



<b><u>Decision Ref:</u></b>	2020-0382
<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 at point of sale
<b><u>Outcome:</u></b>	Partially upheld

### **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 loan amount was €142,600 and the term of the loan was 30 years. The particulars of the mortgage loan offer accepted by the Complainants on **01 June 2004** detailed that the loan type was a "1 Year Fixed Rate Home Loan". A tracker interest rate of ECB + 1.25% was subsequently applied to the mortgage loan and continued to apply to the mortgage loan until the mortgage loan was redeemed in **December 2014**.

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

The Complainants' mortgage loan account was drawn down subject to a one year fixed rate of 2.54%. A tracker interest rate of ECB + 1.25% was subsequently applied to the mortgage loan. The applicable interest rate in **April 2014** was a tracker interest rate of ECB + 1.25%.

The Complainants outline that they made a decision to build a new house as they were given a free site by the First Complainant's parents. The Complainants detail that they

entered into discussions with the Provider with regards to financing the building of a new house in **April 2014**.

The Complainants submit that during their discussions with the Provider, the Complainants proposed two options:-

*“1. To keep existing property and take out a new mortgage for new build*

*2. To sell existing property and transfer tracker mortgage with a loan top up for funds required.”*

The Complainants state that an employee of the Provider advised the Complainants that the first option was not feasible. The Complainants detail that although there was rental income, the fact that there was only one wage was a major factor.

The Complainants submit that they were advised that the second option was “good” as they had over €40,000 in savings and had a free site to build on. The Complainants detail that they were advised that the “*tracker mortgage could be transferred to the new property however the rate would be plus 1% of the tracker rate on the interest rate*” and that the additional top up loan would be subject to a standard variable rate. The Complainants submit that they relied on this advice and proceeded to sell their property.

The Complainants submit that they were advised by the Provider that the only option was to sell their existing property. The Complainants submit that the employee of the Provider “*did not directly tell [the Complainants] to sell the property but [the employee of the Provider] advised [the Complainants] that [they] could only get the mortgage when house was sold.*”

The Complainants state that they contacted the Provider after the sale of the property and they were “*told ‘things have changed in Dublin’. They were only offering us €120k instead of the €200k as advised.*”

The Complainants state that “*[the Provider] misinformed [the Complainants] regarding [their] options*”.

The Complainants submit that they entered into an arrangement with a building contractor for the new build prior to the Provider’s rejection of the requested mortgage. The Complainants submit that as a result they “*had to source a mortgage from a different financial institution at a higher rate as [the Complainants] lost [their] tracker rate*”.

The conduct complained of is that the Provider incorrectly advised the Complainants regarding their mortgage loan account which has resulted in the Complainants losing their tracker rate mortgage loan with the Provider in **2014**.

The Complainants are seeking reimbursement for the difference in the tracker mortgage they would have been repaying and the mortgage of €120,000 they are currently repaying.

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

The Provider states that it issued a **Letter of Approval** to the Complainants on **24 May 2004** for the loan amount of €142,600. It details that the initial rate of interest was fixed at 2.54% for the first year and the loan was repayable over 35 years. A tracker interest rate of ECB + 1.25% was applied to the mortgage loan and continued to apply to the mortgage loan until **December 2014**, when the mortgage loan was redeemed.

The Provider submits that the Complainants made their initial enquiry concerning the financing of building a new house on **01 April 2014**, in a meeting with an employee of the Provider. The Provider states that the Complainants proposed to sell their existing property and avail of the Tracker Portability product. The Provider details that the Complainants proposed to avail of the Tracker Portability product in the amount of €103,000 (the balance of their existing loan) on a tracker rate of ECB + 2.25% and seek to apply for additional funds of €67,000 on a variable interest rate which would bring the total borrowings to €170,000. The Provider submits that an Approval in Principal was given to the Complainants along with a copy of the Provider's brochure containing details of the portability product. The Provider submits that *"the Complainants were not given the impression during this meeting that the Mortgage was approved rather than it appeared affordable based on unsupported figures provided"*.

The Provider details that it received an email dated **06 May 2014**, where the Complainants proposed to apply for a new mortgage for €200,000 whilst retaining the existing mortgage, which would bring the total borrowings to €303,000. The Provider states that it advised the Complainants that the second proposal would be a *"difficult proposition"* but that the proposal could be examined. The Provider submits that on the completion of a preliminary affordability assessment, it contacted the Complainants to inform them that this proposal was refused due to a lack of repayment capacity.

The Provider submits that on **08 May 2014**, it amended its credit policy to include a new assessment, Minimum Disposable Income Requirement. The Provider outlines the policy of Minimum Disposable Income Requirement (MDIR), *"was used to assess the Customer's ability to service the proposed loan repayments in the context of normal household living expenses (which are determined with reference to the type and size of the*

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*family/household).*” The Provider outlines that as a result of the new assessment there were then three tests for affordability as part of its credit policy; Net Income Ratio Criteria (Nets), MDIR and Demonstrated Repayment Capacity.

The Provider outlines that on **30 June 2014**, the Complainants emailed the Provider requesting the checklist of items required for the application process and the relevant information was sent to them on **01 July 2014**.

The Provider submits that in **02 July 2014**, the Complainants *“enquired if they would be approved by [the Provider] for an additional loan of €100,000 over and above the Tracker Portability loan, instead of the €67,000 additional borrowing which they had proposed until then”*.

The Provider submits that it received the Complainants’ formal application on **15 July 2014**. The Provider submits that the mortgage application was assessed and was denied as *“it was outside of the current Credit Policy”*. The Provider submits that it informed the Complainants of the mortgage loan refusal on **25 July 2014** and informed them that it was due to the lack of capacity to meet repayments.

The Provider submits that it does not accept the Complainants’ submission that it advised the Complainants to sell their property. The Provider submits that the employee of the Provider in question *“merely sought clarification of a sale price to ensure the figures on [the Complainants] Mortgage Application were correct as any approval would be based on these figures.”* The Provider outlines that it received a communication from the Complainants’ solicitor on **10 July 2014**, to take up the title deeds on accountable trust receipt. The Provider details that redemption figures were then issued on **25 July 2014**, **11 December 2014** and **16 December 2014**. The Provider outlines that a redemption cheque of €100,165.10 was lodged to the mortgage loan account on **22 December 2014**.

The Provider submits that the employee of the Provider was not in a position to approve the loan and that the decision was to be ultimately made by the Retail Credit Centre. The Provider asserts that the Complainants were correctly advised in respect of the Tracker Portability product.

### **The Complaints for Adjudication**

The complaint for adjudication is that the Provider incorrectly advised the Complainants regarding their mortgage loan account which has resulted in the Complainants losing their tracker rate mortgage loan with the Provider in **2014**.

## **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 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.

At the outset, it is important to point out that this Office will not interfere with the commercial discretion of a financial service provider with respect to a decision to accept or reject a consumer's application for credit, unless the conduct complained of is unreasonable, unjust, oppressive or improperly discriminatory in its application to a Complainant, within the meaning of **Section 60 (2) of the Financial Services and Pensions Ombudsman Act 2017**.

In order to determine this complaint, it is necessary to consider the interactions between the Complainants and the Provider in relation to the Complainants' tracker portability mortgage product application between **April and July 2014**.

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The Complainants attended a meeting with the Provider on **01 April 2014**. I have not been provided with a copy of minutes of the meeting that took place at the time, however it is generally accepted between the parties that a meeting took place at which the Complainants discussed the possibility taking out a new mortgage with the Provider for the purposes of building a family home on the site the Complainants had been gifted. At the time, the Complainants had an existing tracker interest rate mortgage (ECB + 1.25%), with an outstanding balance of €103,000 and the Complainants required additional borrowings of €67,000. It appears that at this meeting an **Approval in Principle** was completed, which involved inserting the details given by the Complainants into the **Approval in Principle Calculator** and testing against the Provider's "*Maximum amount available for all loan repayments (Nets) test*". The Approval in Principle document concluded as follows:

	<i>"Max Nets Per Policy</i>	<i>Actual Nets</i>	<i>Within Policy?</i>
<i>NETS Test</i>	<i>40.0%</i>	<i>34.9%</i>	<i>Yes"</i>

The Complainants were furnished with a copy of the **Approval in Principle** document and a copy of the Provider's **Home Movers Brochure**.

The Provider has furnished in evidence a copy of its **brochure** marked **02/14** which details the process applicable in **2014** when the Complainants applied for the tracker portability mortgage product. Relevant excerpts from the brochure are as follows:

### **1. Applying for Tracker Portability**

...

*The Application Stage for getting a new Tracker Portability Mortgage involves just two steps*

#### **Step 1**

*First, you should meet with a Mortgage Advisor in your local [Provider] branch. Let them know that you are an existing [Provider] customer who is interested in a Tracker Portability Mortgage. Your Mortgage Advisor will explain to you how the product works and give you a better idea of how much you could borrow and at what mortgage rate.*

#### **Step 2**

*If you are satisfied that the Tracker Portability Mortgage is for you, you should meet with your Mortgage Advisor again and provide the following:*

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- *Your application documents (e.g. P60 and two of your last three payslips, a salary certificate and six months personal bank account statements).*
- *Evidence of having at least 10% deposit of the purchase price of the new property and associated cost.*
- *A full valuation on your existing property, at your own cost, completed by an independent valuer from [the Provider's] Valuation Panel (the branch will supply you with a list of local valuers) if the current LTV is greater than 90%.*

*At this point, it's a matter of waiting to see if your application is approved. As you know, your mortgage application is subject to underwriting criteria. If it is approved, we will provide you with an Approval in Principle letter.*

...

*To secure a Letter of Approval, an independent valuation needs to be carried out on the new property, arranged by [the Provider] and completed by an independent valuer from [the Provider's] Valuation Panel. If the valuation (property value) differs from the purchase price, we may have to re-assess your application."*

## **2. Letter of Approval**

*The next thing to do is to get your formal Letter of Approval.*

....

*Once you have passed this stage and have your Letter of Approval and your Shortfall Repayment Agreement (where relevant), you will be ready to sell and buy."*

## **3. Selling and Buying**

*You've completed your Application, received a formal Letter of Approval and signed and returned your Shortfall Repayment Agreement (where relevant), ticked off any final requirements and are ready to sell your existing property and buy your new one.*

*You will need to complete one step to pass this stage:*

### **Step 1**

*This is the bit you've been waiting for. If you are in Positive Equity and have accepted the Letter of Approval, you can sell your existing property and get ready to buy your new home.*

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....

*Regardless of whether you are in Positive or Negative Equity, if you're not able to purchase your new property on the same day, you must complete the purchase within at least six months (from the date that you sold your existing property) in order to avail of the Tracker Portability offer."*

The following exchange of correspondence took place between the parties in **May 2014**:

- The Complainants emailed the Provider's representative on **06 May 2014**, as follows:

*"We were looking at the option of transferring the tracker onto new house and you advised this can be done once a sale has been agreed on the above premises.*

*Above is preferred option but as you are well aware, selling property at [right] price could take a bit of time.*

*We are also looking at second option if we cannot sell above house taking out a full new mortgage which would be approx €200k (25 years).*

*Can you please look into this and advise"*

- The Provider wrote to the Complainants by email on **07 May 2014** outlining as follows:

*"I can investigate the possibility of seeking approval for new mortgage while keeping your existing property. This would mean that your existing property then becomes an investment property and we could potentially take rental income for this property. If you could confirm the rental income you would hope to achieve from your existing property I could look into this further.*

*While this is an option I feel this could be a more difficult proposition but once I have the info required I will look into this further."*

- On **07 May 2014** the Complainants outlined to the Provider by email that the rental income would be €600 - €650 per month.

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- On **08 May 2014** the Provider wrote to the Complainants by email as follows:

*“I have reviewed your recent request and completed preliminary affordability assessment. I tried to call you to go through this as I would prefer to discuss this with you personally as opposed to email.*

*Please give me a call or drop me a mail when you are available and I will endeavour to call you back at a suitable time.”*

The Provider has detailed that following this, a telephone call took place between the Provider and the Complainants, wherein the Provider’s representative outlined that an affordability test was completed based on the information to hand and that based on the figures the proposal did not meet the requirements. The Provider details that the Complainants accepted this and indicated that they wished to proceed with the tracker portability application. I have not been provided in evidence with an audio recording of that telephone call with the Complainants, nor have I been provided with a copy of the affordability assessment conducted at that time.

Nonetheless, it appears to be accepted between the parties that the Complainants’ proposal to retain the property was considered by the Provider to not be a viable option on the basis of a preliminary assessment carried out at the time and this was communicated to the Complainants during the telephone call on or around **08 May 2014**. The Complainants emailed the Provider on **30 June 2014** as follows:

*“We are close to agreeing a sale on current house, can you please email me list of documents required to approve mortgage as I seem to have misplace the last one”*

The following exchange of correspondence took place between the parties in **July 2014**:

- The Provider emailed the Complainants on **03 July 2014**, as follows:

*“Please see below for a list of requirements for a new mortgage application as requested.*

- *Fully completed salary certificate for each applicant (certificate attached)*
- *2 – 3 recent payslips*
- *Most recent P60*
- *Up to date 6 month statement on all current accounts*
- *Up to date 12 month statement on all savings accounts*
- *Up to date 6 month statement on any VISA accounts held in applicants names*

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- *Confirmation from auctioneer of agreed sale price*

*Additional items required if available for self-build properties*

*(these items will be required for the full approval however Approval in principle can be sought without these)*

- *Copy of full planning permission*
  - *Fully completed certificate of inspection (available from [the Provider] once formal application has been made)*
  - *Build Costs for construction of property.”*
- The Complainants emailed the Provider on **01 July 2014**, as follows:

*“Can you confirm that the tracker mortgage can be transferred to new property plus 1% over duration of loan”.*
  - The Provider emailed the Complainants on **01 July 2014**, as follows:

*“The facility is there to transfer the tracker mortgage to another property with an increase of 1% on the standard rate”.*
  - The Complainants emailed the Provider on **02 July 2014**, as follows:

*“I will drop all of the below into you next week.*

*Originally we were seeking €70,000 – I know (sic) estimate that we will be looking for approx €100,000.*

*Is that still feasible over 20 – 25 years.”*
  - The Provider emailed the Complainants on **03 July 2014** as follows;

*“As the term remaining on the current mortgage is 241 months (20 yrs 1mth) the term of the new mortgage cannot be greater than this. The balance outstanding on the existing facility is in excess of €100,000 and therefore the increased amount of €100,000 should be feasible.”*
  - The Complainants emailed the Provider on **25 July 2014**, as follows:

*“How long will it take before you get final approval on mortgage”*

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- The Provider's representative emailed the Complainants on **25 July 2014**, indicating that he would call the Complainants later.

The Provider has detailed that following this, a telephone call took place between the Provider's representative and the Complainants on **25 July 2014**. I have not been provided in evidence with an audio recording of that telephone call with the Complainants. The Provider has provided an account of that telephone in evidence, which outlines as follows:

*"[Provider's representative] telephoned the Complainants and advised that, based on the information submitted, the Bank could not approve the increased amount of €100,000 in addition to the amount of the existing mortgage outstanding. [Provider's representative] advised that the mortgage was assessed based on a single income (as there was no income for the Second Complainant at the time). Based on a single income household with 1 dependant, [Provider's representative] advised the mortgage requested was not within the Bank's Credit policy.*

*[Provider's representative] advised I had called RCC to discuss this and was advised that as presented the application was outside policy and therefore could not be approved."*

It appears to be accepted between the parties that the Complainants were advised during this telephone call that their application had been rejected by the Provider.

The Provider has submitted into evidence a number of reports that were generated from the **Home Mover Approval in Principle Calculator** at the time the mortgage loan was assessed in **July 2014**. I note that these assessments also included a Proven Repayment Ability assessment which did not appear on the **Home Mover Approval in Principle Calculator** which was generated in **April 2014**. Further I note that the Minimum Disposable Income Requirement (MDIR) Assessment was carried out on the application that satisfied the NETS test. The MDIR Assessment was a new credit assessment introduced by the Provider on **08 May 2014**.

It appears that the Provider assessed the following applications at the time in **July 2014**:

- An application for a total proposed lend of €170,000, which was the amount originally proposed by the Complainants during their discussions with the Provider. The following outcome was concluded:

	<i>"Max Nets Per Policy</i>	<i>Actual Nets</i>	<i>Within Policy?</i>
<i>NETS Test</i>	<i>40.0%</i>	<i>40.4%</i>	<i>No"</i>

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- An application for a total proposed lend of €200,000, which was the increased amount requested by the Complainants at application stage. The following outcome was concluded:

	<i>“Max Nets Per Policy</i>	<i>Actual Nets</i>	<i>Within Policy?</i>
<i>NETS Test</i>	<i>40.0%</i>	<i>46.2%</i>	<i>No”</i>

- An application for the total proposed lend of €170,000, which was the amount originally proposed by the Complainants during their discussions with the Provider, with the term increased by a year. The following outcome was concluded:

	<i>“ Max Nets Per Policy</i>	<i>Actual Nets</i>	<i>Within Policy?</i>
<i>NETS Test</i>	<i>40.0%</i>	<i>39.6%</i>	<i>Yes</i>

....

<i>Minimum Disposable</i>	<i>€2,250</i>	<i>85%</i>
<i>Income Requirement</i>	<i>MDIR</i>	<i>%MDIR</i>

<i>€69,669</i>	<i>€339</i>
<i>(Consider reducing by)</i>	<i>(MDIR Shortfall)</i>

The **Home Mover Approval in Principle Calculator** also recorded as follows with respect to the MDIR assessment:

*“Fail – Requires Justification  
Significantly below MDIR  
If progressing – recommendation should include comment on elements such as:  
Loan Completing Shortly  
Salary Increase Imminent  
Other Additional Income  
Number of Dependants Reducing  
Other Exceptional Elements”*

The Complainants submit that the Provider mis-informed them of their options at the time of the application and by consequence they were financially at a loss as they rushed to sell their house and entered into a contract with the building contractor. I note that the Complainants accept that the Provider’s representative *“did not directly tell us to sell the property but he advised us that we could only get the mortgage when [the house] was sold.”*

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In this regard, I note that the **Home Movers Brochure** envisages a three stage process, the first stage being application, the second being receiving the formal Letter of Approval and the third, being the sale of the property and purchase of the new property. The Complainants were furnished with this brochure at the first meeting in **April 2014** and in these circumstances, should have been aware from the brochure that the sale of the property was the last stage in the process. Nevertheless, I note from the evidence on the file in the form of the email from the Complainants to the Provider on **30 June 2014** indicating that they were “close to agreeing a sale on current house” and the Provider’s response on **03 July 2014** which outlined the list of documents required for the mortgage application that one of the documents was “confirmation from auctioneer of agreed sale price”, that the Provider was aware that the Complainants were progressing the sale of the property at the time.

While the Complainants have placed much emphasis on the fact that the Provider purportedly advised them to sell the property before the mortgage could be obtained, the fact that the Complainants had advanced the sale in advance of submitting the application and receiving the letter of approval, was not determinative in the mortgage loan application being refused and ultimately the Complainants not being able to avail of the tracker portability product. Rather, the Provider processed and assessed the Complainants’ application once the required supporting documentation was received. I further note from the evidence that the sale of the property did not conclude until some months later in **December 2014**, when the mortgage loan was redeemed.

The evidence shows that the Provider did consider the Complainants’ application in full but refused the application for the amount sought (€200,000) on the grounds that the application was outside the Provider’s credit policy. It was a matter of the Provider’s commercial discretion whether to accede to the loan application made by the Complainants in **July 2014**. The Provider was within its right to decline the application, in circumstances where, having assessed the application and the supporting documentation, the mortgage loan did not meet the Provider’s credit criteria.

It is important for the Complainants to be aware that the Provider has obligations pursuant to the **Consumer Protection Code 2012** (the “**CPC 2012**”). **Chapter 5 of the CPC 2012** provides, among other things, the following:

*“SUITABILITY*

*Assessing affordability of credit*

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5.9 Prior to offering, recommending, arranging or providing a credit product to a personal consumer, a lender must carry out an assessment of affordability to ascertain the personal consumer's likely ability to repay the debt, over the duration of the agreement. An affordability assessment must include consideration of:

a) the information gathered under parts b) and c) of Provision 5.1; and

b) in the case of all mortgage products provided to personal consumers, the results of a test on the personal consumer's ability to repay the instalments, over the duration of the agreement, on the basis of a 2% interest rate increase, at a minimum, above the interest rate offered to the personal consumer. This test does not apply to mortgages where the interest rate is fixed for a period of five years or more.

...

5.13 A regulated entity must take account of the result of the affordability assessment when deciding whether a personal consumer is likely to be able to repay the debt for that amount and duration in the manner required under the credit agreement.

...

#### Assessing suitability

5.16. When assessing the suitability of a product or service for a consumer, the regulated entity must, at a minimum, consider and document whether, on the basis of the information gathered under Provision 5.1 and 5.3:

a) the product or service meets that consumer's needs and objectives;

b) the consumer:

i) is likely to be able to meet the financial commitment associated with the product on an ongoing basis;

ii) is financially able to bear any risks attaching to the product or service;

c) in the case of credit products, a personal consumer has the ability to repay the debt in the manner required under the credit agreement, on the basis of the outcome of the assessment of affordability; and,

d) the product or service is consistent with the consumer's attitude to risk."

The evidence shows that the Provider complied with its obligations regarding assessment of suitability pursuant to the **CPC 2012**.

**Provision 4.24** of the **CPC 2012** provides the following:

*4.24 Where a personal consumer's formal application for credit is turned down by the regulated entity, it must clearly outline to the personal consumer the reasons why the credit was not approved. The regulated entity must offer to provide the reasons, on paper or on another durable medium, to the personal consumer. If requested by the personal consumer, the regulated entity must provide the reasons, on paper or on another durable medium, to the personal consumer.*

I note that the Provider submits that the branch contacted the Complainants on **25 July 2014** to advise of the outcome of their application, and the rationale for the decision was discussed. While I note that the Provider submits that a letter of decline was not requested by the Complainants, it is disappointing that the Provider did not offer to provide the reasons why the credit was not approved "*on paper or on another durable medium*" in line with **provision 4.24** of the **CPC 2012**.

There is no evidence before me that the Provider incorrectly advised the Complainants regarding their mortgage loan. However having considered the evidence I am of the view that the Provider should have been clearer in its email communications with the Complainants regarding the tracker portability application. In this regard I note that on **01 July 2014**, the Provider outlined "*The facility is there to transfer the tracker mortgage to another property with an increase of 1% on the standard rate*" and in an email dated **3 July 2014** that "*the increased amount of €100,000 should be feasible*". I find these statements confusing, in particular, the statement that "*the facility is there*". These appear to be indications that the mortgage loan facility was in place and that the increased lending was possible, when in fact the application and supporting documents had not yet been submitted for consideration. The Provider's representative should have inserted a caveat that it was subject to lending criteria and approval. Nonetheless the evidence does show that the Complainants were aware that approval had not been obtained from the Provider. In the email on **30 June 2014**, the Complainants refer to the "*documents required to approve mortgage*" and in the email on **25 July 2014**, the Complainants refer to "*final approval*".

Whilst I understand the Complainants' frustration and disappointment with the Provider's decision, the Provider's own lending criteria falls within its commercial discretion. I must accept that the Provider was entitled to reach the decision that the Complainants' assessment for the mortgage loan did not meet its lending criteria. The evidence supports that assessments were made and the application failed the assessment.

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There is no evidence that the Provider acted in a manner that was unreasonable, unjust, oppressive or improperly discriminatory in declining the application for credit.

However I am of the view that there were failures on the Provider's part in the manner in which it communicated with the Complainants. For this reason, I partially uphold this complaint. To mark the Provider's shortcomings, I direct that the Provider pay the sum of €1,000 to the Complainants in compensation.

### **Conclusion**

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is partially upheld, on the grounds prescribed in **Section 60(2) (g)**.

Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to make a compensatory payment to the Complainants in the sum of €1,000, to an account of the Complainants' choosing, within a period of 35 days of the nomination of account details by the Complainants to the Provider.

I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in **Section 22** of the **Courts Act 1981**, if the amount is not paid to the said account, within that period.

The Provider is also required to comply with **Section 60(8)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

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



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

29 October 2020

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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.

