



<u>Decision Ref:</u>	2022-0085
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Tracker Mortgage
<u>Conduct(s) complained of:</u>	Failure to process instructions Complaint handling (Consumer Protection Code)
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainants incepted three mortgage loans, one on a property in 1999 and two further mortgages loans on a separate property in 2004 and 2006, all mortgages being held with a bank (the “**Provider**”).

The Complainants’ Case

The Complainants say that they communicated to the Provider their desire to close two of the three bank accounts held with the Provider, but that the wrong account was left open and that an account with a less favourable interest rate, was incorrectly closed (the “**Tracker Mortgage Account**”).

In **June 2017** the Complainants contacted their local Provider branch and requested the clearance figures or final balances on each of the three mortgage accounts (*5710 (interest rate 3.08%), *4392 (interest rate 3.55%) and *4293 (interest rate 5.50%). The Complainants discussed with Provider Agent 1, the clearing of two Mortgage Loan accounts and their intention to leave the Tracker Mortgage Account (*5710) in place.

On **12 August 2017**, the Complainants contacted the Provider but as the final account balances were out of date, it was suggested that new balances should be sent to them. On **14 August 2017** the Complainants say that no such figures had been sent and when they contacted the Provider, they were directed to their local Provider branch to ascertain the exact figures. The Complainants say they "*advised [Provider Agent 1] to proceed to close the two accounts and organised payment on the day.*"

In **January 2018**, the Complainants received an annual statement from the Provider which they say was their first realisation that the Tracker Mortgage Account (*5710) had been closed, which they say was a mistake.

The Complainants say that this put them at a loss as they have lost the favourable interest rate attached to the Tracker Mortgage Account, but they retained a mortgage account with a significantly "*higher interest rate.*" They say that Provider Agent 1 agreed that their intention had been to close the Tracker Mortgage Account.

On **27 February 2018** the Complainants contacted the Provider's Customer Relations Department which resulted in the Complainants being sent a series of holding letters from early 2018 until **11 June 2019**. The Complainants complain about the Provider's poor engagement with them and generally about the inadequate customer service they say they received, including the Provider's delay in responding to their complaint. The Complainants say that it was their express instruction not to close the Tracker Mortgage Account, as it had a favourable interest rate when compared to the other two accounts.

The Complainants submit, by email dated **1 March 2021**, that:

"it was always made clear to [Provider Agent 1] in the branch of our intention to keep the Tracker. A point she agreed with, when we spoke with her at the time of closing the mortgages and subsequently again when we followed up with her when we discovered the error. Despite the confusion regarding account numbers we continuously referenced the term Tracker in our conversations with [Provider Agent 1] and the [Provider] as the mortgage we would NOT be clearing. The confusion occurred we believe, with the sole use of account numbers. Surely [Provider] have an obligation to make sure their customers are clearly advised, especially when we had continuously referenced the Tracker throughout the process? This, including a Post it with new redemption figures from Head Office, presented to us further contributed to the confusion on the day we went to redeem the mortgages, as the original numbers were null and void!..."

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we didn't go to the bank furnished with account numbers that day, but made it clear that the mortgage that was NOT to be cleared was the Tracker, to us it looks as if they just rang head office and got the two account numbers from the out of date redemption quote. If this had been flagged by any member in [Provider] either at branch or head office level, the error would never have occurred."

The Complainants submit, by email dated **26 April 2021**, that:

"On the first day we attended the [Provider] we asked was there a deal to surrender the Tracker. There had been some media coverage that Trackers were being surrendered and that a saving could be met. We were told no, there was no deal, hence another reason not to clear it. This was where [Provider Agent 1] advised us we would be mad to surrender it and we stated we had no intention of doing so! The staff we dealt with were clear that the Tracker was to be kept in place. Surely the staff member should have rechecked that this was our tracker being cleared at the second time of asking! Staff training should include the customer's best interests and also checking the correct numbers, as it was clear the Tracker was not in play here.... I spoke with [Provider Agent 1] and not only did I contact her at the [Provider] but she had to call me back so a record of both internal and external calls should be available. Why does the [Provider] record some calls and not others?"

The Complainants further assert that:

"I am also wondering is the fact that the [Provider] closed the wrong mortgage (Tracker) another way for them to get out of my tracker given the recent issues with tracker mortgages? It appears to me that the [Provider] have no interest in engaging with me or in resolving their error. In the interim I have of course continued to pay the repayments on the expensive mortgage that should have been cleared almost two years ago."

The Complainants submits that *"our wishes were discussed with [Provider Agent 1]."* The Complainants want the Provider to *"reverse the error."*

The Provider's Case

The Provider asserts that the Complainants requested both Mortgage Loan accounts, ending *5710 and *4293 to be paid off, closed and redeemed, in an email dated **11 August 2017** and that it acted on this express instruction. The Provider finds that although Provider Agent 1 made a request to reinstate the Tracker Mortgage Account (*5710) that it was too late at this point, as the bank account was closed.

The Provider acknowledged its delays in contacting the Complainants, not returning promised phone calls and failing to respond to their complaint in a timely manner and it apologises for this lapse in its customer service. The Provider, in its **Final Response Letter of 10 July 2019**, made an offer of €100.00 (one hundred euro) as a gesture of goodwill to the Complainants with that figure increasing to €2,000.00 (two thousand euros) on **17 February 2020**, at the time when it submitted its formal response to the complaint investigation of this Office.

The Provider submits as follows:

*“Redemption figures were sent to the Complainants by way of letters dated 22 June 2017... The 22 June 2017 letters stated that the figures provided were only valid for 20 days from the date of the letter. On 11 August 2017, the Complainants responded, by email, instructing [Provider Agent 1] to clear and close the two loan accounts ending with *4293 and *5710. The Complainants' email stated the following:-*

*‘Hi [Provider Agent 1]
We are going ahead to clear the following mortgages
*4293
*5710
Can you please advise on next step
Many thanks
[Complainant's Names].*

*On 12 August 2017, the Complainants were informed by email from [Provider Agent 1] that the original redemption figures dated 22 June 2017 had expired and updated figures for the accounts *5710 and *4293 would be provided to them...*

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On 14 August 2017, [Provider Agent 1] emailed the Complainants stating:

'I have spoken to my colleague [Provider Agent 2] today and she has advised that if you are coming into the branch this week, to come in before 2.30 and she can provide exact redemption figures. Just ask for her and she will get the figures for you. I will request the formal redemption letters but they usually take 5 days so just wanted to give you this option in case you want to pay off before you get the formal letters.'

The Complainants attended the [Local] Branch on **24 August 2017** and once again met with [Provider Agent 1]. The redemption figures for accounts ending *5710 and *4293 which were provided to the Complainants on 24 August 2017 were:

Account ending *5710: €53,354.13
Account ending *4293: €26,750.00."

In its **Final Response Letter**, dated **10 July 2019**, the Provider wrote to the Complainants and said as follows:

"[Provider Agent 1] has confirmed that you discussed keeping the Tracker mortgage open in her branch and she regrets that you gave the incorrect Account number in your email. Kindly note it is the customers' responsibility to ensure that the correct information is provided in requests of this nature and the [Provider] is not liable for any incorrect information provided by our customers. It is regrettable that your Tracker Mortgage was redeemed, but please note that this was done per your request. As noted above the [Provider] acted upon the instructions provided by you and closed the Account based on the lodgement you made. Further to this, you did not query this matter for six months after the accounts had been closed."

The Provider asserts that it had no alternative motive for withdrawing the Tracker Mortgage account and says that:

"The [Provider] is satisfied that it has acted transparently in all of its dealings with the Complainants and acted in line with the Complainants' instructions..."

The Provider says that on **24 August 2017**, the Complainants made a lodgement to accounts *5710 and *4293 clearing those accounts.

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Additionally, by letter dated **18 March 2021**, the Provider advised that *"calls to and from the [Provider's] branches are not recorded."* The Provider also said that calls dated **12 October 2017** and **1 November 2017** were not relevant to this matter and were therefore not furnished, on that basis.

The Provider maintains that it *"closed accounts ending *5710 and *4293 in response to the Complainants' unambiguous request and instructions to do so."* The Provider also argues that *"this complaint has no merit and should not be upheld."*

The Complaint for Adjudication

The Complaint is that the Provider :

1. wrongfully closed the Complainants' Tracker Mortgage Account (*5710) in error, in **August 2017**;
2. maladministered of the Complainants' Mortgage Loan Accounts including demonstrating a poor level of Customer Service while dealing with their complaint submitted on **27 February 2018**.

Decision

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainants were given the opportunity to see the Provider's response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

In arriving at my Legally Binding Decision I have carefully considered the evidence and submissions put forward by the parties to the complaint. Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties on **24 January 2022**, outlining the preliminary determination of this office 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.

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Following the consideration of additional submissions from the parties, the final determination of this office is set out below.

The **Consumer Protection Code 2012 (as amended)** section 2.8 is relevant and says that the Provider must ensure it *“corrects errors and handles complaints speedily, efficiently and fairly.”*

The Provider asserts in that regard that:

*“the [Provider] has no evidence of it seeking clarification on the Complainants' instructions regarding the closure of the two accounts, the [Provider] clearly provided the redemption figures for each of the three accounts by way of letters dated 22 June 2017 together with providing updated redemption figures again on 24 August 2017 when the Complainants visited the [Location] branch in person. The Complainants confirmed their instructions by way of email dated 11 August 2017 and again at the [Location] branch at which they attended in person on 24 August 2017. It is the customers' responsibility to ensure that they provide correct and accurate information when instructing the [Provider] to redeem and/or close accounts. The [Provider] closed the Complainants' loan accounts ending with *5710 and *4293 in line with the express instructions of the Complainants.”*

The Provider contends that *“it did not make an ‘error’ in closing the Complainants' account ending *5710.”* The Provider also submits that *“the redemption amount lodged to account ending *5710 would not have been sufficient to redeem the Complainants' non-tracker account ending *4392. In fact, the Complainants would have been required to lodge an additional sum of approximately €30,000 in order to redeem account ending *4392.”*

By letter to the Complainants dated **18 March 2021**, the Provider submitted that *“on 18 September 2017, the Complainants requested a letter confirming closure of account ending *4293 through [Provider Online Site]. On 20 September 2017, the [Provider] issued said letter confirming that mortgage account number *4293 was closed and no further payments were due. No such request was made by the Complainants for account ending *5710 and therefore no such letter was issued. In or around January 2018, the Complainants were issued with copies of Mortgage Statements for year ending 2017 for accounts *5710 and *4293.”*

By letter dated **28 August 2017**, the Provider wrote to the Complainants and said *“thank you for your recent request for the amount you need to pay to clear your mortgage”* and cited the balance on account *5710 as €551.60.

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I note the content of the audio evidence in relation to the **11 October 2017** telephone call, the following was said:

First Complainant: *"*5710"*

Provider Agent 3: *"I will have a look at this one...yeah this is the paid off one."*

First Complainant: *"*yeah."*

...

Provider Agent 3: *"the one you gave me was a managed variable rate loan on the property, for one hundred and forty thousand, that is still an active one."*

...

First Complainant: *"yes, I understand."*

The Complainants submit that:

"There are a number of occasions on the main lengthy voice recording where we referenced that we still believed we had a Tracker mortgage outstanding. We suggest this is further evidence that we had always intended to and fully believed we had kept our tracker mortgage. The time slots, where these references are made, are at 6.31, 31.32 and at 34.07! At each of these points we reference the tracker mortgage and our understanding that we had retained it."

On **18 March 2021**, the Provider wrote to the Complainants in relation to the above cited telephone call and said that:

*"the [Provider] acknowledges that the Complainants made passing reference to having a tracker rate on one of their three accounts, but at no point did they ask the customer service agent to check this, nor did they provide the customer service agent with the account number to which they were referring....Furthermore, the customer service agent stated at 31.09 of the call on 11 October 2017, that mortgage account ending *5710 had been paid off - a statement which was not queried by the Complainant."*

I note that although a number of references are made by the First Complainant during this phone call to a tracker mortgage still in being, this occurs in circumstances where the purpose of the call was to find out why a copy of the First Complainant's deeds were not sent to him regarding another mortgage account.

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It seems to me throughout the course of the **11 October 2017** telephone call, that the First Complainant was confused about the account number and which mortgage loans they related to. I am satisfied that the Provider Agent 3 confirmed with the First Complainant that account *5710 was paid off.

The evidence, confirms that there were three mortgage accounts in being, namely *5710 (interest rate 3.08%) *4392 (interest rate 3.55%) and *4293 (interest rate 5.50%). I note that mortgage accounts *5710 (interest rate 3.08%) and account*4293 (interest rate 5.50%) were closed, whereas account *4392 (interest rate 3.55%) was left open. In other words an account with an interest rate of 3.55% was left open and one with a lower interest rate of 3.08% was closed. I also note that each account had different account balances (and different amounts it would cost to clear the loan remaining). I acknowledge that these amounts may have been revised prior to closure, but I reference them here to compare them in relation to one another. The account balances were as follows:

- account *5710 - **€54,892.30** (fifty-four thousand, eight hundred and ninety-two euros and thirty cent)
- account *4392 - **€85,051.46** (eighty-five thousand and fifty-one euros and forty six cent) and
- account *4293 - **€30,505.65** (thirty thousand, five hundred and five euros and sixty-five cent).

It is notable in that regard, that it was the two lowest account balances which were closed (€54,892.30 + €30,505.65) and the highest account balance (€85,051.46) was left open.

I am satisfied that the Complainants instructed the closure of the accounts with significantly lower balances (together almost the equivalent of the one they left open. The Complainants submit that "*we were in the process of closing our mortgages we were not concerned about the amounts. The only point we were concerned about was the Tracker point.*" I am satisfied that any borrower closing mortgage accounts for such large sums of money, are likely to have the outstanding balances at the forefront of their minds, to facilitate such an undertaking.

I note that the Provider submits that "*no redemption forms or documentation were completed or submitted by the Complainants in June 2017 or August 2017.*" I also note that the Provider submits that it "*has no evidence of it seeking clarification on the Complainants' instructions regarding the closure of the two accounts.*"

I accept the Provider's submission that "calls to and from the [Provider's] branches are not recorded" . In any event, I accept that Provider Agent 1 is likely to have been informed of the Complainants' intention to close certain of their Mortgage Accounts and that it is likely that she gave relevant information to them on that issue. It was then up to the Complainants to determine what action to take. Having considered the evidence available, I take the view that the accurate communication of account numbers was ultimately the Complainants' responsibility and in circumstances where they expressly instructed the closure of two clearly identified accounts, the Provider was obliged to carry out those instructions.

I note that by letter dated **28 August 2017**, the Provider wrote to the Complainants citing the balance on account *5710 as €551.60 and I am satisfied that from this point on they should have been aware that it was the balance on this account that they had set their money against. Overall, I am satisfied that the obligation to supply the correct account numbers, lay with the Complainants and that the Provider acted reasonably in closing the mortgage accounts as the Complainants had requested.

The Provider submits that:

"While the [Provider] was investigating the complaint, the [Provider's] Customer Resolution Centre liaised with the Complainant on regular intervals, in line with the customer complaints procedure, thanking them for their patience and ensuring them that their complaint was being investigated...while the [Provider] acknowledges that circa 16 months elapsed before it issued its Final Response letter on 10 July 2019, however, the [Provider] maintained regular contact with the Complainants throughout this period. During this time, the [Provider] investigated the nature of the complaint and it regularly updated the Complainants."

In its **Final Response Letter**, dated **10 July 2019**, the Provider wrote to the Complainants and said as follows:

"on the 24th September 2018 and the 19th February 2019 you were promised call backs and regretfully these were not made."

In relation to whether the Provider abided by the **Consumer Protection Code 2012 (as amended)** provision 2.8 to ensure it "*corrects errors and handles complaints speedily, efficiently and fairly,*" it submits as follows:

"the [Provider] endeavours to ensure all customer complainants are handled speedily, efficiently and fairly."

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Nevertheless, the [Provider] were experiencing an unprecedented high volume of queries in 2018/2019 and whilst the [Provider] did their utmost to ensure all customers receive a timely resolution to the Issues they had raised, in some instances, including that of the Complainants, it took longer than anticipated to investigate the queries raised."

I note that call backs were not made on the dates of **24 September 2018** and **19 February 2019**. In particular, I note that the Complainants raised their complaint in **February 2018** and it was not until **June 2019** that they received a comprehensive response, representing a delay of some 16 months. I am satisfied that this amounted to a failure of the Provider to meet its obligations under provision 2.8 of the **Consumer Protection Code 2012**.

The Provider made a goodwill offer to the Complainants by letter to this Office dated **17 February 2020** as follows:

"The [Provider], on this occasion, would like to offer the Complainants a gesture of goodwill in the sum of €2,000 in recognition of this service issue. This offer is inclusive of the €100 offered in its letter of 10 July 2019."

For the reasons outlined above, I am satisfied that the Provider acted fairly and reasonably in closing the accounts that were specified to it by the Complainants, including the borrowing which was on a Tracker Rate of interest. In that respect, this element of the complaint cannot reasonably be upheld. I further note however, the serious lapse in customer service to the Complainants, which the Provider has sought to redress.

Insofar as that element of the complaint is concerned, I note that when the Provider was responding to the formal investigation of this Office, it made an offer to the Complainants in the amount of **€2,000** to redress this customer service failure on its part, which I consider to be reasonable in the circumstances. Accordingly, on the basis that this offer remains open to the Complainants for acceptance, I indicated in my preliminary decision, that I did not consider it necessary or appropriate to make any direction in that regard, and that it would be a matter for the Complainants to communicate directly with the Provider if they wish to accept this reasonable offer of compensation for the Provider's failures.

I note that since the preliminary decision of this Office was issued, the Complainants have indicated their preference to receive a cheque from the Provider, without any further communication from them directly with the Provider. This is an option which I am pleased to note the Provider has confirmed it will facilitate, upon receipt of the legally binding decision of this Office, being issued today.

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Accordingly, for the reasons outlined above, I do not consider it appropriate to 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.



MARYROSE MCGOVERN
Financial Services and Pensions Ombudsman (Acting)

8 March 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.