Rate is 60% of normal variable rate subject to a floor of 3.5%. With BIK in mind, it is still advantageous. It is subject to 3 times salary (€240k), though the accepted work around is to draw a staff loan and a second smaller commercial loan for the balance (€67k). Can we discuss, please. Thanks.”*

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A letter issued by the Provider to the Complainant on **05 July 2007**, which was **11 pages** in total and was headed **“Final Financial Summary”**. The **Final Financial Summary** does not appear to have been signed by the Complainant.

Page 2 of the **Final Financial Summary** details, as follows.

“Staff Mortgage of 3.50% to take over existing mortgage. This application will cover exposure up to three times salary – second application required for shortfall of Eur67k”.

Page 3 of the **Final Financial Summary** details, as follows;

Home Loan Questions and Answers	
<i>Borrower type</i>	<i>Re- mortgage/switcher</i>
<i>Type of Property</i>	<i>Main Residence</i>
<i>Loan purpose</i>	<i>Home improvement</i>
<i>What is the value of the property you wish to obtain the mortgage on?</i>	<i>EUR 390,000.00</i>
<i>What is the purchase price?</i>	<i>EUR 0.00</i>
<i>How much do you wish to borrow?</i>	<i>EUR 67,000.00</i>
<i>Please provide a detailed breakdown including figures on how this loan is made up</i>	
<i>Eur67k application to be included with application for [sic] staff mortgage of Eur240k (preferential rates) Total exposure Eur 307k</i>	
<i>What is your preferred loan repayment term?</i>	<i>20 years 0 months</i>
<i>Is there any other information which is relevant to your application?</i>	
<i>n/a</i>	

Page 5 of the **Final Financial Summary** details, as follows;

“During our meeting I explained to you that the [Provider] can provide you with advice on Life and Specified Illness Insurance, Repayment Protection Insurance and Home Insurance Cover in relation to the Home Loan you have chosen.

...”

It appears to me from the **Final Financial Summary** document that the Complainant met with the Provider at some point to discuss his mortgage loan application.

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This office has not been provided with minutes of any such meeting. However, it does not appear to be in dispute that a meeting of some nature took place, at which, the Complainant and the Provider discussed the Complainant's new lending requirements.

The Provider has submitted into evidence a **credit application** dated **05 July 2007** which details the following:

" ...

Application for EUR 240,000.00 Variable Rate Home Loan [Redacted]

New collateral: TEUR 75 guarantee Mortgage on real property

...

Comments:

...

Branch fully support application for many reasons. [Complainant] is a staff member on very strong salary which is mandated this showing adequate disposable income. Accounts operated in an exemplary manner. Strong security held".

The evidence is clear that at this time, the Complainant wished to borrow more money from the Provider for the purposes of carrying out home improvements. The evidence shows that the Complainant was initially exploring the option of a Loan to Value mortgage and the initial credit application from **June 2007**, proceeded on the basis of a tracker interest rate applying to the entire sum sought of €316,000. It appears that by **27 June 2007**, the Complainant had discussed the matter with a colleague and had decided to take out a new loan on the staff interest rate for €240,000 and the balance above the ceiling eligible for the staff rate, to be by way of separate mortgage loan for €67,000. The consequence of this, when implemented, being that the mortgage loan ending in **1967** would be redeemed and the entitlement to a tracker interest rate of ECB + 0.99% under mortgage loan account ending **1967** which he had taken out in the amount of €275,000 in **July 2006** would come to an end.

The evidence does not support the Complainant's submissions that he was not aware of the consequences of seeking a staff interest rate mortgage loan in **2007**. The evidence also does not support the Complainant's submission that he was not aware of the benefit in kind consequences of seeking a staff interest rate mortgage loan.

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The Complainant's email of **27 June 2007** specifically refers to the Complainant having considered the benefit in kind consequences and favouring the rate having taken this into account. I note he outlines "*With BIK in mind, it is still advantageous*".

The evidence shows that the transaction that the Complainant was seeking to enter in **July 2007**, was more complicated than the application of a staff rate to his existing lending of €275,000 with the Provider. The Complainant was seeking additional borrowings of circa €32,000 and a restructure of that lending such that €240,000 was subject to the staff rate and €67,000 was the subject of commercial rates. I understand that a tracker interest rate of 4.58% (ECB at the time was 4.00% + 0.58%) applied to the €67,000 portion of the mortgage loan under account ending **2668**.

The Complainant himself in his email of **27 June 2007** referred to "*new loan papers*". It appears to me that the "work around" referred to by the Complainant in his email of 27 June 2007, was to address the fact that there was a cap on the borrowing on the staff rate of €240,000. This did not align with the borrowing that the Complainant had on his then existing loan account ending 1967 of €275,000. The Complainant then refers to "*draw a staff loan and a second smaller commercial loan for the balance (€67k)*". I also note that the Complainant was a Senior Manager in the Provider's Specialised Credit Services division at the time.

The **Final Financial Summary** refers to a *Re-mortgage/switcher* and "*Staff Mortgage of 3.50% to take over existing mortgage*". I note that there is no specific reference to the redemption of mortgage loan account ending **1967**, which I would expect to be specifically outlined as an action as part of the overall transaction taking place at the time. However, in any event, it is clear from the contemporaneous evidence that the Complainant was aware that in order to increase his borrowings and avail of the staff variable rate on €240,000 of his lending that mortgage loan account ending **1967** would be redeemed from the proceeds of the new mortgage loans under accounts ending **2641** and **2668**.

A Housing Loan Agreement in respect of mortgage loan account ending **2641** issued to the Complainant on **09 July 2007**. The Complainant's mortgage loan documentation comprises the **Housing Loan Agreement** headed **Variable Rate Home Loan** and the **General Conditions for Annuity Home Loans**. The following are extracts from the mortgage loan documentation and are relevant to the Complainant's complaint.

- **The Variable Rate Home Loan**

The **Variable Rate Home Loan** issued by the Provider to the Complainant dated **09 July 2007**. The **“important information”** section on **page 1** included the following;

*“Amount of credit advanced: EUR 240,000.00
Period of Agreement: 20 years 2 month(s) from drawdown***
Number of Repayment Instalments: 239 plus any final balance.
Amount of Each Instalment: 239 payment(s) of EUR 1,635.30
1 payment(s) of EUR 1,634.99
...
APR*: 5.48% variable
...
Annual Percentage Rate of Charge”

The **“Schedule”** section on **page 2** of the **Variable Rate Home Loan** detailed as follows;

*“Purpose of the Loan:
Other expenditure or where a combination of facilities is involved, as specified in your
Loan Application*

*Property to be mortgaged (the “Property”):
[the Complainant’s named primary residence]*

Latest Drawdown Date: 9 October 2007

Rate of Interest: 5.34% per annum, variable

*...
Security: A first legal mortgage over the Property. (An existing ‘all sums’ first legal
mortgage over the Property in our favour will satisfy this, but you must pay the
stamp duty on it (if any) required to cover the increased sum lent)*

Assignment over Life Insurance.

...

*Guarantee EUR 275000.00
Type: Individual guarantee”*

Condition 12.1 of the **General Conditions for Annuity Home Loans** details that *“If the Loan is a variable rate loan which is not linked to the ECB Refinance rate, the rate of interest applicable to the Loan will be our applicable variable home loan rate.....Our variable home loan rate is subject to variation from time to time in response to market conditions...”*

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The “**Acceptance and Authority**” section on **page 4** of the **Variable Rate Home Loan** detailed as follows;

“WARNING – THIS IS AN IMPORTANT LEGAL DOCUMENT AND YOU ARE STRONGLY ADVISED TO SEEK INDEPENDENT LEGAL ADVICE BEFORE YOU SIGN YOUR ACCEPTANCE

*I/We have read and understand the nature and contents of this Loan Agreement
I/We agree to be bound by this Loan Agreement
Where applicable I/We irrevocably authorise my/our solicitor to give the undertaking(s) referred to in clause 3 of the General Conditions and I/We irrevocably authorise you to pay the Loan through my/our Solicitor (unless another mode of payment is agreed by my/our Solicitor).”*

The “**Acceptance and Authority**” does not appear to have been signed by the Complainant. The Provider has not offered this office any reason why it does not hold a signed copy of the **Variable Rate Home Loan** dated **09 July 2007**. When asked by this office whether the Complainant was required to sign anything in order to convert a portion of the Complainant’s mortgage to a Staff Home Loan in July 2007, the Provider refers to this facility letter and the **Final Financial Summary**. It is not disputed between the parties that the terms of this loan were accepted by the Complainant at the time.

Mortgage loan account ending **2641** was drawn down on **10 December 2007**.

It is clear to me that the **Variable Rate Home Loan** and the **General Conditions for Annuity Home Loans** conditions, envisaged that a variable rate would apply to the mortgage loan account. The terms and conditions of the mortgage loan did not link the variable interest rate to an ECB rate.

Again I note that the conditions of the **Variable Rate Home Loan** do not stipulate that mortgage loan account ending **1967** would be redeemed in full. In these circumstances, I accept that there was room for some uncertainty as to the status of mortgage account ending **1967** at that time mortgage account ending **2641** was signed and drawn down.

However in order for the Complainant to increase his borrowings and avail of the staff variable rate on €240,000 of his new lending, it was evident that mortgage loan account ending **1967** would be redeemed from the proceeds of the new mortgage loans under accounts ending **2641** and **2668** at the time the funds were drawn down.

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In the circumstances of this particular matter I do not accept that it was reasonable of the Complainant to assume that the entitlement to a tracker interest rate of ECB + 0.99% which was held on mortgage loan account ending **1967** which had been taken out for the sum of €275,000 would continue to apply to the new mortgage loan under account ending **2641** which had been taken out for the sum of €240,000 and was the subject of entirely different terms. The Complainant sought and accepted two new mortgage loans (accounts ending **2641** and **2668**) at that time on different terms to the original loan (account ending **1967**).

The Complainant takes issue with the Provider's conduct in withdrawing tracker interest rates in **October 2008**. The Complainant details that the Provider should have approached him prior to withdrawing tracker interest rates to see whether or not he would like to make another "*determination on [his] borrowing rate structure*". The Complainant submits that this did not occur and that there was no notice or consultation that the tracker rate would no longer be available.

There was no obligation on the Provider to specifically inform the Complainant that tracker interest rates were going to be withdrawn as a product option on offer generally by the Provider in or around **October 2008** or query with him whether he wished to make any changes to the interest rate applying to mortgage loan account ending **2641** in advance of the withdrawal. The Complainant did not have any contractual entitlement to a tracker interest rate on mortgage loan account ending **2641** and the withdrawal of the tracker interest rate product did not affect the Complainant's entitlements on his mortgage loan account ending **2641**.

The Complainant also submits that the Provider should have offered the Complainant the opportunity to apply a tracker interest rate to his mortgage account ending **2641** when the staff rate was no longer beneficial in **April 2009**. He details that this was common practice in the industry at the time.

The Provider has submitted into evidence a **credit application** dated **08 April 2009** which details the following:

" ...

Application for EUR 228,750.00 Variable Rate Home Loan [Redacted]

...

Comments:

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[The Complainant] is a member of Staff in Specialised Credit for the past three years. He is presently on a Staff mortgage paying 3.5% - svr floor on staff rates. Due to recent changes [the Complainant] believes that this circumstance is no longer beneficial so therefore is looking to change from this position to standard commercial rates. Present SVR on PPR's is 3.65% - this position will also change over the coming weeks as SVR will amend to 3.40% at the end of the month.

...

This application is only for an Internal Transfer – there is no request for additional funds or increase to term

...

This is an Internal Product change – [the Complainant's] original sanction was in July 2007 – no request for additional funds or term – this is purely to amend from staff rate to commercial to avoid increasing BIK costs”.

A Housing Loan Agreement in respect of mortgage loan account ending **5439** issued to the Complainant on **08 April 2009**. The Complainant's mortgage loan documentation comprises of the **Housing Loan Agreement** headed **Variable Rate Home Loan** and the **General Conditions for Annuity Home Loans**. The following are extracts from the mortgage loan documentation relevant to the Complainant's complaint.

- **The Variable Rate Home Loan**

The **Variable Rate Home Loan** issued by the Provider to the Complainant dated **08 April 2009**. The **“important information”** section on **page 1** included the following;

<i>“Amount of credit advanced:</i>	<i>EUR 228,750.00</i>
<i>Period of Agreement: 18 years 9 month(s) from drawdown***</i>	
<i>Number of Repayment Instalments:</i>	<i>223 plus any final balance.</i>
<i>Amount of Each Instalment:</i>	<i>223 payment(s) of EUR 1,410.18</i>
	<i>1 payment(s) of EUR 1,407.74</i>

...

APR: 3.72% variable*

...

**Annual Percentage Rate of Charge”*

/Cont'd...

The “**Schedule**” section on **page 2** of the **Variable Rate Home Loan** detailed as follows;

“Purpose of the Loan:

Internal Transfer, as specified in your Loan Application

Property to be mortgaged (the “Property”):

[the Complainant’s named primary residence]

Latest Drawdown Date: 8 July 2009

Rate of Interest: 3.65% per annum.

...

Security: A first legal mortgage over the Property. (An existing ‘all sums’ first legal mortgage over the Property in our favour will satisfy this, but you must pay the stamp duty on it (if any) required to cover the increased sum lent)”

The “**Acceptance and Authority**” section on **page 4** of the **Variable Rate Home Loan** detailed as follows;

“WARNING – THIS IS AN IMPORTANT LEGAL DOCUMENT AND YOU ARE STRONGLY ADVISED TO SEEK INDEPENDENT LEGAL ADVICE BEFORE YOU SIGN YOUR ACCEPTANCE

I/We have read and understand the nature and contents of this Loan Agreement

I/We agree to be bound by this Loan Agreement

Where applicable I/We irrevocably authorise my/our solicitor to give the undertaking(s) referred to in clause 3 of the General Conditions and I/We irrevocably authorise you to pay the Loan through my/our Solicitor (unless another mode of payment is agreed by my/our Solicitor).”

The “**Acceptance and Authority**” does not appear to have been signed by the Complainant. The Provider has not given this office any reason why it does not hold a signed copy of the **Variable Rate Home Loan** dated **08 April 2009**.

It is unclear why a new mortgage loan issued at this time, in circumstances where the **credit application** clearly outlined that this was “*an Internal Product change*” and there was “*no request for additional funds or term – this is purely to amend from staff rate to commercial to avoid increasing BIK costs*”. However, it is not disputed between the parties that the terms of this loan were accepted at the time.

/Cont’d...

In any event there was no obligation on the Provider to offer the Complainant a tracker interest rate at the time in **April 2009**. I understand that the Provider was no longer offering tracker interest rates as a new product option at the time. The fact that the Complainant's initial mortgage loan account ending **1967** was on a tracker interest rate of ECB + 0.99% did not entitle the Complainant to a tracker interest rate on mortgage loan account ending **2641** or **5439**. Mortgage loan account ending **1967** had been redeemed in **December 2007**, when the Complainant re-structured his borrowings and sought two new loans, one on a staff variable rate and the second on a tracker rate of 4.58% (ECB + 0.58%).

For the reasons outlined in this Decision, I do not uphold this complaint.

Conclusion

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is rejected.

The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.



**GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

29 October 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,

/Cont'd...

and

(b) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.

