



<u>Decision Ref:</u>	2021-0499
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Tracker Mortgage
<u>Conduct(s) complained of:</u>	Refusal to move existing tracker to a new mortgage product Failure to offer a tracker rate throughout the life of the mortgage
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint relates to a mortgage loan account which was held by the Complainants with the Provider. The mortgage loan that is the subject of this complaint was secured on the Complainants' private dwelling house.

The mortgage loan account ending **8502** was for an amount of €190,000 and the term of the loan was 30 years. The particulars of the Letter of Approval dated **30 July 2004** detailed that the loan type was a "1 Year Fixed Rate Home Loan". The interest rate was 2.74%.

This mortgage loan was redeemed in full on **5 March 2010**.

The Complainants' Case

The First Complainant submits that she contacted the Provider in **2009** to request that the Second Complainant be removed as an account holder in respect of the mortgage loan account. The First Complainant states that she requested to either replace the Second Complainant with a new account holder, or alternatively, transfer the mortgage loan account into her sole name. The Complainants submit that the Provider "*refused both options*".

As a result, the First Complainant contends that the Provider *“forced [her] to move to a different lender”* and take out a new mortgage on a *“much higher rate.”* The First Complainant details that the Provider maintains that it has no record of the new application and cannot provide her with any details.

The Complainants maintain that they *“sat down with [the Provider] and produced all [their] financial information and [they] were told an application would be made to head office to have it assessed in [First Complainant’s] sole name and then jointly in the name of [the First Complainant’s] partner”*. The Complainants submit that they were then told by the Provider that their application was *“not successful”*. The Complainants contend that they were told that the Provider was trying to get people off tracker mortgages at that time.

The Complainants maintain that the reason that the Provider refused the request to amend the account holder details in **2009** was that they were *“entitled to be on a tracker rate and at the time [the Provider was] trying to get people off them”*.

The Complainants submit that despite what the Provider states, the request for transfer form was given to a branch of the Provider and *“a meeting did take place outside of normal business hours”*.

The Provider’s Case

The Provider submits that a Letter of Approval dated **30 July 2004** issued to the Complainants which provided for a 1-year fixed rate home loan in the amount of €190,000 over a term of 30 years. The Provider states that the *“loan agreement in respect of the mortgage did not include any contractual right to a tracker rate of interest at any point during the term of the mortgage”*.

The Provider submits that prior to the expiry of the initial 1-year fixed rate period, it issued a fixed interest rate options form which was signed by the Complainants on **14 December 2005**, whereby they opted to apply a 2-year fixed rate of 3.99% to the mortgage loan account.

The Provider notes that prior to the expiry of the 2-year fixed rate period in **December 2007**, the Provider issued an interest rate options letter to the Complainants which outlined the interest rate options available to the Complainants at that time. The Provider states that as the Complainants did not return a signed interest rate options form to the Provider, the mortgage loan account defaulted to a tracker interest rate of ECB + 0.80%.

The Provider further states that this rate was applied to the mortgage loan account on **21 December 2007** and the mortgage loan account remained on this rate until it was redeemed on **5 March 2010**.

The Provider submits that its internal email records show that the First Complainant contacted the Provider on **30 March 2009** in relation to amending the account holder details. The Provider outlines that by way of letter dated **31 March 2009**, it noted that in order to consider the transfer of the mortgage account into the sole name of the Complainant, *"it would require a Request for Transfer Form to be signed by the [the Complainants]."*

The Provider contends that it has no record of receiving the signed Request for Transfer Form. The Provider asserts that it *"could not consider or proceed with the request for account transfer without receipt of the signed form"*. The Provider further states that *"the Bank's position remains that it did not refuse the Complainant's request, rather it could not proceed with it in the absence of the signed Request for Transfer Form"*.

The Provider maintains that *"approximately two weeks later"* it received correspondence dated **14 April 2009** from the First Complainant's solicitor informing the Provider that the First Complainant was in the process of re-mortgaging the property. The Provider further maintains that this letter *"enclosed an Accountable Trust Receipt signed by the [the Complainants] requesting the transfer of the title deeds of the property to [Solicitor firm]."* The Provider submits that it *"duly complied"* with this request and the mortgage was redeemed on **5 March 2010** and the Provider confirmed the mortgage loan account was closed in a letter dated **22 March 2010**.

The Provider details that its branch, where the Complainant claims to have met with the Provider to discuss the request to remove her brother as account holder in **2009**, has been *"unable to trace any documentation or records in relation to the Complainant."* The Provider states that its data retention policy allows for a 6-year retention period from the date on which a consumer product, service or transaction is completed or discontinued. The Provider submits that the branch *"would not have been in a position to approve a name transfer as this could only be approved following an assessment by the Bank's Central Credit Department."*

The Provider states that it is satisfied that it acted appropriately with regard to the Complainants' request to amend the account holder details on the mortgage. The Provider maintains that there are no conditions in the mortgage documentation which refer to a change in account holder details.

The Complaint for Adjudication

The complaint for adjudication is that the Provider refused the Complainants' request to amend the account holder details in **2009**, which led to the redemption of the mortgage loan account and the loss of the tracker rate.

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 17 November 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.

In order to determine this complaint, it is necessary to review and set out the relevant provisions of the Complainants' mortgage loan documentation. It is also necessary to consider the details of certain interactions between the Complainants and the Provider between **2004** and **2010**.

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The Provider issued a **Letter of Approval- Particulars of Mortgage Loan** dated **30 July 2004**, which details as follows:

<i>"Loan Type:</i>	<i>1 Year Fixed Rate Home Loan</i>
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<i>Purchase Price / Estimated Value:</i>	<i>EUR 227,500.00</i>
<i>Loan Amount:</i>	<i>EUR 190,000.00</i>
<i>Interest Rate:</i>	<i>2.74%</i>
<i>Term:</i>	<i>30 year(s)"</i>

Special Condition A of the **Letter of Approval** dated **30 July 2004** details as follows:

"GENERAL MORTGAGE LOAN APPROVAL CONDITION 5 "CONDITIONS RELATING TO FIXED RATE LOANS" APPLIES IN THIS CASE. THE INTEREST RATE SPECIFIED ABOVE MAY VARY BEFORE THE DATE OF COMPLETION OF THE MORTGAGE."

General Condition 5 of the **General Mortgage Loan Approval Conditions** details as follows:

"5. Conditions relating to fixed rate loans

- 5.1 The interest rate applicable to this advance shall be fixed from the date of the advance for the period as specified on the Letter of Approval, and thereafter will not be changed at intervals of less than one year.*
- 5.2 The interest rate specified in the Letter of Approval may vary before the date of completion of the Mortgage.*
- 5.3 Whenever repayment of a loan in full or in part is made before the expiration of the Fixed Rate Period the applicant shall, in addition to all other sums payable, as a condition of, and at the time of such repayment, pay whichever is the lesser of the following two sums:*
 - (a) A sum equal to one half of the amount of interest (calculated on a reducing balance basis) which would have been payable on the principal sum desired to be repaid, for the remainder of the Fixed Rate Period, or*

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(b) A sum equal to [the Provider's] estimate of the loss (if any) occasioned by such early repayment, calculated as the difference between on the one hand the total amount of interest (calculated on a reducing balance basis) which the applicant would have paid on the principal sum to that being repaid to the end of the Fixed Rate Period at the fixed rate of interest, and on the other hand the sum (if lower) which [the Provider] could earn on a similar principal sum to that being repaid if [the Provider] loaned such sum to a Borrower at its then current New Business Fixed Rate with a maturity date next nearest to the end of the Fixed Rate period of the loan, or part thereof, being repaid.

5.4 Notwithstanding Clause 5.1 [the Provider] and the applicant shall each have the option at the end of each fixed rate period to convert to a variable rate loan agreement which will carry no such redemption fee."

The **General Mortgage Loan Approval Conditions** also detail the following:

"IF THE LOAN IS A VARIABLE RATE LOAN THE FOLLOWING APPLIES:

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

The **Acceptance of Loan Offer** was signed by the Complainants and witnessed by their solicitor on **31 December 2004**. The Acceptance of Loan Offer states as follows:

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

- i. Letter of Approval*
- ii. the General Mortgage Loan Approval conditions*
- iii. [the Provider's] Mortgage Conditions*

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

...

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

It is clear that the **Letter of Approval** dated **30 July 2004** envisaged a 1-year fixed interest rate with the option of a variable rate of interest to apply thereafter. The variable rate, in the Complainants' mortgage loan documentation, made no reference to varying in accordance with variations in the ECB refinancing rate, rather it was a variable rate which could be adjusted by the Provider.

Upon the expiry of the initial fixed rate interest rate period, the Complainants were issued with an interest rate options form which was signed by the Complainants on **14 December 2005**. The options form detailed as follows:

“

		<i>eur €</i>
<i>Variable rate Mortgage currently</i>	<i>3.55%</i>	<i>€877.05</i>
<i>1 Year fixed rate Mortgage currently</i>	<i>3.75%</i>	<i>€897.71</i>
<i>2 Year fixed rate Mortgage currently</i>	<i>3.99%</i>	<i>€922.86</i>
<i>3 Year fixed rate Mortgage currently</i>	<i>4.15%</i>	<i>€939.83</i>
<i>5 Year fixed rate Mortgage currently</i>	<i>4.29%</i>	<i>€954.81</i>
<i>7 Year fixed rate Mortgage currently</i>	<i>4.55%</i>	<i>€982.95</i>
<i>10 Year fixed rate Mortgage currently</i>	<i>4.70%</i>	<i>€999.38”</i>

The evidence shows that the Complainants opted to apply a 2-year fixed rate of 3.99% to the mortgage loan account.

Prior to the expiry of the 2-year fixed rate period in **December 2007**, the Provider submits that it issued an interest rate options letter to the Complainants which outlined the interest rate options available to the Complainants at that time. The Provider states that as the Complainants did not return a signed interest rate options form to the Provider, the mortgage loan account defaulted to a tracker interest rate of ECB + 0.80%. I note that from the **mortgage statements** furnished in evidence that the rate of interest changed to 4.80% on **21 December 2007**.

The Provider explains that it is not in a position to submit a copy of the rate options form that issued to the Complainants in **December 2007** because its data retention policy allows for a 6-year retention period from the date on which a consumer product, service or transaction is completed or discontinued. The Provider further states that as the Complainants closed the mortgage loan account in **March 2010**, “*any further documentation pertaining to the Complainant[s] would no longer be available*” and it “*would not hold further documentation pertaining to the Complainant after March 2016.*”

I acknowledge that the Provider is only obliged to retain documentation on file for six years from the date the relationship with the mortgage holder ends under the **Consumer Protection Code 2006**. In circumstances where the Complainants closed the mortgage loan account the subject of this complaint in **March 2010** and the Complainants first lodged their complaint with this office in **2018**, I do not consider there to be any breach of the **Consumer Protection Code 2006** on the part of the Provider. In any event, I note that the content of this correspondence is not in dispute between the parties.

The Provider has submitted internal email correspondence between an employee of the Provider and a different branch within the Provider. The email dated **30 March 2009** details as follows:

"[the First Complainant] has requested we allow her take over the above loan in her own name. She has been paying this loan herself since drawdown as [the Second Complainant] has his own mortgage, also with us. She wants [the Second Complainant's] name remove[d].

Please contact [the First Complainant] regarding this request."

The Provider sent a letter dated **31 March 2009** to the Complainants which detailed as follows:

"I refer to your recent request for the Transfer of the above numbered mortgage into the name of [the First Complainant].

In order that I may consider this proposed transfer further, I should be pleased if you would arrange to have the enclosed request for transfer form signed by both and returned directly to [the Provider].

Furthermore, [the First Complainant] should complete and sign the remainder of the form and have the enclosed salary certificate completed and authenticated by his/her employers and return all documents directly to [the Provider], together with a copy of their most recent P60 or last three payslips.

However, if [the First Complainant] is self-employed, please arrange to have the attached report completed and stamped by his/her accountant and returned to this office.

On receipt of the above, I confirm that I will give the matter my immediate attention."

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The Provider has submitted that it has no record of receiving the signed **Request for Transfer Form** from the Complainants and in the absence of receiving the requisite form from the Complainants, it could not proceed with the request to amend the name of the account holders.

The Provider has furnished details of its policy in relation to the restructuring of a joint mortgage by removing an account holder which was applicable in **2009**, as follows:

“All parties to the mortgage account must provide their written consent to any amendments to the structure of the loan/ownership of the property and relevant supporting documentation must be provided by the parties seeking the transfer request and recorded on file.

Repayment capacity would require assessment by the Bank’s Retail Credit Department and would be subject to the appropriate and relevant supporting documentation being supplied and meeting credit policy.

It is the intention of the Bank to comply with the letter and spirit of all relevant legislation and Codes of Conduct, for example the Consumer Protection Code (CPC) issued by the Central Bank and the Consumer Credit Act 1995”.

The Complainants’ solicitor sent a letter dated **14 April 2009** to the Provider which detailed as follows:

*“We refer to the above and confirm we act on behalf of [the Complainants] who are currently in the process of remortgaging the above property. Please now find **enclosed** the following:-*

- 1. Accountable trust Receipt.*
- 2. Cheque in the sum of €35.00*

We would be most obliged if you would now please release title documents to the above property to our office on Accountable Trust Receipt at your earliest possible opportunity.”

The Provider states that it duly complied with the request to release the title deeds of the mortgaged property to the Complainants’ solicitor.

The Complainants' solicitor wrote to the Provider again by way of letter dated **13 January 2010** which detailed as follows:

"We refer to the above and confirm we act on behalf of [the Complainants] who are currently in the process of remortgaging the above property. In this regard we would be most obliged to hear from you with up to date redemption figures in respect of the above loan account number [mortgage loan account ending 8502]. When furnishing the said figures you might please ensure that the figure includes full and final settlement in relation to all monies owing by our above named clients, and also include the daily rate of accrual..."

The Provider responded by way of letter dated **26 January 2010** which outlined the following:

"Thank you for your recent request for the amount you need to pay to clear your mortgage.

Here are the details.

<i>Loan Number</i>	<i>Amount €</i>	<i>Daily Accrual</i>	<i>Inclusive of fixed rate exit fee €</i>
<i>[Account ending 8502]</i>	<i>170,027.16</i>	<i>8.37</i>	<i>0.00</i>

...

*These figures are valid for **20 days** from the date of this letter, after which these figures will be out of date. The figures quoted are for today's date, **therefore you will need to add on the daily accrual thereafter**. This fixed-rate exit fee can vary depending on changes in interest rates."*

The Provider sent a letter to the Complainants dated **1 March 2010** which detailed as follows:

"Thank you for your recent request for the amount you need to pay to clear your mortgage. Here are the details.

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<i>Loan Number</i>	<i>Amount €</i>	<i>Daily Accrual</i>	<i>Inclusive of fixed rate exit fee €</i>
<i>[Account ending 8502]</i>	<i>169,555.96</i>	<i>8.35</i>	<i>0.00</i>

...

*These figures are valid for **20 days** from date of this letter, after which these figures will be out of date. The figures quoted are for today's date, **therefore you will need to add on the daily accrual thereafter**. This fixed-rate exit fee can vary depending on changes in interest rates."*

The Complainants' solicitor responded by way of a letter dated **3 March 2010** which stated the following:

"We refer to the above and your fixed letter of the 1st inst., copy of which we now enclose for ease of reference.

Please now find enclosed cheque in the sum of €169, 581.01 to include three days interest from the date of your said letter in full and final settlement of all monies owing to [the Provider] by our above named clients."

The Provider responded by way of letter dated **8 March 2010** which outlined the following:

"We refer to your letter dated 3rd instant and note your request.

We would be obliged if you would please forward cheque in the sum of €35.00 upon receipt of which we will forward the vacated Mortgage to you."

The Complainants' solicitor then wrote to the Provider by way of letter dated **9 March 2010** which detailed the following:

"We refer to the above and your faxed letter of the 8th inst copy of which we now enclose for ease of reference.

Please now find enclosed cheque in the sum of €35.00 as requested. Please furnish Deed of Mortgage duly Vacated at your earliest possible opportunity."

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The Provider subsequently issued a letter to the Complainants dated **22 March 2010** which stated the following:

"I acknowledge receipt of the payment of €169,581.01 to the above account on the 5th March 2010.

I confirm the above loan is now closed and no further payments are due on this mortgage account."

The First Complainant has submitted that she requested to either replace the Second Complainant with a new account holder, or alternatively, to transfer the mortgage loan account into her sole name in **2009**, however, the Provider *"refused both options"*. The Complainant has also submitted that as a result of the refusal, the Provider *"forced [her] to move to a different lender"* and take out a new mortgage on a *"much higher rate."*

It is clear to me from the above correspondence between the Complainants' solicitor and the Provider, that the Provider did in fact provide the Complainants with an opportunity to apply to transfer the mortgage loan account into First Complainant's sole name. However, the Complainants failed to return a signed copy of the Request for Transfer Form to the Provider in order for the Provider to assess the Complainants' request.

The Complainants submit that despite what the Provider states, the request for transfer form was given to a branch of the Provider and *"a meeting did take place outside of normal business hours"* however, I have not been provided with any evidence to support the Complainants' submission in this regard. In any event, I accept that such a meeting would not, in itself, have established any right to such a transfer.

The evidence shows that the Complainants, through their solicitor, contacted the Provider shortly after the Provider had issued a Request for Transfer Form to them, by way of letter dated **14 April 2009** to inform the Provider of their intention to re-mortgage the property and move the mortgage to a different Provider. The Complainants' solicitor issued a further letter to the Provider on **13 January 2010** noting that the Complainants were currently in the process of re-mortgaging their property at that time. During this time, the Complainants were free to apply to restructure their joint mortgage loan with the Provider with the assistance of their solicitor, however I have not been provided with any evidence that the Complainants did so. Rather, it appears to me that the Complainants were taking active steps to re-mortgage with a different provider, as was their absolute entitlement, by requesting the release of the title deeds.

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I cannot therefore in those circumstances accept the Complainants' submission that they were "refused both options" or that the Provider "forced [First Complainant] to move to a different lender" and take out a new mortgage on a "much higher rate." The Provider appeared to be willing to consider allowing the First Complainant to transfer the mortgage into her sole name, however, the Complainants do not appear to have returned a signed copy of the Request for Transfer Form to the Provider.

I have been provided with two telephone recordings from **2017**, which I have reviewed and I have also considered contemporaneous notes from a third telephone call which occurred in **2018**. The telephone calls appear to have occurred between the Provider and the First Complainant in relation to the complaint raised with the Provider which is the subject of this Decision. I am of the view that these recordings have no bearing on this complaint.

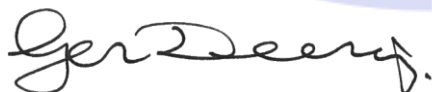
It is clear from the above that if the Complainants did not wish to transfer the mortgage to a different Provider, they could have returned a signed copy of the Request for Transfer Form to the Provider. However, the Complainants do not appear to have done so, and instead, opted to redeem their mortgage with the Provider and transfer it to an alternate provider. It is important to note that even if the Complainants had completed and returned the Request for Transfer Form to the Provider, it would have been a matter of commercial discretion on the part of the Provider whether or not to accede to such a request.

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

Conclusion

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

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



GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

9 December 2021

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Pursuant to *Section 62 of the Financial Services and Pensions Ombudsman Act 2017*, the Financial Services and Pensions Ombudsman will publish legally binding decisions in relation to complaints concerning financial service providers in such a manner that—

(a) ensures that—

(i) a complainant shall not be identified by name, address or otherwise,

(ii) a provider shall not be identified by name or address,
and

(b) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.