



<u>Decision Ref:</u>	2022-0285
<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
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

This complaint relates to a mortgage loan account held by the Complainants with the Provider. The mortgage loan is secured on the Complainants' private dwelling house.

The Complainants held a number of mortgage loan accounts with the Provider. Mortgage loan account ending **7057** was on a tracker interest rate and this loan was fully redeemed on **14 February 2011**. Mortgage loan account ending **9152** was on a staff interest rate and this loan was fully redeemed in **2008** in accordance with the terms of the drawdown in relation to mortgage loan account ending **6848**. Mortgage loan account ending **6848** was drawn down in **February 2008** on a staff interest rate. Mortgage loan account ending **6848** was redeemed in **2016** following the sale of the Complainants' then private dwelling house. At the same time, the Complainants applied for a new mortgage loan to purchase a new private dwelling house.

The loan type offered to the Complainants, on foot of their mortgage loan application in **July 2016**, is described as "*1 Year Fixed New Business Home Loan (<=80% LTV)*" in the **Letter of Approval** dated **06 September 2016**. Mortgage loan account ending **2852** was drawn down on **12 October 2016** in the amount of €253,000.00 for a term of 30 years, commencing on a one-year fixed interest rate of 3.2%. It is this mortgage loan account that is the subject of this complaint.

The Complainants' Case

The Complainants submit that in **2005** they drew down a mortgage loan on a “*tracker arrangement*” with the Provider, with a portion of the mortgage loan account on a discounted staff interest rate. The Complainants submit that in **2006**, they opted to apply the discounted staff interest rate to the entirety of their mortgage loan.

In **2016**, the Complainants submit that they moved house and asked the Provider “*on a number of occasions before moving house*” and during the application process for the new mortgage loan whether they would be able to “*move*” to a mortgage loan with the same terms and conditions as the discounted staff interest rate mortgage which was drawn down in **2005**. However, the Complainants state that they were informed that this was not an option. The Complainants submit that they also requested to “*transfer the policy back to the original tracker mortgage*” but state that they were also informed by the Provider that this was not possible.

The Complainants submit that they were “*under considerable pressure to draw down*” and subsequently drew down mortgage loan account ending **2852** in **2016** on a 1-year fixed interest rate of 3.20%. The Complainants detail that on the expiry of the fixed interest rate period in **2017**, a “*managed variable rate*” was applied to their mortgage loan account.

The Complainants assert that they have been treated unfairly by the Provider and maintain that they should have been offered the option of applying the discounted staff rate or tracker interest rate to mortgage loan account ending **2852** in **2016**.

The Complainants are seeking that the Provider transfer mortgage loan account ending **2852** to either a discounted staff interest rate or a tracker interest rate.

The Provider's Case

The Provider submits that the Complainants held a number of mortgage loan accounts with the Provider and by way of background, notes the following in relation to each mortgage loan account:

- **Mortgage loan account ending 9152**

The Provider states that a Letter of Approval dated **08 January 2004** was issued to the Complainants for the amount of €107,760.00 and provided for a variable staff interest rate of 2.50%. The Provider submits that this mortgage loan was drawn down on **02 June 2004**.

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The Provider indicates that this mortgage loan was redeemed in **February 2008** on foot of the Complainants having drawn down mortgage loan account ending **6848**.

- **Mortgage loan account ending 7057**

The Provider details that it issued a Letter of Approval dated **12 January 2004** for the amount of €165,480.00 on a two-year fixed interest rate. The Provider submits that this mortgage loan account drew down on **03 June 2004** on a fixed interest rate of 3.45%.

The Provider states that *“While there was no tracker rate entitlement in the loan agreement, based on a policy of the Bank then in place”* the Complainants requested to apply a tracker interest rate of 4.00% (ECB + 1.25%) to the mortgage loan account and this was actioned by the Provider on **03 July 2006**.

The Provider submits that this mortgage loan remained on a tracker interest rate until the loan was redeemed on **14 February 2011**.

- **Mortgage loan account ending 6848**

The Provider states that a Letter of Approval was issued to the Complainants for a *“new staff loan”* for an amount of €254,000.00. The Provider submits that **Condition 9** of the Letter of Approval stipulated that mortgage loan account ending **9152** was required to be redeemed in full before the mortgage loan with mortgage loan account ending **6848** was drawn down. The Provider details that mortgage loan account ending **6848** was drawn down on **25 February 2008** on a staff interest rate of 2.50%.

The Provider states that mortgage loan account ending **6848** was redeemed in **2016** as per the terms and conditions in respect of mortgage loan account ending **5852**.

- **Mortgage loan account ending 5852**

The Provider submits that a Letter of Approval was issued to the Complainants on **06 September 2016** for the purchase of a new property. The Provider details that the loan offer was for an amount of €253,000.00 and **Condition 16** of the Letter of Approval stipulated that mortgage loan account ending **6848** would be redeemed from the proceeds of the sale of the Complainants' former property. The Provider

details that mortgage loan account ending **5852** was drawn down on **12 October 2016** on a fixed interest rate of 3.2%.

The Provider states that the Complainants submitted an application for credit on **21 July 2015** *“in respect of their proposal to obtain a new mortgage loan in respect of a new property to be purchased by them.”* The Provider submits that a note on its internal application system detailed that the Complainants planned to place their existing property on the market, and they planned to use the proceeds of sale *“as a deposit for their purchase and that they were seeking a loan of €287,000.”* The Provider indicates that the Complainants *“did not have a specific property selected at that stage”*.

The Provider submits that it issued an Approval in Principle to the Complainants on **17 August 2015**. The Provider states that the Complainants subsequently located a property that they wished to purchase on **28 September 2015**.

The Provider notes that its records show that the First Complainant contacted the Provider in **November 2015** to enquire if the Complainants were entitled to a tracker interest rate as they had held a tracker interest rate before in respect of another mortgage loan. The Provider states that the First Complainant was advised that the Complainants were not entitled to a tracker interest rate on their new mortgage loan by way of a tracker mover mortgage product as they did not have a *“current tracker”*.

The Provider details that it contacted the Complainants on **09 June 2016** as the Provider’s loan offer was due to expire and the *“Complainants confirmed that they were still trying to source a suitable property to purchase and that they would revert once they were in a position to submit their application back to the Bank for reassessment.”*

The Provider states that the Complainants completed a new application for credit on **20 July 2016** for a loan amount of €253,000.00 repayable over a term of 30 years on a one-year fixed interest rate. The Provider submits that a note was placed on its internal systems detailing that a reassessment would be required.

The Provider states that a Letter of Approval was issued to the Complainants on **06 September 2016** where they were offered a loan amount of €253,000.00 repayable over a term of 30 years commencing on a one-year fixed interest rate. The Provider submits that the Complainants signed the Acceptance of Loan Offer on **13 September 2016** and the mortgage loan was drawn down on **12 October 2016**.

In response to the Complainants’ submission that the Provider refused their request to apply the discounted staff interest rate or the tracker interest rate from their previously held mortgage loans to mortgage loan account ending **2852**, the Provider states it has *“no*

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*record of a refusal by the Bank to apply a staff rate to the account ending 2852 or of a request by the Complainant[s] for such a rate in respect of the account ending 2852". The Provider states that the Complainants' previously held tracker mortgage account ending **7057** was redeemed in **February 2011** and in circumstances where it had stopped offering tracker rates to new business customers in **mid-2008** "the option of a tracker rate mortgage was not available to the Complainants" in **2016** when they applied for a new mortgage loan. The Provider further states that the Complainants were no longer considered to be employees in **2016** "therefore they had no entitlement to a staff mortgage of 2.50%."*

The Provider rejects the Complainants' submission that they were treated unfairly in respect of their mortgage loan application for mortgage loan account ending **5852**. The Provider submits that the mortgage loan which had previously availed of a staff interest rate (mortgage loan account ending **9152**) and the mortgage loan that had previously availed of a tracker interest rate (mortgage loan account ending **7057**) "had been redeemed in 2008 and 2011 respectively." The Provider states that "as the tracker mortgage account ending in 7057 had been redeemed in 2011 they could not apply for the tracker portability product."

The Provider details that it introduced a tracker portability product to the market in **early-2014**. The Provider states that this mortgage product "comprised the existing tracker rate applied to the existing loan account plus an additional 1%" and in order to avail of the product "there must be a current Tracker mortgage loan in existence at the time of the application for the tracker portability loan." The Provider asserts that the "Complainants had redeemed their tracker mortgage account (7057) in February 2011, therefore they were not eligible for the portable tracker mortgage product in 2016."

The Complaint for Adjudication

The complaint for adjudication is that the Provider failed to allow the Complainants transfer their tracker interest rate or their discounted staff interest rate from their previously held mortgage loans drawn down in **2005** and **2006** to a new mortgage loan that they drew down in **2016** under mortgage loan account ending **2852**.

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

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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 **29 July 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 consider the Complainants' mortgage loan documentation and any interactions between the Complainants and the Provider in relation to the Complainants' application for a new mortgage loan in **2016**.

It is also helpful at the outset to consider the particulars of the Complainants' previously held mortgage loans with the Provider as it is on foot of these mortgage loans that the Complainants maintain that they were entitled to apply a staff interest rate or a tracker interest rate to their new mortgage loan in **2016**.

A **Letter of Approval** dated **08 January 2004** for mortgage loan account ending **9152** has been submitted in evidence, which details as follows:

<i>"Loan Type:</i>	<i>Staff Home Loan</i>
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<i>Purchase Price / Estimated Value:</i>	<i>EUR 297,000.00</i>
<i>Loan Amount:</i>	<i>EUR 107,760.00</i>
<i>Interest Rate:</i>	<i>2.50%</i>
<i>Term:</i>	<i>35 year(s)</i>

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...”

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

“Special Conditions

- A.** *IN THE EVENT OF YOUR EMPLOYMENT WITH [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.*
- B.** *YOU AUTHORISE [the Provider] TO DEDUCT REPAYMENTS FROM YOUR SALARY AND TO VARY THE DEDUCTION IN THE EVENT OF CHANGES TO INSTALMENTS AND/OR INSURANCE PREMIUMS.*

...”

It is clear to me that the **Letter of Approval** dated **08 January 2004** for mortgage loan account ending **9152** gave the Complainants an entitlement to a staff interest rate unless the First Complainant’s employment with the Provider ceased or the mortgage loan was more than three months in arrears.

The Provider details that this mortgage loan account was drawn down on **02 June 2004**.

A **Letter of Approval** dated **12 January 2004** for mortgage loan account ending **7057** has been submitted in evidence, which details as follows:

<i>“Loan Type:</i>	<i>2 Year Fixed Rate Home Loan</i>
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Purchase Price / Estimated Value: EUR 297,000.00

Loan Amount: EUR 165,480.00

Interest Rate: 3.80%

Term: 35 year(s)

...”

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

“Special Conditions

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

..."

General Condition 5 of the **General Mortgage Loan Approval Conditions** attaching to the **Letter of Approval** details 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.

5.3 Whenever repayment of a loan in full or in part is made before expiration of the Fixed Rate Period the applicant shall, in addition to all other sums payable as a condition of and at the time of such repayment, pay whichever is the lesser of the following two sums:

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

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

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

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*“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.”*

It is clear to me that **Letter of Approval** dated **12 January 2004** provided that mortgage loan account ending **7057** would commence on a two-year fixed interest rate of 3.80% and on expiry of the fixed interest rate period, the Complainants would have the option to apply a variable interest rate to the mortgage loan account.

Mortgage loan account ending **7057** was drawn down on **03 June 2004**.

The Complainants requested that the Provider apply a tracker interest rate to mortgage loan account ending **7057** in **May 2006**. This request was made by way of a handwritten note on a rate options form, signed by the First Complainant and dated **24 May 2006**, which detailed as follows:

“ I want to switch this part of my mortgage to a tracker mortgage. Can you please send me confirmation when this is done.”*

The Provider issued correspondence dated **06 July 2006** to the Complainants, indicating that a tracker interest rate had been applied to mortgage loan account ending **7057** as follows:

“Mortgage account number: [ending 7057]

Dear [Complainants]

I am writing to you again about your mortgage.

We have now amended your mortgage as follows :

<i>Product Type</i>	<i>Tracker Home Loan. Ecb + 1.25%. 100k to 205k</i>
<i>Term remaining:</i>	<i>395 Months</i>
<i>Due date:</i>	<i>03/08/2006</i>
<i>New repayment:</i>	<i>€625.52</i>
<i>*Balance outstanding</i>	<i>€160,279.79</i>
<i>**Loan type:</i>	<i>Annuity</i>
<i>Interest rate:</i>	<i>4.00%</i>

...

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**This is only an indication of your balance and is not a payoff figure*

Endowment Mortgages also displayed as Loan type Interest Only

A further letter in respect of mortgage loan account ending **7057** dated **27 February 2008**, details as follows:

"Mortgage account number: [ending 7057]

Dear [Complainants]

I am writing to you again about your mortgage.

We have now amended your mortgage as follows :

<i>Product Type</i>	<i>Tracker Home Loan. Ecb + 1.25%. 100k to 205k</i>
<i>Term remaining:</i>	<i>26 Months</i>
<i>Due date:</i>	<i>03/02/2008</i>
<i>New repayment:</i>	<i>€20 08</i>
<i>*Balance outstanding</i>	<i>€4,197.24</i>
<i>**Loan type:</i>	<i>Annuity</i>
<i>Interest rate:</i>	<i>5.25%</i>

...

**This is only an indication of your balance and is not a payoff figure*

Endowment Mortgages also displayed as Loan type Interest Only

I note that the balance on the mortgage loan had reduced from €160,279.79 in **July 2006** to €4,197.24 in **February 2008**.

Mortgage loan account ending **7057**, which had a tracker interest rate of ECB + 1.25% applied to it from **July 2006**, was redeemed on **14 February 2011**.

A further **Letter of Approval** was issued to the Complainants dated **22 February 2008** in respect of mortgage loan account ending **6848**. This **Letter of Approval** details as follows:

<i>"Loan Type:</i>	<i>Staff Home Loan</i>
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<i>Purchase Price / Estimated Value:</i>	<i>EUR 297,000.00</i>
<i>Loan Amount:</i>	<i>EUR 254,000.00</i>
<i>Interest Rate:</i>	<i>2.5%</i>
<i>Term:</i>	<i>31 year(s)</i>

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...”

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

“Special Conditions

...

9. *That the total borrowings with [the Provider] (a/c no [ending 9152]) be discharged from the proceeds of [the Provider] advance.*

...”

The Provider indicates that mortgage loan account ending **6848** was drawn down on **25 February 2008**. The **Special Conditions** attached to the **Letter of Approval** in respect of mortgage loan account ending **6848**, stipulated that mortgage loan account ending **9152** would be redeemed with the monies of the Provider’s advance in relation to mortgage loan account ending **6848**. The Provider details that mortgage loan account ending **9152** was redeemed on **28 February 2008**.

An **Application for Credit** was signed by the Complainants on **21 July 2015**. The following details are outlined under the **“Details of Mortgage Required”** section of the application form:

“...

<i>Amount of Loan required</i>	<i>€232,000.00</i>
<i>Purchase price / value of property</i>	<i>€290,000.00</i>
<i>Loan type</i>	<i>1 Year Fixed New Business Home Loan (<=80% LTV)</i>
<i>Repayment Term required</i>	<i>25 years(s)”</i>

The Complainants signed the **Application for Credit** on **21 July 2015** confirming the following:

“I/We have had the necessary time to consider and query the information provided to me in relation to my/our application.”

The Provider issued a **Statement of Suitability** to the Complainants on **21 July 2015** which details as follows:

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“

Important Notice- Statement of Suitability

This is an important document which sets out the reasons why the product(s) or services(s) offered or recommended is/are considered suitable, or the most suitable, for your particular needs, objectives and circumstances.

.....

Dear [Complainants],

The following outlines our proposal based on information you have given us regarding your personal circumstances, financial needs and plans. The loan preferences and options you have chosen are also listed, as at 21st July, 2015.

Proposal

You have selected a fixed rate loan type from the range which we are prepared to offer you based on your needs and circumstances. With a fixed rate product your mortgage repayments will remain the same for the duration of the fixed term. You are aware that an early repayment fee may be payable if you redeem your mortgage or switch products (if applicable) before the fixed term has expired.

You have been advised that at the end of any fixed rate period you will receive a maturity options letter. This letter will provide you with a list of all products available to you at the time. This list may or may not include your original product selection.

Warning: You may have to pay charges if you pay off a fixed-rate loan early.

Mortgage details agreed

We have discussed your loan amount with you and your surplus funds. We have advised you that by reducing your mortgage you can reduce the amount of interest that you pay. We recommended that you consider your own personal financial circumstances and ensure that you have sufficient funds available to you in case of emergency. Based on this discussion you have advised us that you are not prepared to put your surplus funds towards your deposit at this time.

We talked about the term of your mortgage at the meeting. We recommended that you consider the term of your mortgage and advised you that the longer the term of the mortgage the more interest you will pay. Based on this discussion you have

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advised us that you are happy with the term noted below as this is best suited to your needs.

“You have chosen a repayment term and loan amount to achieve a repayment amount best suited to your needs and preferences”. Details are as follows:

- *Amount of loan required* €287,000.00
- *Property price/value* €359,000.00/€359,000.00
- *Loan Purpose* Moving House
- *Loan Type* 5 Year Fixed New Business Home Loan (<=60% LTV)
- *Repayment term required* 34 years
- *Flexible repayment option* None

Please review the information in this letter and ensure the mortgage features and details best suit your requirements and wishes, given the advice from [Provider] staff and the information you provided. You should take the necessary time to consider and query any information provided to you in relation to your loan application.....

In the case of a joint application it is understood that the above represents the wishes and requirements of both applicants. If you disagree with, or wish to change any of the above requirements/statements, please contact your branch.....”

On page 5 of the **Statement of Suitability** dated **21 July 2015**, the following is detailed under the heading “*Tracker Portability*”:

“Tracker Portability is only available to existing [Provider’s] customers with [the Provider’s] tracker rate mortgages who are moving home

- *This product is only available to existing [Provider] Mortgage customers on home loan tracker interest rates.*

...”

The **Statement of Suitability** dated **21 July 2015** clearly indicates that the Provider’s tracker portability product was only available to customers who were availing of a tracker interest rate on an existing mortgage loan and who were moving from one property to another.

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The Provider's **Credit Application Details & Recommendation Template** dated **30 July 2015**, details as follows:

"Looking to borrow €287k to purchase a property in [location]. Specific property not yet known but looking at houses priced at €359k Term of 34 years with monthly repayments of €1,305.13."

A **Letter of Approval** dated **22 October 2015** issued to the Complainants, however this was not accepted and signed by the Complainants.

The Provider's internal notes dated **02 November 2015** at **11.07 am** detail that the First Complainant contacted the Provider to enquire about the possibility of applying a tracker interest rate to their new mortgage loan as follows:

"Spoke to [First Complainant] to ask if loan pack was in order. She had a query re rates, asked if she was entitled to tracker rate, can you please give her a call back to advise."

The Provider's internal notes dated **02 November 2015** at **12.07 am** detail that the Provider's representative would contact the Complainants as follows:

"Hi [Provider's representative], will ring [First Complainant] today however customer does not have current tracker to avail of mortgage mover product"

A further **Letter of Approval** dated **14 January 2016** issued to the Complainants, however this was not accepted and signed by the Complainants.

The Provider's internal notes dated **25 July 2016** detail certain amendments to the Complainants' mortgage loan application as follows:

"Application was previously approved for €232K and a re assessment was requested.

Application details have changed with new property, ie €320K application €252K, LTI 3.1, LTV 79. [...]

Please review for approval"

The Provider carried out a reassessment of the Complainants' mortgage loan application and a further **Letter of Approval** dated **02 August 2016** issued to the Complainants. However, this loan offer was not accepted and signed by the Complainants.

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A **Statement of Suitability** was issued to the Complainants on **06 September 2016**, which details as follows:

“You have chosen a repayment term and loan amount to achieve a repayment amount best suited to your needs and preferences”. Details are as follows:

- *Amount of loan required* €253,000.00
- *Property price/value* €320,000.00/€320,000.00
- *Loan Purpose* Moving House
- *Loan Type* 1 Year Fixed New Business Home Loan (<=80% LTV)
- *Repayment term required* 30 years
- *Flexible repayment option* None

Please review the information in this letter and ensure the mortgage features and details best suit your requirements and wishes, given the advice from [Provider] staff and the information you provided. You should take the necessary time to consider and query any information provided to you in relation to your loan application...

*In the case of a joint application it is understood that the above represents the wishes and requirements of both applicants. If you disagree with, or wish to change any of the above requirements/statements, please contact your branch.
...”*

The **Statement of Suitability** indicates that, on foot of their discussions with the Provider, the Complainants agreed that a one-year fixed interest rate loan type was the most suitable mortgage loan product for them based on their needs and circumstances.

The Provider subsequently issued the Complainants with a **Letter of Approval** on **06 September 2016**. The **Letter of Approval** details as follows:

<i>“Loan Type:</i>	<i>1 Year Fixed New Business Home Loan (<=80% LTV)</i>
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<i>Purchase Price / Estimated Value:</i>	<i>€ 320,000.00</i>
<i>Loan Amount:</i>	<i>€ 253,000.00</i>
<i>Interest Rate:*</i>	<i>3.2%</i>
<i>Term:</i>	<i>30 year(s)</i>

...

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LTV:**

42%

**Please note that this rate may change prior to drawdown of the mortgage.*

*** LTV% includes all loans and any cross charges on the mortgage property."*

The information relating to housing loans within the meaning of the **Consumer Credit Act 1995** contained in the **Letter of Approval** details as follows:

"Variable Rate Loans

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

....

Tracker Mortgage Loans

- 1. The interest rate applicable to Tracker Mortgage Loans is made up of the European Central Bank Refinancing Rate ("the ECB Rate") plus a percentage over the ECB Rate. The amount of the percentage over the ECB Rate will depend on the amount of the loan and that percentage will not be exceeded during the term of the loan.*
 - 2. The ECB rate may be increased or decreased from time to time by the European Central Bank (ECB). We will apply all increases or decreases within one month from the data announced by the ECB as the effective date.*
- ..."*

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

"Special Conditions

...

7. 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.

10. On expiry of the fixed rate period, the interest rate will be such rate as may be selected by the Applicant(s) from the [Provider's] rates then offered for selection by the Applicant(s) or in the absence of such selection, the prevailing Managed Variable Rate which applies to the rate band applicable to the loan to value ratio of the mortgaged property at the date of drawdown of the loan (that is, the ratio of the amount advanced at the date of drawdown relative to the value if the mortgaged property at the date of drawdown).

[...]

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16. That the total loan with [the Provider] (a/c no [ending 6848]) be discharged from the sale of your existing property and appropriate evidence be submitted to [the Provider].”

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

- “5.1 If it is stated in the Letter of Approval that the Advance is to be subject to a fixed rate the interest rate applicable to the Advance shall be fixed from the date of the Advance for the period (a “Fixed Rate Period”) as specified on the Letter of Approval.
- 5.2 The interest rate specified in the Letter of Approval may vary before the date of drawdown of the Advance.
- 5.3 Whenever (i) repayment of a loan in full or in part is made, or (ii) with the agreement of [the Provider], the loan is switched to a variable rate loan, or other fixed rate loan, before expiry of the Fixed Rate Period (hereinafter called the “Early Termination”), the Applicant shall, in addition to all other sums payable as a condition of and at the time of the Early Termination, pay a sum equal to [the Provider’s] estimate of the loss (if any) arising from the Early Termination. [...]
- 5.4 [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 **Acceptance of Loan Offer** was signed by the Complainants and witnessed by their solicitor on **13 September 2016** 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 dated the 6th day of September 2016.***
 - ii. the General Mortgage Loan Approval Conditions
 - iii. The Irish Banking Federations 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.

...

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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.

It is clear from the documentary evidence that on foot of the discussions between the Provider and the Complainants between **July 2015** and **September 2016**, the Provider formally offered the Complainants a mortgage loan commencing on a one-year fixed interest rate.

The **Special Conditions** provided that a prevailing managed variable interest rate would apply on the expiry of the fixed interest rate period if no other interest rate options were offered by the Provider and selected by the Complainants. The nature of the variable interest rate in this instance made no reference to being a tracker interest rate comprising an ECB refinancing rate plus a percentage over the ECB rate. Rather, the nature of the variable interest rate appears to be one that could be adjusted by the Provider from time to time as opposed to varying in line with variations in the ECB rate. If the Complainants were not satisfied with the terms and conditions of the **Letter of Approval**, including the type of mortgage product and interest rate offered, the Complainants could have decided not to accept the loan offer made by the Provider or indeed approach another financial service provider for finance. However, the Complainants did not do so. Instead, the Complainants accepted the Provider's loan offer by signing the **Acceptance of Loan Offer** on **13 September 2016**, and in doing so, confirmed that their solicitor had fully explained the terms and conditions of the mortgage loan to them.

The **mortgage loan statements** provided in evidence indicate that mortgage loan account ending **2852** was drawn down on **12 October 2016**. In accordance with **Special Condition 16** of the **Letter of Approval** dated **06 September 2016**, mortgage loan account ending **6848**, which was availing of a staff interest rate, was redeemed from the proceeds of sale of the Complainants' then existing property.

The Complainants submit that that the Provider refused their request to apply a discounted staff interest rate to mortgage loan account ending **2852**. The Complainants appear to be of the view that they should have been allowed to transfer the staff interest rate that was applicable to mortgage loan account ending **6848** to their new mortgage loan under mortgage loan account ending **2852**. However, I have not been provided with any evidence to suggest that the Complainants applied for a staff interest rate in respect of their new mortgage loan. The Provider explains that the group structure had changed in or

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around **2012** which meant that the First Complainant was considered to be employed by a separate entity. Therefore, any new agreements made between the First Complainant and that entity in relation to staff benefits such as beneficial rates on mortgage loans after the change to the group structure, were a matter for that entity and its staff. Consequently, when the Complainants applied for a new mortgage loan in **2015**, the Provider did not consider them as employees and therefore they had no entitlement to be offered a staff interest rate mortgage.

Moreover, just because the Complainants were availing of a staff interest rate on mortgage loan account ending **6848** when they applied for a new mortgage loan, this did not give them an automatic entitlement to transfer that particular interest rate to a new mortgage loan once mortgage loan account ending **6848** was redeemed. It was firstly a matter for the Provider to decide whether to offer additional borrowings to the Complainants and secondly, it was a matter for the Provider to decide how any new mortgage loan would be structured. It is important to note that both mortgage loans were entirely separate and distinct with different mortgage loan amounts and different properties of different values forming the basis of the underlying security for each loan.

The Complainants also submit that the Provider refused their request to apply a tracker interest rate to their mortgage loan account ending **2852**. The Complainants appear to be of the view that they should have been allowed to transfer the tracker interest rate that had applied to mortgage loan account ending **7057** to their new mortgage loan under mortgage loan account ending **2852**. I note that the Provider commenced offering a tracker portability product in **mid-2014**, however this product was *“only available to existing [Provider] Mortgage customers on home loan tracker interest rates”* as indicated in the **Statement of Suitability** issued to the Complainants on **21 July 2015**. The evidence shows that when the Complainants applied for their new mortgage loan in **2015**, they did not have an existing tracker mortgage loan. The Complainants previously held a tracker mortgage under mortgage loan account ending **7057**, however this mortgage loan was redeemed in **2011**, some 4 years prior to the Complainants’ application for a new mortgage loan. Consequently, it was not possible for the Complainants to *“port”* a tracker interest rate to a new mortgage loan in respect of a new property as the Complainants did not have an existing tracker mortgage to *“port”*.

Further, the Provider was under no contractual or regulatory obligation to offer the Complainants a tracker interest rate on their new mortgage loan in **2015/2016** in circumstances where it had ceased offering tracker interest rate products to in **late-2008**. I accept that this was a business decision that the Provider was entitled to make. By consequence, tracker interest rates were no longer available as part of the Provider’s mortgage product offering by the time the Complainants applied for their new mortgage loan under mortgage loan account ending **2852** in **2015/2016**.

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

Conclusion

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

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



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

25 August 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—

(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.

