



<u>Decision Ref:</u>	2023-0070
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Tracker Mortgage
<u>Conduct(s) complained of:</u>	Failure to offer a tracker rate at point of sale
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

This complaint relates to a mortgage loan account ending **3161** held solely by the Complainant with the Provider. The mortgage loan that is the subject of this complaint is secured on the Complainant's private dwelling house.

The Complainant previously held mortgage loan account ending **4648 (01)** with the Provider. This mortgage loan was held jointly by the Complainant with her former spouse (the "third party") and was secured on the Complainant's private dwelling house. Mortgage loan account ending **4648 (01)** was on a tracker interest rate of ECB + 0.80% and the mortgage loan was redeemed in **2015**.

The Complainant drew down a new mortgage loan under mortgage loan account ending **3161** in her sole name in **October 2015**. The loan amount was €174,500.00 and the term of the loan was 17 years. The **Loan Offer Letter** provided for a fixed interest rate of 3.85% which would apply until **31 August 2018**. Mortgage loan account ending **3161** is the subject of this complaint.

The Complainant's Case

The Complainant states that she bought a house with a third party in **2007**, and the "initial rate that applied to that mortgage was a tracker rate ECB, plus a margin of 0.75%". The

Complainant outlines that the relationship with the third party ended in **January 2011** and she “took over the mortgage repayments to keep [her] family home”.

The Complainant submits that she approached the Provider in **June 2015** “to discuss the possibility of [removing [third party] name off the mortgage and for the property to be in [her] sole name”. The Complainant outlines that she “was not changing any other details, no further money requested, just simply to remove [third party] name and put both the Mortgage account and the property into [her] sole name”. The Complainant submits that her original repayments, when on a tracker interest rate, were €800.00 per month but increased to €1,166.96 per month “as a result of requesting to take [her] then partner’s name off the Mortgage loan”.

The Complainant details that the Provider informed her that it “would need to assess [her] affordability and following this they were agreeable to have the mortgage put in [her] sole name”. The Complainant maintains that the mortgage balance “was placed in a new account in [her] name [ending 3161] and the old mortgage account [ending 4648] was cleared on drawdown”.

The Complainant asserts that during her discussions with the Provider she “asked if [she] could keep [her] tracker rate”. The Complainant maintains that the Provider “refused this request” and the monthly repayments increased. The Complainant submits that “if [she] had been purchasing a new home or had been in negative equity, [she] could have kept [her] Tracker rate and yet, just because [she] was simply taking over the existing Mortgage in [her] sole name, [she] wasn’t entitled to keep [her] Tracker Rate”.

The Complainant is of the view that she “lost the tracker because in order to take [her] ex partner’s name off the mortgage, the bank insisted that [she] take out a new mortgage and refused to allow [her] to keep [her] tracker rate of ECB + 0.75%”. The Complainant states that it is “extremely non customer focused” for the Provider to state that the tracker interest rate offered in **2015** was not available for joint borrowers looking to change their loan into a sole borrower’s name but may have been offered to her as a sole borrower if she was buying a new property or to both the Complainant and the third party “had [they] not been meeting [their] monthly repayments”.

The Complainant is seeking:

- (a) A tracker rate of ECB + 0.75% be applied to mortgage loan account ending **3161**;
and
- (b) A refund of interest overpayments from **October 2015** to date.

The Provider’s Case

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The Provider submits that, in **July 2015**, it received an application form signed by the Complainant on **07 July 2015** applying *“for a mortgage in the amount of €174,500 over a term of 17 years”*. The Provider maintains that all credit facilities were *“subject to financial status checks and an affordability assessment”*. The Provider states that it approved the application and a **Loan Offer Letter** issued on **10 August 2015** which *“confirmed that the customer’s mortgage was to draw down on a fixed interest rate”*. The Provider maintains that the **Loan Offer Letter** *“did not contain any reference to a tracker interest rate nor did the document state that a tracker interest rate would be made available to the customer at any future date”*. The Provider outlines that mortgage loan account ending **3161** drew down in **October 2015** on a fixed interest rate of 3.85%, which applied until **31 August 2018**.

The Provider is of the view that the Complainant *“had no contractual entitlement to a tracker interest rate for her mortgage ending in 3161, nor did the Bank have any obligation (regulatory or otherwise) to offer a tracker interest rate to the customer when she applied for this loan in July 2015”*. The Provider details that tracker interest rates were available from late **2001** until late **2008**, when they were withdrawn from the market and, therefore, tracker interest rates were not available to the Complainant when she applied for a new mortgage loan in **2015**.

The Provider explains that in **July 2015** the Complainant *“requested to remove the second party from her previous mortgage loan ending in 4648 (01)”*. The Provider submits that mortgage loan account ending **4648 (01)** was between the Provider and the Complainant along with the third party, *“both of whom were jointly and severally liable for the term of the loan”*. The Provider maintains that to remove a person from a loan *“that loan needs to be redeemed and a new loan to be issued in the sole name of the remaining customer or in the names of any new parties”*.

The Provider asserts that mortgage loan account ending **4648 (01)** and mortgage loan account ending **3161** *“were separate loans with different terms and conditions”*. The Provider details that it has always been its policy that *“customers apply for a new mortgage in the names of the new borrower composition and undergo the relevant mortgage application and full credit assessment in line with the Bank’s credit policy”*. The Provider is of the view that as there would be a new borrower composition *“any new mortgage would be completely separate to the previous mortgage and as such would be subject to the terms and conditions applicable at the time of the application (for a new mortgage)”*. The Provider submits that when the mortgage loan under mortgage loan account ending **4648 (01)** was redeemed on **15 October 2015**, *“the contractual entitlement to a tracker interest rate on that mortgage loan ended”*.

The Provider states that a range of interest rates were available to the Complainant in **2015** when she sought a mortgage loan in her own name, including fixed and variable interest rate options. The Provider maintains that its staff "*were not authorised to and did not provide advice to customers as to what interest rate to select*". The Provider outlines that the decision as to which interest rate to select "*rested with the customer based on what suited her individual circumstances*". The Provider submits that the Complainant completed and signed a **Statement of Suitability** on **07 July 2015** confirming that she wished to proceed with the mortgage application based on a fixed interest rate.

The Provider states that in **2015** it offered "*customers with an existing tracker interest rate or customers who are in negative equity*" the option to "*move to a new home or arrange a transfer of title*". However, the Provider explains that this option was not offered to joint borrowers looking to change the mortgage loan into the name of a sole borrower over the same secured property.

The Complaint for Adjudication

The complaint for adjudication is that the Provider failed to allow the Complainant to keep her tracker interest rate on her mortgage loan account in **2015** when she applied to have the mortgage loan put into her sole name.

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 Complainant was given the opportunity to see the Provider's response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

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

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

A Preliminary Decision was issued to the parties on **28 February 2023** 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 the complaint, it is relevant to consider the interactions between the Complainant and the Provider in **2015** when the Complainant first sought to have the joint mortgage loan account ending **4648 (01)** transferred into her sole name and then applied for a new mortgage loan account ending **3161** in her sole name. It is also necessary to review and set out the relevant provisions of the Complainant's mortgage loan documentation.

While this Office has not been furnished with the mortgage loan documentation in relation to mortgage loan account ending **4648 (01)**, it is not disputed between the parties that the Complainant previously held a mortgage loan jointly with a third party under mortgage loan account ending **4648 (01)** and that a tracker interest rate of ECB + 0.80% applied to the mortgage loan. The Complainant and a third party, who is not party to this complaint, were joint borrowers in respect of the mortgage loan account ending **4648 (01)**. It appears from the evidence that the Complainant sought to remove the third party's name from the mortgage ending **4648 (01)** in **2015**.

The Complainant completed and signed a **General Mortgage Application Form** on **07 July 2015**. **Section 1.5** of the **General Mortgage Application Form** refers to "Your mortgage requirements" wherein it is noted that €174,500.00 was the loan amount required and the "Repayment period" was detailed as 17 years. The fixed interest rate option was selected on the application form.

The Complainant also signed a **Statement of Suitability** on **07 July 2015** which was enclosed with the application form. The important notice section of the **Statement of Suitability** states as follows:

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

The **Statement of Suitability** which was signed by the Complainant details as follows:

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“ ...

Thank you for taking the time to meet with me. [The Provider] offers products and services on an information only basis and does not recommend or advise a particular product. The questions below were asked to help you decide on the most appropriate product type and you answered the following:

...

- *Are you interested in a mortgage whereby your mortgage repayments could rise or fall in line with the interest rate changes? No*
- *A **Fixed Rate Mortgage** gives stability and security for an agreed period of time as you pay a set amount per month even if interest rates go up or down. This gives you peace of mind if you need to budget your outgoings.*

Are you interested in a mortgage where you pay a set amount per month for an agreed period of time? Yes

- *Are you interested in fixing your payments for a 3 year, 5 year or 7 year period? You may incur a penalty if you change your mortgage within this term. Yes*

Having answered these questions and discussed and gathered sufficient personal information from you the following products offered were discussed:

- **3 Year Fixed Rate Mortgage**
- **5 Year Fixed Rate Mortgage**
- **7 Year Fixed Rate Mortgage**

You have considered the facts and, after taking into account the product information I have provided you with, you have determined that the following products are suitable to you.

- **3 Year Fixed Rate Mortgage**

I explained the Features and Benefits of the above by referring to the relevant product brochure-ware and Terms and Conditions.

*You consider the **3 Year Fixed Rate Mortgage** suitable for you because:*

- *You wish to fix your repayment over a fixed term to allow you to budget your monthly outgoings and to ensure your repayments remain unaffected by rate changes over the fixed term.*

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The product you have chosen has an introductory fixed rate of 3.85% for 3 years, at the end of this term you have the option of rolling onto the standard variable rate. An increase of 2% above the current standard variable rate 4.30% will mean that your scheduled repayment would be €1,395.74 based on a mortgage of €174,500 over a 17 year term.

..."

The **Customer Declarations** section of the **Statement of Suitability** was signed by the Complainant on **07 July 2015** on the following terms:

"...

3 Year Fixed Rate Mortgage

- I confirm that there are no changes to my personal details held by [the Provider]*
- I confirm that I have given consideration to any future known or potential changes in my circumstances when deciding to proceed with this mortgage.*
- I confirm that I understand that I may have to pay charges if I pay off a Fixed Rate Loan Early.*
- I confirm that the Mortgage outlined above is suitable to my needs and circumstances.*
- I have received the relevant product brochures, including terms and conditions along with the [Provider] Terms of Business and the [Provider] Personal Banking Terms and Conditions brochures.*
- I confirm that I did not receive advice or a recommendation during the course of this process.*
- I understand that if I do not meet my repayments on my loan, my account will go into arrears. This may affect my credit rating which may limit my ability to access credit in the future.*

..."

The Complainant signed her agreement to the above terms contained in the **Statement of Suitability** and ticked the box stating:

"I am proceeding with this application"

The Provider issued a **Loan Offer Letter** dated **10 August 2015** to the Complainant based on borrowings in the amount of €174,500.00. The **Loan Offer Letter** referred to a new mortgage loan account ending **3161**.

The repayment details as set out in the **Loan Offer Letter** dated **10 August 2015** in relation to mortgage loan account ending **3161** are as follows:

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“ ...
Loan Type : 3Yr Fix 3.85% until 310818
Capital and Interest
Loan Amount : €174,500.00
Interest Rate : 3.85%
Interest Type : Fixed
Loan Term : 17 years
...”

The **Continuation of the Special Conditions** attached to the **Loan Offer Letter** dated **10 August 2015** include the following:

“...The loan offer is made on the strict understanding that the monies being advanced to the Borrower are being used to discharge, in full, the Borrower’s liabilities to [the Provider] mortgage ref: [ending 4648]....”

The **Mortgage General Terms and Conditions** outline the following in relation to fixed interest rate loans:

- “ ...
- (b) *In the case of a fixed interest rate Mortgage, the following conditions will apply:*
- (i) *The fixed rate quoted shall be subject to variation prior to drawdown in accordance with any variations in the fixed rate offered by the company;*
 - (ii) *The Borrower on the expiry of the Fixed Rate Period may, by prior notice in writing to the Lender, opt to choose a further fixed rate of interest for a certain period if such an option is made available by the Lender and on terms and conditions as may be specified by the Lender. Where such an option is not made available by the Lender or, if available, where the Borrower fails to exercise the option, the interest rate applicable will be a variable rate of interest which may be increased or decreased by the Lender at any time, and in this respect, the decision of the Lender will be final and conclusively binding on the Borrower....”*

The Complainant accepted and signed the **Loan Offer Letter** dated **10 August 2015** by signing the **Loan Acceptance** on **17 August 2015** in the presence of her solicitor on the following terms:

- “ ...
1. *I/We have had the Loan Offer, the Specific Loan Offer Conditions and the General Terms and Conditions explained to me/us by my/our Solicitor and I/we*

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fully understand them. I/We hereby accept the Loan Offer on the terms and conditions specified. I/We undertake to complete the Mortgage Deed as soon as possible.

2. *I/We fully understand accept the specific nature of this Remortgage Mortgage. I/We further understand that any outstanding debt owing (whether owing now or in the future) to [Provider] by me/us at any given time is secured on the Property the subject of the Fixed Mortgage and must be repaid in full before the relevant title deeds can be returned or the relevant mortgage deed released.*
- ...”

By signing the **Loan Acceptance** on **17 August 2015**, the Complainant confirmed that the **Loan Offer Letter** and the conditions attaching to the **Loan Offer Letter** were explained to her by her solicitor and that she fully understood them. As such, I accept that the Complainant had the benefit of independent legal advice when entering into the new mortgage loan agreement and that the terms and conditions attaching to the **Loan Offer Letter** were, or ought to have been, explained to her by her solicitor.

The **mortgage loan statements** provided in evidence show that the Complainant’s new mortgage loan in her sole name was drawn down on **06 October 2015** under mortgage loan account ending **3161** on a fixed interest rate of 3.85%.

The Complainant contends that the Provider failed to allow her to retain a tracker interest rate of ECB + 0.80% when she requested to have her original mortgage loan account transferred into her sole name in **2015**.

The Provider explains in its submission to this Office that it introduced a 10-year “*Home Mover*” product in **2015** which was available to existing mortgage customers buying a new home and whose existing mortgage was availing of a tracker interest rate product. The Provider notes that existing mortgage customers availing of a tracker interest rate were offered a new tracker interest rate for 10 years subject to certain lending and eligibility criteria. However, the Complainant in this instance was not seeking to buy a new home and sell her existing home in **2015**. Rather, the Complainant was seeking to remove the third party’s name from her original mortgage loan under mortgage loan account ending **4648 (01)** so that it could be transferred into her sole name. In doing so, the Complainant wanted to retain the applicable tracker interest rate of ECB + 0.80% and retain the existing mortgaged property.

The Provider states that tracker interest rate products were available from the Provider until **late 2008**, when they were withdrawn from the market. In this regard, the Provider has detailed that in line with its credit policy, customers looking to transfer an existing mortgage from joint names to a sole name basis were required to complete a new loan

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application which would be assessed by the Provider. If a new mortgage loan was agreed, the joint mortgage loan was required to be redeemed and a new mortgage loan on new terms and conditions in the customer's sole name would be agreed and drawn down. The Provider states that this meant that the customer would lose the previously held tracker interest rate and move to an interest rate on offer by the Provider as part of its available product range at the time.

Having considered the details made available it is clear that the Provider was under no obligation, contractual or otherwise, to offer the Complainant a specific tracker interest rate on foot of the Complainant's application for a new mortgage loan under mortgage loan account ending **3161**. In accordance with the Provider's lending criteria in **2015**, porting of existing interest rates was not allowed on foot of a request for transfer of title on the mortgage loan. It was not possible for the Complainant to retain the original mortgage loan on the tracker interest rate of ECB + 0.80%. Rather, in order to have a mortgage loan in her own name, the Complainant was required to redeem the jointly held mortgage loan and submit a new mortgage loan application for new lending in her own name. Tracker interest rates had been withdrawn from the market by **2015**, therefore tracker interest rates were not available for selection in respect of new mortgage loans.

The evidence shows that the Complainant signed a **Statement of Suitability** confirming that she was satisfied to proceed with the application for the Provider's 3-year fixed interest rate of 3.85%. The Provider subsequently issued a **Loan Offer Letter** on **10 August 2015** which clearly set out the applicable fixed interest rate of 3.85% and the **Special Conditions** stipulated that the funds advance in respect of the Complainant's new mortgage loan were to be used to discharge the Complainant's liabilities under mortgage loan account **4648 (01)**. The Complainant accepted the terms and conditions of the new mortgage loan by signing the **Loan Acceptance** on **17 August 2015**. If it was the case that the Complainant believed that the Provider's 3-year fixed interest rate product was not suitable for her, she was under no obligation to accept the terms of the **Loan Offer Letter** dated **10 August 2015**. The Complainant could have remained as a joint mortgage holder with the third party on mortgage loan account ending **4648 (01)** and continued under the terms and conditions of the original loan on a tracker interest rate of ECB + 0.80%. However, the Complainant did not do so and chose to redeem mortgage loan account ending **4648 (01)** and draw down a new mortgage loan in her sole name commencing on a 3-year fixed interest rate of 3.85%.

Having considered the documentation provided in evidence by both the Complainant and the Provider, I do not accept that the Provider acted incorrectly or unreasonably in its management of the Complainant's request to transfer the joint mortgage into her sole name. I also do not accept that there was any obligation on the Provider, contractual or

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otherwise, to offer the Complainant a tracker interest rate of ECB + 0.80% on the new mortgage loan account ending **3161**.

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**

24 March 2023

PUBLICATION

Complaints about the conduct of financial service providers

Pursuant to *Section 62* of the *Financial Services and Pensions Ombudsman Act 2017*, the Financial Services and Pensions Ombudsman will **publish legally binding decisions** in relation to complaints concerning financial service providers in such a manner that—

(a) ensures that—

- (i) a complainant shall not be identified by name, address or otherwise,
 - (ii) a provider shall not be identified by name or address,
- and

(b) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.

Complaints about the conduct of pension providers

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

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(a) ensures that—

(i) a complainant shall not be identified by name, address or otherwise,

(ii) a provider shall not be identified by name or address,

and

(b) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.

