



<u>Decision Ref:</u>	2020-0445
<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 Refusal to move existing tracker to a new mortgage product
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The complaint relates to mortgage loan account ending **5338** held solely by the Complainant with the Provider. Mortgage loan account ending **5338** is secured on the Complainant's former private dwelling house.

The Complainant and a third party jointly drew down a mortgage loan account ending **7107** in **2004**, which was redeemed in full in **March 2012**. The Complainant drew down the subject mortgage loan account ending **5338** in her sole name in **March 2012**.

The loan amount for mortgage loan account ending **5338** is €300,000 and the term of the loan is 30 years. The **Loan Offer** dated **31 January 2012** detailed that the mortgage loan account would be drawn down as follows;

- (a) Mortgage loan sub-account **(01)** drew down on a "*Discounted Standard Variable Rate (SVR- 0.50%)*" for the loan amount of €169,330; and
- (b) Mortgage loan sub-account **(02)** drew down on "*[Named Product] Flexible Tracker rate of ECB +0.75%*" for the loan amount of €130,670.

The Complainant's Case

The Complainant submits that her original mortgage loan account with the Provider was held jointly with her then husband. That mortgage loan account, ending **7107** comprised four sub-accounts as follows;

- (i) Sub-account ending **5988** was drawn down in **September 2004** on a tracker rate of ECB + 1.05%. In **February 2007** the account was switched to a reduced tracker rate of ECB + 0.75%. In **May 2007** the account was switched to the Provider's lifetime staff fixed rate of 3%, which it remained on until the redemption of the account in **March 2012**.
- (ii) Sub-account ending **8956** was drawn down in **October 2005** on a tracker rate of ECB + 1.05%. In **February 2007** this sub-account was switched to a reduced tracker rate of ECB + 0.75% which it remained on until the redemption of the account in **March 2012**.
- (iii) Sub-account ending **9489** was drawn down in **July 2006** on a tracker rate of ECB + 1.05%. In **February 2007** this sub-account was switched to a reduced tracker interest rate of ECB + 0.75% which it remained on until the redemption of the account in **March 2012**.
- (iv) Sub-account ending **0666** was drawn down in **October 2007** on a tracker interest rate of ECB + 0.75%, which it remained on until the redemption of the account in **March 2012**.

The Complainant submits that in **2011** *"I separated from my husband and I needed to make provisions for my family home so that my son and I could continue to reside there."* She details that she was not allowed by the Provider to retain the existing mortgage account ending **7107** in her sole name, because the Provider did not *"allow the removal of someone from the mortgage. Instead I was forced to undergo another credit assessment which resulted in considerable unfavourable terms being put upon me despite taking on sole responsibility for the liability. I fail to see how this is less risky in terms of ensuring that [the Provider's] risk is covered!"*

The Complainant states that consequently *"I had no choice but to re-apply for the mortgage [in] my sole name, it was not an ad-hoc request on my behalf."* She details that during the *"renegotiation"* of her mortgage in **2012** the Provider *"advised that I would lose my tracker rate as I was not entitled to it anymore"*. She submits that she now understands that the Provider *"was not within [its] rights to remove"* the tracker interest rate from her. She details *"I understand [the Provider's] assertion that tracker rates were no longer available, but I was an existing customer, nothing was changing bar the fact that I was taking sole responsibility."*

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The Complainant details that she drew down her new mortgage loan account ending **5338** in **March 2012**, which comprised two sub-accounts as follows;

- (i) Sub-account ending **(01)**, for the loan amount of €169,330, which was placed on a discounted standard variable rate of 4.25%.
- (ii) Sub-account ending **(02)**, for the loan amount of €130,670, which was placed on a tracker interest rate of ECB + 0.75%.

The Complainant submits that she was *“not happy”* with the discounted variable rate but that *“Based on what I was told by [the Provider] I felt that I had no other options open to me to consider so that I could secure my home.”* She further outlines that *“a discounted standard variable rate of .50% was agreed, yet the sub-account [ending (01)] was actually drawn down at .55%. Why was that? Why was it not drawn down at the lower rate?”*

The Complainant disputes that in **December 2012** that she *“chose to apply a [Named Product] discounted standard variable rate - .65%’. [The Provider] have been unable to produce supporting documentation and why would I choose an even higher interest rate willingly?”*

The Complainant maintains that the Provider has *“taken advantage of my personal circumstances and acted unethically. The previous mortgage was drawn down in 2005 and paid through until 2012 when I was forced to take the mortgage out in my own name. At this point all of the interest payments made from 2005-2012 were consumed by the bank with no consideration. This would equate to tens of thousands!”*

She further details *“[the Provider] would also have benefited from the renegotiation as I lost the vast majority of any value of the previous payments made under the initial agreement as the loan interest was front loaded and the principle amount paid was negligible. With the response and their unwillingness to reconsider I feel that they have taken advantage of my unfortunate circumstances”*. She outlines that *“Taking into account all the interest paid both on the current and previous agreements and the extended duration following the new terms – I feel that it is fair to state that [the Provider] have made an exorbitant profit out of my situation. It is simply not fair or equitable.”*

The Complainant is seeking the following;

- (a) The tracker rate to be applied to the entirety of her mortgage loan account ending **5388** (sub-accounts ending **(01)** and **(02)**); and
- (b) A refund of the interest she has overpaid on the sub-account ending **(01)**.

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The Provider's Case

The Provider submits that the Complainant originally held a mortgage loan account with the Provider in joint names with another party under mortgage loan reference ending **7107** which was split into four mortgage sub-accounts.

The Provider has outlined the history of the four sub-accounts under mortgage reference ending **7107** as follows;

Mortgage sub-account ending 5988

- The account drew down on a tracker interest rate of ECB + 1.05% in **September 2004**
- The Complainants opted to amend the tracker rate to ECB +0.75% in **February 2007**
- The Complainants instructed the Provider to place the sub-account on the Provider's staff lifetime fixed rate of 3% in **May 2007**.
- The staff rate remained in place until the sub-account was redeemed in **March 2012**

Mortgage sub-account ending 8956

- The account drew down on a tracker interest rate of ECB + 1.05% in **October 2005**
- The Complainants opted to amend the tracker rate to ECB + 0.75% in **February 2007**. This tracker rate remained in place until the sub-account was redeemed in **March 2012**

Mortgage sub-account ending 9849

- The account drew down on a tracker interest rate of ECB +1.05% in **July 2006**
- The Complainants amended the tracker rate to ECB + 0.75% in **February 2007**.
- The tracker rate remained in place until the sub-account was redeemed in **March 2012**

Mortgage sub-account ending 0666

- The account drew down on a tracker interest rate to ECB + 0.75% in **October 2007**.
- The interest rate remained in place on this sub-account until it was redeemed in **March 2012**.

The Provider submits that in **2011**, the Complainant requested that the jointly held mortgage loan account ending **7107** be transferred into her sole name. The Provider details that in order for the Provider to do this, it was necessary for the Complainant to apply for a new mortgage loan and undergo the relevant mortgage application credit assessment in line with its prevailing credit policy.

The Provider outlines that *“A mortgage loan agreement with joint borrowers is a contractual agreement between the Bank and both customers. The borrowers are jointly and severally liable and in order for either part to no longer be subject to the contract the Bank are entitled to require the full redemption of the loan. There was no condition stating that a party to the loan agreement can leave the loan agreement without the loan being redeemed in full.”*

It further submits that the Provider *“is not in a position to simply remove a party from a jointly held mortgage account and allow a remaining party to continue with the borrowing on the existing terms and conditions in their sole name. The removal of a party from a jointly held mortgage account would amount to a material change that could potentially impact the security held by the Bank and may also increase the risk to the Bank, as only one person would remain on the loan and that would be solely responsible for its maintenance. The Bank must satisfy itself that the party proposing to continue with the borrowing in their sole name is in a financially viable position to do so.”*

The Provider further outlines that *“The removal of one party from a jointly held mortgage represents a break in the original mortgage contract that was entered into between the Bank and the parties. The party wishing to retain the borrowing must therefore secure a mortgage in their own name and undergo the relevant mortgage application assessment(s). The sole name mortgage would be viewed as a new borrowing and the funds advanced used to redeem the original joint held mortgage. It is and always has been the Bank’s policy to structure the transfer of a jointly held mortgage to a sole mortgage (and indeed from a joint mortgage to another joint mortgage with different named parties) by means of an entirely new mortgage agreement.”*

The Provider submits that the Complainant successfully obtained a new mortgage in her sole name under mortgage reference ending **5338**. It states that *“The new mortgage in the customer’s sole name was completely separate to the original jointly held mortgage and was subject to new terms and conditions.”*

The Provider details that the Complainant could not have been offered a tracker interest rate on her mortgage account ending **5338** in **2012** as the Provider had withdrawn tracker interest rates for all customers in **mid-2008**.

It states that details of the interest rates that would apply to the Complainant's mortgage loan account ending **5338** were clearly outlined in the Loan Offer dated **31 January 2012** which the Complainant signed and accepted on **10 February 2012**.

The Provider details that mortgage loan account ending **5338** was drawn down on **05 March 2012** in the Complainant's sole name for the amount of €300,000 for a term of 30 years. It details that the mortgage was split into two sub-accounts as follows;

- Sub-account ending **(01)** drew down for the loan amount of €169,330 on a discounted standard variable rate of 0.55%
- Sub account ending **(02)** drew down for the loan amount of €130,670 on a tracker interest rate of ECB + 0.75%

The Provider details that the jointly held mortgage account ending **7107** was redeemed using funds from the new/sole mortgage borrowing in **March 2012**. It states that at the time of the redemption, three of the sub-accounts under mortgage reference ending **7107** were on a tracker interest rate of ECB + 0.75% and the fourth was on a staff lifetime fixed interest rate.

The Provider submits that it *"allowed the customer to port the existing tracker interest rate of ECB base rate + 0.75% margin to her new sole named mortgage on 5 March 2012. Mortgage sub-account 2 on the new mortgage was created on 05 March 2012 in respect of the portion of the customer's mortgage that was to avail of a tracker interest rate of ECB base rate + 0.75% margin. In line with the Bank's credit policy at the time, the customer was only allowed to avail of the tracker interest rate on the amount equivalent to the remaining balance of the mortgage sub accounts attached the original jointly held mortgage, which were availing of a tracker rate at the time (i.e. mortgage sub-accounts [ending] 8956, [ending] 9489 and [ending] 0666 which were availing of a tracker interest rate at that time)."*

The Provider details that the Complainant was not an employee of the Provider *"and so she could not retain the staff lifetime fixed interest rate in her sole name. Therefore the remaining portion of the new mortgage was subject to the Bank's available interest rate products at that time, which did not include a tracker interest rate."*

The Provider submits that the Complainant availed of *"a Discounted Standard Mortgage (DSVR)"* on mortgage sub-account ending **(01)**. It states that this sub-account *"drew down on a Discounted Variable Rate and there is nothing contained in the Loan Offer to suggest that there was a contractual entitlement to have a tracker interest rate applied either at draw down or at any future date."*

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It refers to correspondence the Provider received from the Complainant dated **20 February 2012** which stated *“I am happy to proceed with the new Discounted Variable rate of SVR – 0.55% (4.20%) on Sub Account 1 of my mortgage application”*.

The Provider submits that the mortgage sub-account ending **(01)** was drawn down on a discounted standard variable rate of -0.55%, and therefore the Complainant was charged a slightly lower amount of interest than she would have received on the discount of -0.50% which was more *“financially advantageous”* to the Complainant.

The Provider details that in **December 2012** the Complainant chose to apply a discounted standard variable rate of -0.65% to sub-account ending **(01)**. The Provider details that sub-account ending **(01)** remains on the discounted standard variable rate of -0.65% and sub-account ending **(02)** remains on the tracker interest rate to this day.

The Provider does not accept the Complainant’s assertion that the Provider *“took advantage”* of her *“unfortunate circumstances”*. It submits *“we empathise with any personal difficulties the customer may have been experiencing at the time. However, any requirements made of the customer were in line with the Bank’s credit policy and consistent with how all other customers/applicants were treated in the same situation.”* The Provider states it is satisfied that the requirement on the Complainant to undergo a new mortgage application and credit assessment in respect of transferring the original mortgage debt into her sole name was in accordance with the Provider’s prevailing credit policy and commercial decision to do so.

The Complaint for Adjudication

The conduct complained of is that the Provider acted inappropriately by removing the Complainant’s tracker interest rate when she drew down a sole mortgage in **March 2012**.

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 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.

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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 17 November 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.

The issue to be determined is whether the Provider acted inappropriately by removing the Complainant's tracker interest rate when she drew down her sole mortgage in **March 2012**.

In order to determine the complaint, it is relevant to consider the interactions between the Complainant and the Provider in **2012** when the Complainant first sought to have the joint mortgage loan account ending **7107** transferred into her sole name and then applied for the new sole mortgage loan account ending **5338**. It is also necessary to review and set out the relevant provisions of the Complainant's mortgage loan documentation.

Mortgage loan account ending 7107

An **Offer of Advance** dated **27 May 2004** was issued to the Complainant and a third party, who is not party to this complaint, for mortgage reference ending **7107** (sub-account ending **5988**). It detailed as follows;

1. *"Amount of Credit Advanced : 180,000.00 Eur*
2. *Period of agreement: 35 years 0 months*

...

Interest rate : 3.0500%"

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

“The rate of [Provider] Flexible Mortgage tracks the ECB rate with a margin which is fixed for the life of the Home Loan term. The margin for this Home Loan is ECB rate plus 1.05%. The margin is dependent on the amount borrowed and the value of the property to be mortgaged.”

The Complainant and third party signed the **Acceptance and Authority** on **11 August 2004** 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 in the Bank’s standard form of Mortgage.”*

An **Offer of Additional Advance** dated **20 May 2005** was issued to the Complainant and a third party for the mortgage reference ending **7107** (sub-account ending **8956**). It detailed as follows;

1. *“Amount of Credit Advanced: 40,000.00 Eur*
2. *Period of agreement: 35 years 0 months*

...
Interest rate : 3.0500%”

The **Important Information** section of the Loan Offer further details the following;

WARNING

YOUR HOME IS AT RISK IF YOU DO NOT KEEP UP PAYMENTS ON A MORTGAGE OR ANY OTHER LOAN SECURED ON IT.

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

The **Special Conditions** to the Additional Offer of Advance contains the same text as that quoted above and for the sake of brevity I have not requested it here.

The Complainant and third party signed the **Acceptance** on **29 May 2005** on the same terms as quoted above.

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An **Offer of Additional Advance** dated **24 May 2006** for mortgage reference ending **7107** (sub-account ending **9489**) has been provided in evidence which details as follows;

1. *“Amount of Credit Advanced: 85,000.00 Eur*
 2. *Period of agreement: 34 years 0 months*
- ...
- Interest rate : 3.5500%”*

The **Important Information** section of the Loan Offer further details the following;

“

WARNING

YOUR HOME IS AT RISK IF YOU DO NOT KEEP UP PAYMENTS ON A MORTGAGE OR ANY OTHER LOAN SECURED ON IT.

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

The **Special Conditions** to the Additional Offer of Advance contains the same text as that quoted above and have not requested it here.

The Complainant and third party signed the **Acceptance** on **29 May 2006** on the same terms as quoted above.

An **Offer of Additional Advance** dated **13 September 2007** for mortgage reference ending 7107 (sub-account ending **0666**) has been provided in evidence and details as follows;

1. *Amount of Credit Advanced: 30,000.00 Eur*
 1. *Period of agreement: 32 years 0 months*
- ...
- Interest rate : 4.7500%”*

The **Important Information** section of the Loan Offer further details the following;

“

WARNING

YOUR HOME IS AT RISK IF YOU DO NOT KEEP UP PAYMENTS ON A MORTGAGE OR ANY OTHER LOAN SECURED ON IT.

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

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

“The rate of [Provider] Flexible Mortgage tracks the ECB rate with a margin which is fixed for the life of the Home Loan term. The margin for this Home Loan is ECB rate plus 0.75%. The margin is dependent on the amount borrowed and the value of the property to be mortgaged.”

This office has not been furnished with a signed copy of the **Acceptance** of the **Additional Offer** for mortgage sub-account ending **0666**. Nonetheless it does not appear to be disputed between the parties that the Complainant accepted the loan offer.

I note that the **General Conditions** to the loan offers for each of the four sub-accounts ending **5988, 8956, 9489** and **0666** detailed as follows;

“ ...

12. Joint and Several Liability: *Where the Offer of Advance is addressed to two or more persons, they shall be jointly and severally liable for the repayment of the Advance.”*

The Provider submitted that in **February 2007** the mortgage loan sub-accounts ending **5988, 8956** and **9489** were amended to the tracker interest rate to ECB + 0.75%. The Provider further detailed that in **May 2007** the mortgage loan sub-account **5988** was amended to the Provider’s staff lifetime fixed interest rate of 3%. I have not been provided with any documentation which evidences these rate changes. While this is disappointing, it does not appear to be in dispute between the parties that this is what occurred on the mortgage sub-accounts.

The Complainant and a third party, who is not party to this complaint, were joint borrowers in respect of the mortgage loan account under reference ending **7107**. It appears from the evidence that the Complainant sought to remove the third party’s name from the mortgage ending **7107** in **2011**. It is unclear from the evidence when exactly the Complainant first approached the Provider to request that the third party be removed from the mortgage.

The Provider states that tracker interest rate products were available from the Provider until **late 2008**, when they were withdrawn from the market.

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In this regard, the Provider has detailed that in line with its credit policy, customers looking to transfer an existing mortgage from joint names to a sole name basis are required to complete a new loan application that will be assessed by the Provider.

The Complainant takes issue with the fact that the Provider required her to secure a new mortgage in her sole name and undergo the relevant lending assessment. It is important for the Complainant to understand that the mortgage loan account ending **7107** was a joint mortgage and in accordance with the terms and conditions which the parties agreed to. The Complainant and the third party were jointly and severally liable for the debt until such time as the mortgage was redeemed in full. It is my view that this contractual position is clearly set out in the **General Terms and Conditions** for the mortgage loan sub-accounts under reference ending **7107**.

There is nothing in the terms and conditions applicable to the mortgage loan ending **7107** that obliged the Provider to consent to the removal of one of the borrowers from the obligations of the mortgage loan contract, at the Complainant's request. It is important for the Complainant to understand that what she was seeking to do was to vary the contract that she entered into with the Provider. There was no contractual or other obligation on the Provider to accede to that request. I am of the view that it was not unreasonable nor unusual for the Provider to require the Complainant to submit an application for a new mortgage in circumstances where she wished to hold a mortgage loan in her own name only.

I note that a **General Mortgage Application Form** signed by the Complainant on **18 October 2011** has been submitted in evidence.

In **Part C: Your mortgage requirements**, in response to "*Amount of Loan*" the Complainant has written "*€300,000*" and in response to "*Repayment period*" she has written "*30 years*".

It is further detailed at **Part E: Your existing property/ address** under the heading **Applicant Address**:

"Same as property to be mortgaged

Re-mortgaging due to separation"

There is no reference to interest rate options in the **Application Form**.

The Provider issued a **Loan Offer Letter** dated **31 January 2012** to the Complainant which detailed as follows:

“ **IMPORTANT INFORMATION AS AT 31/01/2012**

- 1. Amount of credit advanced :€300,000.00
- 2. Period of Agreement :30 years

...

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

The Loan Offer letter details as follows in the section **Breakdown**;

“Mortgage Account number: [redacted] 5338 – Sub Account 1

...

Purpose of Loan :Remortgage

Repayment Details Loan Account 1

Mortgage Account Number	:[Redacted]5338
Loan Type	:Dis Var SVR- 0.50%
	Capital and Interest
Loan Amount	:€169,330.00
Interest Rate	:4.25%%
Interest Type	: Discount Variable
Term	:30 years”

...

Mortgage Account number: [redacted] 5338 – Sub Account 2

...

Purpose of Loan :Remortgage

Repayment Details Loan Account 1

Mortgage Account Number	:[Redacted]5338
Loan Type	:[Named Product] Tracker ECB +0.75%
	80% Capital and Interest

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<i>Loan Amount</i>	<i>:€130,670.00</i>
<i>Interest Rate</i>	<i>:1.75%</i>
<i>Interest Type</i>	<i>:Variable</i>
<i>Term</i>	<i>:30years"</i>

The **Specific Loan Offer Conditions** appended to the **Letter of Offer** detailed as follows;

"...

The Discounted Variable rate quoted shall be subject to variation prior to drawdown in accordance with any variations in the Standard Variable rate offered by the Company".

The **Schedule to the Offer of Loan** details as follows:

"Additional Special Conditions which are applicable to this Offer:

This loan offer is made on the strict understanding that the monies being advanced to the borrower are being used to refinance existing [redacted] mortgage ref [redacted]2149"

The Complainant signed the **Loan Acceptance** on **10 February 2012** on the following terms;

- "1. I/We acknowledge receipt of the General Terms and Conditions and Specific Conditions attached to the Loan Offer. I/We have had the Loan Offer, the Specific Loan Offer Conditions and the General Terms and Conditions explained to me/us by my/our Solicitor and I/we fully understand them. I/We hereby accept the Loan Offer on the terms and conditions specified. I/We undertake to complete the Mortgage Deed as soon as possible.*
- 2. I/We fully understand and accept the specific nature of this Remortgage Mortgage. I/We further understand that any outstanding debt owing (whether owing now or in the future) to [the Provider] by me/us at any given time is secured on the Property the subject of the variable and tracker Mortgage and must be repaid in full before the relevant title deeds can be returned or the relevant mortgage deed released. "*

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The evidence shows that the Complainant wrote to the Provider on **20 February 2012** as follows;

"I, [Complainant], confirm I am happy to proceed with the new Discounted Variable rate of SVR – 0.55% (4.20%) on Sub Account 1 of my mortgage application".

While I have not been provided with evidence of this, it appears that the four mortgage sub-accounts under reference ending **7107** were redeemed in full in **March 2012**.

Although there was no contractual or other obligation on the Provider to do so, it appears that the Provider permitted the Complainant to port the tracker rate of ECB + 0.75% to the new mortgage sub-account ending **5338 (02)** in **March 2012**. The Complainant takes issue with the fact that the Provider did not offer her a tracker interest rate for the entirety of the mortgage loan account ending **5338** (comprising sub accounts ending **(01) and (02)**).

The Complainant did not have a contractual entitlement to the application of the tracker interest rate which was previously held on the joint mortgage account ending **7107** on the new mortgage loan that she was applying for. It is important for the Complainant to understand that there was no obligation on the Provider to offer her a tracker interest rate on the entire mortgage loan under mortgage account ending **5338**. The Provider was entitled to make an offer on any additional borrowings on its then available rates for new borrowings. It is understood that the Provider ceased offering tracker interest rates in **2008**.

It is clear that the Provider offered the Complainant a discounted variable interest rate for the sub-account ending **(01)**, which was accepted by the Complainant, having acknowledged that the terms and conditions of the mortgage loan were explained to her by her solicitor. If it was the case that the Complainant was of the view that the variable interest rate was not suitable for her, then the Complainant could have decided not to sign and draw down the loan and instead seek an alternative rate with the Provider or with another mortgage provider. However the Complainant did not do so.

The Provider submits that the sub-account ending **(01)** was switched to a discounted standard variable rate of -0.65% in **December 2012** which was a greater discount than the discount of -0.55% that previously applied. The Complainant submits that she has no recollection of instructing the Provider to apply the discounted variable rate of -0.65% at that time. The Provider has not furnished any supporting documentation in this regard, which is disappointing. Nonetheless, it does not appear to be disputed between the parties that the sub-account ending **(01)** remains on a variable interest rate.

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Having considered the documentation provided in evidence by both the Complainant and the Provider, I do not accept that the Provider acted incorrectly or unreasonably in its management of the Complainant's request to transfer the joint mortgage into her sole name. I also do not accept that there was any obligation on the Provider, contractual or otherwise, to offer the Complainant a tracker interest rate on the mortgage sub-account ending **5338 (01)** when she applied for mortgage loan account ending **5338** in **October 2011**.

For the reasons set out 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

8 December 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.