



<u>Decision Ref:</u>	2021-0392
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Tracker Mortgage
<u>Conduct(s) complained of:</u>	Failure to offer a tracker rate at point of sale
<u>Outcome:</u>	Substantially upheld

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint relates to the following mortgage loan accounts held by the Complainants with the Provider. The mortgage loan accounts which are the subject of the complaint were secured on a property that was intended to be the Complainants' private dwelling house.

- A facility letter dated **10 April 2008** for mortgage account ending **2348** provided for an interest only bridging loan in the amount of €350,000 for a period of 14 months. The interest rate applicable to the loan was the Provider's standard variable rate.
- A second facility letter dated **10 April 2008** for mortgage account ending **2356** provided for a long-term ECB Tracker loan of 4.50% in the amount of €350,000. The term of the loan was 24 years. This facility was not drawn down by the Complainants.
- A third facility letter dated **3 November 2010** for mortgage account ending **3316** provided for a loan amount of €330,500. The term of the loan was 22 years and 8 months and the interest rate applicable to the loan was the Provider's standard variable rate.

The mortgage loan account ending **3316** was redeemed in full by the Complainants on **1 December 2012**.

The Complainants' Case

The Complainants detail that in **April 2008** they were granted “a tracker mortgage” by the Provider for their “self build home”. They detail that the Provider offered them an initial “bridging finance interest only” facility, while they dealt with an unforeseen “planning issue”. They state that “the understanding was we were to revert back to our tracker mortgage when this was resolved.”

The Complainants state that “We gave clear instructions all the while that if our tracker was in any danger we were to [be] informed and we would duly draw down the remainder of the mortgage and start our agreed tracker mortgage rate. The employees in the bank knew that the tracker rate was of central importance to our build.” They further detail that “From the very start we made it crystal clear that maintaining the tracker rate was the most important part of our ability to meet our monthly repayments. This was reinforced by us in every conversation by telephone or in person had with the staff at [the Provider]. When the tracker rates were pulled from the market in [late] 2008, we were reassured more than ever that our rate was safe and we trusted the bank.”

The Complainants submit however that on **9 July 2009** they received a phone call from the Provider informing them that “the tracker was gone”. They state that the First Complainant “immediately went directly to the bank to see what was going on face to face and in person. He was informed that indeed the tracker was being taken and there was nothing [the First Complainant] could do about it.”

The Complainants state that the Provider informed them that a letter had been issued to them on **26 March 2009** which reminded them that the bridging loan facility was due to expire on **9 July 2009**, and in circumstances where the loan was not fully drawn down by that date, the facility would need to be re-priced. The Complainants assert that they did not receive this letter. They state that if they had, it “would have triggered us to move to the tracker immediately as all our finances were based around those mortgage repayments.” They further state that they were told by the Provider’s representative that “it doesn’t matter if the letter was sent or not [the Provider] were taking the tracker”.

The Complainants submit that the Provider’s representative “could not furnish” a copy of the letter that purportedly issued to them in **March 2009** when they requested to see a copy. They submit that they did receive a copy of the letter a few days later, which “did not have the appearance of an official letter sent by [the Provider] like all other correspondence with [the Provider]”.

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The Complainants state that *“In our strongly held view we should have been allowed at the very least maintain our tracker, or draw down our mortgage when during a phone conversation we were told that the tracker was being taken-after all June was still two months, prior to the final draw down date of our original bridging agreement.”*

The Complainants state that *“In the weeks that followed with no other option we accepted a further extension to bridging finance to facilitate the completion of the house. On completion of the build we were on a much higher variable rate which provided un[su]stainable for us, and we were forced into the sale of the house.”* The property was sold in **2015**. The Complainants state that they would never have built the house if they could not afford the repayments, but they had been *“at all times reassured that the tracker rate was secure”*.

The Complainants state that they believe *“it’s fair that we would be compensated for all we have lost and gone through”*.

The Provider’s Case

The Provider submits that on **3 April 2008** the Complainants completed a credit application for a mortgage loan to fund the construction of a new residential property. It states that the Complainants were issued a facility letter on **10 April 2008** for an interest only bridging loan facility in the sum of €350,000 for a period of 14 months on the Provider’s standard variable interest rate.

The Provider details that pursuant to a separate credit application also dated **3 April 2008**, the Complainants were issued a second facility letter also dated **10 April 2008** for a *“24 year ECB Tracker loan for the same amount”*. It outlines that the *“ECB Tracker loan was approved on the basis that the bridging loan facility would be fully drawn down within the initial 14 month term and the Complainants’ short term interest only loan would then be refinanced by the long term ECB Tracker loan with capital and interest payments.”*

The Provider refers to an explanatory letter issued to the Complainants with the facility letters on **10 April 2008** *“which stated how the two facilities were linked.”* It states that the letter confirmed that **Condition 7.1** of the home loan agreement required the Complainants to draw down the home loan before the *“Latest Drawdown Date”* specified in the home loan agreement. The Provider states that the first stage payment of the bridging loan facility was drawn down on **9 June 2008** and the term of the bridging loan was 14 months from the date of drawdown, and therefore the *“Latest Drawdown Date”* for the ECB tracker loan facility was **9 August 2009**.

The Provider details that it withdrew ECB tracker loan products from the market in **late 2008**. It states however that if the bridging loan had been fully drawn down within the initial period of 14 months, the Provider *“would have approved the drawdown of the ECB Tracker loan as both facilities had been sanctioned in April 2008 on that basis.”*

The Provider submits that following the withdrawal of the tracker loan product, it circulated an *“internal business procedure document”* on **24 October 2008** to clarify the process for circumstances where a bridging loan facility was approved with a proposed follow-on ECB tracker loan facility at the same time on origination. It details that this document confirmed that:

- *“Where the customer had completed the new build and had in place a signed Loan to Value (“LTV”) side letter the customer would be entitled to the margins as specified in the LTV side letter with a requirement for a current property valuation to be obtained to determine the correct LTV.*
- *This had to be completed within **12 weeks of the expiry of the bridging facility** otherwise the customer was not eligible for the LTV offer and could only be offered an on-sale mortgage at existing rates offered.”*

The Provider states that it issued a letter to the Complainants on **26 March 2009** to inform them that *“if the bridging letter was not fully drawn down by 9 [August] 2009 the long term loan facility would have to be re-priced.”* It states that by **April 2009** the Complainants had only drawn down one stage payment of €60,000. It states that after *“having been informed of the risk of losing their right to an ECB Tracker loan”*, the Complainants in a credit application dated **14 April 2009** sought an extension of the bridging loan facility as they had *“run into problems with the build and feel now that the build will not be completed until September 2010.”* The Provider states that an extension of the bridging loan period was approved until **20 September 2010**.

Regarding the Complainants’ submission that they were informed during a telephone conversation with one of the Provider’s employees in **June 2009** that the Provider was *“taking the tracker”*, the Provider states that this employee is longer employed by the Provider and the Provider does not have any audio or written record of the alleged telephone conversation, and for that reason the Provider is unable to comment on the Complainants’ submission.

The Provider details that the Complainants made a separate credit application dated **15 September 2010** to further extend the bridging loan period until **11 October 2010** as the Complainants had not yet furnished the Provider with the required final Certificate of Compliance with Planning Permission and Building Regulations.

The Provider submits that the new house was not completed until **September/October 2010** approximately and the latest drawdown date for the ECB tracker loan was **9 August 2009**. It states that therefore the option to refinance the long-term loan on a tracker interest rate was no longer available to the Complainants as they had sought, and the Provider had approved a *“fundamental amendment to the terms of the initial approval in 2008”* by requesting a further interest only bridging facility for a period of approximately 14 months.

The Provider outlines that pursuant to the terms of a facility letter dated **3 November 2010** the Complainants agreed to finance their long-term funding into a loan on the Provider’s standard variable rate and the loan was drawn down on **11 November 2010**.

The Provider submits that it is satisfied that the documentation issued to the Complainants with regard to their entitlement to a tracker interest rate was *“sufficiently clear and transparent”*.

The Provider states that it met with the Complainants on **12 August 2011** and at that meeting the Complainants confirmed that they were not living in the property and had not decided whether to move in or to rent or sell the property. It details that the Complainants requested interest only payments on the loan facility, because one of the Complainants was taking a *“career break”* on the basis that the cost of childcare outweighed her income and the other Complainant had decided to return to college and was working part time. The Provider states that despite the Complainants not living in the property which secured the loan, the Provider *“agreed to apply the spirit of the Code of Conduct on Mortgage Arrears”* and agreed to grant the Complainants a 3-month moratorium on repayments backdated to **September 2011** to allow them time to decide which of the two properties they owned was more appropriate to sell/rent and which property they intended to live in.

The Provider states that in a credit application dated **18 September 2015** the Provider consented to the voluntary sale of the secured property for €647,000 on the basis that the outstanding loan amount at that time was approximately €328,000. It states that the sale of the property repaid the mortgage in full, with a significant surplus of approximately €319,000 being available to the Complainants after the redemption of the mortgage account.

The Complaint for Adjudication

The complaint for adjudication is that the Provider acted inappropriately by failing to inform the Complainants to draw down the balance of their bridging loan facility prior to **July 2009** and consequently, the Complainants lost a pre-agreed tracker interest rate on their mortgage loan.

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 7 October 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 acted inappropriately by failing to inform the Complainants to draw down the balance of their bridging loan facility prior to **July 2009**. In order to determine this, it is necessary to review and set out the relevant provisions of the Complainants' loan documentation. It is also relevant to set out the Provider's interactions with the Complainants between **2008** and **2009**.

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I have considered the **Credit Application** for the **Bridging Finance Loan** dated **3 April 2008** which set out as follows;

"Application for EUR 350,000.00 Bridging Finance Loan [ending] 2348

...

Repay. terms: EUR 0.00 Set. code 4 Maturity (mths)/Date 06.05.2009

New debit rate p.t. 5.49000

...

Reply:

350k lend to assist with build of new ppr.

NTB customer.

C6 classification. 50% ltv on completion.

Self employed applicant, and pcu are happy with proofs provided.

Serviceability is fairly tight overall [af]ter sensitisation, however there is comfort of [Second Complainant's] existing property which could be rented out on completion of new build.

Interest only facility during build, reverting to C&I on completion.

Application is approved subject to conditions 1,2,3,4,5,6,7,9,14,15,16,17,19,20 plus level term cover during interest only period."

The **Credit Application** for the **Tracker Home Loan** dated **3 April 2008** set out as follows;

"Application for EUR 350,000.00 ECB Tracker [ending]

...

Repay. terms: EUR 1,990.95 Set. code 4 Maturity (mths)/Date 06.04.2032

New debit rate p.t. 4.50000

...

Reply:

350k lend to assist with build of new ppr.

NTB customer.

C6 classification. 50% ltv on completion.

/Cont'd...

*Self employed applicant, and pcu are happy with proofs provided.
Serviceability is fairly tight overall [af]ter sensitisation, however there is comfort of
[Second Complainant's] existing property which could be rented out on completion
of new build.*

Interest only facility during build, reverting to C&I on completion.

Application is approved subject to conditions 1,2,3,4,5,6,7,9,11."

The **Comments** section of both **Credit Applications** detailed as follows;

*"[The Complainants] are new to bank customer requesting to borrow Eur350k over
25 years to assist with construction of new family home. [First Complainant] owns
the site valued at Eur250k. The property into [sic] be in the sole name of [the First
Complainant] and a joint mortgage in the names of [the Complainants].*

*They current[ly] live in property owned by [Second Complainant] and plan to rent
this property out when the new property is completed.*

*[First Complainant] is a self employed [occupation redacted] and [the Second
Complainant] is a [occupation redacted] earning Eur109k per annum annually
between them.*

1/. Brief summary of application (Include comment on any connected borrowing).

LTV - (initial & final where bridging features)

LTV approx. 50%. To be determined by final valuation.

*Confirmation of funds held to cover 6 months interest for bridging
Stage draw down mortgage.*

*Comment on any system decline reasons (Found under Automatic Limits in Reply
screen)*

Stage draw down mortgage.

Details comment on any policy breaches

*Current account go slightly overdrawn but back into credit within few days when
salary is mandated.*

*Where the customer has or will have more than 1 investment property the
individual addresses & individual rentals should be detailed indicating alongside (E)
for existing property & (P) for proposed.*

No investment property involved.

/Cont'd...

*Comment on serviceability, including impact of 2% rise in interest rates
Monthly budget show surplus in place by customers even allowing for 2 % increase
in interest rates.*

*This budget does not include added comfort of rental income from [the Second
Complainant's] property when the new property is completed.*

*Provide summary of combined budget for applications for more than one household
Only one household involved.*

*Comment on score
Acceptable.*

*...
No guarantor involved.*

*...
No debt restructuring.*

*Provide detailed explanation for any detrimental information within credit search
Clear credit search. No undisclosed borrowing.*

*Comment on conduct of existing a/cs, whether [the Provider] or competitor
Main accounts go overdrawn slightly but brought back into credit within few days.
All borrowing repayments up-to-date.*

2/. Reasons for support & provide recommendation.

...

Recommend approval for facility.

*Low LTV
All existing borrowing repayments up-to-date.
Clear credit search.
Opportunity for cross sales."*

/Cont'd...

The Provider issued a **Final Financial Summary** dated **3 April 2008** to the Complainants which detailed as follows:

“Thank you for meeting with me to discuss your requirements regarding

- *Home Loan*

If anything has changed since our meeting, please let me know as soon as possible as this may affect your product choice.

Please note that the summary must be read in conjunction with any product literature and your personalised illustration(s), if applicable.

Please check the information provided is correct, and if you have any questions do not hesitate to contact me.”

The **Home Loan Questions and Answers** section set out the following;

<i>“Borrower type</i>	<i>Mover</i>
<i>Type of property</i>	<i>Main residence</i>
<i>Loan purpose</i>	<i>Bridging finance</i>
<i>What is the value of the property you wish to obtain the mortgage on?</i>	<i>EUR 700,000.00</i>
<i>What is the purchase price?</i>	<i>EUR 0.00</i>
<i>What is the transaction type of the purchase?</i>	<i>Not applicable</i>
<i>How much do you wish to borrow?</i>	<i>EUR 350,000.00</i>
<i>What is the principle means of funding the gap between loan amount and purchase?</i>	<i>Savings</i>
<i>Please provide a detailed breakdown including figures on how this loan amount is made up</i>	
<i>Customers wish to borrow EUR350k over 25 years to assist with construction of new family home.</i>	
<i>What is your preferred loan repayment term?</i>	<i>24 years 0 months”</i>

The Complainants signed the **Final Financial Summary** on **4 April 2008**.

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The Provider issued a letter to the Complainants on **10 April 2008** enclosing the **Bridging Finance Agreement** (for mortgage account ending **2348**) and the **Tracker Home Loan Agreement** (for mortgage account ending **2356**).

The letter detailed as follows:

“With this letter, we are forwarding your bridging finance agreement and related home loan agreement.

Please sign one copy of this letter and have your signature witnessed by your solicitor. It must be returned to the Bank with your bridging finance and home loan agreements, when these have also been signed and witnessed.

By signing this letter, you confirm that you understand the basis on which we are offering your bridging and home loans, and that you agree to this. The return of this letter signed and witnessed is a pre-condition of our offer and these loans, and the Bank may withdraw its offer if you do not do this.

The home loan is not offered as a separate loan from the bridging finance. Our offer is that we will initially advance the bridging finance loan to accommodate your requirement to draw down your home loan in stages.

By signing this letter you hereby authorise us to draw down your home loan and to credit the proceeds of the home loan (when they are drawn down) towards clearing all principal and interest due on your bridging finance loan. We will exercise this authority when the period of the bridging finance agreement is over, subject to all preconditions to drawdown of your home loan have been satisfied. If you have drawn down your bridging facility in full prior to the expiry of the period of your bridging finance agreement, you may request us to exercise this authority to draw down your home loan and clear your bridging facility, provided you have satisfied all preconditions to such drawdown. The term of your home loan and your obligation to make the payments provided for in the home loan agreement, will commence from the date of such drawdown of your home loan.

...

Condition 7.1 of your home loan agreement requires you to draw down your home loan before the Latest Drawdown Date specified in your home loan agreement. If we advance your bridging finance to you, then we agree that the Latest Drawdown Date for your home loan shall be extended to the last day of the period of the bridging finance agreement.

/Cont'd...

...

I/We have read the above letter. I/We understand the basis upon which you are offering me/us my/our bridging finance and my/our home loan and I/We agree to this."

I note that the copy letter furnished in evidence has not been signed by the Complainants.

A Bridging Finance Agreement dated **10 April 2008** issued from the Provider to the Complainants in respect of mortgage account ending **2348**.

The **"important information"** section on **page 1** included the following;

<i>"Amount of credit advanced:</i>	<i>EUR</i>	<i>350,000.00</i>
<i>Period of Agreement:</i>	<i>1 years 2 month(s) from drawdown**</i>	
...		
<i>APR*:</i>	<i>5.66%</i>	

...

**Annual Percentage Rate of Charge*

..

***This is the amount by which the instalment repayment will increase in the event of a 1% increase at the start of the first year in the interest rate on which the above calculations are based.*

****The Period of Agreement is based on our discussion with you, when we estimated when you would draw down the Loan and when you make your first payment. If you selected a first repayment date in a calendar month after the month in which the estimated drawdown date occurs, then the Period of Agreement will be extended to reflect one or more extra calendar months. The number of instalments that you will pay remain the same."*

The **"Schedule"** section of the **Bridging Finance Agreement** detailed as follows;

"Purpose of the Loan:
Bridging Finance, as specified in your Loan Application

...

<i>Latest Drawdown Date:</i>	<i>10 July 2008</i>
<i>Rate of Interest:</i>	<i>5.49% per annum</i>

/Cont'd...

You will make interest only payments during the whole loan period so you will still have to repay the original capital amount at the end of the mortgage term. The interest charged may vary during the course of the loan.

...

WARNING: THE PAYMENT RATES ON THIS HOUSING LOAN MAY BE ADJUSTED BY THE LENDER FROM TIME TO TIME (This will not apply during any period of fixed interest rate).

..."

The **General Conditions for Annuity Home Loans** enclosed with both facility letters outline as follows:

"7 Drawdown

7.1 *Subject to compliance with the terms of the Agreement (and subject also to clause 7.3 below) you may draw down the Loan in one amount not later than the Latest Drawdown Date. We may, at our sole discretion, elect to extend the Latest Drawdown Date, but we shall not under any circumstances be obliged to do so. Any extension of the Latest Drawdown Date will not be effective unless it is confirmed in writing to you. If the loan is not drawn by the Latest Drawdown Date and we do not exercise this discretion to extend the Agreement shall terminate without prejudice to your liability for fees and your obligation to comply with the terms of the Agreement in respect of sums already advanced.*

7.2 *Where the Loan is advanced to purchase property the purchase must be completed and you must get vacant possession when the Loan is drawn. Your solicitor must hold any funds drawn on trust for such purpose.*

7.3 *Where the purpose of the Loan includes financing the construction, improvement or renovation of a dwelling on the Property (the "Works") the following apply:*

7.3.1 *the Loan can only be drawn against architects or surveyors certificates for work done, the first drawdown to be made no later than the Latest Drawdown Date and, unless we otherwise agree, the last drawdown to be made no later than twelve months thereafter;*

/Cont'd...

- 7.3.2 *if the Works require planning permission, a copy of the relevant permission(s) must be furnished to us prior to any drawdown of the Loan;*
- 7.3.3 *on completion of the Works an architect's or surveyor's certificate confirming compliance with all applicable planning permissions and building regulations in a format acceptable to us must be furnished;*
- 7.3.4 *If the Works are exempt from planning permission and/or building regulations, an architect's or surveyor's certificate must be furnished confirming this.*

...

12. Interest – Variable Rate Loans

12.1 *If the Loan is a variable rate loan which is not linked to the ECB Refinance rate, the rate of interest applicable to the Loan will be our applicable variable home loan rate or if a margin over or under that rate is specified in the Schedule the aggregate from time to time of that margin and the applicable variable home loan rate. Our variable home loan rate is subject to variation from time to time in response to market conditions and such rate at the date specified in the Important Information Notice is the rate quoted in the Schedule.*

12.2 *If the Loan is an ECB Tracker Variable Rate Home Loan, then the interest rate is linked to the ECB Refinance Rate. The rate of interest specified in the Schedule is the rate applicable to the Loan at the date of the facility letter, and it represents the sum of the ECB Refinance Rate on that date and an agreed margin (“the ECB rate margin”). The ECB Refinance Rate is subject to variation, and the rate of interest applicable to the Loan shall be the ECB rate margin added to the ECB Refinance Rate from time to time, and shall vary accordingly.*

12.3 *The APR and other details quoted in the Important Information Notice assume that the variable home loan rate throughout the Period of Agreement will be variable home loan rate as at the date specified in the Important Information Notice. However due to variations in our variable home loan rate the actual rate of interest applicable to the Loan from time to time may be different.*

...”

/Cont’d...

The Complainants signed the “**Acceptance and Authority**” section of the **Bridging Finance Agreement** on **7 May 2005** in the presence of their solicitor, on the following terms:

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

I/We agree to be bound by this Loan Agreement.

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

It appears that the interest rate applicable to the bridging loan facility was a variable interest rate which was “*not linked*” to the ECB rate, but rather was “*subject to variation from time to time and in response to market conditions*”. The **Schedule** to the Bridging Finance Agreement did not contain any reference to an ECB rate, such as would have been required for the application of a tracker interest rate to the Complainants’ mortgage loan under **condition 12.2**.

The **Schedule** to the Bridging Finance Agreement provided that the Latest Drawdown Date was **10 July 2008**. **Condition 7.1** provided that the loan must be drawn down in one amount not later than the Latest Drawdown Date and if the loan was not drawn down by the Latest Drawdown Date and the Provider did not exercise its discretion to extend the Latest Drawdown Date, the Agreement would be terminated.

I note from the **mortgage loan statement** that the Complainants drew down funds of €60,000 on **10 June 2008**. The term of the bridging loan facility was 1 year and 2 months from the date of drawdown.

An ECB Tracker Variable Rate Home Loan Agreement dated **10 April 2008** issued from the Provider to the Complainants in respect of mortgage account ending **2356**.

The “**important information**” section on **page 1** included the following;

<i>“Amount of credit advanced:</i>	<i>EUR 350,000.00</i>
<i>Period of Agreement:</i>	<i>24 years 1 month(s) from drawdown**[*]</i>
...	
<i>APR*:</i>	<i>4.60%</i>
...	
<i>*Annual Percentage Rate of Charge</i>	

/Cont’d...

***This is the amount by which the instalment repayment will increase in the event of a 1% increase at the start of the first year in the interest rate on which the above calculations are based.*

****The Period of Agreement is based on our discussion with you, when we estimated when you would draw down the Loan and when you make your first payment. If you selected a first repayment date in a calendar month after the month in which the estimated drawdown date occurs, then the Period of Agreement will be extended to reflect one or more extra calendar months. The number of instalments that you will pay remain the same."*

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

*"Purpose of the Loan:
Bridging Finance, as specified in your Loan Application*

...

Latest Drawdown Date: 10 July 2008

Rate of Interest: 4.50% per annum

..."

The **General Conditions** of the ECB Tracker loan set out the following;

"2 Preconditions

Before you may draw down the Loan we must receive in form and substance satisfactory to us:

...

2.6 the insurance requirements referred to in clause 5 below have been satisfied

...

5 Insurance

...

5.4 You must for the Period of Agreement insure the Property for its full reinstatement value under a suitable index-linked policy providing insurance against fire, flood, subsidence and other unusual and reasonable risks. Our interest will be noted on the original policy which will be retained by us for the Period of Agreement. You must not allow any such policy to lapse.

/Cont'd...

...”

Condition 7 and 11 of the **General Conditions for Annuity Home Loans** were the same as outlined above. For the sake of brevity, I will not quote them again here.

The Complainants signed the **“Acceptance and Authority”** section of the **ECB Tracker Variable Rate Home Loan Agreement** on **7 May 2005** in the presence of their solicitor on the following terms:

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

I/We agree to be bound by this Loan Agreement.

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

It is clear to me that the facility letters dated **10 April 2008**, together with the Provider’s letter of **10 April 2008**, envisaged that the 14 month Bridging Loan Agreement was required to be drawn down by **10 July 2008** and the drawdown date for the ECB Tracker loan facility would be extended to the last day of the period of the bridging finance agreement.

The Provider has submitted that it withdrew tracker rates from the market in **late 2008**. It has furnished a copy of its **internal business procedure document** dated **26 October 2008** which set out as follows;

“ECB Tracker updated queries

Four key areas had queries to be resolved following the withdrawal of the ECB Tracker.

They were:

- *Expired Offer Letters*
- *Bridging Finance with LTV ECB Tracker side letter in place*
- *Additional funds requested when original is an LTV ECB Tracker or LTV Fixed rate mortgage*
- *LTV Fixed rate mortgage maturing*

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Process to be adopted

∇ *Expired offer letters*

All offers where the offer letter is expired and the last date for drawdown in the schedule on page two of the facility letter is past are no longer valid and must be repriced based on the new best offer available.

Branches should not extend the offer for ECB Tracker offers

∇ *Bridging Finance with LTV Side letter in place*

- *Where the customer had completed the new build and had in place a signed LTV side letter the customer would be entitled to the margins as specified in the LTV side letter.*
- *The current property value must be obtained to determine the correct LTV and if necessary the offer recalculated on the new LTV but using the margins in the original offer letter.*
- *This must be completed within 12 weeks of the expiry of the Bridging Facility otherwise the customer was not eligible for the LTV offer and can only be offered an on-sale mortgage at existing rates offered."*

The Provider has furnished in evidence a letter issued to the Complainants on **26 March 2009** which stated as follows;

"I note that your Bridging Loan is due to expire on 09-07-2009.

If the loan is not fully drawn down in full by this date the facility will need to be re-priced.

Please contact me at your earliest convenience to discuss the above."

The Provider's internal log shows that "Day-to-day" correspondence was issued to the Complainants on **26 March 2009**.

The Complainant have asserted that they did not receive this letter. They have further submitted that the copy letter provided in evidence does "*not have the appearance of an official letter sent by [the Provider]*".

In circumstances where it appears that the Provider was using the correct address to issue correspondence to the Complainants since **2005**, there does not appear to me to be any reason why the Complainants would not have received the Provider's letter of **23 March 2009**. Nor is it clear to me why the Complainants are of the view that this correspondence was not an "official letter" in circumstances where the letter was sent from a named Provider employee in the named Provider branch that the Complainants were dealing with at the time.

In any event I note that a **Credit Application** to extend the Bridging Loan facility was submitted by the Complainants on **14 April 2009**. The Credit Application set out as follows:

"Application for Change of payment account [redacted]

...

Reply:

approved, subject to original conditions of sanction.

...

Comments:

Customers have bridging loan which is due to expire on 09.07.2009.

Approval for Eur350k was granted in April 2008. Customers have so far drawn down 1 stage payment of Eur60k.

Customers now looking to extend the bridging loan facility from 09.07.2009 to 09.09.2010.

Customers have run into problems with the build and feel now that the build will not be completed until September 2010.

The build was stopped in September 2008 due to an objection from a neighbour regarding the levels of the property. This resulted in everything been stopped. The customers had to get engineers in to confirm that all levels were as per the planning permission and report this to the local planning authority. The customers has received unofficial confirmation that levels as per the planning permission and expect to receive official confirmation of same in the next few weeks.

/Cont'd...

Customers also dont wish to rush the build of the house as they dont want to put themselves under financial pressure. [Second Complainant] in a permanent [occupation] and is in secure employment.

[First Complainant] is a self employed [occupation] and even though customer is financial[ly] secure he wants to make allowances for the qui[e]ter period that lies ahead for him.

As a result the customers will not be building the new house as quickly as originally planned.

I recommend approval to be granted for the extention [sic] of the bridging loan facility until September 2010 to allow the customer time to get the house fully built whilst not [p]utting themselves under financial pressure.”

I note that the Provider exercised its discretion to allow an extension to the Bridging Loan Facility, which the Complainants had originally agreed to draw down by **9 July 2009**, until **20 September 2010**. Therefore, it does not appear to me that the Bridging Loan Facility expired on **9 July 2009** as outlined in the Provider’s letter of **26 March 2009**.

The Complainants have submitted that they received a telephone call from the Provider on **9 July 2009** to say that “*the tracker was gone.*” The Provider has submitted that it does not hold any audio or written record of the purported telephone conversation between the parties in **June/July 2009** and that the representative referred to in the Complainants’ submission is no longer employed by the Provider. In the absence of evidence, I am unable to comment on the discussions which purportedly took place between the Provider’s representative and the Complainants on this date.

The Provider’s internal records detail the following interactions on the following dates;

2 September 2010	<i>“Rang [First Complainant] today and informed him to call branch next week so we can switch mortgage over to capital and interest. Certs of completion and full house insurance well before the 20.9.2010 and new up to date valuation as well.”</i>
15 September 2010	<i>“Spoke to [redacted] this morning and requested final certificate of compliance. He will put in post this evening”</i>
12 October 2010	<i>“[First Complainant] rand (sic) this morning, he has changed his insurance to buildings and contents and will forard (sic) the new policy in 2 days time when received by himself.”</i>

12 October 2010	<i>“...other application processed to credit department to mark limit up to 334k again as to do an application (sic) to extend bridging finance for another 2 weeks while awaiting fire insurance.”</i>
------------------------	---

The Complainants sought a further extension to the bridging loan facility by way of **Credit Application** dated **15 September 2010** which detailed as follows;

“Application for Change of payments account [redacted]

Repay. terms: EUR 0.00 Set. code Maturity(mths)/Date 11.10.2010

New debit rate p.t. 4.15000

...

Reply:

Approved – Extension until 11.10.2010.

Please submit application to switch mortgaged to a C&I basis once final valuation and final cert of compliance is received.

...

Comments:

Customers have bridging loan which is due to expire on 20.09.2010

Approval for Eur350k was granted in April 2008. Customers have so far drawn down 300k.

Customer ran into planning problems in July 09 and bridging was extended to September 2010.

We are now seeking approval to extend bridging by 3 more weeks to 11.10.2010 as we are awaiting final valuation and final cert of compliance. I have spoken to customer and architect and these are due by the end of next week.

/Cont'd...

We will then request final stage drawdown and switch mortgage over to capital and interest.”

The Provider has submitted that the build was completed in or around **September/October 2010**. The Provider has submitted that it was of the view that the ECB Tracker Home Loan Facility had lapsed in **August 2009**.

The Complainants completed a **Credit Application** on **2 November 2010** for their long-term home loan facility which set out as follows;

*“Application for EUR 330,500.00 Variable Rate Home Loan [redacted]
Joint account [Second Complainant]*

Repay. terms: EUR 1,701.43 Set. code 4 Maturity(mths)/Date 29.06.2033

New debit rate p.t. 3.15000

...

Reply:

Approved as presented

Customers have completed their self build.

All original conditions must be adhered too (sic) – 1.3.4.5.6.7.11.19

Please submit application to switch mortgaged to a C&I basis once final valuation and final cert of compliance is received.

...

Comments:

[The Complainants] were approved for bridging loan of Eur 350k in April 2008. Property ran into delays and was extended for a further year in April 2009 and then a further 6 months again.

Once the loan was fully drawn down the mortgage was to be switched to LTV mortgage. Please note that customers are not drawing down final 14k. Due to delays customers was informed that ECB Tracker home loan option has now lapsed and a variable rate is applicabl (sic) to this loan.

/Cont'd...

The bridging loan is now fully drawn and this application is to transfer the mortgage to the LTV Mortgage.

Customer credit ratings returned at C5-3.Home Loan of 131k from [another Provider] appeared in ICB which is loan under 2nd property where customers were living until new property was finished. All loan repayments are up to date and included in budget.

Branch recommends approval for the facility”

The Provider issued a new **Variable Rate Home Loan Agreement** to the Complainants dated **3 November 2010** for mortgage home loan account ending **4087** which provided for a loan in the amount of €330,500 over a term of 22 years and 8 months.

The mortgage loan detailed that the *“Agreement is made between [the Provider], and you the borrower(s) named above for a housing loan on the terms and subject to the conditions set out above.”*

The **“important information”** section on **page 1** of the **Variable Rate Home Loan Agreement** dated **3 November 2010** included the following;

<i>“Amount of credit advanced:</i>	<i>EUR 330,500.00</i>
<i>Period of Agreement:</i>	<i>22 years 8 month(s) from drawdown***</i>
<i>...</i>	
<i>APR*:</i>	<i>3.20%</i>
<i>...</i>	
<i>*Annual Percentage Rate of Charge</i>	
<i>..</i>	

****The Period of Agreement is based on our discussion with you, when we estimated when you would draw down the Loan and when you make your first payment. If you selected a first repayment date in a calendar month after the month in which the estimated drawdown date occurs, then the Period of Agreement will be extended to reflect one or more extra calendar months. The number of instalments that you will pay remain the same.”*

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

*“Purpose of the Loan:
Internal Transfer, as specified in your Loan Application*

Property mortgaged:

[Redacted]

Latest Drawdown Date: 3 February 2011

Rate of Interest: 3.15% per annum"

Condition 12.1 of the **General Conditions for Annuity Home Loans** outlines as follows in relation to **Variable Rate Loans**;

"If the Loan is a variable rate loan which is not linked to the ECB Refinance rate, the rate of interest applicable to the Loan will be our applicable variable home loan rate or if a margin over or under that rate is specified in the Schedule the aggregate from time to time of that margin and the applicable variable home loan rate. Our variable home loan rate is subject to variation from time to time in response to market conditions and such rate at the date specified in the Important Information Notice is the rate quoted in the Schedule."

The "**Acceptance and Authority**" section of the **Variable Rate Home Loan Agreement** detailed as follows;

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

I/We agree to be bound by this Loan Agreement.

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

I am disappointed to note that a signed copy of the agreement has not been provided in evidence to this office. Nonetheless it does not appear to be disputed between the parties that the mortgage account ending **4087** was drawn down on the above referenced terms and conditions.

Having considered the Complainants' mortgage loan documentation, it appears to me that in order for the ECB Tracker Home Loan Facility (mortgage loan account ending **2356**) to be drawn down, the Complainant was first required to satisfy the conditions of the bridging loan under mortgage loan account ending **2348** by drawing down that loan in full.

/Cont'd...

The documents that issued to the Complainant at the application stage and the letter that enclosed the Bridging Loan Facility and the ECB Tracker Home Loan Facility made it clear that ECB Tracker Home Loan Facility was not offered as a separate loan from the Bridging Finance Facility. That said, separate facility letters were issued by the Provider as the nature of each facility was different, one being a short-term bridging loan and the other being a long-term ECB tracker loan.

However, it is clear to me that both loans were inextricably linked in that the short-term bridging finance loan was advanced to allow the Complainants draw down their long-term ECB tracker home loan in stages and the purpose of the ECB tracker home loan with capital and interest repayments was to repay the bridging finance loan.

The "*Latest Drawdown Date*" in respect of both facilities is listed as **10 July 2008**, being the last date for draw down of the loans. However, in accordance with the terms of the Provider's letter dated **10 April 2008**, in circumstances where the Provider advanced the Bridging Finance Facility to the Complainant, the "*Latest Drawdown Date*" for the ECB Tracker Home Loan Facility was extended to the last day of the period of the bridging finance agreement. The period of the Bridging Finance Facility was initially 14 months, therefore the ECB Tracker Home Loan Facility was required to be drawn down by **August 2009**. I note that the first stage payment of the bridging finance loan (mortgage loan account ending **2348**) was made on **10 June 2008** therefore the ECB Tracker Home Loan Facility was required to be drawn down on or before **10 July 2009**.

In circumstances where the construction of the mortgaged property was delayed for various reasons, the build was not fully completed until some 13 months after the Bridging Loan Facility was due to expire. Therefore, the bridging finance loan was not drawn down by the "*Latest Drawdown Date*" as per the terms of the Bridging Finance Facility. However, the Provider exercised its discretion by allowing the Complainant to extend the term of the bridging finance loan on two separate occasions. By doing so, the Provider extended the "*Period of Agreement*" of the Bridging Finance Facility from 14 months to 27 months. Given both the Bridging Finance Facility and ECB Tracker Home Loan Facility were so inextricably linked, I am of the view that it is reasonable to conclude that the "*Latest Drawdown Date*" for the ECB Tracker Home Loan Facility was therefore also extended to the last day of the new extended period of the bridging finance agreement which was **11 October 2010**.

It appears to me that the Provider is of the view that if the Complainants had drawn down the Bridging Loan Facility before **July 2009** and if the required final Certificate of Compliance with Planning Permission and Building Regulations had been furnished to the Provider, then the Provider would have activated the ECB Tracker Home Loan Facility and therefore the Complainants could have availed of the tracker interest rate. However, in circumstances where the Complainants did not specifically request an extension of the ECB Tracker Home Loan Facility, the Provider maintains that this facility had essentially lapsed by the time the period of the bridging finance agreement expired on **11 October 2010**. The Provider relies on **Clause 7.1** of the ECB Tracker Home Loan Facility in this regard.

While I acknowledge that **Clause 7.1** states that if the loan is not drawn down by the "*Latest Drawdown Date*" and the Provider does not exercise its discretion to extend that facility, then the Provider is entitled to terminate the agreement, I do not consider it reasonable for the Provider to have terminated the ECB Tracker Home Loan Facility in **July 2009**, in circumstances where the Bridging Finance Loan had been extended to **October 2010**.

It is clear from the Provider's internal notes that representatives from the Provider's branch were in contact with the Complainants when the Complainants sought an extension to the term of the bridging finance agreement. Despite being fully aware that construction had been delayed and having agreed to extend the period of the bridging finance agreement, I find it difficult to understand why the Provider did not automatically extend the "*Latest Drawdown Date*" of the linked ECB Tracker Home Loan Facility let alone explain to the Complainants that it was necessary to seek a separate extension of the ECB Tracker Home Loan Facility in writing when extending the bridging finance loan.

In addition, I note that the requisite Certificate of Compliance with Planning Permission and Building Regulations, which was a pre-condition to drawing down the ECB Tracker Home Loan Facility, did not appear to issue until in or around **October 2010**. Further, **Clause 15** of the ECB Tracker Home Loan Facility sets out that the Provider is under no obligation to advance the loan if there is undue delay in complying with furnishing the Certificate of Compliance with Planning Permission and Building Regulations within a reasonable time. However, it is important to highlight that the Provider was well aware that construction had been delayed on the property and therefore understood that the Complainant would not be in a position to furnish the certificate until **October 2010** when the term of the bridging finance loan ultimately expired, after the agreed extensions, and construction had completed. Therefore, I do not consider it fair or reasonable on the part of the Provider to rely on the fact that the Complainant was unable to comply with the pre-condition ECB Tracker Home Loan Facility in relation to supplying the certificate on draw down as a reason for terminating that facility in **July 2009**.

/Cont'd...

The Provider states in its submissions to this office that despite no longer offering any ECB tracker loan product, it intended to allow the drawdown of the ECB tracker loan as both facilities had been sanctioned prior to the withdrawal of the ECB tracker loan product if the Complainant had fully drawn down the bridging loan and construction was fully completed by the expiry of the initial bridging loan term on **10 July 2009**.

However, on the expiry of the bridging finance loan in **October 2010**, the Provider decided not to allow the Complainant roll onto the ECB tracker loan agreement that was previously agreed between the parties. Rather, the Provider offered the Complainant a completely new home loan agreement at a standard variable rate.

I note from that the Complainants attended meetings with the Provider in **August 2011**, **September 2011**, and **March 2012** to discuss their "*Financial Difficulties/Hardship*".

A copy of the Provider's internal notes of a meeting on **12 August 2011** between the First Complainant and the Provider has been provided in evidence and outlines as follows;

"Customers main borrowing is with [the Provider]. This has been stated as being the customers main ppr. However they are renting another property and do not seem to be living there. Customers have requested interest only on loan as [the second Complainant] is taking a career break from [occupation redacted] to look after family as she says child care costs outweigh her income. Meeting to be set up with [redacted] to look after credit management of case as it is over the threshold of €250k. [The second Complainant] returned the Standard Financial Statement to the branch today and awaits confirmation of time and date of meeting."

The Second Complainant attended a meeting with the Provider on **1 September 2011**. The Provider's notes of the meeting detail the following;

"[The Second Complainant] has decided to take a career break from [career] for 12 mths to look after her 3 young children, the youngest is [age] and her other children are aged [age] and [age]. Her maternity leave has just finished and she received her last pay cheque in Aug, her career break starts this month - Sept and will run to Sept 2012, it will be reviewed in March 2012 to see if she was to extend it further than the initial 12 mths. This will eliminate childcare fees which she has priced around and the best price she got for [county] was E700 per child per month, totalling E2.1k p/m."

/Cont'd...

[The First Complainant] was a self employed [occupation] upto 2 yrs ago running his own business with 20 employees. Due to the collapse in the [redacted] industry his business suffered and he became unemployed. He decided to return to college and get his degree and is now [career redacted]. He is currently working part time with 15 hrs p/w, he is hoping that his hrs will be increased this year to 17 hrs p/w but as he is only recently began [new career] he will be at the end of the list and can only take what hrs he is given.

Customers applied for I/O on their [third party Provider] loan - property in [Complainants' current PDH location] where they currently live and paid their first i/o repayment in Aug of c E200 (to be confirmed), C&I repayment was cE602 p/m, [the Second Complainant] is going to provide a statement showing new repayment amt.

They are living in [Complainants' current PDH location] property which is mortgaged with [third party Provider]. The house in [the subject property] which we have mtg for has just finished being built, this was a self build property that [the First Complainant] was completing and it was on bridging finance with ourselves up to Oct last year, now on a variable rate housing loan. Property is not furnished and customers cannot afford to furnish same yet. Their intention was to move into property and use as their PPR, they are now deciding on what is the best option for them and their family, they may still move in or may rent or sell same. They are looking for i/o for next 6 mths while [the Second Complainant] is on career break from work with possible request further extension on expiry during which time they will decide what to do. The newly built house is currently advertised for rent on daft.ie for E2.1k per month, it is a high spec property which [the First Complainant] built, 3,100 sq ft - 4 double bedrooms, 3 bathrooms, garage, patio etc, situated on 1 acre of land includes geo thermal heating. They will decide over next few mths whether to move in to new property or not and if not whether they will rent it or sell it. There has not been any enquiries yet for the rental of it.

Both have a credit card each, [the Second Complainant] is with [third party Provider] with a limit of c2k, [the First Complainant] is with [third party Provider] with a limit of elk, cards are cleared in full each month, very small expenses put through on them, [the Second Complainant] will provide statements to verify same. Currently they do not avail of MIS, FIS etc, [the Second Complainant] was unaware that these existed and is going to contact citizens advice bureau to see if she falls within criteria to avail of any. I referred her to MABS and gave her MARP brochure. Also gave 1950s which she will sign and return along with wage slips, external bank statements.

/Cont'd...

They would like our assistance for i/o for 6 mths to allow them review their situation regarding property and whether they will attempt to furnish and move in or rent/sell. [The Second Complainant's] youngest is [age], her maternity leave has just finished and they are now in a position to decide on the next step for their family.

When her 12 mth career break is up she may return to work as her oldest child will have started school and her second will have started play school resulting in lower childcare fees."

The First Complainant attended a further meeting with the Provider on **8 March 2012** in relation to their mortgage loan account. The Provider's notes recorded the following

"1. Customer wanted to discuss why he could not avail of tracker rate when final stage payment was issued on bridging finance. I advised that ECB tracker rate was withdrawn in Oct a08 and that the banks offer of the ECB tracker rate was tied into the original sanctioned dated June a08 which was a 12 month bridging and on completion tracker would be applied. However customer had extended his bridging by approx further 16 months which had voided the offer of the tracker dated June a08. I advised I would get a detailed response out to him on this.

2. [The First Complainant] advised that he was dealing with [the Provider's representative] in SCS and had forwarded her relevant documentation she had requested from him in order to progress his application for interest only. I advised that [the Provider's representative] would be in contact with him relating to this.

3. [The First Complainant] requested to view all information the bank held on himself and [the Second Complainant] relating to their loans at branch. I advised that they will have to send this request in in writing along with appropriate fee e6.35.

4. I discussed [the First Complainant's] proposal regarding part interest only and asked him when he thought he would be able to move into his new property. He advised that his plumber was not in business any longer and that there was a problem with his underfloor heating and also wiring. This will have to be retraced. I asked him if this work was to be complet (sic) how long after would it take to move into the property, he advised that he would not move in straight away as he has young children and it would take time to heat the house, let it settle etc.

/Cont'd...

I asked him could I view the house and asked him for directions (sic) but he refused to give same to me. He also advised that the construction of the house had been delayed by 10 months due to an objection by a neighbour and also he had to get a loan from his parents to plant 200 trees on site to comply with planning.

I advised that I would reply to his query regarding tracker rate in due course."

The Provider issued a letter to the Complainants on **9 March 2012** with respect to the First Complainant's query in relation to the loss of the tracker interest rate on their mortgage loan which detailed as follows;

"I refer to [the First Complainant's] query in relation to the ECB Tracker Rate mortgage and to why the rate was not applied to your existing home loan when same was fully drawn down for your completed house in [the subject property location] as per your architects Certificate of Compliance.

You were sanctioned bridging finance in April 2008 in the amount of €350,000 to fund the construction of your new home in [the property location]. This bridging finance had a term of 12 months and on completion of the house within this agreed timeframe you were also approved to switch to an ECB Tracker Rate mortgage. Subsequently on 14th October 2008 ECB Tracker Rate mortgages were removed from the banks offering of mortgage products but your ECB Tracker Rate Mortgage offering was still valid as long as your new home was completed within the agreed 12 months as per the terms of sanction in April 2008.

You were written to in March 2009 advising that if your loan was not fully drawn down by July 2009 your facility with the bank would have to be repriced. You subsequently extended your bridging finance by a further 16 months which resulted in the offer of an ECB Tracker Rate being made invalid as you had overrun the term agreed on your original Bridging Finance approval.

The final stage payment in the amount of €35,000 was made to your solicitor in October 2010 on foot of your architects final certificate of completion and compliance. You then signed the agreement for a Standard Variable Rate Mortgage in November 2010 which is the current rate applied to your home loan.

/Cont'd...

I also refer to your request to provide a new- life cover policy to protect your borrowing with the bank. I am now' returning the assignment signed by you along with a new assignment form as your signatures will need to be witnessed in person by a solicitor or two bank officials from [the Provider]. You can return this form to the branch along with the original life policy schedule.

Should you have any queries in relation to any of the above please do not hesitate to contact me."

The Complainants have submitted that they were "forced" to sell the security property as their mortgage loan repayments were "unsustainable". I note that a **Credit Application** was completed on **23 July 2012** to release the deeds for the purposes of selling the property.

A further **Credit Application** was completed on **9 August 2012** to determine the Complainants' "Credit Action Plan". The Application outlined as follows;

"Reply:

Approved. Relationship to remain with Debt Management.

Credit Action Plan closed.

....

UPDATED RE CUSTOMERS POSITION

"Demand has issued on this connection and file has been sent to Debt Management. Customers rang branch to query how much the arrears position amounted to on loan and advised that they may be able to raise funds through family members to clear same but could not commit to this. They also requested how much the capital and interest repayments would be going forward if they cleared the arrears, This amounts to e1890 per month and they advised that they will continue to lodge e1300 per month to c/a as this is all they can afford at present. I advised that in order for the Bank to consider this proposal we would need to sight up to date financial information re core bank statements and earnings confirmation but they are unwilling to give this.

/Cont'd...

In the absence of customers supplying information I recommend that file continues to rest with Debt management for their follow up."

A **Credit Application** for consent to sell the security property completed on **18 September 2015** set out the following;

"Application for (see specification):

Other: 1. EUR 0.00 Consent to Sale

Other: 2. EUR 0.00 Consent to Sale

...

Reply:

Approved – consent provided to complete voluntary sale of property at [redacted] for Eur647k subject to the Bank receiving proceeds to repay Home Loan [account ending 4087] in full."

I note from the **mortgage loan statements** that account ending **4087** was redeemed in full on **1 December 2012**.

The evidence shows that the Complainants made the decision to sell the property of their own accord. The Complainants were not residing in the security property when they requested that the Provider release the deeds of the property in **July 2012**, rather the Complainants were living in a different property mortgaged with a third party Provider. It appears that the Complainants were not in a position to service the mortgage loan repayments on both properties as the First Complainant was working on a part time basis and the Second Complainant was on a career break.

Nonetheless, having regard to the manner in which the Bridging Finance Facility and ECB Tracker Home Loan were offered to the Complainants, I find it difficult to understand why the Provider decided to treat the ECB Tracker Home Loan Facility and the Bridging Finance Facility as separate loans in **July 2009** when it had considered the two loans to be "linked" up to that point. In circumstances where the ECB main refinancing rate had steadily decreased from 4.25% to 1.00% between **2008** and **2010**, it appears to me that it was more beneficial for the Provider to terminate the Complainant's ECB Tracker Home Loan Facility and issue a new **Facility Letter** to the Complainants offering a standard variable interest rate. I believe this was unreasonable.

/Cont'd...

In light of all the foregoing, I substantially uphold this complaint and direct, pursuant to **Section 60(4) of the Financial Services and Pensions Ombudsman Act 2017**, that the Provider do the following:

- (i) Repay to the Complainant any interest overpaid between **October 2010** and the date on which the mortgage loan account ending **4087** was redeemed;
- (ii) Pay a sum of €8,000 compensation to the Complainants in respect of the loss, expense and inconvenience the Complainants have suffered.

Conclusion

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is substantially upheld, on the grounds prescribed in **Section 60(2) (b)** on the basis that the conduct on the part of the Provider was unreasonable and **Section 60(2)(g)**.

Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to:

- (i) Repay to the Complainant any interest overpaid between **October 2010** and the date on which the mortgage loan account ending **4087** was redeemed;
- (ii) Pay a sum of €8,000 compensation to the Complainants in respect of the loss, expense and inconvenience the Complainants have suffered.

The sum of €8,000 compensation is to be paid to an account of the Complainants' choosing, within a period of 35 days of the nomination of account details by the Complainants to the Provider.

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

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

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



GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

1 November 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.