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| <b><u>Decision Ref:</u></b>             | 2020-0463  |
| <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 |
| <b><u>Outcome:</u></b>                  | Rejected   |

#### **LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

##### **Background**

This complaint relates to one of two mortgage loan accounts held by the Complainants with the Provider. Both mortgage loans were secured on the Complainants' private dwelling house.

Mortgage loan account ending **9515** was on a tracker interest rate and this loan was fully redeemed on **16 April 2014**. The Complainants applied for a new mortgage loan in **March 2014** because they decided to sell their existing private dwelling house and purchase a new one. At the time of the application for a new mortgage loan, the Complainants queried whether they could retain their tracker interest rate when they purchased their new private dwelling house and apply their tracker interest rate to a new mortgage loan, however, they were advised by the Provider that a tracker portability product was not available.

The loan type offered to the Complainants, on foot of their application in **March 2014**, is described as "*Loan to Value Managed Variable Rate Homeloan <= 50% LTV*" in the **Letter of Approval** dated **2 April 2014**. Mortgage loan account ending **3150** was drawn down on **29 April 2014** in the amount of €105,000 for a term of 14 years on a variable rate of interest. It is this mortgage loan account that is the subject of this complaint.

### **The Complainants' Case**

The Complainants submit that they previously held mortgage loan account ending **9515** with the Provider which was drawn down in **2002** on a tracker interest rate of ECB + 1.68%.

This mortgage loan account was secured on the Complainants' private dwelling house at the time.

The Complainants explain that in **October 2013** they notified the Provider in writing that they were considering "*trading up*" and purchasing a new private dwelling house. The Complainants note that, at the time, they also queried whether there were "*any proposals*" available that would allow them to retain their tracker interest rate on a new mortgage loan.

The Complainants further submit that they met with the Provider's Branch Manager in **March 2014** "*prior to revising [their] mortgage rate*" who informed them that the "*portable tracker mortgage option would not be available for a number of months and therefore [they] could not avail of the product*". In later submissions, the Complainants state that they requested the option of the portable tracker mortgage from the Provider in **February 2014**.

The Complainants submit that they purchased their new private dwelling house in **April 2014** and mortgage loan account ending **9515** was fully redeemed on **16 April 2014**. The Complainants note that when they applied for their new mortgage loan account ending **3150**, the Provider offered them a variable interest rate mortgage which they accepted "*as this was the only way to progress this matter without jeopardising the sale*" of their former private dwelling house the subject of mortgage loan account ending **9515**. The Complainants are of the view that "*the option to transfer*" the tracker interest rate from mortgage loan account ending **9515** to their new mortgage loan account ending **3150** should have been afforded to them "*in particular when no revisions to the loan and term of the mortgage were requested by [them]*".

The Complainants submit that the Provider's tracker portability product was advertised in **February 2014**, two months prior to them accepting the Letter of Approval for mortgage loan account ending **3150**.

The Complainants refer to an extract from an online forum website published on **20 February 2014** which analysed the Provider's new tracker portability product offering. The Complainants also refer to a newspaper article published on **26 April 2014** which "*clearly states*" that the launch date of the tracker portability product was **28 April 2014**.

The Complainants contend that given they had initially brought their request for a tracker portability product to the attention of the Provider's branch in **February 2014**, the option to transfer their tracker interest rate to account ending **3150** should have been made available to them.

The Complainants further submit that the tracker portability product should have been made available to them as they had sought mortgage loan ending **3150** within six months of the sale of their existing property the subject of their previous mortgage loan account ending **9515**.

The Complainants are seeking for mortgage loan account ending **3150** to be placed on tracker interest rate of ECB + 1.68% and to be refunded all overpaid interest from **April 2014**.

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

The Provider submits that it received a letter from the Complainants dated **30 October 2013** querying whether they could transfer their tracker interest rate to a new mortgage loan account on foot of purchasing a new private dwelling house. The Provider asserts that its tracker portability product offering was first made available to customers on **28 April 2014** therefore the Provider was not in a position to offer a tracker portability product to the Complainants in **October 2013**.

The Provider states that after **October 2013**, the manager of the Provider's branch recalls speaking with the First Complainant "*on numerous occasions about the possible future introduction of Tracker Portability*". The Provider submits that the branch manager recalls that the Complainants contacted him stating that they had identified a new home which they wished to purchase and he explained that only a "*managed variable rate or a fixed rate were available, as tracker portability had not been introduced*". The Provider explains that while there were reports of a new tracker portability product to be launched, the Provider was unable to commit to a date when the product would be available.

The Provider notes that these discussions took place prior to the Complainants' application for a new mortgage loan in **March 2014**. The Provider submits that the Complainants met with the Provider's branch manager on **6 March 2014** at which time they completed a loan application for a new mortgage loan in the amount of €105,000 repayable over a term of 14 years in respect of their new private dwelling house. The Provider explains that the branch manager went through all of the rate options with the Complainants "*before inputting details of their application into the loan application system*" and "*having been informed that the new portability product was not yet launched*", the Complainants opted for a "*Loan to Value Managed Variable Rate Homeloan*".

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The Provider notes that it issued a **Statement of Suitability** to the Complainants on **6 March 2014** followed by **Approval in Principle** on **13 March 2014**.

The Provider states that it subsequently issued a **Letter of Approval** to the Complainants on **2 April 2014** which offered the Complainants a mortgage loan in the amount of €105,000 over a term of 14 years on a variable interest rate of 3.95%. The Provider submits that the Complainants signed the **Acceptance of Loan Offer** on **9 April 2014** in the presence of their solicitor confirming that their solicitor had explained the terms and conditions of the Provider's loan offer to them. The Provider notes that it issued a letter dated **28 April 2014** to the Complainants confirming details of their new mortgage loan account ending **3150** and the mortgage loan account was drawn down on **29 April 2014**.

The Provider states that the tracker portability product was first made available to customers on **28 April 2014** therefore this product was not available to any customers when the Provider issued a loan offer to the Complainants on **2 April 2014**. The Provider submits that the Complainants subsequently drew down on the mortgage loan on **29 April 2014**, which was the day after the tracker portability product was officially made available to customers. The Provider explains that the tracker portability product was made available on the basis that any application for the product, made on or after **28 April 2014**, "*had to be made prior to the applicants' sale of the property which was the Bank's security for the existing tracker rate loan*".

The Provider acknowledges the Complainants dissatisfaction that the tracker portability product was launched so close to the drawdown of their new mortgage loan account. The Provider notes that on **27 February 2014** it announced two new products that it would be offering in the future to include "*moving home and keeping the tracker interest rate*". From **3 March 2014**, the Provider states that "*[Product] brochures were available in all of our branches*". On **25 April 2014**, the Provider explains that it issued a press release and sent a communication to its staff advising that the new tracker portability product would launch on **28 April 2014** and customers could begin the application. In response to the Complainants' submissions that that the communications from the Provider with respect to the tracker portability product indicated that the product was available prior to the stated launch date in **April 2014**, the Provider submits these were "*public discussions*" that occurred prior to the introduction of this loan type on **28 April 2014**. The Provider further asserts that such discussions do not alter the "*historical sequence*" of the events surrounding the Complainants' mortgage loan account ending **3150**. In this regard, the Provider submits that the Complainants completed their loan application on **6 March 2014** and a loan offer issued to them on **2 April 2014** which they accepted, and highlights that these events "*pre-dated*" the Provider's launch of tracker portability loans on **28 April 2014**.

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## **The Complaint for Adjudication**

The complaint for adjudication is whether the Provider incorrectly failed to offer the Complainants a tracker portability product in **April 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 on 24 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 incorrectly failed to offer the Complainants a tracker portability product in **April 2014**.

In order to adjudicate on this complaint, it is necessary to consider the Complainants' mortgage loan documentation and any interactions between the Complainants and the Provider in relation to the Complainants' application for a new mortgage loan between **October 2013** and **April 2014**.

The First Complainant issued a letter to the Provider dated **30 October 2014** querying whether the tracker interest rate applicable to the Complainants' existing mortgage loan account ending **9515** could be retained and applied to any future mortgage loan. The letter dated **30 October 2014** details as follows;

*"Dear [Provider's representative]*

*Further to our meeting last September, we wish to notify your bank that we had a bid accepted on a property we wish to purchase by way of "trading up". This is subject to the sale of our own property in [location], which will be advertised with an estate agent next week.*

*As you will see our mortgage is on a tracker rate and wish to enquire if your bank has any proposals to continuing this arrangement with a future mortgage.*

*Furthermore if there is any advantage in early settlement of our current mortgage could you also advise us.*

*We enclose a letter authorising the release of the title deeds on Accountable Trust Receipt to our Solicitors [Complainants' solicitors]. We would be pleased if you could attend to this matter with your mortgage department and confirm same to me."*

The solicitor acting on behalf of the Complainants in relation to the sale of the mortgaged property the subject of mortgage loan account ending **9515** requested the release of title documentation on accountable trust receipt from the Provider by way of letter dated **6 November 2013**.

I note that a number of "*discussions*" took place between the Complainants and the branch manager of the Provider between in or around **October 2013** and **March 2014**, after the Complainants had identified a new property that they wished to purchase subject to the completion of the sale of the mortgaged property the subject of mortgage loan account ending **9515**. This office requested the Provider to furnish a recording and/or transcript of the telephone calls that took place between the Provider and the Complainants during this period. The Provider submits that "*telephone lines of the branch were not recorded*", therefore, the Provider is not in a position to furnish this office with any telephone recordings or transcripts.

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However, I note that it is not in dispute between the parties that discussions took place between the Complainants and the branch manager of the Provider in relation to the Complainants' new mortgage loan application and the introduction of a tracker portability product.

An **Application For Credit** was signed by the Complainants on **6 March 2014**. The following details are outlined under the '**Details of Mortgage Required**' section of the application;

"...  
*Amount of Loan required* €105,000.00  
*Purchase price / value of property* €176,000.00  
*Loan type* Loan to Value Managed Variable Rate  
*Homeloan <= 50% LTV*  
*Repayment Term required* 14 years(s)"

The Complainants signed the **Application For Credit** on **6 March 2014** confirming the following;

*"I/We have had the necessary time to consider and query the information provided to me in relation to my/our application."*

The Provider issued a **Statement of Suitability** to the Complainants on **6 March 2014** which details as follows;

"  
***Important Notice- Statement of Suitability***  
***This is an important document which sets out the reasons why the product(s) or services(s) offered or recommended is/are considered suitable, or the most suitable, for your particular needs, objectives and circumstances.***

.....

*Dear [Complainants],*

*The following outlines our proposal based on information you have given us regarding your personal circumstances, financial needs and plans. The loan preferences and options you have chosen are also listed, as at 6<sup>th</sup> March 2014.*

***Proposal***

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*Please review the information in this letter and ensure the mortgage features and details best suit your requirements and wishes, given the advice from [Provider] staff and the information you provided. You should take the necessary time to consider and query any information provided to you in relation to your loan application.....*

*In the case of a joint application it is understood that the above represents the wishes and requirements of both applicants. If you disagree with, or wish to change any of the above requirements/statements, please contact your branch.....”*

The **Statement of Suitability** indicates that, on foot of their discussions with the Provider, the Complainants agreed that a variable rate loan type was the most suitable product for them based on their needs and circumstances.

The Provider has submitted into evidence an internal diary entry dated **7 March 2014** at **10:48:03** on foot of a meeting between the branch manager of the Provider and the Complainants.

The diary entry details as follows;

*“Proposal: Applicants are proposing to purchase a secondhand property outside the village of [location] for €176k & will carry out works to the tune of €75k, therefore they require a mortgage of €105k over 14 years & the balance will be provided from the equity in their current home & they also have substantial savings. Please note that this couple are redeeming their tracker mortgage for a variable rate.”*

The Provider issued an **Approval in Principle Letter** to the Complainants **13 March 2014**. The **Approval in Principle Letter** details as follows;

*“....*

*I am delighted to approve you, in principle, for the following:*

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| <i>Product Name:</i>                                      | <i>Loan to Value Managed Variable Rate Homeloan<br/>&lt;=50% LTV</i> |
| <i>Amount:</i>  | <i>€105,000</i>  |
| <i>Length of the mortgage :</i>                           | <i>14 Year(s)</i>  |
| <i>Based on purchase price or valuation of : €176,000</i> |  |
| <i>Interest Rate:</i>                                     | <i>3.95%.....</i>  |

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*This is an approval 'in principle' only. If you wish to proceed further with your application you should meet the conditions listed in our 'specific conditions' section on the next page.....*

**Specific Conditions**

*You must meet the following conditions before we fully approve you for a loan.*

*.....*

*13. The total loan with [Provider] (a/c no ending 9515) be discharged from the sale of your existing property and appropriate evidence be submitted to [Provider]"*

The Provider issued the Complainants with a **Letter of Approval** on **2 April 2014**. The **Letter of Approval** dated **2 April 2014** details as follows;

|                    |   |
|--------------------|---|
| <i>"Loan Type:</i> | <i>Loan to Value Managed Variable Rate Homeloan &lt;= 50% LTV</i> |
|--------------------|---|

|  |                     |
|--|---------------------|
| <i>Purchase Price / Estimated Value:</i> | <i>€ 176,000.00</i> |
| <i>Loan Amount:</i>                      | <i>€ 105,000.00</i> |
| <i>Interest Rate:*</i>                   | <i>3.95%</i>        |
| <i>Term:</i>                             | <i>14 year(s)</i>   |
| <i>...</i>                               |                     |
| <i>LTV:**</i>                            | <i>42%</i>          |

*\*Please note that this rate may change prior to drawdown of the mortgage in response to market conditions.*

*\*\* LTV% includes all loans and any cross charges on the mortgage property."*

The **Special Conditions** attached to the **Letter of Approval** detail as follows;

**"Special Conditions**

*...*

*7. The interest rate applicable to the mortgage is the Managed Variable Rate which applies to the rate band applicable to the loan to value (LTV) ratio as specified in this Letter of Approval (the LTV is the ratio of the amount being borrowed relative to the value of the property at the date of the Approval).*

*The Managed Variable Rate may vary from time to time (including before drawdown of the loan) without regard to variations in any other interest rate used by [the Provider] (including, for example, any Managed Variable Rate applicable to loans of different LTV rate bands, any other rate based on LTVs, the [Provider's] standard variable rate or the European Central Bank rate) and without regard to variations in the LTV ratio of this loan during the term of the mortgage."*

I note that the Provider issued the original **Letter of Approval** in duplicate together with the **General Mortgage Loan Approval Conditions** and the **Irish Banking Federation General Housing Loan Mortgage Conditions** to the Complainants' solicitor under cover of letter dated **2 April 2014**.

The **Acceptance of Loan Offer** was signed by the Complainants and witnessed by their solicitor on **9 April 2014** on the following terms;

*"1. I/we the undersigned accept the within offer on the terms and conditions set out in:*

- i. **Letter of Approval dated the 2<sup>nd</sup> day of April 2014.**\**
- ii. the General Mortgage Loan Approval Conditions*
- iii. The Irish Banking Federations General Housing Loan Mortgage Conditions*

*copies of the above which I/we have received, and agree to mortgage the property to [the Provider] as security for the mortgage loan.*

*...*

*4. My/our Solicitor has fully explained the said terms and conditions to me/us.*

*\*Note that the date of the Letter of Approval inserted above is the date of the most recent Letter of Approval. The most recent Letter of Approval cancels all earlier Letters of Approval."*

The Provider's original mortgage loan account ending **9515** was redeemed on **16 April 2014**. The Provider issued a letter dated **16 April 2014** to the Complainants noting "*this account is now closed*". The Provider issued a letter to the Complainants on 28 April 2014 with details of their mortgage loan account ending **3150** and in particular noted that the "*commencement date*" was **29 April 2014**. The Complainants' new mortgage loan account ending **3150** was drawn down on **29 April 2014**.

The Complainants take issue with the fact that the Provider did not offer them the option to transfer their tracker interest rate from mortgage loan account ending **9515** to their

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new mortgage loan account ending **3150** through the Provider's tracker portability product. The Complainants contend that the Provider advertised its tracker portability product as an option for customers in **February 2014**, two months prior to them accepting the **Letter of Approval** dated **2 April 2014**, yet they were not offered this product during their mortgage loan application in respect of mortgage loan account ending **3150**.

The Complainants have submitted an extract from an online forum that has no connection to the Provider. The entry appears to be dated **20 February 2014** and states as follows;

*"Analysis of new [Provider] tracker mover*

*[Provider] has announced its various products for people who wish to move house  
....."*

The Complainants have also submitted an article from a national newspaper dated **26 April 2014** announcing the Provider's launch of a "*portable tracker mortgage*". The article states that customers of the Provider will be able to move home but still retain their tracker interest rate "*from Monday*" being **28 April 2014**. I note that the article also states that the tracker portability product was first announced by the Provider in **February 2014**.

The Provider accepts that it initially announced its new product offerings, to include a tracker portability product, to the market in **late February 2014**. The Provider also explains that brochures in relation to this product were available in its branches from **3 March 2014** and information was also available on the Provider's website. The Provider has submitted a copy of this brochure in evidence. I have reviewed the contents of the brochure and note that there is no reference to a commencement date or launch date of the product. The brochure describes the three stages for applying and receiving a tracker portability mortgage. The three stages include the application stage, securing a letter of approval, selling an existing property and buying a new one. I note that page 25 of the brochure reads as follows;

*"Looking for more information?*

*Our Mortgage Team are available to answer all of your questions and take you through the details of how it applies to you.*

*For more information, call into your local branch, contact us on [contact number] or visit us at [Provider's website]."*

It is important for the Complainants to be aware that despite the announcements and advertising campaigns launched by the Provider in respect of its tracker portability product

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offering in or around the time of the Complainants' application for mortgage loan account ending **3150** in **March** and **April 2014**, this product was not available to any customer of the Provider until **28 April 2014**. The Provider was not in a position to offer the Complainants a tracker portability product during their mortgage application process because it simply was not available at that time. I have been provided with no evidence to support the Complainants' submission that the communications from the Provider with respect to the tracker portability product indicated that the product was available prior to the stated launch date in **April 2014**. Moreover, I am of the view that such advertising campaigns and discussions cannot be reasonably construed to amount to a formal offer of, or entitlement to a tracker portability product.

It is clear that, on foot of the discussions between the Provider and the Complainants between **October 2013** and **March 2014**, the Provider formally offered the Complainants a loan to value managed variable rate home loan, which was the product type on offer at the time. The **Letter of Approval** dated **2 April 2014**, which was signed and accepted by the Complainants in the presence of their solicitor and which formed the contractual basis of the loan agreement between the parties, provided for a "*Loan to Value Managed Variable Rate Homeloan <=50% LTV*". If the Complainants were not happy with the terms of the **Letter of Approval**, including the type of mortgage product and interest rate offered, the Complainants could have decided not to accept the offer made by the Provider. Instead, the Complainants accepted the Provider's offer by signing the **Acceptance of Loan Offer** on **9 April 2014**, and in doing so, confirmed that their solicitor had fully explained the terms and conditions of the mortgage loan to them.

Having considered the evidence submitted by the parties and the Complainants' mortgage loan documentation, I find that the Provider did not incorrectly fail to offer the Complainants the option of a tracker portability mortgage during their application for their new mortgage loan in **March/ April 2014**. The Provider commenced offering the tracker portability product in **late April 2014**, after the Provider issued a Letter of Approval to the Complainants on **2 April 2014** which they ultimately accepted on **9 April 2014**. The Provider was not under any obligation to make a tracker portability product available to the Complainants or indeed any of their customers prior to the official launch date by virtue of advertising campaigns or public discussions that took place prior to the introduction of this loan type offering in **late April 2014**.

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

**GER DEERING  
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

16 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.