



<b><u>Decision Ref:</u></b>	2022-0299
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Tracker Mortgage
<b><u>Conduct(s) complained of:</u></b>	Refusal to move existing tracker to a new mortgage product
<b><u>Outcome:</u></b>	Rejected

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

##### **Background**

This complaint relates to the Complainants' mortgage loan application for a tracker portability product with the Provider. At the time of the Complainants' application, the First Complainant held a mortgage home loan account ending **3101** with the Provider and a tracker interest rate applied to the mortgage loan.

The purpose of the Complainants' mortgage loan application for a tracker portability product was to purchase a new property in the joint names of the Complainants and maintain a tracker interest rate on a portion of the mortgage borrowings.

Mortgage loan account ending **3101** was secured against the First Complainant's residential investment property and this property was sold in **July 2015**.

##### **The Complainants' Case**

The First Complainant submits that she had an existing mortgage loan account ending **3101** with the Provider and was availing of a tracker interest rate.

The First Complainant explains that she wanted to sell the property in **2014** which was the subject of her existing mortgage loan ending **3101** and “port” the tracker mortgage to a new property which she intended to purchase with the Second Complainant.

The Complainants submit that they met with the Provider in or around **July 2014** to discuss what was required of them to avail of the Provider’s tracker portability product for a joint mortgage on a new property. The Complainants submit that they met with the Provider on “a few” occasions in relation to their application for a tracker portability product. The Complainants state that they received approval in principle on **01 July 2014**.

The Complainants note that they submitted a joint application for the tracker portability product in **May 2015**. The Complainants submit that the application process was lengthy and “at every turn” the Provider requested additional information and documentation. They submit that the application process took much longer than they had expected, but eventually they received verbal approval for the sum of €129,000.00.

The First Complainant states that she sold her existing property in **July 2015**. The Complainants explain that the tracker portability product was available for 6 months from the date of the sale, subject to receiving the letter of approval.

The Complainants submit that they subsequently requested an increased loan amount of €160,000.00 but the Provider would only offer them a loan amount of €149,000.00. They submit that in **November 2015**, they wanted to purchase a property for €170,000.00 and use other funds to cover the balance. They submit that the Provider assured them that it would provide “proof of funds” so they could bid for the property at auction, but the Provider failed to give them the proof of funds in time so they could not make a bid at the auction.

The Complainants submit that they found another property in **January 2016** and the availability of the portability product was due to expire on **27 January 2016**. The Complainants detail that the Provider informed them that it would be unable to issue the Letter of Approval by **27 January 2016** and granted them a 1-month extension to avail of the tracker portability product. The Complainants state that they received the letter of approval on **29 January 2016**, however, they were ultimately unable to complete the purchase prior to the expiry date of the tracker portability product on **27 February 2016**.

At this time, the Complainants state that they were selling an existing property held in the name of the Second Complainant. The Complainants submit that at a meeting with a representative of the Provider, the representative accused the Second Complainant of “lying” to him. The Complainants were subsequently granted a further 1-month extension to **31 March 2016**.

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The Complainants submit that due to the Provider's actions, they sold the First Complainant's property at a depressed cost, they lost the opportunity to buy a prospective new home, they have incurred significant costs and they have suffered from stress and anxiety.

The Complainants are seeking that the Provider compensate them for the value of the property sold in **July 2015**, or alternatively, to provide the Complainants with a tracker portability mortgage plus compensation for all costs and stress incurred.

### **The Provider's Case**

The Provider states that it does not accept the Complainants' submissions that its actions prevented them from availing of its tracker portability product between **May 2015** and **March 2016**.

The Provider details that the First Complainant had a mortgage for the sum of €79,791.00 under mortgage loan account ending **3101** which was drawn down on **30 May 2006**.

The Provider states that the Complainants enquired about the tracker portability product in **July 2014**, at which stage mortgage loan account ending **3101** was availing of a tracker interest rate of ECB + 0.95% and the mortgaged property was being leased to tenants by the First Complainant.

The Provider details that it launched its tracker portability product in **April 2014** and explains that it was *"available for existing home loan customers who have a tracker mortgage loan account and who plan to sell their existing home and purchase another."* The Provider states that tracker portability means applying a tracker interest rate which is 1.00% higher than the existing tracker rate to a portion of the new loan which can be no more than the balance of the existing tracker home loan for the remaining term of that loan. The Provider details further that the *"purchase of the new property is expected to take place on the same day as the sale of the existing property, but in any event no later than six months [from] the date of the sale of the existing home. A valid Letter of Approval in respect of the new home loan(s) must be in place prior to the sale of the existing property."*

The Provider submits that it issued the Complainants with approval in principle for the tracker portability proposal on **01 July 2014**. The Provider states that this document

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detailed that the Complainants were considering the purchase of a new home for the purchase price of €250,000.00 of which the Complainants would be contributing €25,000.00 for a deposit and the balance of €225,000.00 comprising €68,081.00, which was the balance of the First Complainant's tracker mortgage loan account, and €156,919.00 in respect of a variable interest rate mortgage loan.

The Provider submits that a meeting was held with the Complainants on **02 April 2015** to discuss another potential application and a further approval in principle was issued to the Complainants for a mortgage loan in the amount of €130,000.00 repayable over the term of 25 years.

The Provider states that a further meeting was held with the Complainants on **20 April 2015**. The Provider details that "*a new proposal*" was discussed in relation to another property with the potential purchase price of €150,000.00. The Provider submits that the Complainants proposed to sell the mortgaged property, the subject of mortgage loan account ending **3101**, and retain the tracker interest rate and lease the Second Complainant's property. The Provider states that it received the required particulars from the Complainants and submitted a credit application for approval to the Provider's credit department on **14 May 2015**. The Provider details that it issued a Loan Approval in respect of this credit application comprising a total borrowing of €131,000.00 which included the tracker portability of the balance of the First Complainant's tracker mortgage loan.

The Provider states that the Complainants informed the Provider in **July 2015** that the proposed purchase of the property had fallen through. The Provider details that the Complainants also advised the Provider that they had sold the First Complainant's mortgaged property on **24 July 2015**.

The Provider submits that a further meeting was held with the Complainants on **31 July 2015** where the Complainants asked the Provider "*for an indication of the maximum amount that they could borrow.*" The Provider submits that the Complainants detailed that they had a maximum loan amount of €160,000.00 in mind, after which the Provider confirmed that they could apply for a maximum of €149,000.00. The Provider submits that it advised the Complainants that the "*tracker portability loan would expire in January 2016, which was six months after the sale of the mortgage property*".

The Provider states that the Complainants contacted one of its branches on **27 November 2015** to inform the branch about a property that they had identified that was due to be sold by auction on **09 December 2015**. The Provider details that in accordance with its "*process for assessing loan applications involving a property purchase at an auction, an upfront valuation by a valuer of the property in [location] was arranged.*" The Provider states that the valuation was completed on **04 December 2015** and the valuer confirmed

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his valuation of the property at €220,000.00. The Provider submits that it then contacted the Complainants to advise of the valuer's opinion and requested the level they were preparing to bid at the auction, which the Complainants confirmed was €190,000.00. The Provider detailed that this was referred for assessment to its credit department on **07 December 2015** but *"[d]ue to the proximity of the auction two days later, it was not possible to achieve loan approval for the Complainants prior to the auction."*

The Provider submits that another meeting took place with the Complainants on **10 December 2015**, where the Second Complainant confirmed that his property had been sold. The Provider states that the Complainants were informed that a new mortgage application with up-to-date financial details would be required, and this would need to be assessed by the Provider's credit department before another loan approval would issue. The Provider details that the Complainants were advised at this stage that the tracker portability period would expire the following month.

The Provider submits that the Complainants indicated on **12 January 2016** that they were interested in purchasing a different property for the value of €210,000.00. The Provider explains that it requested the Complainants to provide updated information for the case to be presented to the Provider's credit department for approval.

The Provider states a representative from the Provider's branch who the Complainants had been dealing with contacted the Provider's head office on **14 January 2016** regarding the Complainants' application, prior to the expiration of the six-month tracker portability loan approval. The Provider detailed that *"although the customers had approval from the Retail Credit Centre ("RCC"), they had not had a property in mind and loan approval in respect of a new property had not yet issued."* The Provider submits that on **20 January 2016**, the Provider agreed to extend the tracker portability expiry period by a month to **27 February 2016** to allow the Complainants time to complete the purchase of the property they had most recently brought to the attention of the Provider.

The Provider states that on **21 January 2016** the Complainants detailed that the Second Complainant's property had been sold and the Complainants would have funds from the sale of this property to assist to complete the purchase of their new property.

The Provider submits that two Letters of Approval dated **29 January 2016** were issued to the Complainants detailing as follows:

<i>"Loan amount:</i>	<i>€65,729.93</i>
<i>Loan Type:</i>	<i>Tracker Homeloan (ECB + 1.95%)</i>
<i>Term:</i>	<i>24 years</i>
<i>Interest Rate:</i>	<i>2%</i>

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*Initial Repayment Amount:* €287.56  
*Account Number:* [ending **6181**]

*Loan amount:* €83,270.07  
*Loan Type:* 12 Month Discounted MVR LTV <=50%  
*Term:* 20 years  
*Interest Rate:* 3.2%  
*Initial Repayment Amount:* €470.20  
*Account Number:* [ending **6219**]"

The Provider submits that on **18 February 2016** the Second Complainant queried Special Condition 14 of the loan offers which reads as follows:

*"Confirmation from [State Body] that m/l ref [ending **6593**] has been redeemed in full prior to cheque issue."*

The Provider submits that the Second Complainant noted *"that the contracts in respect of the sale of [location] were not yet signed"* and he required the removal of the Special Condition in the Provider's Letters of Approval. The Provider indicates that it informed the Complainants that if the existing mortgage on the Second Complainant's property was still in place, then the application would need to be re-assessed by its credit department. The Provider states that it advised the Complainants that *"the tracker portability part of the loan offer may no longer be available when the reassessment was done."*

The Provider submits that on **25 February 2016** the Complainants' solicitor emailed the Provider detailing that a copy of the sale contracts would be dropped into the branch in 20 minutes. The Provider states that on **03 March 2016** approval was obtained from the Provider's head office to extend the tracker portability to **31 March 2016** and the Complainants' solicitor was informed of this by email dated **03 March 2016**.

The Provider submits that the Complainants did not accept the Provider's two Letters of Approval dated **29 January 2016**, and as such the Provider details that it *"erased the entries in the Bank's mortgage application processing system in accordance with the Bank's data protection policy and procedures."*

The Provider details that the Complainants submitted a copy of an approval in principle document issued to them by the Provider on **22 December 2016** for an amount of €185,000.00 repayable over a term of 24 years with an initial 5-year fixed interest rate of 3.5%. The Provider however indicates *"that this did not proceed further."*

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The Provider states that from **July 2014** to **December 2016**, it *“continued to assist the Complainants in respect of a series of borrowing proposals”* and it *“endeavoured to ensure that the Complainants could avail of a tracker portability loan by extending the six months’ availability of the product twice until 31 March 2016.”*

The Provider does not accept the Complainants’ submissions that new issues were raised by the Provider throughout the application process which delayed the mortgage approval. The Provider submits that when *“a key change to a proposal occurs such as the amount of loan sought, term, purchase price, or address of property, the Bank must complete a new mortgage application to ensure repayment capacity is evident and the applicant has the ability to repay the loan based on up to date information provided.”* The Provider further details that it does not accept the Second Complainant’s submission that he was advised to leave his property off the mortgage application as it *“would slow the whole process down”*.

### **The Complaint for Adjudication**

The complaint for adjudication is that the Provider deliberately frustrated the mortgage loan application process to prevent the Complainants availing of the Provider’s tracker portability product during the period between **July 2015** and **February 2016**.

### **Decision**

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

In arriving at my Legally Binding Decision, I have carefully considered the evidence and submissions put forward by the parties to the complaint.

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

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A Preliminary Decision was issued to the parties on **05 August 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 interactions between the Complainants and the Provider in relation to the Complainants' tracker portability mortgage product application from **2014 to 2016**. In this regard, I will consider the evidence submitted by the parties to include the records supplied by the Complainants pertaining to their tracker portability mortgage loan application and a statement prepared by the Provider's branch entitled '*Summary report of the meetings held between the Complainants and the Branch representatives between April 2015 and February 2016 with comments as prepared by Branch*', detailing its recollection of its dealings with the Complainants during the mortgage loan application process between **April 2015 and February 2016**.

At the outset, it is important to point out that this Office will not interfere with the commercial discretion of a financial service provider with respect to a decision to accept or reject a consumer's application for credit, unless the conduct complained of is unreasonable, unjust, oppressive or improperly discriminatory in its application to a Complainant, within the meaning of **Section 60 (2)** of the **Financial Services and Pensions Ombudsman Act 2017**.

The Provider has submitted a copy of its "*Home Movers*" brochure dated **24 February 2014** in evidence which details the application process that was in place at the time the Complainants applied for the tracker portability mortgage product. The **Applying for Tracker Portability** section of the brochure details as follows:

*"Step 1*

*First, meet with a Mortgage Advisor in your local [Provider] branch. Let them know that you are an existing [Provider] customer who is interested in a Tracker Portability Mortgage. Your Mortgage Advisor will explain to you how the product works and give you a better idea of how much you could borrow and at what mortgage rate.*

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### Step 2

*If you are satisfied that the Tracker Portability Mortgage is for you, you should meet with your Mortgage Advisor again and provide the following:*

- *Your application documents (e.g. P60 and two of your last three payslips, a salary certificate and six months personal bank account statements).*
- *Evidence of having at least 10% deposit of the purchase price of the new property and associated cost.*
- *A full valuation on your existing property, at your own cost, completed by an independent valuer from [the Provider's] Valuation Panel (the branch will supply you with a list of local valuers) if the current LTV is greater than 90%.*

*At this point, it's a matter of waiting to see if your application is approved. As you know, your mortgage application is subject to underwriting criteria. If it is approved, we will provide you with an Approval in Principle letter.*

The **Letter of Approval** section of the brochure details as follows:

*"The next thing to do is to get your formal Letter of Approval.*

### Step 1

*To secure a Letter of Approval, an independent valuation needs to be carried out on the new property, arranged by [the Provider] and completed by an independent valuer from [the Provider's] Valuation Panel. If the valuation (property value) differs from the purchase price, we may have to re-assess your application.*

### Step 2

*If you are in Negative Equity, you must do the following:*

*[...]*

*Once you have passed this stage and have your Letter of Approval and your Shortfall Repayment Agreement (where relevant), you will be ready to sell and buy."*

I note that the Complainants were not in negative equity and as such, Step 2 did not apply with respect to their application.

The **Selling and Buying** section of the brochure details as follows:

*"You've completed your Application, received a formal Letter of Approval and signed and returned your Shortfall Repayment Agreement (where relevant), ticked off any final requirements and are ready to sell your existing property and buy your new one.*

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You will need to complete one step to pass this stage:

**Step 1**

This is the bit you've been waiting for. If you are in Positive Equity and have accepted the Letter of Approval, you can sell your existing property and get ready to buy your new home.

[...]

Regardless of whether you are in Positive or Negative Equity, if you're not able to purchase your new property on the same day, you must complete the purchase within at least six months (from the date you sold your existing property) in order to avail of the Tracker Portability offer".

The evidence on file indicates that an **Approval in Principle** issued to the Complainants on **01 July 2014**. The **Approval in Principle** document provides a breakdown of borrowings for the purchase of a new property with a purchase price of €250,000.00 and details as follows:

"New Loan

Purchase Price	€250,000
Less Deposit Required (10% minimum)	€25,000
Mortgage on New Property	€225,000
Plus Negative Equity	€0,000
Total New Mortgage	€225,000
Loan To Value	90%

Repayment of New Loan

Part A- Tracker Interest Rate

Mortgage Balance	€68,081
Interest Rate	2.10%
Term (Years)	21
Monthly Repayment Amount	€334.33

Part B- Variable Interest Rate

Mortgage Balance	€156,919
Interest Rate	4.59%
Term (Years)	26
Monthly Repayment Amount	€852

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Total Repayment Amount (Part A +Part B)

€1196.56

The **Approval in Principle** document also details as follows:

*“Getting a ‘Mortgage Approval in Principle’ before you start looking for a house is always a good idea. It will give you a rough idea of how much you have to spend.*

***What does ‘Home Mover Approval in Principle’ mean?***

*Home Mover Approval in Principle’ is an understanding between you and us outlining roughly how much we could lend to you.*

*We base that calculation on the information you provide and if you do decide to complete a full application, we’ll check to make sure that all the details are accurate.*

- *This is an approval in principle only so it is not legally binding. We cannot guarantee that we will approve a full application for a mortgage for this or any amount yet.*
- *If you decide to proceed with a full mortgage application it will be subject to our lending criteria, terms and conditions.*
- *The amount and term quoted above may not be a suitable option for your needs. You should also be aware that it costs more to borrow over a longer term than over a shorter term. This is because you will pay more interest over the longer term than a shorter term. However, we will be sure to outline all your options for your circumstances when you complete an application with us.*

***Okay. What happens next?***

- *You continue the search for your new home and we will try to help you in any way that we can.*
- *When you are ready to make a full application, simply get in touch and we will set up an appointment to help you complete your application*
- *Make sure to check the enclosed ‘Home Mover – Approval in Principle Pack’, which outlines everything you need to know about the application process and the attached Mortgage Application checklist which describes what you will need to bring along when you next meet us.*
- *The Household Cash flow Self Assessment Planner is also enclosed. Can you please complete this ahead of our next meeting.”*

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There is no further evidence on file to indicate that the Complainants proceeded to the next step in the application for a tracker portability product by seeking that the Provider issue a formal Letter of Approval at the time in **2014**.

The Provider's notes detailing the timeline of the Provider's engagement with the Complainants and its recollection of events indicate that the Complainants met with a mortgage advisor of the Provider's branch in early **April 2015**. A letter issued from the Provider to the Complainants dated **02 April 2015** detailing as follows:

*"Dear [Complainants]*

*Thanks for talking to [the Provider] about your mortgage application earlier today. From our conversation, and the summary details that you have provided, we have calculated that you may qualify to borrow the following amount:*

**Amount: €130,000**

**Term: 25 years**

*Getting a Mortgage Approval in Principle before you start looking for a house is always a good idea. It will give you a rough idea of how much you have to spend.*

***What does 'Home Mover Approval in Principle' mean?***

*Home Mover Approval in Principle' is an understanding between you and us outlining roughly how much we could lend to you. We base that calculation on the information you provide and if you do decide to complete a full application, we'll check to make sure that all the details are accurate.*

- *This is an approval in principle only so it is not legally binding. We cannot guarantee that we will approve a full application for a mortgage for this or any amount yet.*
- *If you decide to proceed with a full mortgage application it will be subject to our lending criteria, terms and conditions.*
- *The amount and term quoted above may not be a suitable option for your needs. You should also be aware that it costs more to borrow over a longer term than over a shorter term. This is because you will pay more interest over the longer term than a shorter term. However, we will be sure to outline all your options for your circumstances when you complete an application with us.*

***Okay. What happens next?***

- *You continue the search for your new home and we will try to help you in any way that we can.*

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- *When you are ready to make a full application, simply get in touch and we will set up an appointment to help you complete your application*
- *Make sure to check the enclosed 'Home Mover – Approval in Principle Pack', which outlines everything you need to know about the application process and the attached Mortgage Application checklist which describes what you will need to bring along when you next meet us."*

The Provider's summary report of the meetings indicate that a meeting took place between the Complainants and the Provider's representative on **20 April 2015** where the Complainants detailed that they were seeking to purchase a property for €150,000.00. The Complainants indicated that they intended to sell the First Complainant's residential investment property which was on a tracker interest rate, purchase a new property, and transfer the tracker interest rate from the First Complainant's mortgage loan to the new mortgage loan.

Following receipt of all required particulars from the Complainants, the Provider's branch submitted an **Internal Credit Application** dated **14 May 2015** to the Provider's retail credit department. The **Internal Credit Application** has been provided in evidence and details as follows under the "Proposal" section:

- *Clients are looking to sell [First Complainant's] property in [location] for €79,500 which is mortgaged with [the Provider]. Balance is €66058.00.*
- *They are looking to purchase new property in [location] for 150k over 25 years. It is currently on the market for 185k, they are the only party presently interested in the property and they hope to secure it for the €150K. The address is [property address].*
- *They are looking to avail of mortgage mover for existing mortgage amount and balance at standard rates.*
- *[First Complainant] has a house here in [location] where he is going to rent it out. There is a mortgage with [state body] with a balance of 53K on it. Rental income will be €700 per calendar month."*

The "Conditions" section of the **Credit Application** details as follows:

*"Redeem Existing mortgage from sale proceeds and carry this mortgage as tracker portability".*

The "Summary/Recommendation" section of the **Credit Application** details as follows:

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*“Clients are looking to sell their own family home and purchase another property as their PDH and avail of the mortgage mover product given [First Complainant’s] current mortgage is on a tracker rate. They are looking to purchase the new property for a price of €150K and have 15K to use towards the cost. They also have their own funds to cover stamp duty, legal fees and auctioneer fees. [Second Complainant] is employed as a [redacted]. [First Complainant] is currently on [allowance]; however I haven’t included this figure in the application. They have [number] dependents. [Second Complainant] is going to rent out his own house. Rental income for this property will be €700. Confirmation to be obtained prior to loan approval. IRB string at 16. Current accounts operated in a satisfactory manner.”*

A letter issued from the Provider to the Complainants’ solicitors dated **23 July 2015** in response to a request from the Complainants’ solicitors for a redemption quote in relation to the First Complainant’s mortgage loan account ending **3101**. This letter details as follows:

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

<i>Loan Number</i>	<i>Amount €</i>	<i>Daily Accrual</i>	<i>Inclusive of fixed rate exit fee €</i>
<i>[ending 3101]</i>	<i>65,810.09</i>	<i>1.8</i>	<i>0.00</i>

*Please note that the figures quoted are in accordance with the request received by [the Provider]. Please do not include vacate or accountable trust receipt fee in the amount you pay to clear the above mortgages/s.*

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

*You can pay off the mortgage(s) at any branch.”*

The Complainants’ solicitors issued a letter to the Provider dated **24 July 2015** to confirm that mortgage loan account ending **3101** had been redeemed in full as follows:

*“Dear Sirs,*

*We wish to advise on 4<sup>th</sup> day of July, 2015 we cleared mortgage account no [account number] in the sum of €65811.17*

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*We should be obliged if you could kindly furnish vacate duly sealed or alternatively evidence of [discharge].”*

The submissions from the parties on the file indicate that the First Complainant’s residential investment property, which was the subject of a tracker mortgage loan was sold on **24 July 2015**. The **mortgage loan account statement** shows that mortgage loan account ending **3101** was redeemed on **31 July 2015**.

While the First Complainant had sold her existing property in **July 2015**, there is no evidence to suggest that the Complainants had received a formal Letter of Approval from the Provider in relation to financing the purchase of a new property before selling the existing property. In order to avail of the tracker portability product, the Complainants were required to complete the purchase of the new property within at least 6 months from the date of the sale of the First Complainant’s property. In circumstances where the First Complainant’s property was sold in **July 2015**, the Complainants therefore had to complete the purchase of the new property before the end of **January 2016** if they wished to avail of the Provider’s tracker portability offering.

The Provider’s summary report of meetings from **July 2015** detail that the Complainants queried the maximum amount that they could borrow in circumstances where they had sold the First Complainant’s property and they intended to sell the Second Complainant’s property. The Provider’s notes detail that the case was referred to the Provider’s retail credit department on **31 July 2015** which confirmed that the Complainants could borrow up to €149,000.00. The Provider’s notes also detail that the tracker portability would remain available to the Complainants up until **January 2016** and the Complainants were informed of this.

The Complainants sought to purchase a new property following the sale of the First Complainant’s property, however the purchase of the chosen property at the time fell through on **31 July 2015**.

An email from the Complainants to the Provider’s representative dated **24 November 2015** has been submitted in evidence which details as follows:

*“Dear [Provider’s representative],*

*This email is regarding [the Complainants] Mortgage that was approved for 130k. I am requesting that a Valuation be made on the property [location of potential purchase]. Please find details of same property attached. We are also requesting a Mortgage Loan Offer on [location of potential purchase].*

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*The house [location of potential purchase] is to be sold by [auctioneer] on [date] 2015. It has a reserve of 170k.*

*[Provider's representative] we have approximately 45k of our own savings available to us. We also have our house [Second Complainant's property] on the market valued at 125k with a remaining loan on that mortgage of approximately 50k. Our house has an offer at the moment of 107k. There is equity of between 57k – 75k.*

*We would also like to request a bridging loan of 30k – 40k. We hope to purchase the house for 170k and we can cover this amount with the already approved mortgage of 130k + 40k savings. But a bridging loan would cover us if the bidding went to 200k, until the sale of our home goes through.*

*Thank you and I look forward to hearing back from you soon. Our contact numbers are [...].*

*Kind regards”.*

The Provider's summary report of meetings detail that the Complainants contacted the Provider on **27 November 2015** to inform the branch about a property that they had identified that was due to be sold by auction on **09 December 2015** and the Complainants sought loan approval for the purchase of the property.

The Provider required a valuation of the property before issuing a Letter of Approval, in line with its procedures and as outlined in the “Home Movers” brochure dated **24 February 2014**. The Provider details the valuer completed a valuation on **04 December 2015** who confirmed that the value of the property was €220,000.00. The Provider's summary report of meetings outline that the Provider contacted that Complainants to advise on the valuation and to establish the amount that the Complainants were prepared to bid at auction. The summary notes suggest that the Complainants indicated that they were prepared to bid €190,000.00 on the property. The Provider subsequently communicated this information concerning the valuation and the maximum bid amount to the Provider's retail credit department on **04 December 2015**. The Provider's retail credit department then sought evidence of the balance of funds available to the Complainants to purchase the property. The summary notes show that the Complainants' case was referred to the Provider's retail credit department on **07 December 2015**. The Provider details that it was unable to complete the credit application and issue a Letter of Approval prior to the auction date on **09 December 2015**.

/Cont'd...



The Provider's summary report of meetings detail that a meeting was held with the Complainants on **10 December 2015** during which the Complainants expressed annoyance at the application process. The Provider details that the Complainants confirmed that the Second Complainant had sold his property. The Provider notes that it explained to the Complainants that their application would need to be re-assessed in light of the recent developments and change in circumstances.

The Complainants subsequently approached the Provider on **12 January 2016** as they identified another property that they wished to purchase for a purchase price of €210,000.00. The Complainants' application was subsequently presented to the Provider's credit department on **21 January 2016**. The Provider details that it had a meeting with the Second Complainant on **21 January 2016**. The Provider's notes detail as follows with respect to the meeting of **21 January 2016**:

*"In front of client [Provider's representative] checked with [other Provider's representative] that there was nothing outstanding from [Provider's] side bar legal pack for case to issue (life cover, home insurance & dd all done). [Provider's representative] then asked client was there anything from his side that would delay closing further, he said no.*

*In front of client [Provider's representative] then contacted [other Provider's representative in head office] and got agreement to extend the tracker portability to 27<sup>th</sup> Feb, [Provider's representative] advised client of this and he thanked him for this. [Provider's representative] also asked him as he was out of his house that evening had he a place to stay and client said he was ok for that. Full legal pack issued to client on 29<sup>th</sup> January."*

In circumstances where the Complainants only had until in or around the end of **January 2016** to purchase a new property if they wished to avail of the Provider's tracker portability offering, the Provider agreed to extend the time within which the Complainants could avail of the tracker portability offering to **27 February 2016** to allow the Complainants time to complete the purchase of the new property and obtain the tracker portability product.

Following the meeting on **21 January 2016**, the Provider issued two **Letters of Approval** together with **Statements of Suitability** to the Complainants dated **29 January 2016**.

The first **Statement of Suitability** in respect of the application for mortgage loan account ending **6181** dated **29 January 2016** details as follows:

*"Dear [Complainants]*

/Cont'd...

*The following outlines our proposal based on the information you have given us regarding your personal circumstances, financial needs and plans. The loan preferences and options you have chosen are listed, as at 21st January, 2016.*

### **Proposal**

*A split interest rate allows you to place some of your borrowings (e.g. 50%) at a fixed rate and the remainder at a variable interest rate. With a split interest rate you get the advantages and disadvantages of both fixed and variable rates.*

### **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 recommend 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 happy to put your surplus funds towards your deposit. We have reduced the loan amount below accordingly.*

*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 advised us that you are happy to proceed 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*      €65,729.93
- *Property price/value*      €210,000.00/€210,000.00
- *Loan purpose*      Moving House
- *Loan Type*      Tracker Homeloan ECB + 1.95%
- *Repayment term required*      24 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 [the Provider's] staff and the information you provided. You should take the*

/Cont'd...

*necessary time to consider and query any information provided to you in relation to your loan application. If you have chosen a fixed interest rate loan term and you feel your personal circumstances may potentially change soon, then a fixed interest rate loan term may not be the best option for you. Further details on the range of mortgage options available are enclosed.*

*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 section of the first **Statement of Suitability** entitled “Key Information regarding mortgages” contains the following under the “Tracker Portability” section:

***“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] customers on home loan tracker interest rates.*
- *This mortgage offer is only available to Performing Customers. A Performing Customer is defined as a customer whose account(s) are operating in order on either a capital and interest basis or interest only basis as set out in the terms and conditions and has not been in arrears or availed of a moratorium / restructure in the past 24 months by way of a forbearance measure as a means of helping with affordability and payment of your mortgage.*
- *The existing property and your new property must be your family home.*
- *You must contribute a minimum of 10% of the purchase price towards the purchase of the new property.*
- *You must [...] have sufficient funds to pay all costs including stamp duty and any associated costs such as legal fees, estate agents fees etc. These cannot be deducted from the sale proceeds of your existing property.*  
*[...]*
- *If you are trading-up and need additional funds to purchase the new property, these funds will be offered at new business rates.*
- *The maximum term available is 35 years subject to an upper age limit of 70 for the oldest applicant at loan maturity.*
- *The minimum total loan amount is €40,000 (this includes the tracker portability loan amount).*
- *Capital and interest repayments only.*
- *The purchase of the new property is expected to take place on the same date as the sale of your existing property, but no later than 6 months apart.*

/Cont’d...

- *If you are in negative equity, 100% of the sale proceeds of the existing property must be used to reduce your existing mortgage debt.*
- *This is a limited offer subject to available funding.”*

The **Letter of Approval** dated **29 January 2016** in respect of the application for mortgage loan account ending **6181** details as follows:

<i>“Loan Type:</i>	<i>Tracker Homeloan ECB + 1.95%</i>
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<i>Purchase Price / Estimated Value :</i>	<i>€ 210,000.00</i>
<i>Loan Amount :</i>	<i>€ 65,729.93</i>
<i>Interest Rate :</i>	<i>2%</i>
<i>Term :</i>	<i>24 year(s)</i>
<i>...</i>	
<i>Loan to Value (LTV)</i>	<i>71%”</i>

**General Condition 1.7** of the **General Mortgage Loan Approval Conditions** attached to the **Letter of Approval** dated **29 January 2016** provides as follows:

*“The Applicant must personally within 30 days indicate in writing his willingness to accept the offer of the Advance and draw down of the Advance must be completed within 40 days of his acceptance. Failure to comply with the foregoing or rejection of the Property for such insurance as [Provider] may require at the standard rate without any special conditions cancels this approval”.*

The **Special Conditions** to the **Letter of Approval** dated **29 January 2016** in respect of the application for mortgage loan account **6181** detail as follows:

***“Special Conditions***

- 1. For the avoidance of doubt, the Applicant will not be entitled, during the term of the loan the subject of this Letter of Approval, to a longer term and for a higher loan amount over those specified in this Letter of Approval by reason of the term and / or loan amount specified in this Letter of Approval.*

*[...]*

- 3. The interest rate applicable to this tracker mortgage loan may be varied from time to time by [the Provider] provided the interest rate will not exceed 1.95% over the European Central Bank Refinancing rate (the “ECB Rate”) (comprising of the percentage or margin of 0.95% over the ECB Rate applicable to the loan which issued under a/c number (and irrespective of any reduction in such*

*/Cont’d...*

percentage or margin which may have been agreed subsequent to the issue of such loan) plus 1%). The ECB Rate may be varied from time to time by the European Central Bank (the "ECB"). In the event of any variation of the ECB Rate, the interest rate applicable to this loan will not be more than 1.95% over the ECB Rate as varied by the ECB and the revised interest rate for the loan will apply not later than one calendar month from the date provided by the ECB as the date on which the variation to the ECB Rate will take effect.

4. Condition 1.7 of the General Mortgage Loan Approval conditions (relating to time limits for acceptance and drawdown) applies to this Letter of Approval. Without prejudice to condition 1.7 [the Provider] will extend the period of drawdown of the loan by up to 6 months from the date of issue of this Letter of Approval. If not drawn-down by the expiry of the extended date, [the Provider] will require a reassessment of the loan application and subject thereto, at its discretion, may extend the period for drawdown for a further period which will expire on the date of expiry of the 6 month period from the date of sale of the Existing Property. Accordingly the tracker interest rate in the Letter of Approval (as may be amended from time to time in accordance with changes to the ECB Rate) will apply for a period of 6 months from the date of sale of the Existing Property ("the Post Sale Period) and where the Letter of Approval has expired prior to the end of the Post Sale Period, the applicant may avail of the tracker rate (and as may be amended) for the remainder of the Post Sale Period provided a further Letter of Approval has issued following a reassessment of the loan application and such further Letter of Approval, if issued, will expire at the end of the Post Sale Period.

10. The interest rate and mortgage repayment indicated in the letter of approval are based on the ECB rate applicable at the date of the letter of approval and may change on or before draw down.

[...]

14. Confirmation from [State Body] that m/l ref [ending 6593] has been redeemed in full prior to cheque issue"

The second **Statement of Suitability** in respect of the application for mortgage loan account ending **6219** dated **29 January 2016** details as follows:

"Dear [Complainants]

/Cont'd...

*The following outlines our proposal based on the information you have given us regarding your personal circumstances, financial needs and plans. The loan preferences and options you have chosen are listed, as at 21st January, 2016.*

### **Proposal**

*A split interest rate allows you to place some of your borrowings (e.g. 50%) at a fixed rate and the remainder at a variable interest rate. With a split interest rate you get the advantages and disadvantages of both fixed and variable rates.*

### **Mortgage details agreed**

*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 advised us that you are happy to proceed 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*      €83,270.07
- *Property price/value*      €210,000.00/€210,000.00
- *Loan purpose*      Moving House
- *Loan Type*      12 Month Discounted MVR LTV <=50%
- *Repayment term required*      20 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 [the Provider's] 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. If you have chosen a fixed interest rate loan term and you feel your personal circumstances may potentially change soon, then a fixed interest rate loan term may not be the best option for you. Further details on the range of mortgage options available are enclosed.*

*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"*

/Cont'd...

The second **Statement of Suitability** in respect of the application for mortgage loan account ending **6219** dated **29 January 2016** also contains a section entitled “*Key Information regarding mortgages*” which contains the same text under the “*Tracker Portability*” section as the first Statement of Suitability. For the sake of brevity, I do not intend to repeat this text.

The second **Letter of Approval** dated **29 January 2016** in respect of the application for mortgage loan account ending **6219** details as follows:

“Loan Type:”	12 Month Discounted MVR LTV <=50%
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Purchase Price / Estimated Value :	€ 210,000.00
Loan Amount :	€ 83,270.07
Interest Rate :*	3.2%
Term :	20 year(s)
...	
LTV **	71%

*\*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.”*

**General Condition 1.7** of the **General Mortgage Loan Approval Conditions** attached to the second **Letter of Approval** dated **29 January 2016** provides as follows:

*“The Applicant must personally within 30 days indicate in writing his willingness to accept the offer of the Advance and draw down of the Advance must be completed within 40 days of his acceptance. Failure to comply with the foregoing or rejection of the Property for such insurance as [Provider] may require at the standard rate without any special conditions cancels this approval”.*

The **Special Conditions** to the second **Letter of Approval** dated **29 January 2016** in respect of the application for mortgage loan account ending **6219** detail as follows:

**“Special Conditions**

[...]

4. (a). *Condition 1.7 of the General Mortgage Loan Approval conditions (relating to time limits for acceptance and drawdown) applies to this Letter of Approval.*

/Cont’d...

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

*[...]*

*9. The interest rate specified in the Letter of Approval is a discounted Loan to Value ("LV") Managed Variable rate and will apply for a period of 12 months from the date of the advance ("the Discount Period") but may be varied within the Discount Period (and/or at any time prior to drawdown of the advance). On expiry of the Discount Period, the interest rate will be the then Managed Variable rate applicable to the LTV ratio of the loan which applied at the date of the advance. The Managed Variable rate may vary from time to time without regard to variations in any other interest rate used by [the Provider] (including for example, any other rate based on LTV ratios, the [Provider's] standard variable or the European Central Bank rate) and without regard to variations in the LTV ratio of this loan during the term of the mortgage.*

*10. Confirmation from [State Body] that m/l ref [ending **6593**] has been redeemed in full prior to cheque issue"*

The Provider's summary of meetings notes detail as follows with respect to a meeting held with the Complainants on **18 February 2016**:

*"18<sup>th</sup> February; [Provider's representative's] last time meeting [Second Complainant] which [Complainants' representative] was also in attendance. He was querying a condition in a loan offer that said the mortgage on his existing house had to be redeemed prior to our mortgage issuing and he wanted this removed. [Provider's representative's] referred him back to our meeting of 21<sup>st</sup> Jan and as the house was sold at that stage he or his solicitor should have the funds to comply with*

/Cont'd...



*this. [Provider's representative's] said it was his clear understanding that nothing was outstanding to close the loan, client had confirmed his house was sold and that he was moving out that evening. [Provider's representative's] also referred back asking him about his accommodation now that his house was sold. [Provider's representative] advised that if the existing mortgage remained in place then we would need case re-assessed by credit but time may not be on our side to do this and avail of tracker portability. At that stage client said in his [career] he worked with rapists, murders and criminals and that [Provider's representative's] was despicable and lower than the lot of them. The meeting ended.*

*[Provider's representative's] subsequently got agreement for the tracker portability to be extended to the 31<sup>st</sup> March and in view of clients feelings towards him he got [Complainants' representative] to communicate this to their solicitor."*

The evidence on file indicates that the Complainants submitted a complaint to the Provider and the Provider issued correspondence on **24 February 2016** to the Complainants detailing that it was investigating the matter as follows:

*"Dear [First Complainant]*

*I refer to your recent communication with this office. May I thank you for taking the time to bring this matter to our attention and wish to advise that I will be your point of contact going forward.*

*I am presently investigating the matter and will be in contact with you shortly. In the meantime I should be obliged if you would please bear with me and if for some reason we haven't resolved your complaint within 20 business days, we will send you a written update at that point.*

*I trust this is to your satisfaction."*

An email dated **25 February 2016** submitted in evidence suggests that the Complainants' solicitor indicated that a copy of the contract for sale for the Second Complainant's property would be delivered to the Provider as follows:

*"Good morning [Provider's representative],  
A copy Contract for sale of [Second Complainant's property] will be dropped to your office within next 20 mins."*

/Cont'd...

The Provider's representative sent an email to the Complainants' solicitor on **04 March 2016** indicating that the Provider was in a position to extend the time within which the Complainants could avail of the tracker portability product as follows:

*"Hi [Complainants' representative],*

*Head Office have advised that they will push out the date to the 31<sup>st</sup> March.*

*This is the last extension they will do on it.*

*Can you please advise clients of same."*

The Complainants' solicitor responded on **4 March 2016** detailing as follows:

*"Thanks [Provider's representative].. i will contact [the Complainants].  
Regards".*

I have not been provided with any evidence to suggest that the Complainants accepted the Provider's loan offers in the two **Letters of Approval** dated **29 January 2016** despite the Provider having agreed to extend the availability of the tracker portability product to **31 March 2022** and the Complainants' solicitor having drawn up a contract for sale in respect of the Second Complainant's property.

A letter issued from the Provider to the Complainants, in relation to their complaint, dated **16 March 2016** detailing that the matter was still being investigated and the Provider would be in contact once the investigation was complete.

A **Final Response Letter** dated **31 March 2016** issued to the Complainants detailing the history of the engagement between the Complainants and the Provider. The meeting between the parties of **16 February 2016** was detailed in the Provider's **Final Response Letter** as follows:

*"During a follow up meeting on the 16<sup>th</sup> February 2016, [Second Complainant] advised that the sale of [Second Complainant's property] would not be complete as contracts were not yet signed. He also stated that there was a condition on the loan offer from [the Provider] that a mortgage with [state body] would have to be redeemed from the sale proceeds prior to the [Provider] mortgage issuing. [Provider's representative's] advised that the extension that had been agreed and outlined to [Second Complainant] at the previous meeting was on condition that*

/Cont'd...

*confirmation was received from [Second Complainant] that [Second Complainant's property] was sold. In order for mortgage to fund, the condition that the [state body] property would be redeemed was required. [Second Complainant] was not satisfied with this condition and the meeting ended.*

*Following the meeting, [Provider's representative's] made representations to Head Office for a further extension of the tracker portability closing date and received confirmation of this extension to the 31<sup>st</sup> March 2016 which was communicated to you and to [Complainants' representative], the solicitor acting on your behalf."*

I have not been provided with any further evidence to indicate that the Provider decided to extend the availability of the tracker portability product to the Complainants beyond **31 March 2016**. The tracker portability product was therefore no longer available to the Complainants after **31 March 2016**.

The Provider issued a **Statement of Suitability** and **Letter of Approval** dated **15 April 2016** to the Complainants. The **Statement of Suitability** detailed as follows:

*"Dear [Complainants]*

*The following outlines our proposal based on the 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 January, 2016.*

*[...]*

*"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*                      €65,729.93
- *Property price/value*                        €210,000.00/€210,000.00
- *Loan Purpose*                                Moving House
- *Loan Type*                                     Tracker Homeloan ECB + 1.95%
- *Repayment term required*                24 Years
- *Flexible repayment option*                None"

The Provider issued a cover letter dated **15 April 2016** enclosing the **Letter of Approval** dated **15 April 2016**, which details as follows:

*Dear [Complainants]*

/Cont'd...

*I have enclosed a copy of your new Letter of Approval and this revokes any previous Letter of Approval which issued to you in respect of your Mortgage Application under the above Account number. Note that the period of validity of the new Letter of Approval will take into account the period of time which has elapsed since the date of the issue of the previous Letter(s) of Approval. You should bear in mind that if you change any of the loan details contained within this letter of offer including the rate you may need to be reassessed.*

*I have sent a copy of this Letter of Approval to your Solicitor.*

*If you want to accept our offer, please sign the Acceptance of Loan which has been sent with the mortgage documentation to your solicitor. You should sign the Acceptance of Loan in the presence of your solicitor or [the Provider's] staff member, who must witness your signature. Then return it to the Mortgage Processing Centre as soon as possible so we can process your loan*

*I have enclosed the 'European Standard Information Sheet' which further explains the details of the loan...."*

The **Letter of Approval** dated **15 April 2016** details as follows:

"Loan Type:	Tracker Homeloan ECB + 1.95%
-------------	------------------------------

<i>Purchase Price / Estimated Value :</i>	<i>€ 210,000.00</i>
<i>Loan Amount :</i>	<i>€ 65,729.93</i>
<i>Interest Rate :*:</i>	<i>1.95%</i>
<i>Term :</i>	<i>24 year(s)</i>
<i>...</i>	
<i>LTV **</i>	<i>71%</i>

*\*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."*

**General Condition 1.7** of the **General Mortgage Loan Approval Conditions** attached to the second **Letter of Approval** dated **15 April 2016** provides as follows:

*"The Applicant must personally within 30 days indicate in writing his willingness to accept the offer of the Advance and draw down of the Advance must be completed within 40 days of his acceptance. Failure to comply with the foregoing or rejection*

/Cont'd...

*of the Property for such insurance as [Provider] may require at the standard rate without any special conditions cancels this approval”.*

The **Special Conditions** of the **Letter of Approval** dated **15 April 2016** provide as follows:

“ ...

2. *The interest rate applicable to this tracker mortgage loan may be varied from time to time by [the Provider] provided the interest rate will not exceed 1.95% over the European Central Bank Refinancing rate (the “ECB Rate”) (compromising of the percentage or margin of 0.95% over the ECB Rate applicable to the loan which issued under a/c number (and irrespective of any reduction in such percentage or margin which may have been agreed subsequent to the issue of such loan) plus 1%). The ECB Rate may be varied from time to time by the European Central Bank (the “ECB”). In the event of any variation of the ECB Rate, the interest rate applicable to this loan will not be more than 1.95% over the ECB Rate as varied by the ECB and the revised interest rate for the loan will apply not later than one calendar month from the date provided by the ECB as the date on which the variation to the ECB Rate will take effect.*
3. *For the avoidance of doubt, the Applicant will not be entitled, during the term of the loan the subject of this Letter of Approval, to a longer term and / or higher loan amount over those specified in this Letter of Approval by reason of the term and /or amount of the loan in respect of the Existing Property being greater than the term and /or loan amount specified in this Letter of Approval.*  
...
13. *Where, at any time during the term of the loan, [the Provider] agrees that the Applicant(s) may switch the interest rate to another rate, temporarily, the Applicant(s) will not be able to revert to either of the rates as described above but will be offered the then current applicable rate(s) for the loan.*
14. *Confirmation from [state body] that m/l ref [ending 6593] has been redeemed in full prior to cheque issue.”*

I have not been provided with any evidence to indicate that the Complainants accepted the **Letter of Approval** dated **15 April 2016** which offered a tracker interest rate of ECB +1.95%.

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An e-mail exchange subsequently took place between the Complainants and the Provider's representative, and the Provider informed the Complainants on **18 May 2016** that the tracker portability product was no longer available to them as the time within which to avail of this product had expired. The e-mail dated **18 May 2016** details as follows:

*"Hi [First Complainant],*

*The letter dated May 13th 2016, was a standard letter issued to all mortgage customers who had received a letter of offer in the previous 6 months.*

*As per the loan offer, the tracker portability option is available for 6 months after the sale of the existing property. As your existing property was sold in July 2015 the tracker portability option has now expired."*

The above e-mail refers to a letter dated **13 May 2016** that issued to the Complainants. This Office has not been provided with a copy of this letter in evidence. However, the e-mail of **18 May 2016** clearly states that the tracker portability option had expired.

The Complainants submit that they sold the First Complainant's property at a depressed cost, they lost the opportunity to buy a prospective new home, they have incurred significant costs and they have suffered from stress and anxiety. However, the evidence shows that the First Complainant sold her existing property in **July 2015** without the Complainants having secured formal loan approval by way of **Letter of Approval** from the Provider to purchase a new property. The "*Home Movers*" brochure dated **24 February 2014** clearly sets out the stages to be completed in order to avail of the tracker portability product to include receiving a "*formal Letter of Approval*" and being ready to buy the new property. The First Complainant sold her existing property in **July 2015** and there is no evidence to suggest the Provider put pressure on the First Complainant to sell the property at that time. The evidence shows that Complainants had not even secured formal loan approval for the purchase of a new property when the First Complainant sold her existing property. The Complainants had only obtained approval in principle at that point. In any event, the purchase of the new property fell through in **July 2015** and there is no evidence to suggest that the Provider was responsible for this.

The "*Home Movers*" brochure dated **24 February 2014** and the **Statements of Suitability** dated **29 January 2016** detail the eligibility criteria to avail of the tracker portability product. Both documents clearly detail that the purchase of the new property is expected to take place on the same date as the sale of the existing property, but no later than 6 months apart. In circumstances where the First Complainant sold her existing property which was subject to a tracker interest rate on **24 July 2015**, the Complainants had 6 months from that date to purchase a new property in order to avail of the tracker

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portability product. Therefore, the Complainants had up until in or around the end of **January 2016** to complete the purchase of the new property.

However, it was not until **24 November 2015**, that the Complainants contacted the Provider to seek a Letter of Approval in relation to another property that they wished to make a bid on at an auction on **9 December 2015**. The Complainants therefore had approximately 12 working days within which to secure credit from the Provider. While the Provider's representative organised a valuation of the property as quickly as possible, the Provider's representative was unable to have the loan approval sanctioned by the retail credit section of the Provider prior to the auction date. I accept that this was disappointing for the Complainants however the Provider's meeting notes suggest that substantial efforts were made by the Provider's representative to have the loan sanctioned, within what was a very tight time period.

Another mortgage loan application from the Complainants was presented to the Provider's credit department on **21 January 2016** and during this process the Provider's representative sought and received approval to extend the period within which the Complainants could avail of the tracker portability product to **27 February 2016**.

The Provider subsequently issued two **Letters of Approval** dated **29 January 2016**, one of which was the tracker portability product for the loan amount of €65,729.93. However, the Complainants appeared to have an issue with the **Special Condition** contained in the **Letter of Approval** dated **29 January 2016** which required the Complainants to provide confirmation that the Second Complainant's mortgage loan with a state body had been redeemed prior to the issue of the loan cheque. I do not find that such a request was unreasonable in circumstances where the Provider had assessed the Complainants' overall affordability which took account of any existing mortgage loans held by the Complainants and the redemption of any such loans on foot of a potential sale. In this regard, the Provider was entitled to request that the Complainants' application for credit be re-assessed if the Second Complainant's existing mortgage was not redeemed in full, based on its own lending and eligibility criteria.

The Provider further agreed to extend the period within which the Complainants could avail of the tracker portability product to **31 March 2016**. However, there is no evidence to suggest that the Complainants availed of this extension by accepting the loan offers contained in the **Letters of Approval** dated **29 January 2016**, completing the purchase of the new property and drawing down the mortgage loans.

The Provider issued a further **Letter of Approval** dated **15 April 2016** which provided for a tracker interest rate. Again, there is there is no evidence to suggest that the Complainants accepted this loan offer.

I acknowledge that the Complainants may have been under pressure to find a property and draw down a new mortgage loan before the expiration of the tracker portability product. However, it would appear to me that the Complainants found themselves in that situation because the First Complainant sold her existing property in **July 2015** without the Complainants having secured formal loan approval and being ready to complete the purchase a new property within 6 months of the sale of the First Complainant's property.

Having considered the evidence before me, I do not consider there to be sufficient evidence to support the Complainants' contention that the Provider deliberately frustrated the mortgage loan process to prevent them availing of the tracker portability product during the period between **July 2015** and **February 2016**. Rather, the evidence shows that the Provider dealt with the Complainants efficiently during the mortgage loan application process by granting approval in principle and issuing formal Letters of Approval in a timely manner following an assessment of the Complainants' applications for credit in accordance with the Provider's eligibility and lending criteria. Moreover, the Provider facilitated the Complainants during the mortgage loan application process by extending the time within which the Complainants could avail of the tracker portability product on two separate occasions, that is from **January 2016** to **27 February 2016** and from **27 February 2016** to **31 March 2016**. The Provider was under no obligation, legal, contractual, or otherwise, to extend the availability of the tracker portability product to the Complainants for an indefinite period of time.

For the reasons outlined above, I do not uphold the complaint.

### **Conclusion**

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

/Cont'd...



*Jacqueline O'Malley*

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

31 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.