An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2023-0188
Sector:	Banking
Product / Service:	Tracker Mortgage
Conduct(s) complained of:	Refusal to move existing tracker to a new mortgage product
Outcome:	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

This complaint relates to one of two mortgage loan accounts held by the Complainants with the Provider. Both mortgage loans were secured on the Complainants' private dwelling house.

Mortgage loan account ending ***5202***, which was on a tracker interest rate, was redeemed in **August 2013**. The Complainants applied for a new mortgage loan in **April 2013** because they decided to sell their existing private dwelling house and purchase a new one.

The loan type offered to the Complainants, on foot of their application in **April 2013**, is described as "*1 Yr New Business Variable Rate*" in the **Amended Letter of Approval** dated **18 July 2013**. Mortgage loan account ending ***4111*** was drawn down on **16 August 2013** in the amount of €253,000.00 for a term of 30 years on a 1-year new business variable rate of interest. It is this mortgage loan account that is the subject of this complaint.

The Complainants' Case

The Complainants state that they applied for a second mortgage in **2013** which "*would see [them] approved for a negative equity mortgage*". The Complainants submit that they were approved "*to purchase [their] second home for €144,000 and sold [their] first home in negative equity of €108,000*".

The Complainants detail that their first mortgage loan was a tracker mortgage and, when their second mortgage was approved in **August 2013**, they "*were issued a variable rate of 3.99%*". The Complainants assert that the Provider was offering a tracker portability product "*in the first quarter of 2014*" but that this "*was not communicated to [them]*". The Complainants state that they were "*unduly treated*" and "*were not made aware of any future offer of a tracker portability product*".

The Complainants maintain that they were anxious to close the sale because *"[they] had sale agreed on [their] property in [redacted area] and [they] did not want to lose the sale"*. The Complainants state that they originally went to the Provider "*with the intention of keeping [their] mortgage*" and applying for a new mortgage for "*[their] potential new property*". The Complainants submit that the agent of the Provider informed them that this was not "*an option the bank would facilitate*". The Complainants are of the view that if they had been made aware that a tracker portability product would be available from the Provider within six months, they "*most definitely would [have] waited*".

The Complainants state that the internal note relied upon by the Provider in evidence which outlines that they were willing to give up their tracker interest rate is "*extremely misleading as [they] were not living in the property*".

The Complainants submit that they "*were held in duress"* and *"given no option but to go ahead with the only terms and conditions [redacted] explained to [them] thus completely losing [their] tracker mortgage*". The Complainants state that they "*find it hard to believe*" that the Provider "*only came up with this product six months after [they] were offered [their] Mortgag*e". The Complainants are of the view that this is "*under handed*" and that the Provider "*robbed [them]*".

The Complainants assert "*that any member of staff selling mortgage products must be trained on each product that they sell".* The Complainants question how staff of the Provider could "*be trained to and sell a negative equity mortgage when there was no such product to start with*". The Complainants maintain that the Provider was "*doing all they could to take back these tracker mortgages".*

The Complainants submit that the negative equity product booklet was "*not drawn up when [they] applied for the mortgage and there was no such product available but the bank knew it was in their best interest to give [them] a mortgage thus again taking [their] tracker*". The Complainants maintain that they were "*never given this booklet*" and they "*didn't know what a negative equity mortgage was*". The Complainants outline that the Statement of Suitability does not mention "*negative equity mortgage*".

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The Complainants state that they reject the Provider's submissions that it was explained to them that they would lose their tracker interest rate. The Complainants state that the Provider's comments are "*pretentious*".

The Complainants want their mortgage loan account reviewed to ensure that they have been treated fairly by the Provider.

The Provider's Case

The Provider outlines that the Complainants drew down mortgage loan account ending ***5202*** on **18 August 2006** in the sum of €269,950.00. The Provider submits that, some years later, the Complainants completed an application for credit in a branch of the Provider on **19 April 2013** in which the Complainants applied for a 1-year new business variable interest rate.

The Provider asserts that the Complainants wished to sell the mortgaged property the subject of mortgage loan account ending ***5202*** which was being rented to tenants and purchase a new property. The Complainants were living in a rental property at the time and the Provider states that they were "*anxious to sell their existing property and complete the purchase of the new property*". The Provider states that the branch manager had a conversation with the Complainants in relation to the interest rates available at the time. The Provider notes however that the tracker portability product was not discussed because it "*had yet to be launched by the Bank*". The Provider submits that the agent of the Provider "*advised the Complainants that they would be giving up their tracker rate by trading up their property*".

The Provider explains that a Letter of Approval issued on **11 July 2013** to the Complainants "*which offered a loan facility of €253,000.00 over a term of 30 years with a 1 year new business variable rate of 3.99%*" pursuant to mortgage loan account ending ***4111***. The Provider outlines that an Amended Letter of Approval issued on **12 July 2013** "*which offered a loan facility of €253,000.00 over a term of 30 years with a 1 year new business variable rate of 3.99%*". The Provider states that a valuation was supplied to the Provider dated **18 July 2013** and a subsequent Amended Letter of Approval issued on **18 July 2013,** which was signed and accepted by the Complainants on **26 July 2013**. The Provider details that the Special Conditions of the mortgage loan agreement required the Complainants to redeem mortgage loan account ending ***5202*** and sell the mortgaged property the subject of that mortgage loan.

The Provider explains that the Complainants were offered a negative equity mortgage in **July 2013** "*because the private dwelling house they were selling in 2013 was valued less than their then outstanding mortgage loan amount*".

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The Provider states that the Complainants were offered a 1-year new business variable interest rate of 3.99% "*due to the Complainants loan to value which exceeded 90% LTV mortgage facility*". The Provider submits that in order to accommodate the Complainants' wishes to move home, it offered them a negative equity mortgage which "*allows customers to move home even if they are in negative equity on their current home*".

The Provider explains that in **February 2014**, it announced that a new tracker portability product would be launched in **April 2014**, which "*allows customers to move home and keep their existing Tracker Interest rate that applies to their Primary Mortgage plus an additional 1%*". The Provider submits that a booklet was produced in **2014** which "*explained how a customer could move home while having negative equity*". The Provider outlines that it began accepting applications for tracker portability home loans from **28 April 2014**.

The Provider details that the Complainants' original mortgage loan account ending ***5202*** which was operating on a tracker interest rate was redeemed in **August 2013**, prior to the launch of the tracker portability product, therefore this option was not available to them. The Provider is of the view that it "*was not in a position to know in advance what interest rates or products it would be offering in the future*".

The Provider states that it rejects the Complainants' assertion that the Provider "*robbed*" them and that it was "*blind folding*" the Complainants.

The Provider seeks to rely on an internal note which details that the Complainants were willing to forego their tracker interest rate and submits that this note relates "*to one of the options dismissed by the Complainants which was to retain and live in the existing mortgage property at the time of the discussion and retain the existing loan and tracker rate*". The Provider is of the view that the note indicates that the option of selling the existing mortgaged property resulting in the redemption of their original tracker mortgage loan "*was the preferred option of the Complainant*s".

The Provider outlines that mortgage loan account ending ***4111*** is still active with the Provider.

<u>The Complaints for Adjudication</u>

The complaints for adjudication are as follows:

a) The Provider failed to inform the Complainants during the mortgage loan application process in **2013** that the tracker portability product would be available in early **2014**; and

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b) The Provider failed to explain to the Complainant why it considered the negative equity mortgage product to be suitable for the Complainants in **2013**.

Decision

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

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

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

A Preliminary Decision was issued to the parties on **21 August 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 this complaint, it is necessary to review and consider the Complainants' mortgage loan documentation and certain interactions between the Complainants and the Provider in relation to the Complainants' application for a new mortgage loan between **April 2013** and **August 2013.**

Prior to applying for the mortgage loan that is the subject of this complaint, the Complainants held a mortgage loan with the Provider under mortgage loan account ending ***5202.*** While I have not been provided with the mortgage loan documentation in relation to mortgage loan account ending ***5202***, it is not disputed between the parties that this

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mortgage loan was operating on a tracker interest rate. This mortgage loan was secured against the Complainants' existing private dwelling house at the time. The Complainants subsequently approached the Provider seeking to sell their existing private dwelling house and sought additional finance to purchase a new private dwelling house.

An **Application for Credit** was signed by the Complainants on **19 April 2013**. The following details are outlined under the **Details of Mortgage** section of the application:

> *"…*
>
> | | |
> |---|---|
> | *Amount of Loan required* | *€275,000.00* |
> | *Purchase price / value of property* | *€150,000.00* |
> | *Loan type* | *1 Yr New Business Variable Rate* |
> | *Repayment Term required* | *30 years(s)* |
>
> *…"*

The Complainants signed the **Application for Credit** on **19 April 2013** confirming the following:

> *"…*
>
> *I/We have had the necessary time to consider and query the information provided to me in relation to my/our application.*
>
> *…"*

The Provider issued a **Statement of Suitability** to the Complainants on **19 April 2013** detailing a loan amount of €275,000.00 and a "*property price/value*" of €150,000.00. The **Statement of Suitability** further provides that based on the Complainants' discussions with the Provider, the Complainants agreed that a 1-year new business variable interest rate mortgage loan was the most suitable product for them based on their needs and circumstances.

It appears that the Complainants did not proceed with this loan amount as a document titled **Credit Application Details & Recommendation Template** dated **25 April 2013** has been submitted in evidence by the Provider which details the following under the *"Proposal"* section:

> *"[The Complainants] have now received an offer of €135,000.00 on their property in [redacted address], They have also sourced a property in [redacted location] (where they are currently renting) which they can purchase for €149,00.00. They are seeking our assistance by way of a new mortgage of €255,000 which will allow them purchase the new property and carry over the negative equity from the [redacted address] property…"*

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The section titled *"Recommendation/Rationale Why are you giving this facility"* outlines as follows:

> *"…*
> *Customers feel so strongly about not wanting to return to their property that they are willing to give up the tracker rate that attaches*
> *…"*

Internal e-mail correspondence dated **May 2013** has been submitted into evidence by the Provider in relation to the Complainants' credit application. An e-mail dated **17 May 2013** states as follows:

> *"…*
> *It is a Negative Equity case where Customers have an Offer on the table in relation to the property they are selling, they are worried about losing out on this deal as they have not yet had feedback in relation to this proposal*
>
> *Approval of the proposal as submitted would allow them consent to move to Sale Agreed & also allow them the ability to purchase an alternative property*
> *…"*

A further e-mail dated **21 May 2013** states as follows:

> *"…*
> *Overall I am ok with this application, which I approve.*
> *I think that the loan amount should be reduced to €243k to comply with the credit policy requirement of customers covering min 10% of purchase price* ***plus costs****.*
> *…"*

A further document titled **Credit Application Details & Recommendation Template** dated **11 June 2013** has been submitted in evidence by the Provider which details the following under the *"Proposal"* section:

> "…
> *Please note that this is an amendment to a previously submitted application for €255,000 which was approved by [redacted] at €243,000*
>
> *[The Complainants] have now agreed sale for their property in [redacted] for €135,000 - They had been approved to purchase a property in [Redacted] for*

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€149,000, however this sale fell through & they now wish to purchase an alternative property at [redacted address] with an asking price of €170,000

…

Purchase Price	*€170,000*
Less 10%	*€17,000*
Balance	*€153,000*
Plus Outstanding NE	*€109,000*
Total Required	*€262,000"*

The section titled "*Recommendation/Rationale Why are you giving this facility"* outlines as follows:

> *"…*
> *No loss to the bank here, very well conducted accounts*
> *…"*

The Provider issued a further **Statement of Suitability** on **11 July 2013** to the Complainants detailing a loan amount of €253,000.00 and a "*property price/value*" of €160,000.00. The Provider issued the Complainants with a **Letter of Approval** on **11 July 2013** offering a loan facility of €253,000.00 over a term of 30 years on a 1-year new business variable rate of 3.99%. I note that the Complainants did not draw down the mortgage loan pursuant to this **Letter of Approval**.

The Provider issued a further **Statement of Suitability** to the Complainants on **12 July 2013** together with an **Amended Letter of Approval** dated **12 July 2013**. The **Amended Letter of Approval** dated **12 July 2013** offered a loan facility of €253,000.00 repayable over a term of 30 years on a 1-year new business variable interest rate of 3.99%. It appears that the Complainants did not draw down the mortgage loan pursuant to the **Amended Letter of Approval** dated **12 July 2013**.

The Provider issued a further **Statement of Suitability** to the Complainants on **18 July 2013** which details as follows:

" …

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

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…

Dear [Complainants],

The following outlines our proposal based on information you have given us regarding your personal circumstances, financial needs and plans. The loan preferences and options you have chosen are also listed, as at 18th June, 2013.

Proposal

You have selected a variable rate loan type from the range which we are prepared to offer you based on your needs and circumstances. A variable rate mortgage offers you flexibility, you can increase your repayments, use a lump sum to pay off all or part of your mortgage or re-mortgage without having to pay any fixed rate breakage fees. You are aware that a variable rate may increase or decrease depending on market factors meaning your mortgage repayments may increase or decrease.

…

Mortgage details agreed

We have discussed your loan amount with you and your surplus funds. We have advised you that by reducing your mortgage you can reduce the amount of interest that you pay. We recommended that you consider your own personal financial circumstances and ensure that you have sufficient funds available to you in case of emergency. Based on this discussion you have advised us that you are happy to put your surplus funds towards your deposit.

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 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* — *€253,000.00*
- *Property price/value* — *€160,000.00/€160,000.00*
- *Loan Purpose* — *Moving House*
- *Loan Type* — *1 Yr New Business Variable Rate*
- *Repayment term required* — *30 Years*

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- *Flexible repayment option* *None*

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

The Provider issued an **Amended Letter of Approval** dated **18 July 2013** to the Complainants which details as follows:

"…

Loan Type:	*1 Yr New Business Variable Rate*

Purchase Price / Estimated Value:	*€ 160,000.00*
Loan Amount:	*€ 253,000.00*
*Interest Rate:**	*3.99%*
Term:	*30 year(s)*
…	
*LTV:***	*158%*

**Please note that this rate may change prior to drawdown of the mortgage in response to market conditions.*

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

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

"…
Special Conditions
…
7. The interest rate specified in the Letter of Approval is the New Business Variable Rate and will apply for a period of 12 months from the date of the advance but may be varied within the said 12 month period (and/pr at any time prior to drawdown of the advance) without regard to variations in [the Provider] standard variable rate or any reference or other [Provider] interest rate. On expiry of the 12 month period, the New Business Variable Rate will cease and the interest rate applicable to this loan shall be the then prevailing standard variable rate applicable to loans of this type

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…

11. As all or part of the loan to be advanced under this Letter of Approval is to be applied on the closing date of this loan to discharge any shortfall in the amount due to [Provider] in relation to [Provider] loan on the Existing Property, the Applicants Solicitor is to contact the Mortgage Processing Centre of [Provider] [redacted telephone number] in relation to arranging the discharge of the said shortfall.

12. The entire amount of the loan drawn down under this Letter of Approval will be a charge on the property to be mortgaged.
…
16. That the total loan with [the Provider] [ending 5202] be discharged from the sale of your existing property and appropriate evidence be submitted to [the Provider].
…
18. A binding and unconditional contract for sale of the Applicant's property at [redacted address] "The Existing Property" must be in place and show a consideration of €135,000 as the sale price and have a closing date of not later than 3 months from the date of the Letter of Approval".

The **Amended Letter of Approval also details the following in relation to variable rate loans:**

"VARIABLE RATE LOANS- "THE PAYMENT RATES ON THI HOUSING LOAN MAY BE ADJUSTED BY THE LENDER FROM TIME TO TIME"

The **Acceptance of Loan Offer** was signed by the Complainants and witnessed by their solicitor on **26 July 2013** on the following terms:

"…1. I/we the undersigned accept the within offer on the terms and conditions set out in:
*i. **Letter of Approval dated the 18th day of July 2018.****
ii. the General Mortgage Loan Approval Conditions
iii. The Irish Banking Federations General Housing Loan Mortgage Conditions

copies of the above which I/we have received, and agree to mortgage the property to [the Provider] as security for the mortgage loan.
…

4. My/our Solicitor has fully explained the said terms and conditions to me/us.

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> **Note that the date of the Letter of Approval inserted above is the date of the most recent Letter of Approval. The most recent Letter of Approval cancels all earlier Letters of Approval.…"*

It is clear that the **Amended Letter of Approval** dated **18 July 2013** in relation to mortgage loan account ending ***4111*** provided for a loan amount in the sum of €253,000.00 commencing on a variable interest rate of 3.99% for the first 12 months of the term of the loan with the Provider's prevailing variable interest rate to apply thereafter.

The **mortgage loan account statements** for mortgage loan account ending ***4111*** indicate that the mortgage loan drew down on **16 August 2013**.

The Complainants' original mortgage loan account ending ***5202*** was redeemed in **August 2013** in accordance with **Special Conditions** of the **Amended Letter of Approval**.

The Complainants' solicitor wrote to the Provider on **23 August 2013** enclosing a cheque in the sum of €241,791.39 as follows:

> *"…*
> ***Mortgage Ref:*** ***[ending 5202]***
> *…*
> *We refer to the above matter and now enclose herewith our Clients Account cheque in the sum of €241,791.39 to redeem our client's mortgage as detailed above.*
>
> *We enclose herewith a copy of your letter dated 23rd inst, confirming the redemption figure for today's date.*
> *…"*

The Complainants are of the view that the Provider failed to explain to them why it considered the negative equity mortgage product to be a suitable product for them in **2013**.

The evidence shows that the Complainants were offered a negative equity mortgage in **July 2013** because they wanted to sell their existing mortgaged property (which was secured against their original mortgage loan account ending ***5202***) and this property was valued less than the amount owed by the Complainants in relation to mortgage loan account ending ***5202***.

At the time of the mortgage loan application in **April 2013**, the outstanding balance on the Complainants' original mortgage loan was €243,601.75 and the Complainants had received an offer of €135,000.00 for the sale of their existing mortgaged property at the time

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leaving a shortfall of approximately €108,000.00. By **June 2013**, the Complainants had been approved to purchase a property for €149,000.00, however this sale fell through, and the Complainants then wished to purchase a property for €170,000.00. The evidence shows that by the time the Complainants had gone sale agreed on the new property in or around **July 2013** and had been issued with an **Amended Letter of Approval** dated **18 July 2013**, there was an outstanding negative equity balance of approximately €109,000.00.

The **internal notes** show that the Complainants were willing to purchase the new property and carry over the negative equity from their existing private dwelling house at the time that was secured against mortgage loan account ending ***5202***. I am satisfied therefore that the negative equity mortgage product was a suitable product for the Provider to offer the Complainants at the time as it allowed the Complainants to purchase a new property even though they were in negative equity on their existing property at the time. The negative equity mortgage product allowed the Complainants to trade up and bring the negative equity from their existing home to the new property.

The Provider issued the Complainants with a **Statement of Suitability** dated **18 July 2013** offering a loan amount of €253,000.00 to purchase a property valued at €160,000.00. The loan amount of €253,000.00 included the negative equity balance from mortgage loan account ending ***5202***. The nature of the negative equity mortgage product was offered on a variable interest rate basis and the reasons why this product was considered suitable, or the most suitable, for the Complainants' particular needs, objectives and circumstances was set out in the **Statement of Suitability** dated **18 July 2013.** The Provider also issued an **Amended Letter of Approval** dated **18 July 2013** to the Complainants setting out the particulars of the new mortgage loan and the terms and conditions attached to the mortgage loan agreement. The loan to value detailed in the **Amended Letter of Approval** dated **18 July 2013** was 158% as this included the negative equity portion. The **Special Conditions** of the **Amended Letter of Approval** dated **18 July 2013**, as detailed above, required the Complainants to redeem their existing mortgage loan under mortgage loan account ending ***5202*** with the proceeds of sale from their existing property and to discharge any shortfall in the amount due to the Provider in relation to mortgage loan account ending ***5202***.

The decision to accept the **Amended Letter of Approval** dated **18 July 2013** which provided for a loan amount of €253,000.00 on a variable interest rate was a decision that only the Complainants could make, and the Complainants had the benefit of legal advice before accepting the Provider's loan offer. In circumstances where the Complainants wished to sell their existing mortgaged property for €135,000.00 and the outstanding loan balance on mortgage loan account ending ***5202*** was much greater than this, I am of the view that the Complainants were on notice that they were in a negative equity situation. It

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was open to the Complainants to decline the Provider's loan offer if they were not happy with the loan amount that was offered or the nature of mortgage loan.

The Complainants further assert that the Provider incorrectly failed to inform the Complainants during the mortgage loan application process in **2013** that the tracker portability product would be available in early **2014**. In this regard, the Complainants take issue with the fact that they were not permitted to transfer the tracker rate of interest that had applied to their original mortgage loan account ending ***5202*** to their new mortgage loan account ending ***4111***. The Complainants appear to be of the view that the Provider should have informed them in **July 2013** that it intended to launch a tracker portability product in the first quarter of **2014**.

The Provider explains in its submissions that it announced its new product offerings to the market, to include a tracker portability product, in **February 2014**. The Provider has submitted a brochure in evidence in relation to the tracker portability product which is dated **24 February 2014**.

It is important for the Complainants to be aware that despite the announcements and advertising campaigns launched by the Provider in respect of its tracker portability product offering, this product was not available to any customer of the Provider until **April 2014**.

It is also worth noting that the Complainants had indicated in their initial submissions to this Office that they were anxious to sell their existing property and purchase a new private dwelling house, however, in later submissions, the Complainants detail that they were not in fact anxious to sell and that they approached the Provider with the intention of retaining their original mortgage loan "*and applying for a new mortgage for our potential new property*".

The internal notes detailed above from **April** and **May 2013** suggest that the Complainants were keen to move out of their existing mortgaged property and were keen to sell that property as they had received an offer. While I acknowledge that the Complainants may have felt under pressure to sell their existing mortgaged property which was the subject of their original mortgage loan that operated on a tracker interest rate at the time, the decision to sell that property and accept the offer of a new mortgage loan on a variable interest rate was a decision that only the Complainants could make.

As detailed above, the **Amended Letter of Approval** dated **18 July 2013**, which was signed and accepted by the Complainants in the presence of their solicitor, and which formed the contractual basis of the loan agreement between the parties, provided for variable interest rate mortgage loan as opposed to a tracker interest rate. The **Special Conditions** attached to the **Amended Letter of Approval** dated **18 July 2013** clearly stipulated that mortgage

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loan account ending ***5202*** had to be redeemed if they wished to proceed with the purchase of their new property and draw down a new mortgage loan under mortgage loan account ending ***4111***. By redeeming mortgage loan account ending ***5202***, the Complainants' contractual entitlement to a tracker interest rate ended. The new mortgage loan which was for the purposes of purchasing the new property was completely separate from the original mortgage loan under mortgage loan account ending ***5202***, with distinct terms and conditions applying to that mortgage loan.

If the Complainants were not happy with the terms of the **Amended Letter of Approval** to include the variable interest rate offered, the Complainants could have decided not to accept the offer made by the Provider. Instead, the Complainants accepted the Provider's offer by signing the **Acceptance of Loan Offer** on **26 July 2013**, and in doing so, confirmed that their solicitor had fully explained the terms and conditions of the mortgage loan to them.

The Provider was under no obligation to offer the Complainants advice with respect to interest rate options. Any information given by the Provider with respect to interest rates available could only be given on the basis of information available at the time in **July 2013**, prior to the tracker portability product being launched in the market. The Provider was therefore not in a position to offer the Complainants a tracker portability product during the mortgage loan application process in **2013** because it simply was not available at that time.

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

<u>Conclusion</u>

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

JACQUELINE O'MALLEY
HEAD OF LEGAL SERVICES

12 September 2023

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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.