



<u>Decision Ref:</u>	2022-0015
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Tracker Mortgage
<u>Conduct(s) complained of:</u>	Failure to offer a tracker rate throughout the life of the mortgage
<u>Outcome:</u>	Rejected

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

The Complainants hold two mortgage loan accounts (ending **3455** and **2481**) with the Provider. Both mortgage loan accounts are secured on the Complainants' private dwelling house.

The Letter of Approval dated **23 January 2008** in respect of mortgage loan account ending **3455** outlined the loan type as "*Staff Home Loan*". The loan amount was €166,000.00 and the term was 39 years.

The Letter of Approval dated **14 May 2008** in respect of the mortgage loan offer under application number/ mortgage loan account ending **3500** outlined the loan type as "*Disc Tracker (LTV<60%/<200K) HomeLoan*". The loan amount was €84,000.00 and the term was 39 years. This mortgage loan was never drawn down by the Complainants and is the subject of this complaint.

The Letter of Approval dated **31 March 2010** in respect of mortgage loan account ending **2481** outlined the loan type as "*1 Yr Disc Variable (>80% LTV) Home Loan*". The loan amount was €84,000.00 and the term was 35 years.

The Complainants' Case

The Complainants submit that they applied for a mortgage in the amount of €250,000 in **2007**. They detail that they opted to place the maximum portion allowable of €166,000 on the Provider's staff discounted interest rate of 2.5% (mortgage loan account ending **3455**) and the remaining portion of €84,000 on a discounted tracker variable rate (mortgage loan account ending **3500**).

The Complainants note that mortgage loan account ending **3455** was drawn down in **February 2008** on foot of a loan offer letter dated **23 January 2008**. The Complainants submit that the funds were issued in staged payments. In this regard they state that they *"chose not to draw down the €84,000 at this time as the works required as per the stages above were not complete as per point 2.6.1 and 2.6.2 of the General mortgage loan approval conditions and both cheques were not required"*.

The Complainants submit that they subsequently sought to draw down mortgage loan account ending **3500** in **2010** and were informed by the Provider that the loan offer for this mortgage loan had expired. As a result, they submit that they had to apply for a new mortgage and drew down the remaining funds on a discounted variable rate of 4.1%, pursuant to the terms of a loan offer dated **30 March 2010** (mortgage loan account ending **2481**).

The Complainants submit that they hold a signed loan acceptance for mortgage loan account ending **3500** which was submitted to the Provider in **January 2008**. They further submit that they hold an amended loan offer letter for mortgage loan account ending **3500** dated **14 May 2008** which the Complainants submit *"indicates the loan had not been cancelled"*.

The Complainants state that their solicitors received a call from an agent of the Provider on **6 February 2008** *"enquiring if [they] wanted 2 cheques to issue, one for €35,000 which was the staged payment... and one for €84,000 which was mortgage ending 3500"*. The Complainants submit that *"This indicates all required paperwork to secure the loan was completed and in place and [they] could at this stage drawn down the tracker mortgage ending 3500."* The Complainants detail that they *"chose not to draw down the €84,000 at this time as the works required as per the stages above were not complete as per point 2.6.1 and 2.6.2 of the General mortgage loan approval conditions and both cheques were not required."*

The Complainants assert that the Provider was “*aware*” that in circumstances where they had not completed the stages required to enable them to draw down on the funds under mortgage loan account ending **3455**, they would not have had “*sufficient works completed to drawn down on the mortgage 3500.*”

The Complainants are seeking that mortgage loan account ending **2481** is switched to the tracker interest rate that they assert should have applied to the mortgage loan account ending **3500**. They are seeking redress and compensation in respect of the monies overpaid since **March 2010** due to the application of the variable rate to mortgage loan account ending **2481** instead of the tracker rate.

The Provider’s Case

The Provider submits that the Complainants were “*not allowed to draw down*” on mortgage loan offer reference **3500** in **2010** as their loan approval and acceptance had expired by **2010**. The Provider states that mortgage loan approval ending **3500** had been approved and offered to the Complainants in **2008** when mortgage loan account ending **3455** was approved. The Provider details that the Complainants “*did not draw down loan approval ending 3500 and it was withdrawn.*”

The Provider submits that the Complainants signed an application for credit on **16 January 2008** for two mortgage loans to facilitate their home loan borrowing. The Provider states that the “*respective application numbers*” were accounts ending **3455** and **3500**. The Provider details that its credit department assessed the Complainants’ affordability at a total sum of €250,000. The Provider details that the sum of €166,000 was the maximum available to the Complainants by way of a staff loan application. The Provider submits that the staff rate portion of the application was given the reference ending **3455** and the remainder, amounting to €84,000 was given the reference **3500**.

The Provider submits that it issued a **Statement of Suitability** for mortgage loan account ending **3455** on **22 January 2008**, where “*a split loan option of a proposed fixed rate and tracker variable rate were the loan preferences chosen.*” The Provider details further that a Letter of Approval “*was also printed on this date*”. The Provider submits that its Letters of Approval for a loan amount of €166,000 under mortgage loan offer reference ending **3455**, and for a loan amount of €84,000, under mortgage loan offer reference ending **3500**, were issued to the Complainants in or around **22 January 2008**.

The Provider details that it issued the Complainants an amended Letter of Approval in respect of mortgage account ending **3455** on **23 January 2008**. The Provider states that it received a *“signed, dated and witnessed”* Acceptance of Loan Offer for account ending **3455** from the Complainants’ solicitor on **30 January 2008**. The Provider submits that mortgage loan account ending **3455** commenced draw down by the Complainants on **7 February 2008** in line with **Special Condition 11** of the **General Mortgage Loan Approval Conditions**.

The Provider submits that the drawdown dates for the remainder of the funds under account ending **3455** were as follows:

<i>“07/02/2008</i>	<i>€35,000</i>
<i>18/07/2008</i>	<i>€35,000</i>
<i>05/03/2009</i>	<i>€50,000</i>
<i>27/11/2009</i>	<i>€46,000</i>
<i>TOTAL</i>	<i>€166,000”</i>

The Provider states that it did not receive the completed Acceptance of Loan Offer in respect of mortgage loan account ending **3500**.

The Provider details that **Condition 1.7** of the **General Mortgage Loan Approval Conditions**, provided that the Complainants had 21 days to indicate in writing their willingness to take up the advance. The Provider submits that *“Loan Approval 3500 was cancelled in accordance with General Mortgage Loan Approval Condition 1.7”*. The Provider further states that the *“lapse of the loan offer was noted by the Complainants in 2010 when they requested that a new loan application be processed by the Bank, after which the loan account ending 2481 was offered to, accepted by and drawn down by the Complainants.”*

In response to the Complainants’ submissions which appear to reflect the Complainants’ solicitors notes of telephone calls, the Provider asserts that it *“appears”* from the document that the Complainants *“were aware on and around 6 February 2008 that both of the loans had been made available to be drawn down by them immediately and that they elected to draw down only one loan”*. The Provider further details that the Complainants *“were aware that either loan, if it was not drawn down, would lapse after a period of time as set out in the General Mortgage Loan Approval Conditions of the relevant loan agreement.”*

The Provider submits that the Complainants' submissions reflect that *"It appears that the loan account ending 3500 may have been offered by the Bank to the Complainants again in May 2008. However, if a new loan offer was issued in May 2008, this is an indication that the January 2008 offer had not been drawn down and had lapsed and that the Complainants were aware of this."*

The Provider states further that it had ceased offering tracker interest rates for new business borrowers in **mid-2008**, therefore in **March 2010** *"tracker rates were not available to new mortgage customers"*.

The Provider states that the Complainants' solicitors contacted the Provider on **18 March 2010** noting that mortgage loan account ending **3500** was never drawn down therefore a *"fresh"* application was required by the Complainants.

The Provider submits that its internal notes dated **26 March 2010** and **29 March 2010** relating to the application in respect of account ending **2481** detailed that the *"application had become necessary due to their house build taking longer to progress than anticipated."*

The Provider details that it is satisfied that the information contained in the loan offer under reference **3500** was *"sufficiently clear and transparent with respect to the maximum periods within which acceptance and drawdown of each of the loan offers must take place."*

The Provider submits that it stopped offering new tracker rate loans in **mid-2008**. The Provider details that in **2010** *"tracker rates were only available to existing customers whose loans had a tracker rate entitlement and to customers whose accounts were maturing from a fixed rate with a contractual right to a tracker rate upon fixed rate expiry."*

The Provider states that following the Complainants' loan application of **15 February 2010** the Provider offered the Complainants a one-year discounted variable rate for the loan amount of €84,000. The Provider submits that this *"was the most competitive variable rate available to the Complainants"*. The Provider details that the Complainants accepted the Provider's loan offer on **7 April 2010** *"having taken their Solicitor's advice in respect of all terms and conditions of the loan offer including the one-year discount variable rate and the subsequent rate."*

The Provider states that *"it acted in good faith in 2008 when it made a credit assessment for repayment capacity of an application in the sum of €250,000 which was presented by the Complainants for the purpose of building their new home"*.

The Provider details that the loan was drawn down in “*phased stage payments*” which meant that “*the Complainants only paid interest on what was actually drawn down, not the whole amount.*” The Provider asserts:

“While the Complainants’ request in 2008 for the total sum required to complete their house build was sanctioned, the funds were not utilised in 2008, and in accordance with the Complainants need for stage payment amounts, the Bank met their needs by facilitating a replacement application in 2010 to assist with completing their new home build which lasted until a final drawdown request on 15 June 2010.”

The Provider details that “*It is clear that no loan account ending 3500 was drawn down by the Complainants in 2008 or at any time and that, in accordance with the Bank’s general mortgage loan approval conditions application to all loans, the account was no longer available to the Complainants after a period of time.*”

The Complaint for Adjudication

The complaint for adjudication is that the Complainants had to apply for and draw down a new mortgage loan account ending **2481** on a variable interest rate in **2010**, instead of drawing down mortgage loan account ending **3500** on the tracker interest rate in accordance with the Provider’s loan offer in **2008**.

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.

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A Preliminary Decision was issued to the parties on **18 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.

Following the issue of my Preliminary Decision, the following submissions were received from the parties:

- E-mail correspondence from the Complainants to this Office dated **6 December 2021**; and
- Letter from the Provider to this Office dated **9 December 2021**.

Copies of these additional submissions were exchanged between the parties.

Having considered these additional submissions and all submissions and evidence furnished by both parties to this office, I set out below my final determination.

At the outset, it is important to point out the jurisdiction of this office in complaints regarding the provision of credit. This Office can investigate the procedures undertaken by the Provider regarding the credit application in this matter under the **Consumer Protection Code 2006**, which was in effect at the time of the Complainants' application for a mortgage loan, but will not investigate the details of any negotiation of the commercial terms of a mortgage which is a matter between the Provider and the Complainants, and does not involve this office, as an impartial adjudicator of complaints. This office will not interfere with the commercial discretion of a financial service provider, unless the conduct complained of is unreasonable, unjust, oppressive or improperly discriminatory in its application to a Complainant, within the meaning of **Section 60 (2) of the Financial Services and Pensions Ombudsman Act 2017**.

An **Application for Credit** signed by the Complainants and dated **16 January 2008** has been submitted in evidence by the Provider. I note that the "*details of mortgage required*" section is left blank. A **Stage Payments Certificate** in respect of account ending **3455** signed by the Complainants' engineer dated **8 January 2008** has also been submitted in evidence, which details the Complainants' request for the mortgage loan to be issued in stages.

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The Provider issued a letter to the Complainants dated **23 January 2008**, which details as follows:

“Account number: [ending **3455**]

Property address: [address]

Dear [Complainants]

I have enclosed a copy of your amended loan approval. I have also sent a copy to your solicitor.

If you want to accept our offer, please sign the Acceptance of the loan which has been sent with the mortgage documentation to your solicitor. You should sign the acceptance of loan in the presence of your solicitor who must witness your signature. Then return it to the Mortgage Processing Centra as soon as possible so we can process your loan.

I have also enclosed the “European Standardised Information Sheet” which further explains the details of the loan.”

The **Letter of Approval** dated **23 January 2008** in respect of mortgage loan account ending **3455** details as follows:

“Loan Type:	Staff Home Loan
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Purchase Price / Estimated Value:	EUR 350,000.00
Loan Amount:	EUR 166,000.00
Interest Rate:	2.5%
Term:	39 year(s)”

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

“4. In the event of your employment with [the Provider] terminating, for any reason whatsoever, or your repayments being more than three months in arrears, the interest rate of this advance will be immediately increased to the rate then payable by an ordinary mortgagor with similar advances, and the advance will be at call.

[...]

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6. 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.

[...]

11. General mortgage loan approval condition 2.5 relating to stage payments applies. Any fees to be deducted from the loan cheque as specified in these conditions will be deducted from the first stage payments. Schedule for stage payments:- Foundations / Floor level €35,000.00, Wall Plate/Blockwork €35,000.00, Roof complete €50,000.00, Plastering €46,000.00”.

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

“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.

.....

5.4 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 outline:

“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.”

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The **Acceptance of Loan Offer** was signed by the Complainants and witnessed by a solicitor on **28 January 2008** on the following terms:

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

- i. Letter of Approval*
- 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 to me that the **Letter of Approval** dated **23 January 2008** provided for a staff interest rate of 2.5% and included a schedule for stage payments in circumstances where the property the subject of the mortgage loan was a self-build property.

The mortgage loan statements provided in evidence indicate that the loan was issued on **7 February 2008**, however €131,000 of the total amount of €166,000 was detailed as a *“Holdback Amount”*, and the remaining balance of €35,000 was drawn down on **7 February 2008**.

The mortgage loan statements indicate that a further advance of €35,000 was drawn down on **18 July 2008**, a further advance of €50,000 was drawn down on **5 March 2009** and the final advance on this mortgage loan account was drawn down on **27 November 2009** for the amount of €46,000.

The Complainants submit that they also signed and accepted a second **Letter of Approval** for the remaining amount of €84,000 in **January 2008** in respect of mortgage loan account ending **3500**. I have not been provided with a copy of the Letter of Approval that issued in **January 2008** with reference to application number/ mortgage loan account ending **3500**. However, it is not in dispute between the parties that this loan was never drawn down. In fact, the Complainants note that they chose not to draw down the second loan in **January 2008** as the works required as per the stage payment schedule in relation to mortgage loan account ending **3455** were not completed. The Complainants therefore assert that only a cheque for €35,000 was required to be drawn down in accordance with the stage payment schedule for mortgage loan account ending **3455**.

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The Provider submits that in circumstances where mortgage loan account ending **3500** was never activated or drawn down “*the documentation pertaining to its approval was not retained by the Bank in accordance with the Bank’s policy of not retaining loan application data for longer than twelve months if a loan does not proceed*”. In this regard, I accept that there was no legitimate business reason on the part of the Provider to retain records on pertaining to application number/mortgage loan account ending **3500** on file given the mortgage loan was never drawn down and therefore expired.

I note that a **Law Society of Ireland Residential Mortgage Lending Solicitor’s Undertaking** dated **28 January 2008** has been supplied in evidence which contains a reference to mortgage loan accounts ending **3455** and **3500**. The Complainants’ solicitor appears to have issued a letter to the Provider dated **29 January 2008** which states as follows:

**“Re: Our Clients: [the Complainants]
Property: [address]
Loan Account References: [ending 3500 and ending 3455].**

Dear Sirs,

We refer to the above matter and now enclose the following for your attention:-

- 1. Acceptance of loan offer in respect of the above mortgages.*
- 2. Solicitors Undertaking incorporating Client Authority and Retainer.*

We understand that the engineer’s certificate in respect of the initial stage payment drawdown has been furnished to you under separate cover and we would be obliged if you would kindly arrange to let us have initial stage payment drawdown as soon as possible.”

This correspondence indicates that two separate Letters of Approval in relation to mortgage loan accounts ending **3455** and **3500** issued to the Complainants in **January 2008**.

The Complainants have submitted a page from an “*updated*” **Letter of Approval** in respect of application number/mortgage loan account ending **3500** dated **14 May 2008**, which details as follows:

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“Loan Type:	Dis Tracker (LTV<=60%/<200K) HomeLoan
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<i>Purchase Price / Estimated Value:</i>	<i>EUR 350,000.00</i>
<i>Loan Amount:</i>	<i>EUR 84,000.00</i>
<i>Interest Rate:</i>	<i>4.75%</i>
<i>Term:</i>	<i>39 year(s)”</i>

An updated Letter of Approval appears to have issued in circumstances where the original Letter of Approval referencing application number/mortgage loan account ending **3500** had lapsed as the loan was never drawn down.

This amended loan offer for a loan amount of €84,000 provided for a discounted tracker interest rate of 4.75%.

The Complainants, in their post Preliminary Decision submission dated **6 December 2021**, state that their solicitor had advised them that “*there was no mention of a time limit for the drawdown of the mortgage*”. The letter that the Complainants have submitted in evidence from their solicitor dated **2 March 2009** details as follows with respect to a time limit for drawdown:

“We confirm having received Stage Payment Certificate from [named representative] on the 19th January, last. We have submitted the Stage Payment Certificate to [the Provider] requesting a further stage payment drawdown. However, we have been advised by [the Provider] that your Letter of Loan Offer has now expired.

We confirm having reviewed the letter of Loan Approval and this does not appear to refer to a time limit for the drawdown of the loan.”

The Provider, in its post Preliminary Decision submission dated **9 December 2021**, details that “*the General Mortgage Loan Approval Conditions of the loan offer provided times limits (sic.) for both accepting the loan offer and its drawdown*” and “*it would be unreasonable to expect the Bank to allow a loan offer to be accepted indefinitely.*”

The Provider has submitted in evidence a copy of the General Terms and Conditions which purportedly issued with the Letter of Approval dated **14 May 2008**.

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General Condition 1.7 of the **General Mortgage Loan Approval Conditions**, states as follows:

“The Applicant must personally within 21 days indicate in writing his willingness to take up this advance and the mortgage loan must be completed within 40 days of his acceptance. Failure to comply with the foregoing or rejection of the property for such insurance as [the Provider] may require at the standard rate without any special conditions cancels this approval.”

General Condition 1.7 of the **General Mortgage Loan Approval Conditions** therefore clearly gave the Complainants 21 days to indicate in writing their willingness to take up the advance, despite the Complainants’ and their solicitor’s assertions to the contrary.

I have not been furnished with any evidence to suggest that the Complainants signed and accepted this updated **Letter of Approval** and returned it to the Provider within the time frame set out in **General Condition 1.7**.

I have not been provided with any evidence to suggest that the Complainants sought an extension of the time within to accept the loan offer and draw down the mortgage. In circumstances where Complainants did not accept the updated Letter of Approval referencing application number/mortgage loan account ending **3500** and never drew down the loan, the loan offer expired and therefore the terms of that particular loan offer were no longer available to the Complainants.

The Complainants subsequently approached the Provider in **February 2010** and submitted a further **Application for Credit** in the sum of €80,000.

An **Application for Credit** signed by the Complainants on **6 May 2009** has been submitted in evidence however I note that the form contains no details save for the Complainants’ signatures.

A further **Application for Credit** in the sum of €80,000 was signed by the Complainants on **15 February 2010** and details as follows:

“Details of Mortgage

Type of Loan:

<i>Account Number</i>	<i>[ending 2481]</i>
<i>Amount of Loan required</i>	<i>€80,000.00</i>
<i>Purchase price / value of property</i>	<i>€250,000.00</i>

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<i>Loan Type</i>	<i>1 TR Disc Variable (<=80% LTV) Home Loan</i>
<i>Repayment Term required</i>	<i>37 year(s)</i>

The Provider's internal notes dated **22 February 2010** detail as follows:

"Proposal: Applicants are now looking to drawdown the remaining funds 84K.

The Complainants' solicitor sent a letter to the Provider dated **18 March 2010** as follows:

"Dear Sirs,

We refer to the above matter and to previous correspondence herein.

We note that [the Provider] had previously approved a loan in the sum of €84,000 to the above named clients by way of letter of approval dated 14th May 2008. We note that this loan was never drawn down and that a fresh application is required by our clients.

We further note that the value of the property is now less than that in 2008 and as a result our client's borrowings against the property will be more than 100% of estimated value on completion of all works.

We confirm having advised our client of the implications of this level of borrowing and we confirm that they have instructed us that they are satisfied to proceed with the application for the additional borrowings notwithstanding this.

Therefore we would be obliged if you would kindly arrange to progress the additional mortgage application on behalf of our clients at your earliest convenience."

The Provider's internal notes dated **26 March 2010** detail as follows:

BACKGROUND

[First Complainant] is a staff member in [Provider]

[...]

They took out their mortgage for a self build property and the staff portion has been released in stage payments over the past year.

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The build took longer than anticipated and as a result the standard portion of the application expired and had to be set up again last year. There has been no movement on this until now.

PROPOSAL

Applicants are now looking to drawdown the remaining funds 84K.

REPAYMENT CAPACITY

*Nets based allowing for existing repayment on staff rates are 32%. Irb 17, overall LTV is 81%
good quality current accounts*

RECOMMENDATION

staff application

releasing remainder of funds originally sanctioned as part of the original application..."

A further internal note supplied in evidence from the Provider dated **26 March 2010** details as follows:

"Approval date 30/03/2010 received 13/05/2009 funded 13/04/2010

[account ending 2481]

This application is to replace expired loan account [ending 3500]. This is a stage payment loan and was due to be issued along with [account ending 3455] which issued last year. However building has been slower than expected and this loan was not issued on time.

Loan amount remains the same at 84k. Nets now outside policy at 42% due to rate increase however case has not been assessed by RCC and no further funds being issued.

Override being placed on RCC as there was valuation issue that has now been sorted out with [named valuer] – Head Valuer. See diary for comments."

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The Provider has submitted a copy of its lending rates available to customers in **March 2010**, entitled **Lending Interest Rates**, which is noted as being “effective from the start of business on the 1st February 2010”. This document outlines as follows;

“Home Loans Rates for New Business

Rates applicable to New Variable

Rate Home Loans	RATE	APR
1 Year Discounted Variable LTV <80%	4.00%	4.1%
1 Year Discounted Variable LTV >80%	4.10%	4.2%

Rates applicable to New Fixed Rate Home Loans

	RATE	APR
2 Year Fixed <50% LTV	3.10%	4.0%
5 Year Fixed <50% LTV	3.70%	4.0%
7 Year Fixed <50% LTV	4.50%	4.5%
10 Year Fixed <50% LTV	4.50%	4.5%”

The Provider subsequently issued a letter to the Complainants dated **30 March 2010** as follows:

“Dear [Complainants]

I am pleased to tell you that we have approved your application for a mortgage. The conditions set out in the following documents apply:

- *Letter of Approval*
- *General Mortgage Loan Approval Conditions*
- *Irish Banking Federation General Housing Loan Mortgage Conditions*
- *Copy of Valuers report (if this applies)*

If you want to accept our offer, please sign the Acceptance of Loan which has been sent with the mortgage documentation to your solicitor. You should sign the Acceptance of Loan in the presence of your solicitor, who must witness your signature. Then return the acceptance to us as soon as possible so we can process your loan.

I have enclosed the ‘European Standard Information Sheet’ which further explains the details of the loan.”

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The **Letter of Approval** dated **30 March 2010** in respect of mortgage loan account ending **2481** details as follows:

“Loan Type:	1 yr Disc Variable (>80% LTV) Home Loan
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Purchase Price / Estimated Value:	€250,000.00
Loan Amount:	€84,000.00
Interest Rate:	4.1%
Term:	35 year(s)”

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

“2. (a). Condition 1.7 of the General Mortgage Loan Approval conditions (relating to time limits for acceptance and drawdown of the loan) applies to this Letter of Approval. Without prejudice to condition 1.7 [the Provider] may, at its discretion, extend the period for drawdown of the loan by up to 6 months from the date of issue of the Letter of Approval.

If not drawn down by the expiry of the extended date, [the Provider] will require a re-assessment of the loan application and subject thereto, at its discretion, may extend the period for draw down of the loan by a further 6 months after which no extensions will be permitted. (b). Where this Letter of Approval is an amendment to an existing Letter of Approval, [the Provider] may, when exercising its discretion in extending the date for draw down of the loan and without prejudice to the time limits specified in the said condition 1.7 and where relevant to the date of issue of this amended Letter of Approval, notwithstanding such time limits, require drawdown of the loan under this amended Letter of Approval to take place not later than 6 months from the date of the issue of the original Letter of Approval. The period of further extension, referred to at (a) above, may apply to the amended Letter of Approval provided any such extension, if granted on re-assessment of the loan application, will not exceed 12 months from the date of the original Letter of Approval.

...

7. The interest rate specified in the Letter of Approval is a discounted LTV variable rate and will apply for a period of 12 months from the date of the advance (“the Discount Period”) but may be varied within the Discount Period (and /or at any time prior to drawdown of the advance) without regard to variations in the [Provider’s] standard variable rate or the European Central Bank Refinancing Rate.

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On expiry of the Discount Period, the interest rate will be such rate as may be selected by the Applicant(s) from the [Provider's] interest rates then offered by [the Provider] to the Applicant(s) for selection by the Applicant(s) or such variable interest rate (which may be a tracker variable rate) as will apply in the absence of such selection.

...

11. General mortgage loan approval condition 2.5 relating to stage payments applies. Any fees to be deducted from the loan cheque as specified in these conditions will be deducted from the first stage payment. Schedule for stage payments :- Plastering €19,000.00, On completion €65,000.00"

The **General Mortgage Loan Approval Conditions** outline:

*"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 a solicitor on **7 April 2010** on the following terms:

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

- i. **The Letter of Approval dated 30th day of March 2010.****
- ii. The General Mortgage Loan Approval Conditions*
- iii. The Irish Banking Federation General Housing Loan Mortgage Conditions*

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

...

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

...

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

/Cont'd...

It is clear to me that the **Letter of Approval** dated **30 March 2010** provided for a discounted variable interest rate of 4.1% which would apply for a period of twelve months after which the Complainants would have the option of selecting from the Provider's interest rates then offered. The Special Conditions indicated that the mortgage proceeds would issue in staged payments.

The mortgage loan statements provided in evidence indicate that mortgage loan account ending **2481** was issued on **13 April 2010**, with the initial amount of €19,000 drawn down on that date and the remaining €65,000 drawn down on **16 June 2010**.

The Complainants appear to be of the view that they had an entitlement to a tracker rate of interest to be applied to their mortgage loan account when it was drawn down in **2010** because the Provider issued previous **Letters of Approval** in **January 2008** and **May 2008** offering a tracker interest rate. The Complainants further maintain that the Provider was "*aware*" that sufficient works were not completed in order to draw down the mortgage loan that was originally offered to them with reference to application number/mortgage loan account ending **3500**.

In **January 2008**, the Provider appears to have offered the Complainants a split loan with the portion of €166,000 to be drawn down on a staff fixed interest rate under mortgage loan account ending **3455** and the balance of €84,000 to be drawn down on a tracker rate of interest under mortgage loan account ending **3500**. While I acknowledge that the Complainants' first mortgage loan account ending **3455** was to be drawn down in stages, the **Letters of Approval** that issued in **January 2008** and **May 2008**, referencing application number/mortgage loan account ending **3500**, were entirely distinct and separate to mortgage loan account ending **3455**. The Complainants decided to draw down mortgage loan account ending **3455** but did not draw down the funds offered by the Provider application number/mortgage loan account ending **3500**. The Complainants only requested to draw down these additional funds in order to complete the final stages of the building work in **February 2010**, nearly two years after the initial Letter of Approval issued for application number/mortgage loan account ending **3500**. At that stage, the Complainants were outside the time frame stipulated in **General Condition 1.7** of the Letter of Approval within which to accept and draw down the mortgage loan.

The evidence is that the Complainants' loan approval and acceptance in respect of application number/mortgage loan account ending **3500** expired in **2008**, despite the Complainants' assertions to the contrary, and was therefore withdrawn by the Provider. It would not be reasonable to expect that loan approval and/or the loan offer granted in **2008** would remain valid indefinitely.

/Cont'd...

Therefore, I cannot accept the Complainants' view that because they were offered a tracker interest rate for the €84,000 portion of the loan on foot of a mortgage loan application in **2008**, which they did not draw down, they were somehow automatically entitled to a similar tracker interest rate in **March 2010**, nearly two years after the loan offer from **2008** had lapsed. There is no basis, legal, contractual or otherwise to support such a view.

In order to secure additional borrowings from the Provider in **2010**, the Complainants were required to complete a fresh loan application. It is clear that the Provider afforded the Complainants an opportunity to do so as the Provider approved a new loan in the amount of €84,000 on **30 March 2010**. The Provider submits that when the new **Letter of Approval** issued on **30 March 2010** for the additional borrowings totalling €84,000, tracker interest rates were not available for new mortgage applicants as the Provider had commenced withdrawing tracker interest rate products from the market in **mid-2008**. This was a commercial decision on the part of the Provider which I cannot interfere with as the Provider was legitimately entitled to make such a decision. If the Complainants wished to avail of the tracker interest rate offered in the **Letter of Approval** dated **14 May 2008**, they could have accepted and signed the terms of the loan and drawn down the mortgage loan at that time, however, they did not do so.

The Complainants ultimately accepted and signed the **Letter of Approval** dated **30 March 2010**, which clearly indicates that the interest rate applicable to the mortgage loan was the Provider's variable interest rate, with an initial discounted period, which could be increased or decreased by the Provider. If it was the case that the Complainants were of the view that the discounted variable interest rate mortgage product was not suitable for them, then the Complainants could have decided not to accept the loan offer and instead seek an alternative rate with the Provider. However, there is no evidence that the Complainants did so. The Complainants were under no obligation to accept the **Letter of Approval** dated **30 March 2010**.

In light of all the foregoing, I accept that there was no obligation on the Provider to offer the Complainants a tracker interest rate option in respect of their new mortgage loan in **2010** simply because they had been offered a tracker interest rate some two years previous on a mortgage loan that they never drew down.

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

Conclusion

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

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**

7 January 2022

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.