



<b><u>Decision Ref:</u></b>	2021-0032
<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 Complainants' mortgage loan application for a tracker portability product with the Provider. At the time of the Complainants' application, the Second Complainant held a mortgage home loan account ending **0658** with the Provider which was on a tracker interest rate. The home loan account ending **0658** was held jointly by the Second Complainant with a family member (the "**third party**") and was secured on the Second Complainant's private dwelling house.

The purpose of the Complainants' mortgage loan application for a tracker portability product was to purchase a new property in the joint names of the Complainants and maintain a tracker interest rate. The Complainants' mortgage loan application for a tracker portability product was subsequently declined by the Provider in **June 2014**.

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

The Second Complainant submits that he drew down tracker mortgage loan account ending **0658** with the Provider in **2003** in the amount of €150,000 and he held the mortgage loan jointly with a third party.

The Complainants state that in **2013**, the Second Complainant and the First Complainant (his fiancée) sought to move out of the private dwelling house the subject of mortgage loan account ending **0685** ( the **“mortgaged property”**) and purchase a new property.

In **January 2014**, the Complainants submit that they intended to sell the mortgaged property and *“port the existing loan and secure a second top-up mortgage”* to purchase a new property.

The Complainants submit that they met with the mortgage advisor of their local branch of the Provider in **January 2014** based on *“initial publications in the press of the potential for the portability of our [t]racker mortgage”*. The Complainants state that the mortgage advisor informed them that he had yet to attend a training session regarding the tracker portability mortgage product but the product would be available from **April 2014**.

The Complainants explain that they met the mortgage advisor again after he completed the training in relation to the tracker portability mortgage product and they asked him what was required from them in order to avail of this new product. The Complainants state that the mortgaged property was on the market at that stage. The Complainants assert that the mortgage advisor’s advice was to *“clear any outstanding debt i.e. a Credit Card and a small Credit Union loan”*. The Complainants explain that the sum of the credit card and credit union loan debts did not exceed €2,000 and neither facility had ever been in arrears. The Complainants contend that they questioned the mortgage advisor as to whether they should make separate savings to a separate account on a monthly basis however the mortgage advisor *“insisted that the clearing of outstanding debt was imperative and sufficient”* therefore *“separate savings on a monthly basis were not required”*. The Complainants assert that the mortgage advisor assured them that *“the profit from the sale of the house would satisfy the need for evidence of savings.”* The Complainants explain that on foot of the mortgage advisor’s advice, which they followed *“to the letter”*, they concentrated on clearing the credit card and credit union loan.

The Complainants note that their application *“to carry their tracker and borrow €65,000 on a separate variable rate mortgage”* was refused in or around **May 2014** on the basis that they did not meet the Provider’s lending criteria due to the Complainants’ insufficient repayment capacity.

The Complainants submit that they had *“at least six protracted meetings”* with the mortgage advisor of the Provider’s branch while they were searching for a new property and the Complainants submit that the issue of saving a sum of €384.00 per month (being the difference between the current mortgage and the new proposed mortgage) was *“never mentioned”*. The Complainants submit that this advice was never offered by the

Provider's representative even when the Complainants "*specifically offered to make such savings in a separate account*".

In addition, the Complainants also state that their initial loan application was calculated by the mortgage advisor as a self-build which was "*completely erroneous and that the figures he calculated for [them] differed from meeting to meeting*".

The Complainants maintain that they received "*misleading, inaccurate and miscalculated*" advice from the Provider over a six month period in **2014** which resulted in the refusal of their tracker mortgage portability application and consequently the loss of the existing tracker mortgage. The Complainants assert that the Provider has been "*disingenuous*" in dealing with them from the start of the process "*even to the point of saying that all records had been lost*".

The Complainants maintain that due to the Provider's incorrect advice;

- They sold their existing property in good faith, having been assured by the Provider that their application would be successful;
- They lost the opportunity to buy a prospective new home;
- They incurred rental costs, surveyor's costs, solicitor's fees and storage fees; and
- They have suffered from medical stress and anxiety.

The Complainants submit that given the circumstances, they had to approach an alternative Provider at short notice as they were renting and managed to ultimately secure a mortgage loan with the alternative Provider.

The Complainants are seeking that the Provider reinstate their original tracker mortgage. They are also seeking that the Provider acknowledge its error and furnish them with compensation for losses incurred.

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

The Provider states that the Complainants visited one of its branches in **2014** to discuss the Provider's proposed new product suite then known as 'Home Movers', as the Complainants had identified a new property which they intended to purchase. The Provider maintains that this visit took place before the launch of the tracker portability mortgage product as part of the 'Home Movers' product range in **April 2014**. The Provider submits that the mortgage advisor whom the Complainants had consulted with at the time of their visit to the Provider's branch, "*provided the Complainants with the information available at the time of their visit regarding the Provider's new product suite and agreed that he would revert to them following the launch date*".

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The Provider explains that the Second Complainant was an existing customer of the Provider as he held a joint home loan account with a third party. The Provider notes that *“this is the loan account which the Complainants proposed to transfer to a new Tracker Portability loan in their joint names to facilitate the purchase of a new property in the joint names of the Complainants”*. The Provider submits that shortly after the product launch of the new tracker portability product on **25 April 2014**, the mortgage advisor of the Provider’s branch contacted the Complainants and asked them to come to the branch to complete a loan application.

The Provider states that the Complainants subsequently completed a mortgage application in the branch with the mortgage advisor. The Provider explains that the mortgage advisor *“informed the Complainants of the Provider’s lending criteria i.e., evidence of sufficient income to meet the proposed repayments, repayment history, level of existing borrowings and account history.”* During the completion of the loan application, the Provider submits that the mortgage advisor *“noted that the Complainants did not have evidence to demonstrate the Bank’s required proven repayment ability”* and *“in particular”* he noted that the Complainants *“had no savings and that a number of items presented for payment in the then recent past on a current account held by [Second Complainant] had been returned unpaid”*. The Provider asserts that the Complainants informed the mortgage advisor that they *“wished to progress the application as quickly as possible as they had a property in mind”*. The Provider submits that the mortgage advisor explained to the Complainants that *“full repayment of an existing credit card debt would not normally be viewed as proven repayment ability but he agreed to present this as possible evidence to the Bank’s underwriting department in respect of their application”*. The Provider states that the mortgage advisor agreed to forward the application to the Provider’s credit department for assessment however *“warned the Complainants that reliance on credit card full repayment and closure of the credit card account might not be sufficient to demonstrate repayment capacity and that it may be necessary to wait for six months to reapply for the loan with evidence of savings after a six month period as well as no further returns on the current account”*.

The Provider submits that the Complainants’ application for its tracker portability product was refused in **June 2014** because the Complainants could not meet the Provider’s *“credit policy requirement of a proven repayment capacity for the loan they were seeking”*. The Provider asserts that the mortgage advisor *“arranged with the Provider’s credit department that it would re-consider the Complainants’ application if the Complainants were to revert with proven repayment capacity based on no returned items on the current account and an ability to save €384.00 per month in three months instead of the normal six months”*. The Provider asserts that the mortgage advisor who dealt with the Complainants in respect of their application for the tracker portability product was *“an experienced member of staff”* and was *“fully trained in all aspects of the mortgage process”*.

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The Provider states the mortgage advisor sought to assist the Complainants where it “*was clear*” they did not have the requisite repayment capacity owing to the Complainants’ credit card balance, returned payments on the current account and the lack of savings.

The Provider further states that the Complainants’ application was not declined but rather “*deferred for three months to allow them to prove to both themselves and [the Provider] that this repayment is affordable*”. The Provider submits that the Complainants “*indicated that they would endeavour to meet this requirement over the following three month period.*” The Provider submits that the Complainants did not “*re-initiate the loan application*” after this period. The Provider explains that the Complainants’ application was held on file for a period of twelve months but as the matter did not progress, there was “*no legitimate business reason to retain the application records on file*”. The Provider submits that the application form and associated documentation were “*destroyed after twelve months in accordance with data protection guidelines.*”

In response to the Complainants’ submission that their initial application was calculated as a self-build in error, the Provider contends that the Complainants have provided no details regarding this submission, including the basis on which they refer to a self-build.

### **The Complaint for Adjudication**

The complaint for adjudication is that the Complainants received “*misleading, inaccurate and miscalculated*” advice from the Provider over a six month period in **2014**, which resulted in the refusal of their application for a tracker portability mortgage product and consequently the loss of the existing tracker mortgage.

### **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.

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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 19 January 2021, 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 gave the Complainants "*misleading, inaccurate and miscalculated*" advice regarding the Complainants' application for a tracker portability mortgage product which resulted in the Provider declining the Complainants' application and consequently the loss of the existing tracker mortgage previously held by the Second Complainant.

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**.

The Provider was requested by this office to provide a copy of the Complainants' tracker portability application form together with any file notes, records and memoranda held by the Provider between **January 2014** and **June 2014** in relation to the assessment of the Complainants' tracker portability product application. The Provider has explained that while the Complainants' application form and all associated documentation was held on file for a period of 12 months, in circumstances where no product had been provided at that stage, the application form and associated documentation was destroyed after the 12 month period in accordance with data protection guidelines. I accept that given no letter of offer ever issued to the Complainants and no product was provided to the Complainants, there was no legitimate business reason for the Provider to retain the documentation on file. Nevertheless, the Complainants have maintained records of their dealings with the Provider in **2014**. Those records have been submitted in evidence and have been exchanged with the Provider.

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On foot of receipt of a complaint by the Complainants to this office and prior to the investigation of the complaint by this office, the Provider investigated the matter before issuing a **Final Response Letter** to the Complainants. During its investigation of the Complainants' initial complaint in **July 2016**, the Provider submits that it liaised with the mortgage advisor who dealt with the Complainants in **2014** and requested him to provide his comments in relation to the Complainants' application for a tracker portability product.

The mortgage advisor provided a statement dated **26 July 2016** to the Provider based on his own recollection of his dealings with the Complainants in **2014**. I note that this statement has been exchanged with the Complainants.

In order to adjudicate on 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 in **2014**. In this regard, I will consider the evidence submitted by the parties to include the records supplied by the Complainants pertaining to their mortgage loan application and a statement prepared by the mortgage advisor of the Provider outlining his recollection of his dealings with the Complainants during the mortgage loan application process.

It appears from the evidence submitted that the Complainants met with a mortgage advisor of the Provider's branch in early **March 2014**. I note that two documents, submitted in evidence by the Complainants, entitled '**Your Home Mover – Approval in Principle**' dated **7 March 2014**, issued to the Complainants on foot of a meeting with the mortgage advisor. The first '**Approval in Principle**' document provides a breakdown of borrowings for the purchase of a new property with a purchase price of €190,000 and details as follows;

**"New Loan**

<b>Purchase Price</b>	<b>€190,000</b>
<b>Less Deposit Required (10% minimum)</b>	<b>€19,000</b>
<b>Mortgage on New Property</b>	<b>€171,000</b>
<b>Plus Negative Equity</b>	<b>€0,000</b>
<b>Total New Mortgage</b>	<b>€171,000</b>
<b>Loan To Value</b>	<b>90%</b>

**Repayment of New Loan**

**Part A- Tracker Interest Rate**

<b>Mortgage Balance</b>	<b>€123,159</b>
<b>Interest Rate</b>	<b>2.05%</b>
<b>Term (Years)</b>	<b>25</b>
<b>Monthly Repayment Amount</b>	<b>€525</b>

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**Part B- Variable Interest Rate**

<b>Mortgage Balance</b>	<b>€47,841</b>
<b>Interest Rate</b>	<b>4.45%</b>
<b>Term (Years)</b>	<b>34</b>
<b>Monthly Repayment Amount</b>	<b><u>€228</u></b>

**Total Repayment Amount (Part A +Part B) €0,753''**

The second 'Approval in Principle' document dated **7 March 2014** document provides a breakdown of borrowings for the purchase of a new property with a purchase price of €280,000 and details as follows;

**"New Loan**

<b>Purchase Price</b>	<b>€280,000</b>
<b>Less Deposit Required (10% minimum)</b>	<b>€50,000</b>
<b>Mortgage on New Property</b>	<b>€230,000</b>
<b>Plus Negative Equity</b>	<b>€0,000</b>
<b>Total New Mortgage</b>	<b>€230,000</b>
<b>Loan To Value</b>	<b>82%</b>

**Repayment of New Loan**

**Part A- Tracker Interest Rate**

<b>Mortgage Balance</b>	<b>€123,159</b>
<b>Interest Rate</b>	<b>2.05%</b>
<b>Term (Years)</b>	<b>25</b>
<b>Monthly Repayment Amount</b>	<b>€525</b>

**Part B- Variable Interest Rate**

<b>Mortgage Balance</b>	<b>€106,841</b>
<b>Interest Rate</b>	<b>4.45%</b>
<b>Term (Years)</b>	<b>34</b>
<b>Monthly Repayment Amount</b>	<b><u>€509</u></b>

**Total Repayment Amount (Part A +Part B) €1,034''**

I note that both 'Approval in Principle' documents pre-date the launch date of the Provider's tracker portability product on **25 April 2014**.



The '**Approval in Principle**' documents both detail as follows;

*"Getting a 'Mortgage Approval in Principle' before you start looking for a house is always a good idea. It will give you a rough idea of how much you have to spend.*

### **What does 'Home Mover Approval in Principle' mean?**

*Home Mover Approval in Principle' is an understanding between you and us outlining roughly how much we could lend to you.*

*We base that calculation on the information you provide and if you do decide to complete a full application, we'll check to make sure that all the details are accurate.*

- *This is an approval in principle only so it is not legally binding. **We cannot guarantee that we will approve a full application for a mortgage for this or any amount yet.***
- *If you decide to proceed with a full mortgage application it will be **subject to our lending criteria, terms and conditions.***
- *The amount and term quoted above may not be a suitable option for your needs. You should also be aware that it costs more to borrow over a longer term than over a shorter term. This is because you will pay more interest over the longer term than a shorter term. However, we will be sure to outline all your options for your circumstances when you complete an application with us. [my emphasis]*

### **Okay. What happens next?**

- *You continue the search for your new home and we will try to help you in any way that we can.*
- *When you are ready to make a full application, simply get in touch and we will set up an appointment to help you complete your application*
- *Make sure to check the enclosed 'Home Mover – Approval in Principle Pack', which outlines everything you need to know about the application process and the attached Mortgage Application checklist which describes what you will need to bring along when you next meet us.*
- *The Household Cash flow Self Assessment Planner is also enclosed. Can you please complete this ahead of our next meeting."*

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It appears from the evidence that the Complainants engaged an estate agent to handle the sale of the Second Complainant's existing mortgaged property the subject of his tracker mortgage loan account ending **0658** which he held with a third party. A letter from the Second Complainant's estate agent to the Second Complainant's solicitor dated **27 March 2014** details as follows;

***"Re [address or mortgaged property the subject of loan account ending 0658]  
Your Client: [Second Complainant]***

*To Whom It May Concern,*

*We confirm that we have negotiated the sale of the above property. Details are as follows:*

***Purchase Price: €200,000***  
***Purchaser: [Name of purchasers]***  
***Purchasers Solicitors: [Name and address of purchasers' solicitors]***  
***Subject to: Contract/ Contract denied***  
***Deposit: €5,000 held by us as Stakeholders pending instructions***

*Should you wish to contact the purchaser re return of contract document, please telephone our office.  
[...]"*

It appears from the above letter that the Complainants had found potential purchasers for the mortgaged property the subject of mortgage loan account ending **0658** prior to making a mortgage loan application for the Provider's tracker portability mortgage product in **May 2014** and indeed prior to securing full loan approval.

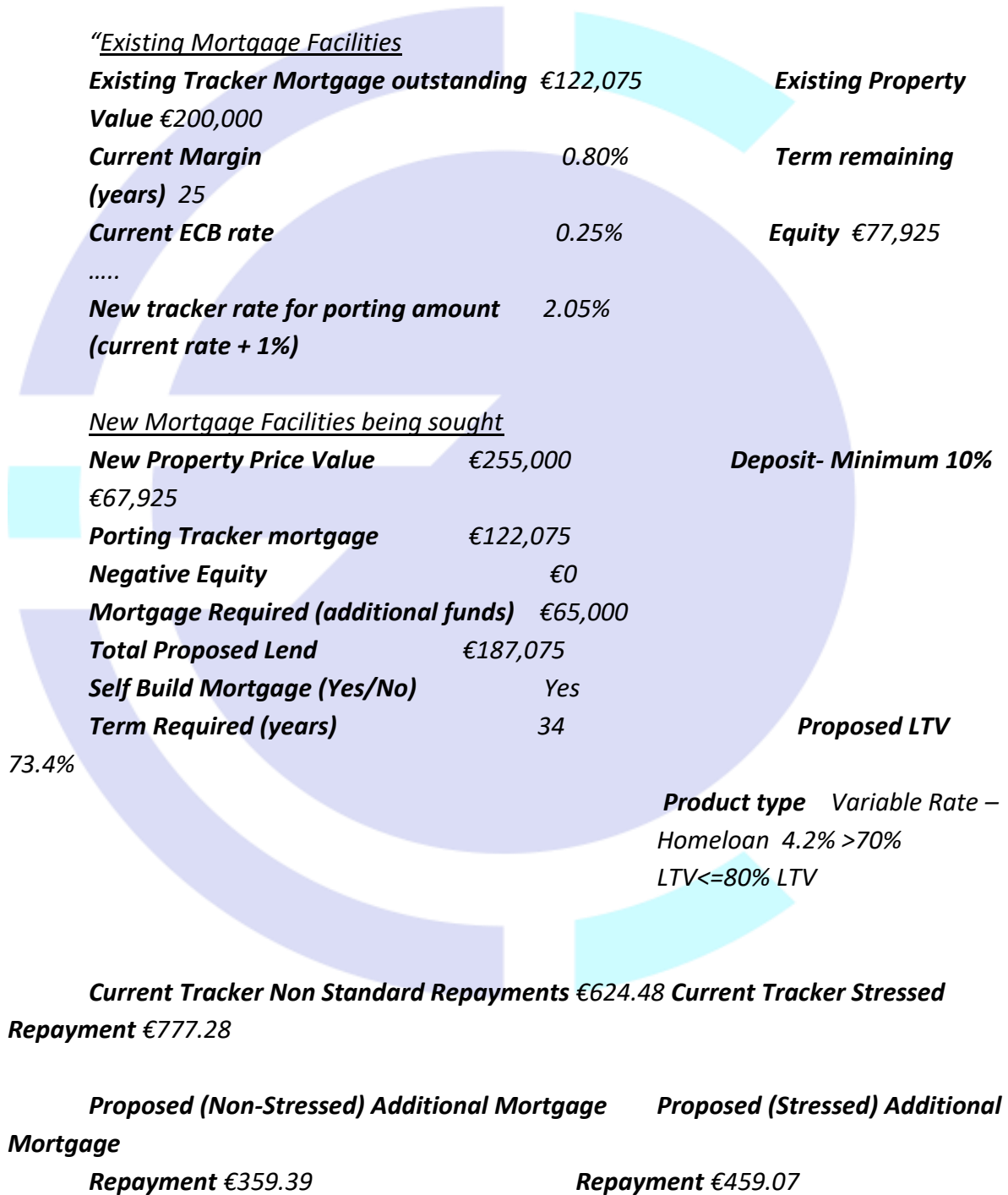
The Complainants have submitted three documents entitled "**Home Mover Approval in Principle Calculator**" in evidence outlining the Complainants' "*Existing Mortgage Facilities*" and "*New Mortgage Facilities being sought*". The documents appear to relate to different properties, the first valued at €220,000 and the second and third both valued at €255,000. The first of these documents detail as follows;

<i>"New Property Price Value</i>	<i>€220,000</i>	<i>Deposit- Minimum 10%</i>
<i>€50,000</i>		
<i>Porting Tracker mortgage</i>	<i>€122,075</i>	
<i>Negative Equity</i>	<i>€0</i>	
<i>Mortgage Required (additional funds)</i>	<i>€47,925</i>	
<i>Total Proposed Lend</i>	<i>€170,000</i>	

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<i>Self Build Mortgage (Yes/No)</i>	Yes	
<i>Term Required (years)</i>	34	<i>Proposed LTV</i> 77.3%
		<i>Product type</i> Variable Rate – <i>Homeloan</i> 4.2% >70% <i>LTV</i> <=80% LTV

The second “Home Mover Approval in Principle Calculator” document details as follows;



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**Total combined proposed non-stressed Mortgage Total combined Proposed  
Stressed Repayment Repayments €983.87 (tracker +new mortgage) €1,236.35**

It is unclear as to when the above two documents were provided to the Complainants however they appear to have been provided to them following meetings with the Provider's mortgage advisor and prior to **May 2014**.

After the launch of the Provider's tracker portability mortgage product on **25 April 2014**, it appears that the mortgage advisor provided the Complainants with a brochure explaining the details of the Provider's tracker portability product. The Provider has submitted a copy of its "Home Movers" guide in evidence which details the process applicable in **2014** when the Complainants applied for the tracker portability mortgage product.

The '**Applying for Tracker Portability**' section of the brochure details as follows;

*"Step 1*

*First, 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:*

- 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%.*

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*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.*

The '**Letter of Approval**' section of the brochure details as follows;

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

*Step 1*

*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.*

*Step 2*

*If you are in Negative Equity, you must do the following:  
[...]*

*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."*

I note that the Complainants were not in negative equity therefore Step 1 above only applied in respect of their application.

The '**Selling and Buying**' section of the brochure details as follows;

*"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.*

[...]

*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 you sold your existing property) in order to avail of the Tracker Portability offer".*

The estate agent engaged by the Second Complainant issued two letters dated **6 May 2014** to the Complainants in respect of the mortgaged property the subject of account ending **0658**. The first letter from the estate agent details as follows;

*"Having inspected the above property it is my opinion that it would achieve in the region of €190,000- €200,000 given the current market conditions".*

The second letter from the estate agent details as follows;

*"We would like to confirm that the above named property was sale agreed at €200,000".*

The Complainants appear to have requested these letters as part of their application for the Provider's tracker portability product.

The Second Complainant sent an email to the mortgage advisor on **12 May 2014** following a meeting with the Provider and upon receipt of what appears to be the Provider's brochure on the tracker portability product noting as follows;

*"Thanks for the paperwork we received today. While it detailed the mortgage it did not detail our mortgage break down into a monthly repayment it only gave examples of others. We understand that the variable mortgage rate has risen but comparing the tracker information breakdown on the paperwork you printed off for us the last day compared to the information you have printed off previously there is a difference of €99.84, both paperwork where drawn up the new tracker rate of 2.05% over 25 years. Just wondering if you can clarify this for us.*

*On the figures you gave us the last day our equity on the house is down as €77,925 (I presume this is profit for the house), does this take into consideration we wanted to pay our house sale expenses out of the proceeds? Can you give [First*

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*Complainant] a ring on [contact number] just to clarify some points before we sign the application [...]"*

The Second Complainant appears to question the information previously provided by the mortgage advisor in relation to the breakdown of the tracker mortgage payments. I understand from the evidence submitted, that the "paperwork" referred to by the Second Complainant in his email above is the "Home Mover Approval in Principle Calculator" documents however it is unclear as to whether additional documents of this nature, other than the two documents referred to above, were provided to the Complainants. The mortgage advisor replied to the Second Complainant by way of email on **13 May 2014** as follows;

*"These are the figures going forward, I discussed with [First Complainant] on why the figures you had were incorrect as I had the mortgage down as a self-build and this adds 20% to the repayment figures, so the attachment will show the correct figures to be submitted to retail, also the system automatically carry the positive equity over and after the legal fees and government stamp duty are paid this leaves over €5000.00 to pay for fees associated with selling your own house."*

The Complainants submit that another "**Home Mover Approval in Principle Calculator**" document was sent to them by the mortgage advisor "after questioning [mortgage advisor] on why there was €100 difference on tracker mortgage in our last meeting". The third "**Home Mover Approval in Principle Calculator**" submitted in evidence by the Complainants, which I understand was attached to the mortgage advisor's email of **13 May 2014**, details as follows;

Existing Mortgage Facilities

<b>Existing Tracker Mortgage outstanding</b>	€122,075	<b>Existing Property Value</b>	€200,000
<b>Current Margin</b>	0.80%	<b>Term remaining</b>	25 (years)
<b>Current ECB rate</b>	0.25%	<b>Equity</b>	€77,925
.....			
<b>New tracker rate for porting amount</b>	2.05%		
<b>(current rate + 1%)</b>			

New Mortgage Facilities being sought

<b>New Property Price Value</b>	€255,000	<b>Deposit- Minimum 10%</b>	€67,925
<b>Porting Tracker mortgage</b>	€122,075		
<b>Negative Equity</b>	€0		

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**Mortgage Required (additional funds)** €65,000  
**Total Proposed Lend** €187,075  
**Self Build Mortgage (Yes/No)** No  
**Term Required (years)** 34  
**Proposed LTV** 73.4%  
**Product type** Variable Rate –  
Homeloan 4.2% >70%  
LTV<=80% LTV”

**Current Tracker Non Standard Repayments** €520.40 **Current Tracker Stressed Repayment** €647.73  
**Proposed (Non-Stressed) Additional Mortgage Repayment** €299.49 **Proposed (Stressed) Additional Mortgage Repayment** €382.56  
**Total combined proposed non-stressed Mortgage Stressed Repayment** €819.89 **Total combined Proposed (tracker +new mortgage)** €1,030.29”

The above calculation is based on the new property being valued at €255,000 and the new property is not categorised as a self-build whereas the mortgage advisor appears to have previously categorised the new property as a self-build in the second “**Home Mover Approval in Principle Calculator**” document referred to above. This office requested the Provider to address the Complainants’ submission that their initial application was calculated as a self-build in error. As outlined above, the Provider does not accept that there was any such error and states that the Complainants have “*provided no details regarding this submission, including the basis on which they refer to a “self build”*”.

The contents of the mortgage advisor’s email dated **13 May 2014** to the Second Complainant, as outlined above and exchanged with the Provider, does not support this assertion by the Provider. It is most unsatisfactory that the Provider did not fully address this matter in its response to this office. The email dated **13 May 2014** shows that the mortgage advisor incorrectly categorised the Complainant’s property as a self-build during the mortgage loan application process but corrected this mistake prior to forwarding the loan application to the Provider’s underwriting team for assessment.

Notwithstanding this incorrect categorisation as a self-build, the loan amounts, mortgage rates and loan terms in respect of the existing mortgage facilities and new mortgage facilities being sought remained the same as did the proposed loan to value and product type. The breakdown of the mortgage repayments differed in that they were lower based

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on the property not being categorised as a self-build. I understand that the figures where the property was not categorised as a self-build were considered by the Provider's underwriting team in its assessment of the Complainants' loan application. Therefore, I do not consider the previous categorisation of the new property as a self-build by the mortgage advisor to have had an impact on the Complainants' mortgage loan application.

The Complainants have submitted a letter dated **14 May 2014** in evidence from the company which the First Complainant held a credit card with. This letter confirms the closure of the First Complainant's credit card account.

The Second Complainant sent an email to the mortgage advisor on **16 May 2014** at **08:15** which details as follows;

*"If I can get the paperwork that we where (sic.) up to you today when do you think we could have clarification on our mortgage being approved, as we are coming under pressure from the vendors of [new property] to produce a deposit. Getting the deposit isn't a problem, but we don't want to put one down until we are sure we have mortgage approval. If you could let me know that would be great."*

The mortgage advisor replied by email on **16 May 2014** at **09:10** as follows;

*"I just have to get the paperwork in order and send up a recommendation, my diarys (sic.) booked up today so I will not get a chance to do it until after 5 and the underwriters usually get back to you within 2-3 days so I would say I will have an answer for you by [W]ednesday."*

The Provider issued a letter to the Complainants dated **19 June 2014** with reference to mortgage application number ending **7484** informing the Complainants that it was unable to facilitate the Complainants' loan application. The letter dated **19 June 2014** details as follows;

*"We are writing to you in connection with your above numbered Mortgage application dated **08/05/2014** in the names of [Complainants].*

*We regret to advise that after due consideration we are unable to facilitate your application at this time for the following reason.*

***The request for credit is outside the Banks current lending / credit criteria***

/Cont'd...

*This decision is based on the information which you provided to us at the time of your application. If however, you believe that you have any additional relevant information which may influence our decision, please contact your branch."*

The Provider issued a further letter to the Complainants dated **20 June 2014** with reference to mortgage application number ending **7630** informing the Complainants that it was unable to facilitate the Complainants' loan application.

The letter dated **20 June 2014** details as follows;

*"We are writing to you in connection with your above numbered Mortgage application dated **08/05/2014** in the names of [Complainants].*

*We regret to advise that after due consideration we are unable to facilitate your application at this time for the following reason.*

***The request for credit is outside the Banks current lending / credit criteria***

*This decision is based on the information which you provided to us at the time of your application. If however, you believe that you have any additional relevant information which may influence our decision, please contact your branch."*

The above letters suggest that the Complainants made two separate mortgage loan applications to the Provider which were ultimately declined by the Provider in circumstances where the Complainants' application fell outside the Provider's lending/credit criteria.

It is unclear as to whether the mortgage advisor informed the Complainants of the Provider's decision to decline their application before the Provider issued the above letters. The Complainants' submissions suggest that they learned of the Provider's decision in **May 2014**. This office requested the Provider to provide full details of its lending/credit policy that was applicable at the time of the Complainants' application for a tracker portability product. The Provider details the following in respect of the lending/credit policy applicable at the time in respect of the Provider's consideration and assessment of home loan applications;

"

- *eligibility of loan applicants for credit, including a review of previous credit history,*

/Cont'd...

- *proven loan repayment ability (“PRA”) regarding the affordability for the applicants of the proposed loan, including assessment of employment details, income net of financial commitments and savings/rent/loan repayments paid in the 6 months prior to the application.*
- *home loan parameters such as maximum duration and LTV, and*
- *acceptable security property criteria.”*

The Complainants have submitted a series of emails in evidence between the mortgage advisor and the third party who held mortgage loan account ending **0658** jointly with the Second Complainant.

I understand from the evidence submitted that the third party is the Second Complainant’s mother who appears to have corresponded with the mortgage advisor and another representative of the Provider in relation to the Provider’s decision to refuse to grant mortgage approval in respect of Complainants’ mortgage loan applications. It is not clear from the evidence submitted as to whether the Complainants requested the third party to liaise with the Provider on their behalf. It is also unclear as to when the emails were exchanged between the relevant parties as the date and time stamps have been removed from the copy of emails submitted in evidence. That said, it would appear that the email exchange occurred during the month of **June 2014** after the Complainants learned of the Provider’s decision to decline their mortgage loan application.

The first email correspondence of note is from the third party to the Provider’s representative:

*“[...]*

*[Complainants] have an interested party in the purchase of their house for the sum of 200k and they have located a house just outside [name of town] which they wish to buy for €255,000. They will have €75,000 equity from the sale of their house.*

*They have been dealing with [name of mortgage advisor] since January and have at all stages followed his advice re clearing loans etc. [Name of mortgage advisor] has said that he used their information as a case study in training sessions. Nevertheless their application to carry their Tracker and borrow €65,000 on a separate variable mortgage has been refused.*

*We are at a loss as to why the clearing and closing of a Visa card could be a cause for a refusal of such a loan prospect. They are in fact just looking for a 60% Loan to Value financing option?”*

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The mortgage advisor sent an email to the third party that reads as follows;

*"I got back to [Complainants] with a decision on their application, I am not aware of what your plan is as I received and (sic.) e-mail to give you a ring regarding your tracker and there was no answer so I left a message on your phone to call or e-mail me back, Can you forward on your mobile number or ring me on [ contact number]...."*

The mortgage advisor sent a further email to the third party that reads as follows;

*"They do not take a revolving facility as repayment capacity, I would of thought they did seen as it was not been used and was been paid off at the same time but the underwriter said it has to be put into a savings account so they need to save the difference between the current mortgage and the new proposed mortgage (€384) plus no returns on any of their accounts to get the application to progress. Once they are approved they have a 6 month period to find a new property and keep hold of their tracker. When they have this they do not have to come in again just drop the paperwork in and I will send it back up to the underwriter."*

The third party sent a further email to the mortgage advisor which details as follows;

*"I really do not understand this language and you know I'm an intelligent person. Am I right that by doing what you advised, i.e. paying off the Visa card and bank loan they have in fact lost out on Loan Approval. If they had not worked so hard to clear their debts it would have been obvious that they were spending at least a further €400 per month servicing these debts.*

*I am at a loss to understand how this has happened [name of mortgage advisor], they can easily afford this new mortgage and now they risk losing their buyers as well as a really good value and ideal family home.  
Please come back to me with some positive news on this issue."*

The mortgage advisor responded to the third party as follows;

*"I have advised [First Complainant] on what to do next, no returns on any of their accounts and to save the difference between their existing mortgage and the new mortgage which is €384.00 a month, I have spoken to the underwriter twice and there is no moving on this decision."*

A further email was sent by the mortgage advisor to the third party as follows;

/Cont'd...

*"Yes I advised them to have repayment capacity for the loan, they were not saving it so last resort was to clear the credit card, regardless of what I say to the customers the underwriter makes the final decision I have got [name of Provider's representative] to look over this already but I will leave will (sic.) the file with [name of Provider's representative] and you can talk to him directly as I have explained to the couple this is the final decision."*

The third party appears to have sent another email to the mortgage advisor as follows;

*"I know this [named of mortgage advisor], but does the underwriter understand that [Complainants] were following your advice. You never mentioned €384 per month savings and they have been talking to you since January".*

The Provider's representative subsequently responded to an earlier email from the third party after he returned from annual leave. The response from the Provider's representative reads as follows;

*"I was on holidays for a few days last week hence the delay in responding to your e-mail.*

*I have reviewed [the Complainants'] file and am currently in discussions with [First Complainant] and Retail Credit regarding same.*

*However all new lending today requires the client to have proven repayment ability for the proposed new repayment for a period of 6 months which is the key component missing in this case.*

*This application is not declined but rather deferred for three months to allow them time to prove to both themselves and us that this repayment is affordable.*

*[Name of mortgage advisor] has fought hard to get this deal approved but unfortunately it is currently outside of the Banks credit policy.*

*Please contact me on [number] should you wish to discuss in more detail."*

The third party responded to the Provider's representative as follows;

*"Thank you for getting back to me [name of Provider's representative]. The advice from [name of mortgage advisor] was that the profit from the sale of the [mortgaged property the subject of mortgage loan account ending **0658** would be*

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*taken into account instead of savings. That is why, again on [name of mortgage advisor] advice, they concentrated on clearing the Visa card and [First Complainant's] bank loan. If they had been advised to save the difference then they would have done so. After all they did start their meetings with [name of mortgage advisor] in January. This was plenty of time to satisfy this underwriters requirement. The first mention of €384 per month to be saved was when I called [name of mortgage advisor] over to the customer service counter.*

*At this point their house is sold with purchasers ringing every day for a moving in date and they run the risk of losing a great offer on a house in [location] ideally suited to their needs and their budget. They have not signed any contract or paid any binding deposit but they were ready to do this in the belief that they had followed all the instructions given.*

*Not to exaggerate this [name of Provider's representative] it is all a mess. They acted in good faith at all times and they believed everything and completed all the requirements outlined by [name of mortgage advisor]. I know that [name of mortgage advisor] is sincere but he was in training and made a genuine error. Unfortunately for everyone, [the Complainants] are paying the price. I do not want them to lose their Tracker option. House prices are going up and now becoming out of their reach. They are distraught.*

*Also [name of mortgage advisor] may have told you that I am redeeming a Tracker (ending in [xxxx]) for €68,000 approx) as I have sold my investment property in [location]. Could this possibly have any effect on this situation with the underwriters?"*

Based on the above email exchange, it appears to me that the Complainants' maintain that the mortgage advisor of the Provider's branch had provided them with inaccurate information which resulted in the Complainants' mortgage loan application for the tracker portability product being denied. I note that the Provider's representative clearly stated that the application was not declined but rather deferred to allow the Complainants a further three months to "prove" they had the requisite repayment ability.

As outlined above, during its investigation of the Complainants' initial complaint in **July 2016**, the Provider liaised directly with the mortgage advisor who dealt with the Complainants in **2014** and requested him to provide a statement in relation to his recollection of the Complainants' application for a tracker portability product. The representative from the Provider's customer relations department sent an email to the mortgage advisor on **26 July 2016 at 13:28** detailing as follows;

/Cont'd...

*"We are currently attempting to respond to the attached complaint [...]"*

*Can you please assist us by providing your comments/response to the following statements made along with a summary of the case as you recall:*

- We feel that [name of mortgage advisor] was only receiving training regarding this new product and that the advice given was not accurate, in fact misleading and always too late.*
- [Name of mortgage advisor] advised that the clearing of a small term loan and a small sum outstanding on a Visa Card.... [name of mortgage advisor] also insisted on the closing of the Visa Card when the balance was cleared.*
- When the underwriters finally refused the small top up Variable Mortgage of €64,000 they cited the lack of saving on a monthly basis. This advice had never been offered by [name of mortgage advisor] even when we specifically offered to make such savings on a monthly basis. He insisted that the clearing of outstanding debt was imperative and sufficient. Therefore he advised that separate savings on a monthly basis were not required.*

*[Name of Provider's representative] states that- the application was not declined but rather deferred for three months to allow them time to prove to both themselves and us that this repayment is affordable.*

*Noting the above statement from [name of Provider's representative] can you recall:*

- 1. If there was an official Mortgage application submitted?*
- 2. If there was a decline letter issued to the customers?*
- 3. Do you still have email records documented in relation [to] this case?*

*I appreciate your help in this matter."*

The mortgage advisor replied to the Provider's customer relations department by email dated **26 July 2016** at **14:19** as follows;

*"*

- The customers came into me before the product was even launched and I gave them information on the product but told them I will ring them to go through figures when the product is launched and when they upload the calculator to do*

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*this, when the product was launched I called them back into (sic.) do an application.*

- *When I seen there was insufficient PRA [proven loan repayment ability] I went up to RCC with their loan to be cleared and their credit card to be cleared and use this as PRA as there was no savings, I noted to the customers the normal form of PRA was loan finishing, savings or a mortgage cleared and there were no savings at all, I noted the credit card was not taken into consideration as part of PRA but customers wanted to move as quickly as possible as they had a house picked out, so I said to them I will send up a recommendation on them to reduce their credit card every month and don't make any purchases and close it off and hopefully they can take this as PRA as they are reducing it like a loan and not using this and they did that.*
- *There was also returns on [Second Complainant's] account at the time, underwriter declined this on the fact that they were not taken the credit card into consideration and returns on [Second Complainant's] account, advised customers of no returns on the account and need to save €384 per month, when I corresponded this to the customer it did not take 3 months, normal criteria in fact is if a customer has returns on their account that they need to have full PRA and no returns on their account for 6 months, I agreed with the underwriter if customers can do this we look at it in 3 months as they were existing customers and they advised they would.*
- *As [Provider's representative] states the application was deferred if the customer had of come back in 3 months the tracker might have been ported pending full PRA and no returns on [Second Complainant's] account.*

*Overall customers were correctly advised from the start I distinctly remember when taken the application asking for savings statements they did not produce these so they had not got full PRA and when I did my calculation the loan clearing and existing mortgage was not enough this is why I said we will either have to wait 6 months or hope the underwriter takes the Credit card balance reduced and closed into consideration but reiterated to the customer this is not the norm.*

*At no point did I tell the customers they would be approved, final decision is with the underwriter.*

*I have a very good record in the bank with vast experience in Mortgages the only reason I sent it up with this proposal with no savings was to accommodate the customer at no point did I make any guarantees.*

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*This was over 2 years ago I would not have any e-mails in relation to this case and I am wondering why the complaint only logged now and not back in 2014?*

[...]"

The Complainants contend that they received "*misleading, inaccurate and miscalculated*" advice from the mortgage advisor of the Provider's branch over a six month period in **2014** which resulted in the refusal of their tracker portability application and the loss of the Second Complainant's existing tracker mortgage.

The Complainants submit that on foot of the Provider's "*incorrect advice*", they suffered the following losses;

- sold their existing property in good faith, having been assured by the Provider that their application would be successful;
- lost the opportunity to buy a prospective new home and incurred "*extra expense*" in the purchase of another;
- rental costs, surveyor's costs, solicitor's fees and storage fees; and
- medical stress and anxiety.

I note that the Provider's tracker portability mortgage product was launched on **25 April 2014**, the Complainants appear to have submitted two mortgage loan applications on **8 May 2014** and the Provider issued letters declining the Complainants' mortgage loan applications on **19 and 20 June 2014**. Therefore, I am of the view that the application process for the tracker portability mortgage product took place across two months. While I acknowledge that Approval in Principle documents issued to the Complainants on **7 March 2014**, it is reasonable to conclude that such approval in principle did not relate to the Provider's tracker portability mortgage as it had not yet been launched on the market. In any event, the approval in principle documents that issued to the Complainants made it clear that the Provider could not guarantee approval of a full application for a mortgage for any loan amount and any full mortgage application submitted would be subject to the Provider's lending criteria, terms and conditions.

After the tracker portability product was launched by the Provider on **25 April 2014** and the approval in principle calculator for that particular mortgage product was uploaded, I understand that the mortgage advisor contacted the Complainants and provided them with details of the mortgage product together with a calculation (through the approval in principle calculator) as to how much they could borrow and at what mortgage rate together with a breakdown of the repayments. I am of the view that this action by the Complainants and the Provider is in line with "Step 1" of the tracker portability application process as outlined in the Provider's guide that was given to the Complainants. It appears

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that the Complainants made a full mortgage application to the Provider in or around **8 May 2014** and further documentation was required in order to complete the application. I understand from the email exchange between the parties that the mortgage advisor passed the Complainants' application to the Provider's underwriting team on or around **13 May 2014** in line with "Step 2" of the tracker portability application process as outlined in the Provider's guide.

The mortgage advisor's recollection of events, as outlined above, indicates that while the Complainants were informed during the application process that they were unable to satisfy the Provider's proven loan repayment ability criteria, they indicated to the mortgage advisor that they "*wanted to move quickly*" as they had already identified a property that they wished to purchase and were coming under pressure from the vendors to pay a deposit. It would also appear that the Complainants had secured a purchaser for the mortgaged property the subject of mortgage loan account ending **0685** as the property was sale agreed. This is borne out by the evidence supplied by the Complainants. Given the circumstances, it appears that the mortgage advisor, having identified from the Complainants' bank account statements from the previous six months that they had no savings record and insufficient proven repayment ability, decided to send the Complainants' application to the Provider's underwriting team for assessment with a recommendation that the Complainant make repayments to reduce the credit card balance and close the credit card as soon as possible. I understand that the mortgage advisor informed the Complainants that the underwriting team may consider this course of action as proven repayment ability. I do not consider the mortgage advisor's recommendation to clear the credit card debt and any current loans to be unreasonable as the discharge of those debts would demonstrate to the Provider that the Complainants have minimum financial commitments.

I have not been provided with any evidence to suggest that the mortgage advisor or indeed any representative of the Provider gave any assurances or guarantees to the Complainants that their application would be successful. The Provider's tracker portability mortgage guide also clearly states that "*[a]s this is a credit product, it is subject to approval by our underwriters*" and "*your mortgage application is subject to underwriting criteria*".

The **General Principles** set out in **Chapter 2** of the **Consumer Protection Code 2012** ("the **CPC 2012**") provide as follows;

*"A regulated entity must ensure that in all its dealings with customers and within the context of its authorisation it:*

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*2.1 acts honestly, fairly and professionally in the best interests of its customers and the integrity of the market;*

*2.2 acts with due skill, care and diligence in the best interests of its customers;*

...

*2.4 has and employs effectively the resources, policies and procedures, systems and control checks, including compliance checks, and staff training that are necessary for compliance with this Code;*

*2.5 seeks from its customers information relevant to the product or service requested;*

*2.6 makes full disclosure of all relevant material information, including all charges, in a way that seeks to inform the customer”*

**Provision 4.24** of the **CPC 2012** provides;

*“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.”*

Having considered the evidence before me, I accept that the Provider has complied with its obligations under the **CPC 2012**. I accept that neither the Provider nor its agents gave any assurances to the Complainants during the mortgage loan application process that their application for a tracker portability product would be successful. Upon consideration of the Complainants’ application and supporting documents, the Provider’s underwriting team ultimately decided not to extend credit to the Complainants.

The Provider explained to the Complainants that the application was rejected at that point in time on the basis that the Provider’s required proven repayment capacity had not been satisfied. Apart from the Complainants having no proof of savings, returned payments were identified on the Second Complainant’s current account statements. I have no doubt that this factor also contributed to the Provider’s underwriting team’s decision to decline the Complainants’ mortgage loan application as missed returned payments could be an indicator of a poor credit history or lack of repayment capacity. Despite the Provider’s initial rejection of the Complainants’ mortgage loan application, I note that the mortgage advisor arranged with the Provider’s underwriting team that it would consider a further application from the Complainants if they were to revert with proven repayment capacity based on no returned items on their current accounts and an ability to save €384.00 per month in three months instead of the normal six months. I am of the view that the mortgage advisor and the Provider’s representative were clear in their communication of

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the reasons for the declinature of the Complainants' application and the steps that could be taken by the Complainants to build up a repayment profile before re-submitting their mortgage loan application.

I have not been provided with any evidence to suggest that the Complainants approached the Provider after the expiry of the three month period or indeed anytime thereafter to re-submit a mortgage loan application with proven savings of €384.00 per month and no returns on the current account. Therefore, I understand that the Complainants did not draw down a mortgage loan with the Provider subsequent to **June 2014**. It appears that the Complainants chose to draw down new borrowings with an alternative Provider.

I acknowledge that the Complainants may have been under pressure to close the sale on the mortgaged property and pay a deposit on the new property that they had identified. I accept that this would have been an anxious and stressful time for them. However, it is important for the Complainants to be aware that they chose to sell the mortgaged property without having secured full loan approval from the Provider. The Complainants submit that they suffered from medical stress and anxiety on foot of the Provider's decision to decline their mortgage loan application and incurred rental costs, surveyor's costs, solicitor's fees and storage fees given they sold the mortgaged property. However, I have not been provided with any evidence that would support holding the Provider responsible for these matters.

I am of the view that the decision to approve the Complainants' application for credit falls within the commercial discretion of the Provider. I will not interfere with a financial service provider's commercial discretion in the form of a decision to accept or reject a consumer's application for credit, other than to ensure that the Provider complies with relevant codes/regulations and does not treat the applicant unfairly or in a manner that is unreasonable, unjust, oppressive or improperly discriminatory.

There is no evidence that the Provider acted in a matter that was unreasonable, unjust, oppressive or improperly discriminatory in declining the application for credit. It is my view that the Provider was entitled to exercise its commercial discretion in declining the Complainants' mortgage loan application on the basis that the Complainants were not able to satisfy the Provider's lending/credit criteria.

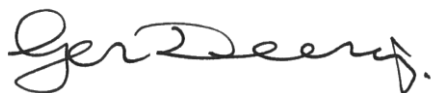
For the reasons set out in this Decision, I do not uphold the complaint.

### **Conclusion**

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

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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**

9 February 2021

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.