



<u>Decision Ref:</u>	2022-0168
<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 at point of sale
<u>Outcome:</u>	Rejected

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

This complaint relates to a mortgage loan account ending **1661** held by the Complainants with the Provider. The mortgage loan was secured on the Complainants' private dwelling house (the "**secured property**").

The secured property was first purchased by the First Complainant and her father by way of mortgage loan (account ending **9471**). The **Loan Offer Letter** dated **20 September 2006** with respect to mortgage loan account ending **9471** provided for a loan amount of €315,000.00 and was repayable over a term of 35 years on a tracker interest rate of ECB + 1.25%. Mortgage loan account ending **9471** was drawn down on **19 December 2006**.

The First Complainant and her father then signed a **Mortgage Form of Authorisation** on **03 July 2007**. By doing so, mortgage loan account ending **9471** was split, and the sum of €133,350.00 was transferred to mortgage loan account ending **3085** on a "*staff interest rate of 4%*".

Mortgage loan accounts ending **9471** and **3085** remained on separate interest rates until both mortgage loan accounts were redeemed in early **2010**.

The First Complainant and Second Complainant subsequently drew down mortgage loan account ending **1661** on **15 January 2010**.

The **Amended Loan Offer Letter** dated **11 December 2009** in relation to mortgage loan account ending **1661**, provided for a loan amount of €301,238.00, repayable over a term of 30 years on a staff variable interest rate of 2.25%.

The Complainants' Case

The First Complainant submits that she drew down mortgage loan accounts ending **9471** and **3085** with her father in **2006**. The First Complainant details that in **2009**, she sought to remove her father from the mortgage loan as joint borrower and replace him with the Second Complainant.

The Complainants submit that when they contacted the Provider to get the Second Complainant added to the mortgage loan, the Provider informed the Complainants that they *"couldn't have the tracker mortgage anymore"*. The Complainants state that the Provider advised them that, in order to add the Second Complainant as the new joint borrower, they would have to redeem mortgage loan accounts ending **9471** and **3085** and apply for a new mortgage loan with the Provider in their joint names. The Complainants submit that mortgage loan account ending **9471** was operating on a staff tracker interest rate and mortgage loan account ending **3085** was operating on a staff variable interest rate. The Complainants detail that mortgage loan accounts ending **9471** and **3085** were closed in **January 2010**. The Complainants note that they *"were not taking a different house so nothing on the mortgage was changing except the fact that [the Second Complainant] was being added"*.

The Complainants submit that they *"thought this was a bit unfair because the mortgage was about €301,000 at that time and the value of the house was €230,000"*. The Complainants further submit that the Second Complainant was *"put at a huge disadvantage"* by being named on the mortgage loan. The Complainants assert that the Provider *"had a duty of care to [them] which [the Provider] did not fulfil"*. The Complainants submit that it was *"very clear"* at the time that the secured property *"was hugely in negative equity; however [the Second Complainant] was allowed to go onto it and [the Provider] in turn took [the Complainants] tracker mortgage away"*.

The Complainants detail that they asked the Provider to explain why they had to give up the tracker interest rate to *“take this bad mortgage”*. The Complainants state that the Provider’s response was a generic letter which *“didn’t answer [their] questions”*.

The Complainants outline that they were subsequently issued a **Loan Offer Letter** for mortgage loan account ending **1661** in **November 2009**, which provided for a variable interest rate. The Complainants maintain that on foot of this change to the nature of the applicable interest rate, they *“lost [their] tracker mortgage and the chance of being able to afford mortgage repayments”*.

The Complainants further submit that the mortgage loan should not have been approved by the Provider on the basis that the Second Complainant’s salary would not have been sufficient to cover the monthly repayments in circumstances where the interest rate increased.

The Complainants outline that they separated in **July 2012** due to the *“stress caused by this huge mortgage”*. The First Complainant details that mortgage loan account ending **1661** fell into arrears in **2014** while she was on maternity leave. The First Complainant states that she was *“constantly harassed with phonecalls”* from the Provider who told her that she should *“get back to work”* so that she could clear the arrears on the mortgage loan account. The First Complainant states that the *“final straw”* was when she received a letter which detailed that the house was being repossessed on foot of arrears in the amount of €1,300.00.

In **August 2016**, the First Complainant explains that she contacted the Provider and sought to remove the Second Complainant’s name from the mortgage loan. The First Complainant submits that she *“found out in August/September 2016”* that the Complainants should have been offered the option to amend mortgage loan accounts ending **9471** and **3085** as requested in **2009** by way of a *“Product Modification”* form. The Complainants submit that had this option been offered to them, they could have left the title to the secured property in the *“Sole Ownership”* of the First Complainant and therefore would not have lost the tracker interest rate and would not have been required to pay legal fees.

The Complainants are seeking the following:

- (a) For mortgage loan account ending **1661** to be *“voided”*;
- (b) To have the Second Complainant removed from mortgage loan account ending **1661**;

(c) Apply a tracker interest rate adjustment to mortgage loan account ending **1661**, backdated to **January 2010**; and

(d) An apology for the stress caused by the Provider when the mortgage loan account fell into arrears.

The Provider's Case

The Provider details that the First Complainant and her father drew down mortgage loan account ending **9471** in the sum of €315,000.00 repayable over a term of 35 years on **19 December 2006**. The Provider states that the **Loan Offer Letter** dated **20 September 2006** in respect of mortgage loan account ending **9471** provided for a tracker rate of interest for the term of the loan.

The Provider outlines that the First Complainant and her father signed and accepted a **Mortgage Form of Authorisation** on **03 July 2007** to split mortgage loan account ending **9471** by transferring a portion of €133,350.00 to mortgage loan account ending **3085** which was on a *“staff interest rate of 4%”*. The Provider submits that mortgage loan accounts ending **9471** and **3085** remained on separate interest rates until **February 2010** when both mortgage loan accounts were redeemed.

The Provider outlines that in **November 2009**, the Complainants contacted the Provider *“seeking to remove the First Named Complainant's father as a joint borrower and replace him with the Second Named Complainant”*. The Provider contends that it refused this request *“due to a fundamental change being made to the mortgage loan, i.e. the Second Named Complainant would be registered on the title of the Property”*. The Provider explains that the Complainants were advised that a new mortgage loan application was required due to this fundamental change to the terms of the mortgage loan agreement.

The Provider asserts that the Complainants' request to remove the First Complainant's father from the mortgage loan and replace him with the Second Complainant, could not have been granted solely by the completion of a *“Product Amendment Form”*. The Provider explains that the reason for this is because the Complainants' request required a new charge being placed on the secured property to reflect the change in ownership and involved *“different risk considerations”* with regard to the Complainants as joint borrowers. The Provider further submits that it was not under any obligation to *“offer any amendment to the original term[s] and conditions of lending, as stipulated in the 2006 Offer Letter”*.

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The Provider asserts that it withdrew tracker interest rates from the market in late **2008** and therefore tracker interest rates were not available for selection by new customers after that date.

The Provider details that given the Complainants submitted a new lending application for mortgage loan account ending **1661** in **2009**, it could only offer interest rates that were available to new customers at that time. The Provider asserts that the available interest rates included fixed and variable interest rates but did not include tracker interest rates.

The Provider details that it issued a **Loan Offer Letter** dated **19 November 2009** to the Complainants which was signed and accepted by them on **20 November 2009**. The Provider details that its internal notes show that it issued an **Amended Loan Offer Letter** dated **11 December 2009** to the Complainants which detailed the value of the secured property as €230,000.00. The Provider states that the Complainants accepted and signed the **Amended Loan Offer Letter** on **12 December 2009**. The Provider submits that this mortgage loan was for the sum of €301,238.00 repayable over a term of 30 years on a staff variable interest rate of 2.25%. The Provider details that the Complainants drew down mortgage loan account ending **1661** on **15 January 2010**.

The Provider contends that, although it *“cannot comment on its internal decision-making process”*, it is satisfied that the mortgage loan account ending **1661** was *“assessed and approved in accordance with the Central Bank lending practices and procedures”*. Further, the Provider submits that *“at all times it acted appropriately in dealing with the Complainants in relation to their arrears and adhered to all applicable statutory codes”*. The Provider submits that due to the economic recession in **2008**, property prices were seriously impacted resulting in negative equity and maintains that the Complainants were fully aware of the negative equity on the secured property at the time.

The Provider contends that it made a reasonable offer *“in response to a request to renegotiate the terms of a contract pursuant to the 2006 Offer Letter”* which the First Complainant and her father sought to amend. The Provider contends that the First Complainant’s mortgage loan with her father could have remained on a tracker interest rate in accordance with the **Loan Offer Letter** dated **20 September 2006**. However, the Provider notes that the First Complainant instead requested to renegotiate the terms of her loan and highlights that she was free to accept or reject the terms offered by the Provider. The Provider further notes that the Complainants *“accepted the terms of the Offer Letter, with the benefit of their own legal advice”* in **2009**.

The Provider submits that its “*tracker for mover*” product, which enables a customer to retain an existing tracker interest rate on a private dwelling house loan when a customer sells the property and draws down a mortgage on a new private dwelling house, was not introduced until **April 2013**. The Provider asserts that in **2009** there was no option for the First Complainant to move the tracker interest rate to mortgage loan account ending **1661**.

The Provider submits that it is satisfied that it “*acted appropriately at all times*” during the course of the Complainants’ mortgage loan application in **2009**. In addition, the Provider contends that “*all information provided to the complainants was clear and comprehensible and that key items were brought to their attention and/or to that of their solicitors*”.

The Complaints for Adjudication

The complaints for adjudication are as follows:

- (a) The Provider should not have approved the Complainants’ new mortgage loan in **December 2009** because of the lack of affordability, the value of the property and the “*huge disadvantage*” it caused the Complainants; and
- (b) The Provider incorrectly failed to offer the Complainants the option of amending the names of the mortgage loan account holders on mortgage loan accounts ending **9471** and **3085** by way of a “*Product Amendment Form*” in **December 2009** and instead, required the Complainants to apply for a new mortgage loan in their joint names which resulted in the loss of a tracker interest 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.

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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 21 April 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.

In the absence of additional submissions from the parties, within the period permitted, the final determination of this office is set out below.

In order to determine this complaint, it is necessary to set out and review the relevant provisions of the mortgage loan documentation in relation to all three mortgage loan accounts. Mortgage loan account ending **1661** is the subject of this complaint however it is also important to consider the details of mortgage loan accounts ending **9471** and **3085** in order to provide some context to the overall complaint. It is also necessary to consider details of certain interactions between the Complainants and the Provider in **2009**.

Mortgage loan account ending 9471

The Provider issued a **Loan Offer Letter** dated **20 September 2006** to the First Complainant and her father in relation to mortgage loan account ending **9471** which details as follows:

“PART 1 – THE STATUTORY LOAN DETAILS IMPORTANT INFORMATION AS AT 20 SEPTEMBER 2006

1. <i>Amount of Credit Advanced</i>		€315,000
2. <i>Period of Agreement</i>		35 Years
3. <i>Number of Repayment Instalments</i>	<i>Instalment Type</i>	4. <i>Amount of each Instalment</i>
12	Variable at 3.850%	€1,364.23
408	Variable at 4.250%	€1,437.87”

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There is no guarantee that this discount will be available when the loan is in fact drawn down. The actual discount that will apply shall be the discount then offered by the Lender at the date of drawdown."

The Special Conditions show that the title to the secured property was to be registered in the sole name of the First Complainant however both the First Complainant and her father were named as joint borrowers in the mortgage loan documentation.

The **Loan Offer Letter** also details as follows:

"This is an important legal document. You are strongly recommended to seek independent legal advice before signing it. This Offer Letter is regulated by the Consumer Credit Act, 1995 and your attention is drawn to the Notices set out on the last page of this Offer Letter"

Part 5 – The General Conditions of the **Loan Offer Letter** provides as follows:

"1. Interpretation and General

- (a) In this Offer Letter the term "Conditions" means all the terms, conditions and provisions set out in Parts 1 to 5 inclusive...
any reference to "Borrower" means the person or persons named as the Borrower on the front page of this Offer Letter and where there are two or more persons, each are jointly and severally liable to the Lender and any reference to "Borrower" shall include a reference to each and every such person and their personal representatives...*
- (b) These conditions are in addition to the terms, conditions and covenants contained in the Lender's deed of mortgage and charge (a copy of which has /will be furnished to the Borrower's solicitor) all of which are incorporated in the agreement with the Borrower whether or not all of the Borrowers execute the deed or mortgage and charge."*

The First Complainant and her father signed the **Borrower's Acceptance and Consents** section of the **Loan Offer Letter** noting as follows:

"1. I confirm that I have read and fully understand the consumer Credit Act notices, set out above, and the terms and conditions contained in this Offer Letter and I confirm that I accept this Offer Letter on such terms and conditions."

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The **Loan Offer Letter** dated **20 September 2006** envisaged a tracker interest rate of ECB + 1.25% for the term of the loan. The First Complainant and her father accepted this **Loan Offer Letter** by signing the **Borrower's Acceptance and Consents** on **21 September 2006**, having confirmed that they had read and fully understood the terms and conditions of the Offer Letter. Mortgage loan account ending **9471** was drawn down on **19 December 2006**.

Mortgage loan account ending 3085

In **July 2007**, the First Complainant and her father decided to apply a staff preferential interest rate to a portion of their mortgage loan. In order to facilitate this, mortgage loan account ending **9471** had to be split. The First Complainant and her father completed a **Staff Mortgage Form of Authorisation – Application for Change of Interest Rate to Preferential Staff Rate** to place a portion of €133,350.00 of the mortgage loan on a staff preferential interest rate of 4%.

The **Acknowledgement and Agreement** section of this **Mortgage Form of Authorisation** was accepted and signed by First Complainant and her father on **03 July 2007** and details as follows:

"I acknowledge that following the acceptance by [the Provider] of this Application the terms and conditions applicable to the Loan shall be amended/varied by the terms and conditions set out in this Form of Authorisation, and I accept the said conditions and agree to be bound by them.

I acknowledge and agree that:-

1. *In converting the Loan from a fixed rate, I understand that I will be liable to pay a funding sum to [the Provider] calculated in accordance with formula set out above under 'Early Repayment'*

...

3. *In converting the Loan to a Tracker Mortgage Loan, I agree that the interest rate applicable to the Loan is a variable interest rate and may vary upwards or downwards. The interest rate applicable shall be no more than the percentage states on page 1 above the prevailing European Central Bank Main Refinancing Operations Minimum Bid Rate ("Repo rate") for the term of the Loan. Variation in interest rate shall be implemented by [the Provider] not later than close of business on the 5th working day following a change in the Repo rate by the European Central Bank.*

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Notification shall be given to the Borrower of any variation in interest rate either by notice in writing served on the Borrower, or first named borrower where there is more than one borrower, or by advertisement published in at least one national daily newspaper. In the event that, or at any time, the Repo rate is certified by [the Provider] to be unavailable for any reason the interest rate applicable to the Loan shall be the prevailing Home Loan Variable Rate.

4. Save as set out in this Form of Authorisation all the terms and conditions applicable to the Loan remain unchanged.”

Mortgage loan account ending **3085** was subsequently opened with a balance of €133,350.00.

The Provider issued a letter dated **31 July 2007** to the First Complainant and her father, which states as follows:

“We refer to your recent request regarding your above mortgage account.

We confirm that your account has now been split as follows:

<i>Account Number</i>	<i>Current Balance</i>	<i>Interest Rate</i>	<i>Repayment</i>
<i>[ending 9471]</i>	<i>€177,975.60</i>	<i>Tracker Rate 4.85%</i>	<i>€884.80</i>
<i>[ending 3085]</i>	<i>€133,350.00</i>	<i>Staff Rate 4.00%</i>	<i>€601.21</i>

We have combined the Direct Debits on both accounts so one payment, in the amount of €1486.01 will be debited to your bank account each month. The next repayment on both accounts is due on 24/08/07.”

Mortgage loan account ending 1661

The First Complainant subsequently contacted the Provider to remove her father’s name as a joint borrower from their original mortgage loan (under mortgage loan accounts ending **9471** and **3085**), and have her husband, the Second Complainant, named as a joint borrower on the mortgage loan instead. The First Complainant wished to remain as one of the joint borrowers on the mortgage loan. It appears that the Complainants also wished to amend the title to the secured property by adding the Second Complainant’s name to the title deeds.

The Provider's **Internal Notes** detail as follows in relation to the First Complainant's request:

"[the First Complainant] purchased a property in [location redacted] in 2006 with her father (joint borrowings / sole title). Herself and [the Second Complainant] married in September of this year. Over the past few years they have been paying the mortgage themselves and they now wish to take [the First Complainant's father] off the mortgage and add [the Second Complainant].

As presented (had to put it as a Switcher app), it is outside guidelines but, as they already have and are repaying the debt, I trust that we can facilitate them.

The existing mortgage are split and one of the accounts has the tracker, ECB + 0.75%. If this is approved, it is possible to keep the split and the existing rates?"

In addition, the Provider's **Rationale for Application** states as follows:

"Discussed with branch and if approved will not carry tracker rate as this is a different proposal.

...

Decision

Will support – and agree with above and request new valuation – at 310k LTV fine for Staff app – Sig 1 on NDI

Decision: Offer Sanctioned Amount: 301,238

....

Valuation now confirmed at only 230k sees LTV at 131% however mortgage already on our books ([First Complainant and her father])"

The Provider submits that in order to remove the First Complainant's father's name from the mortgage loan and add the Second Complainant to the mortgage loan, the First Complainant and her father were required to redeem mortgage loan accounts ending **9471** and **3085** and the Complainants were required to apply for a new mortgage loan. The Provider's internal notes show that the Provider decided that the Complainants would not be able to retain a tracker interest rate on the new mortgage loan, as it was a "different proposal".

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The Complainants proceeded to submit a new mortgage loan application to the Provider in **2009**. Following an assessment of the Complainants' mortgage loan application, the Provider issued a **Loan Offer Letter** dated **19 November 2009** to the Complainants which details as follows:

<i>"1. Amount of Credit Advanced</i>	<i>€301,238</i>
<i>2. Period of Agreement</i>	<i>30 Years</i>
<i>3. Number of Repayment Instalments</i>	<i>360</i>
<i>Instalment Type</i>	<i>Variable at 2.250%</i>
<i>4. Amount of each Instalment</i>	<i>€1,150.82"</i>

PART 2 – THE ADDITIONAL LOAN DETAILS section of the **Loan Offer Letter** dated **19 November 2009** states as follows:

<i>"11. Type of Loan:</i>	<i>Repayment</i>
<i>12. Interest Rate:</i>	<i>2.250% Variable</i>
<i>...</i>	
<i>14. Purchase Price (or value) of Property:</i>	<i>N/A</i>
<i>15. Valuation for Mortgage Purposes:</i>	<i>€310,000"</i>

Part 4 – The Special Conditions section of the **Loan Offer Letter** dated **19 November 2009** states as follows:

"(a) The following Special Conditions apply to the Loan:

- (i) Solicitor to ensure that the Borrower's existing mortgage loan account(s) [ending 9471] and [ending 3085] with the lender is discharged out of the proceeds of this Loan.*

The existing mortgage deed is to be vacated and a new First Legal Charge executed for borrowings sanctioned in this Offer Letter.

...

This is an important legal document. You are strongly recommended to seek independent legal advice before signing it..."

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Part 5 – The General Conditions section of the **Loan Offer Letter** dated **19 November 2009** provides as follows:

“6. Variable Interest Rates

- (a) *Subject to clause 6(c), at all times when a variable interest rate applies to the Loan the interest rate chargeable will vary at the Lender’s discretion upwards or downwards. If at any time a variable rate of interest applies, repayments in excess of those agreed may be made at any time during the term of the Loan without penalty.*
- (b) *The Lender shall give notice to the Borrower of any variation of the interest rate applicable to the Loan, either by notice in writing served on the Borrower in accordance with clause 1(c), or by advertisement published in at least one national daily newspaper. Such notice or advertisement shall state the varied interest rate and the date from which the varied interest rate will be charged.*
- (c) *Notwithstanding anything else provided in this Offer Letter, the varied applicable interest rate shall never in any circumstances be less than 0.1% over one month’s money at the Euro Inter Bank Offered Rate (EURIBOR).”*

The **Consumer Credit Act** notices state as follows:

“If your mortgage loan is at any time at a variable rate, please note:
THE PAYMENT RATES ON THIS HOUSING LOAN MAY BE ADJUSTED BY THE LENDER FROM TIME TO TIME”

The Complainants signed the **Borrower’s Acceptance and Consents** section of the **Loan Offer Letter** on **20 November 2009** provides on the following terms:

“1. I confirm that I have read and fully understand the Consumer Credit Act notices, set out above, and the terms and conditions contained in this Loan Offer Letter and I confirm that I accept this Offer Letter on such terms and conditions.”

I note however that this loan account was not drawn down under the foregoing **Loan Offer Letter**, as the Provider issued an **Amended Loan Offer Letter** on foot of an amended property valuation. The Provider issued the **Amended Loan Offer Letter** dated **11 December 2009** to the Complainants, which details as follows:

“1. Amount of Credit Advanced €301,238

/Cont’d...

2. Period of Agreement		30 Years
3. Number of Repayment Instalments	Instalment Type	4. Amount of each Instalment
360	Variable at 2.250%	€1,150.82”

Part 2 – The Additional Loan Details section of the **Amended Loan Offer Letter** dated **11 December 2009** states as follows:

“11. Type of Loan: *Repayment*
 12. Interest Rate: *2.250% Variable*
 ...
 14. Purchase Price (or value) of Property: *N/A*
 15. Valuation for Mortgage Purposes: *€230,000”*

Part 4 – The Special Conditions section of the **Amended Loan Offer Letter** dated **11 December 2009** states as follows:

“(a) *The following Special Conditions apply to the Loan:*

(i) *Solicitor to ensure that the Borrower’s existing mortgage loan account(s) [ending 9471] and [ending 3085] with the Lender is discharged out of the proceeds of this Loan. The existing mortgage deed is to be vacated and a new First Legal Charge executed for borrowings sanctioned in this Offer Letter.*

...

(v) *This offer replaces our offer of 19/11/2009.*

This is an important legal document. You are strongly recommended to seek independent legal advice before signing it...”

Part 5 – The General Conditions section of the **Amended Loan Offer Letter** dated **11 December 2009** provides as follows:

“6. Variable Interest Rates

(a) *Subject to clause 6(c), at all times when a variable interest rate applies to the Loan the interest rate chargeable will vary at the Lender’s discretion upwards or downwards.*

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If at any time a variable rate of interest applies, repayments in excess of those agreed may be made at any time during the term of the Loan without penalty.

(b) The Lender shall give notice to the Borrower of any variation of the interest rate applicable to the Loan, either by notice in writing served on the Borrower in accordance with clause 1(c), or by advertisement published in at least one national daily newspaper. Such notice or advertisement shall state the varied interest rate and the date from which the varied interest rate will be charged.

(c) Notwithstanding anything else provided in this Offer Letter, the varied applicable interest rate shall never in any circumstances be less than 0.1% over one month's money at the Euro Inter Bank Offered Rate (EURIBOR)."

The **Amended Loan Offer Letter** also details as follows:

"WARNING: YOUR HOME IS AT RISK IF YOU DO NOT KEEP UP PAYMENTS ON A MORTGAGE OR ANY OTHER LOAN SECURED ON IT.

If your mortgage loan is at any time at a variable rate, please note:

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

The Complainants signed the **Borrower's Acceptance and Consents** section of the **Amended Loan Offer Letter** on **12 December 2009**, which provides as follows:

"1. I confirm that I have read and fully understand the Consumer Credit Act notices, set out above, and the terms and conditions contained in this Loan Offer Letter and I confirm that I accept this Offer Letter on such terms and conditions."

The **Amended Loan Offer Letter** dated **11 December 2009** replaced the previous **Loan Offer Letter** dated **19 November 2009** and provided for a variable interest rate of 2.25%.

The nature of the variable interest rate was one that could be adjusted at the discretion of the Provider as opposed to a tracker interest rate that fluctuated in line with variations in the European Central Bank main refinancing rate. The Provider explains that tracker interest rate products were no longer available when the Complainants applied for the new mortgage loan as the Provider had withdrawn tracker interest rates from the market in **late 2008**.

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The Complainants accepted the terms and conditions attaching to the loan offer by signing the **Borrower's Acceptance and Consents** section on **12 December 2009**. The Complainants subsequently drew down mortgage loan account ending **1661** on **15 January 2010**.

The Complainants subsequently completed a number of **Mortgage Forms of Authorisation (MFA)** from **2011** to **2018**, details of which are set out below:

- **08 February 2011**: The Complainants completed a **MFA** to convert the mortgage loan account to a 3-year fixed interest rate of 3.74%.
- **23 January 2012**: The Complainants completed a **MFA** to defer payments for a 3-month period.
- **12 March 2013**: The Complainants completed a **MFA** to convert their mortgage loan account to an interest only loan for a period of 3 months.
- **18 June 2013**: The Complainants completed a **MFA** to pay reduced monthly repayments of €975.00 on their mortgage loan account for a period of six months.
- **03 December 2013**: The Complainants completed a **MFA** to pay reduced monthly payments of €1,000.00 for a period of 18 months.
- **23 June 2015**: The Complainants completed a **MFA** to apply a 2-year fixed interest rate of 3.75% to the mortgage loan account.
- **12 December 2017**: The Complainants completed a **MFA** to apply a 1-year fixed interest rate of 3% to the mortgage loan account.
- **01 December 2018**: The Complainants completed a **MFA** to apply a further 1-year fixed interest rate of 3% to the mortgage loan account.

This Office has also been furnished with a large volume of correspondence in relation to the arrears on mortgage loan account ending **1661**. Arrears commenced on mortgage loan account ending **1661** on **01 March 2013** and the Complainants sought a number of forbearance measures to include reduced monthly repayments and interest only repayments, which the Provider agreed to. The arrears on mortgage loan account ending **1661** were capitalised in the amount of €2,081.26 on **24 April 2014** however the mortgage loan account fell back into arrears on **24 May 2014**. The Provider's internal notes show that the First Complainant contacted the Provider on **26 May 2014** to discuss clearing the arrears on the mortgage loan account.

The First Complainant noted that she had just returned to work from maternity leave. A number of telephone calls subsequently took place between the Provider and the Complainants for the purposes of discussing the arrears on the mortgage loan account and reaching an arrangement to clear the arrears. The arrears on mortgage loan account ending **1661** were cleared on **24 February 2015**.

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It appears that mortgage loan account ending **1661** fell into arrears in **December 2017** as a direct debit was returned as unpaid however the arrears were cleared shortly afterwards on **11 January 2018**.

Having considered the correspondence and the contemporaneous notes of telephone calls between the Provider and the Complainants from 2013 to 2018, I have not been provided with any evidence that supports the First Complainant's assertion that she was "*constantly harassed*" in relation to the arrears on her mortgage loan account. It is important to note that when a mortgage loan account falls into arrears, irrespective of the level of arrears, the Provider is required under the **Code of Conduct on Mortgage Arrears 2013** to provide certain information to a borrower. Having considered the arrears correspondence that issued to the Complainants, this Office is satisfied that the Provider acted in accordance with its obligations under the **Code of Conduct on Mortgage Arrears 2013** in its communications with the Complainants in the period between **2013** to **2018**, when the mortgage loan account was in arrears.

The Complainants appear to submit that they should have been permitted by the Provider to remove the First Complainant's father from the original mortgage loan and add the name of the Second Complainant to the original mortgage loan instead of having to take out a new mortgage loan with the Provider and lose the entitlement to a tracker interest rate. The Complainants submit that should have simply been required to complete a "*Product Amendment form*" to remove the name of the First Complainant's father from mortgage loan accounts ending **9471** and **3085** and add the name of the Second Complainant to the original mortgage loan.

It is important for the Complainants to note that the original mortgage loan (under mortgage loan accounts ending **9471** and **3085**) was a joint mortgage and in accordance with the agreed terms and conditions, both the First Complainant and her father were jointly and severally liable for the debt until such time as the mortgage loan was redeemed in full. It was therefore not unreasonable for the Provider to require the existing borrowings held in the joint names of the First Complainant and her father to be redeemed in full in order to vacate the legal charge.

There is nothing in the terms and conditions applicable to the **Loan Offer Letter** dated **20 September 2006** that obliges the Provider to consent to the removal of one of the borrowers from the obligations of the mortgage loan contract, at the First Complainant's and/or indeed the Complainants' request.

It is important for the Complainants to note that while the underlying security remained the same, they sought to vary the contract that the First Complainant and her father entered into with the Provider in **September 2006**. There was no contractual or other obligation on the Provider to accede to that request by simply having the Complainants complete a form.

The Complainants were required to undergo the Provider's lending assessment and submit an application for a new mortgage loan with up-to-date vouching documentation in order to consider an application for a new mortgage in the joint names of the Complainants.

The Complainants appear to be of the view that the new mortgage loan drawn down under mortgage loan account ending **1661** should not have been approved by the Provider. It is important to note that it was the Complainants who approached the Provider to apply for a new mortgage loan in **2009**. The Complainants were required to provide up-to-date supporting documentation detailing their then current financial and personal circumstances in order for the Provider to be in a position to accurately assess the new mortgage loan application under the Provider's standard mortgage, affordability and underwriting criteria. The Provider, having assessed the Complainants' mortgage loan application, issued an **Amended Loan Offer Letter** dated **11 December 2009** to the Complainants, the terms and conditions of which they duly accepted. If the Complainants were not satisfied with the terms and conditions on which the Provider offered to extend credit, the Complainants could have decided not to accept the terms of the **Amended Loan Offer Letter** dated **11 December 2009** and the Complainants could have instead applied for a new mortgage loan with another financial service provider.

It appears to me that the First Complainant could have also chosen to retain the tracker interest rate by retaining the original mortgage loan held jointly with her father. However, the First Complainant decided to redeem that mortgage loan and apply for a new joint mortgage with the Second Complainant in **2009** at the Provider's then current rates.

Having considered the documentation provided in evidence by both the Complainants and the Provider, this Office is of the view that the evidence does not support the Complainants' complaints that the Provider acted incorrectly or unreasonably in its management of the Complainants' request to amend the joint mortgage held in the names of the First Complainant and her father into the joint names of the First Complainant and Second Complainant, or that the Provider acted incorrectly or unreasonably when approving the mortgage loan in late **2009**.

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

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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.



**JACQUELINE O'MALLEY
HEAD OF LEGAL SERVICES**

16 May 2022

PUBLICATION

Complaints about the conduct of financial service providers

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.

Complaints about the conduct of pension providers

Pursuant to *Section 62* of the *Financial Services and Pensions Ombudsman Act 2017*, the Financial Services and Pensions Ombudsman will **publish case studies** in relation to complaints concerning pension providers in such a manner that—

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(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.

