



An tOmbudsman Seirbhísí
Airgeadais agus Pinsean

Financial Services and
Pensions Ombudsman

Ombudsman's Digest of Legally Binding Decisions

Tracker Mortgage Interest Rates



Volume 3 - Published February 2020

Contains summaries based on decisions in relation to tracker mortgage interest rates, which issued between January 2019 and January 2020

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The Financial Services and Pensions Ombudsman (FSPO)

The FSPO was established in January 2018 by the **Financial Services and Pensions Ombudsman Act 2017**. The role of the FSPO is to resolve complaints from consumers, including small businesses and other organisations, against financial service providers and pension providers.

We provide an independent, fair, impartial, confidential and free service to resolve complaints through either informal mediation, leading to a potential settlement agreed between the parties, or formal investigation and adjudication, leading to a legally binding decision.

When any consumer, whether an individual, a small business or an organisation, is unable to resolve a complaint or dispute with a financial service provider or a pension provider, they can refer their complaint to the FSPO.

We deal with complaints informally at first, by listening to both parties and engaging with them to facilitate a resolution that is acceptable to both parties. Much of this informal engagement takes place by telephone.

Where these early interventions do not resolve the dispute, the FSPO formally investigates the complaint and issues a decision that is legally binding on both parties, subject only to an appeal to the High Court.

The Ombudsman has wide-ranging powers to deal with complaints against financial service providers. He can direct a provider to rectify the conduct that is the subject of the complaint. There is no limit to the value of the rectification he can direct. He can also direct a provider to pay compensation to a complainant of up to €500,000. In addition, he can publish anonymised decisions and he can also publish the names of any financial service provider that has had at least three complaints against it upheld, substantially upheld, or partially upheld in a year.

In terms of dealing with complaints against pension providers the Ombudsman's powers are more limited. While he can direct rectification, the legislation governing the FSPO sets out that such rectification shall not exceed any actual loss of benefit under the pension scheme concerned. Furthermore, he cannot direct a pension provider to pay compensation. He can only publish case studies in relation to pension decisions (not the full decision), nor can he publish the names of any pension provider irrespective of the number of complaints it may have had upheld, substantially upheld, or partially upheld against it in a year.

Formal investigation of a complaint by the FSPO is a detailed, fair and impartial process carried out in accordance with fair procedures. For this reason documentary and audio evidence and other material, together with submissions from the parties, is gathered by the FSPO from those involved in the dispute, and exchanged between the parties.

Unless a decision is appealed to the High Court, the financial service provider or pension provider must implement any direction given by the Ombudsman in his legally binding decision. Decisions appealed to the High Court are not published while they are the subject of legal proceedings.

Publication of FSPO legally binding decisions

The FSPO has the power to publish legally binding decisions in relation to complaints concerning financial service providers under Section 62 of the **Financial Services and Pensions Ombudsman Act 2017**.

The legislation requires that decisions should be published in a manner that ensures that a complainant is not identified by name, address or otherwise and a provider is not identified by name or address. Publication must also comply with Data Protection legislation and regulations.

When the Ombudsman issues a legally binding decision, that decision is subject to a potential statutory appeal to the High Court within 35 calendar days from that date. For this reason the FSPO does not publish decisions before the elapse of the 35 day period available to the parties to issue a statutory appeal to the High Court. In addition, decisions which have been appealed to the High Court are not published, pending the outcome of any such Court proceedings.

Before any legally binding decision is published by the FSPO it undertakes a rigorous and stringent review to ensure that the non-identification requirements of the Act are adhered to in order to protect the confidentiality of the parties.

The legislation also provides the FSPO with the power to publish case studies of decisions relating to pension providers, but not the full decision.

This Digest contains short summaries of a selection of 16 tracker mortgage decisions. Some details within the summaries referenced in this Digest, such as names and locations, have been altered in order to protect the identity of the complainants. It is important to keep in mind that these are only short summaries. Given the complex issues in dispute in these complaints you are encouraged to read the full text of the decisions. Each summary, in the online version of this document includes a link at the top of the page, to the full text of the decision, which was issued to the parties to that complaint.

To provide the maximum possible access to the Ombudsman's decisions we have created an online database of legally binding decisions. This can be accessed at www.fspo.ie/decisions. This database now holds the full text of almost 650 of the Ombudsman's decisions issued since January 2018 in relation to complaints against financial service providers, including 25 tracker mortgage decisions. Decisions will continue to be added on an ongoing basis.

This Digest of Ombudsman's decisions is the third volume in a series of digests.

Volume 1 published in January 2019 contains summaries and case studies based on decisions issued between January and December 2018.

Volume 2 published in February 2020 contains summaries and case studies based on decisions issued between January and December 2019.

Volume 3 published in February 2020 contains summaries of decisions in relation to tracker mortgage interest rate complaints, which issued between January 2019 and January 2020.

Each of the digests and all published decisions are available at www.fspo.ie/decisions.

Information on how to access decisions and search for areas or decisions of specific interest in the decisions database is included on Page 9 of this Digest.

Message from the Ombudsman



Background

This Office and its predecessor office of the Financial Services Ombudsman (FSO), has invested considerable time and resources in

dealing with complaints against financial service providers relating to tracker interest rates on mortgage loans.

Shortly after I took up office as Financial Services Ombudsman in April 2015, it became evident to me that the loss of tracker interest rates on mortgages for certain people who had wrongly been denied them had the potential to cause serious hardship for these people. It was also clear to me that the FSO and its successor FSPO would play a key role in resolving the problem, both for individual borrowers and for larger groups of borrowers through cooperation with the Central Bank of Ireland. Because of this, we invested considerable time and resources in assembling the data available within the FSO, at that time, in relation to tracker complaints. In addition we worked, and continue to work, in close cooperation with the Central Bank of Ireland to ensure that consumers wrongly denied tracker interest rates on mortgage loans have them returned in the most efficient and effective way possible.

Cooperation with the Central Bank of Ireland

The FSO had built up a considerable body of information in relation to tracker mortgage complaints. However, this information was contained in hundreds of individual complaint files. Realising how valuable the information contained in these files could be, we undertook an analysis of tracker interest rate related complaints where decisions had been made between 2009 and July 2015.

We engaged with the Central Bank to establish what information would be of most assistance to it. We presented the findings of our analysis to the Central Bank in November 2015. I believe this information was of assistance to the Central Bank in scoping the industry wide Tracker Mortgage Examination which it directed.

The objective of the Examination directed by the Central Bank was to ensure that lenders conducted a complete review of their mortgage loan books to assess compliance with both contractual and regulatory requirements relating to tracker mortgage contracts. In situations where customer detriment was identified from the Examination, banks were expected to provide appropriate redress and compensation in line with the Central Bank's *'Principles for Redress'*, so as to ensure fair outcomes for customers of those lenders.

It has always been my view that the most effective and efficient way to provide redress and compensation to borrowers who have been wrongly denied tracker interest rates on their mortgage loans, was for the banks to cooperate fully with the Central Bank Examination.

For this reason, we communicated with each complainant who had a tracker interest rate related complaint with us, explaining why I believed that it was in their best interest to put their complaint on hold, pending completion of the Examination.

I realise that having their complaint put on hold was frustrating for complainants. However, given that the Central Bank Examination has resulted in over 40,500 customers being identified as entitled to redress and compensation and over €690 million being paid out to customers, I believe this was the correct approach.

Progressing the resolution of complaints

As the various financial service providers each completed the Examination directed by the Central Bank of Ireland, in respect of individual borrowers, we commenced progressing complaints against those lenders.

Where complainants inform us that they have agreed a settlement with their financial service provider, we close the file. Where complainants have not been offered redress or compensation by their lender or where complainants are not satisfied with an offer of redress or compensation from their financial service provider, then the informal mediation and formal investigation processes of this office are, in most cases, available to those complainants.

The complaints relating to tracker mortgages that we are currently dealing with may include that the complainant:

- › Did not receive a tracker rate of interest and still believes they are entitled to one
- › Received a tracker rate of interest but believes the wrong margin has been applied
- › Received a tracker rate of interest but believes it has been applied from the wrong date
- › Believes that the compensation offered to them by their lender is inadequate

Volume and management of complaints

This office inherited over 600 tracker related complaints from the FSO in January 2018 and we received more than 700 additional complaints in 2018 and almost 500 in 2019.

We have been in ongoing communication and interaction with over 1,800 complainants and their providers in relation to tracker mortgage complaints over the last two years. This work was undertaken while at the same time managing more than 10,000 other non-tracker related complaints.

We closed 143 tracker related complaints in 2018 and 516 in 2019. Of the complaints closed in 2019, we resolved 264 complaints through our informal mediation process. 174 were closed during the investigation, adjudication or legal services process. We closed 78 complaints at registration and assessment stage. At the end of 2019, we had 1,152 tracker mortgage complaints on hand.

Legally binding decisions issued

Of the 25 legally binding decisions relating to tracker mortgage complaints published in conjunction with this Digest, 2 were upheld, 2 were substantially upheld, 4 were partially upheld and 17 were not upheld.

Complaints upheld

In the case of the two complaints fully upheld, the banks had restored the complainants' correct tracker mortgage rate from the correct date and at the correct rate.

However the complainants were unhappy with the level of compensation offered by their bank. In both complaints I found that the compensation offered was insufficient given the particular circumstances of the complainants. As a result, I directed compensation of €52,500 in one complaint and €4,500 in another.

In one of the complaints that I substantially upheld I directed the bank to restore the complainants to a tracker interest rate on the mortgage, repay the interest overpaid by the complainants and pay €2,500 compensation. As the loan had been sold by the bank to a third party financial service provider, I directed the bank to make arrangements with the purchaser of the loan to ensure the complainants continued to benefit from the correct tracker rate of interest for the remainder of the mortgage. There were a number of other similar complaints against that same bank in the process of being investigated by my Office. The bank has indicated its intention to apply my decision across the cohort of customers in the same category. I welcome this approach by the bank and for this reason, I have put any complaints that relate to mortgage loan accounts that fall into this cohort on hold, to allow the decision to be applied to other customers in similar circumstances.

In the case of the second complaint that I substantially upheld the bank had restored the complainants' correct tracker interest rate from the correct date and at the correct rate. However, I found that the compensation offered was insufficient given the particular circumstances of the complainants. I directed the bank to pay €45,000 compensation.

In addition to complaining about the amount of compensation offered, the complainants had objected to the manner in which the sum overcharged by the bank was to be refunded. I did not uphold this aspect of the complaint.

Of the complaints I partially upheld, in one case I found the bank had delayed in offering the complainant a tracker portability mortgage, so I directed €3,000 in compensation. In two complaints, while I found that the complainants were not entitled to a tracker interest rate on their mortgages, I found the quality of the information given to the complainants was lacking and I directed the bank to pay €2,500 in compensation in one case and €3,000 in another. In the fourth complaint that I partially upheld, I found that the complainants were not entitled to a tracker interest rate on their mortgage.

However, I was concerned that the bank did not appear to be aware of its obligations under the Central Bank's Consumer Protection Code in relation to the retention of records. Therefore, I directed the bank to review and change its practice in relation to maintaining consumer records to ensure that it acts in accordance with the Consumer Protection Code.

Complaints not upheld

It can be seen from the tracker related decisions published with this digest that 17 complaints were not upheld. I believe it is likely that it will continue to be the case that a large number of complaints relating to tracker interest rates on mortgage loans will not be upheld. This is because some complainants have unrealistic expectations, believing that their desire to have a tracker interest rate provides a basis for requiring their bank to grant them one. There seems to be a lack of understanding, by some complainants, that for a person to have an entitlement to a particular tracker interest rate there must be some contractual or other obligation on their bank entitling them to such a rate.

Some of the unsuccessful arguments put forward by complainants in support of their argument for an entitlement to a tracker mortgage include:

- › We have a constitutional right to a tracker interest rate mortgage.
- › My twin was given a tracker interest rate mortgage.
- › My business partner was given a tracker interest rate mortgage.
- › When tracker interest rates became more favourable than the employee preferential mortgage, the bank (my employer) should have informed me so that I could have switched to a tracker interest rate on my mortgage.
- › I would like to have had a tracker interest rate on my mortgage but I was never offered one. This argument has been put forward by complainants who took out their mortgages even during the period before tracker mortgages became available on the market and similarly by complainants who took out their mortgages after tracker mortgage products were no longer available on the market.
- › I was offered a tracker interest rate on my mortgage loan but it was too expensive at the time so I refused it and I was never offered one again when they were better value.
- › I was approved for a tracker interest rate mortgage loan in 2008 but I didn't draw it down at the time and when I went back looking for it in 2015, the bank wouldn't give it to me.
- › I have a top-up mortgage loan that is on a tracker interest rate. I should have been offered the same tracker interest rate (per the terms and conditions of my top-up loan) on my main mortgage loan on the expiry of the fixed interest rate period.
- › The bank never told me they were withdrawing tracker interest rates from the market generally. If the bank had told me it was doing this, I would have asked for a tracker interest rate at the time.
- › I had a tracker interest rate on my mortgage loan and I was moving house. The bank would not let me keep the same mortgage loan and "substitute" the new property as the security for the mortgage loan.

I believe the publication of these tracker mortgage decisions will be of assistance to consumers and their advocates and also to financial service providers, in resolving tracker related disputes at the earliest possible opportunity.

Acknowledgements

I want to thank my management and staff for all their hard work and ongoing commitment in dealing with the very challenging volume and complexity of complaints. I would also like to thank the complainants for their patience and cooperation and the providers for their cooperation with our processes.

Together with my management and staff, I will continue to use the powers the Oireachtas has given me, in an impartial manner, to ensure a fair outcome for parties in respect of complaints made to my office.



Ger Deering

Financial Services and Pensions Ombudsman

February 2020

How to search our decisions on www.fspo.ie

Accessing our database of decisions

Our database of legally binding decisions is available online at www.fspo.ie/decisions. To refine your search, you can apply one or a number of filters.

1 Applying filters to narrow your search

To filter our database of decisions, you can firstly select the relevant sector:



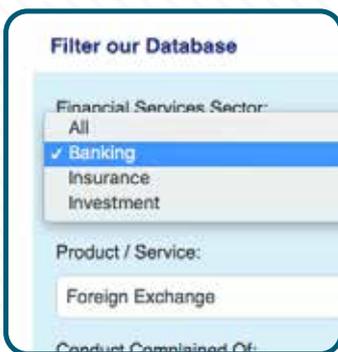
2

Having filtered by sector, the search tool will then help you to filter our decisions further by categories relevant to that sector such as:

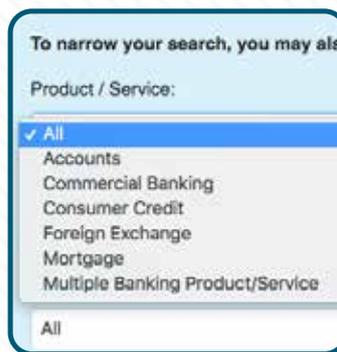
- ▶ product / service
- ▶ conduct complained of



✓ Sector



✓ Product / Service

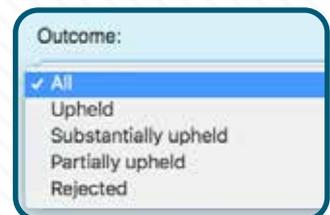


✓ Conduct complained of



3

You can also filter our database of decisions by year, and by the outcome of the complaint, i.e. whether the Ombudsman Upheld, Substantially Upheld, Partially Upheld or Rejected the complaint.



Once you have found the decision you are looking for, click **View Document** to download the full text in PDF.



Banking

[READ THE FULL DECISION HERE](#)

Reference: 2019-0045

Complainants dissatisfied with the level of compensation offered due to personal hardship suffered

Fergus and Niall took out a joint mortgage with the bank in 2007. They both lived with their respective partners in the mortgaged property. They also rented rooms to other paying tenants. In November 2008 they broke from a fixed rate before it was due to expire. When they did so, the bank did not inform them that this meant it would not then offer them a tracker rate in 2010 when the fixed rate had been due to expire. As a result, they ended up on a higher interest rate from 2010 to 2015.

In 2015, the bank admitted its failings, accepting that it had not informed them that by breaking out of the fixed interest rate early they had lost their contractual right to a tracker rate of ECB + 0.75% from 2010. It offered to move them on to the tracker rate, readjust the balance of the mortgage by €43,473.27 to where it would have been had the correct rate been applied, provide a net refund of overpayments of €52,852.19 and pay €9,478.63 compensation in recognition of its failure.

From 2009 to 2013, Fergus and Niall had been engaged in renovations to the property, which only progressed when they could manage to scrape together some funds. This became increasingly difficult as their mortgage repayments increased with rising interest rates. They continued to live in the property with their partners during the four years when the building work was going on, which meant that living conditions were appalling. They went one winter without central heating and with a hole in a wall of the new build area.

Had they been on the correct interest rate, they claimed, they would have had more funds available for building works and the building period could have been reduced by two years. Had this been the case, they would have been able to rent out rooms in the property, as they had done previously. This would have contributed €800 a month of rental income towards their mortgage loan repayments.

The financial strain prevented either of them from getting married at a time they wished. Despite this, they never missed a repayment on their mortgage.

The higher rates also meant that they had to restructure their mortgage loan on several occasions to keep up the repayments. The restructures meant they had to pay additional interest and contributed to the stress they were already feeling. When Fergus contacted the bank to discuss the monthly repayments to prevent the mortgage falling into arrears, he was often met with poor customer service.

The pair accepted the balance reduction of €43,473.27 and the interest refund of €52,852.19. However, they did not accept the compensation of €9,478.63. They stated that this amount did not reflect the undue stress and hardship that they had suffered. They appealed to the bank's independent appeals panel. It rejected the appeal and the complaint progressed to the Ombudsman.

The bank maintained that the level of compensation was reasonable. It argued the request for additional compensation did not take into account the interest savings Niall and Fergus made from 2008-2010 when they broke the fixed interest rate early. However, as a gesture of goodwill, the bank offered an additional €7,000.

The Ombudsman stated that the "interest savings" argument was irrelevant; as this was before the tracker rate should have been implemented in 2010.

The Ombudsman found that Fergus and Niall had found themselves in a situation where they were in constant engagement with the bank seeking to agree a solution so that they could finish the building works and restore full repayments.

Continued on page 11

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However, the reality was that between 2010 and 2015, Fergus and Niall were making significant prepayments on the mortgage loan as a result of the overcharge of interest. For example by November 2011, had the correct interest rate been applied they would have had a credit of €17,000. By November 2014, they would have been in credit to the tune of €42,000 if the correct interest rate had been applied.

In reviewing the evidence, the Ombudsman highlighted correspondence from Niall and Fergus to the bank from 2011. This correspondence made it clear that, due to the numerous increases of the interest rate, that the two had a difficult choice between completing the building works or meeting their monthly mortgage payments. At this point, the higher interest rate meant Fergus and Niall were being overcharged by up to €1,800 per month. During the time between 2011 and 2013 they did not miss any agreed repayments with the bank.

The Ombudsman also noted the significant fact that both Fergus and Niall had found themselves in situations of unemployment, one for a prolonged period and the other as a result of an accident during the period of overcharging. The bank sought to argue that aside from the interest overcharge, the periods of unemployment would have had an impact on the income available to Fergus and Niall to complete the build. The Ombudsman found that the periods of unemployment exacerbated the situation with respect to the bank's overcharge on the complainants' mortgage loan account.

The Ombudsman found that it was clear that the bank's overcharging denied Fergus and Niall the opportunity of making informed financial and lifestyle decisions and greatly added to their stress and hardship. The Ombudsman upheld the complaint and directed the bank to pay a sum of €52,500 in compensation for the loss, expense and inconvenience they had suffered. This sum included the compensation already offered by the bank.

Banking

[READ THE FULL DECISION HERE](#)

Reference: 2019-0374

Mortgage holder refused a rate of ECB + 1.25% when offered in 2007 and expected it would be offered again

John took out a mortgage loan from the bank in 2004. The interest rate was fixed for one year at 2.75%. Upon expiry of the first fixed interest rate period in 2005, he opted for a further two-year fixed rate of 3.74%. When this fixed interest rate was due to expire in 2007, the bank sent John a letter with interest rate options, which included a tracker interest rate of 4.75% (ECB + 1.25%).

John did not accept the tracker rate and decided instead to opt for a further fixed interest rate for three years at 5.10%. John completed and signed an options form to this effect. The options form was received by the bank on 09 March 2007. The fixed interest rate was applied to the mortgage loan on 13 March 2007.

John submitted that his understanding was that he would be able to “revert” to a tracker rate when his fixed rate expired in 2010. He said that this understanding came from the contents of a letter sent to him by the bank on 9 March 2007. He stated that the bank did not inform him that he was in danger of losing his tracker rate “under the terms of the loan”.

In his complaint to the Ombudsman, John stated that the bank failed to offer him a tracker interest rate on expiry of the three-year fixed rate period in March 2010.

John sought for the tracker rate be “reinstated” to his mortgage loan account and for him to be “reimbursed, if entitled.”

The bank pointed to the fact that John did not have a contractual entitlement to a tracker rate, but stated that it was part of the bank’s policy at the time to offer a tracker rate in order to be competitive. However, in mid-2008, the bank stopped offering tracker rates to customers who did not have a contractual entitlement. So, when the three-year fixed rate was due to expire in March 2010, the bank advised John that in the absence of instruction, the account would default to a variable rate. The bank stated that this was in accordance with John’s mortgage loan documentation.

Having reviewed the evidence, the Ombudsman found that John did not have a contractual or other entitlement to a tracker interest rate at the end of the two-year fixed rate period in March 2007.

The Ombudsman noted that the bank had offered John a tracker interest rate of 4.75% (ECB + 1.25%) in March 2007 but John did not select this interest rate option. The Ombudsman noted that there was an elapse of time between when John’s fixed interest rate period expired on 09 March 2007 and when John’s further fixed rate instruction was received by and applied to the account by the bank on 13 March 2007. During this period the tracker interest rate of 4.75% (ECB + 1.25%) was applied to John’s loan as the default rate. This was in line with the bank’s policy at the time.

The Ombudsman found that the bank’s letter dated 09 March 2007 created confusion. The letter stated that “in accordance with the terms of your loan, the rate of interest has been amended to a tracker rate.” The Ombudsman found that the “terms of the loan” did not provide for the entitlement to a tracker interest rate so it is unclear why the bank represented this position to John in that letter. Despite this error, the Ombudsman stated that this letter did not, in and of itself, have the effect of fundamentally altering the terms of John’s mortgage loan to the extent that it would entitle John to a tracker interest rate.

The Ombudsman concluded that the bank should have made it clear that the tracker interest rate had been applied by virtue of its policy at the time and that the policy was susceptible to change. The Ombudsman partially upheld the complaint and directed the bank to pay John €3,000 in compensation for this shortcoming.

Banking

Reference: 2019-0377

READ THE FULL
DECISION HERE



Complainants unhappy with tracker interest rate of ECB + 0.99%

Ella and Kevin held a mortgage with another bank at a standard variable rate. In 2007, they decided to re-mortgage their home with the bank in order to get a better deal. As the couple had a Loan to Value (LTV) ratio of below 80% on their property at the time, they were eligible to apply for a mortgage on a tracker interest rate of the European Central Bank (ECB) rate + 0.5%. They considered the rate but opted instead for a fixed interest rate for 5 years. They stated that they opted for the fixed rate as they did not expect this would be at the expense of relinquishing the tracker rate as a future option.

When this fixed rate was due to expire, the bank laid out the options for the interest rate going forward. The couple found that they were not offered the original tracker rate of ECB + 0.5%. They stated that instead the bank offered them a tracker rate of ECB + 0.99%. When the couple objected, the bank requested an updated valuation of the couple's house to confirm that their current LTV ratio was at or below 80%. As the couple did not supply this, the bank did not offer them the original tracker rate of ECB + 0.5% and the couple took up the ECB + 0.99% rate from February 2012.

The couple submitted that at no time during the initial discussions were they told or given any express indication that by choosing a fixed rate period they were opting out of a future tracker interest rate at ECB + 0.5%.

In their complaint to the Ombudsman, the couple sought for the mortgage loan to be "reverted" to the original tracker rate of ECB + 0.5% rather than ECB + 0.99% rate with effect from February 2012.

The bank stated that when the fixed rate was due to expire, the couple were sent a letter with respect to their interest rate options.

The bank submitted that as the couple were not on an ECB tracker rate prior to entering their fixed interest rate, they were not entitled to revert to an ECB tracker rate. The bank stated that the couple did not have a contractual right to a tracker interest rate on their mortgage loan but "*in light of the circumstances*" and the couple's relationship with the bank, the bank was willing to offer the couple a tracker interest rate as a gesture of goodwill. The bank offered them either a tracker interest rate of ECB + 0.5%, if their LTV ratio was below 80% or ECB + 0.99% if their LTV ratio was above 80%. The couple had to obtain a property valuation to enable a calculation of their LTV ratio. The couple did not submit a valuation and elected to apply the tracker interest rate of ECB + 0.99% to their mortgage loan account in February 2012.

The Ombudsman found that the couple's mortgage loan documentation did not contain any reference to an ECB rate and there was no contractual obligation on the bank to offer the couple a tracker interest rate on their mortgage loan account on the expiry of the fixed rate period in February 2012. The Ombudsman noted the bank's goodwill gesture of a tracker interest rate. The Ombudsman observed that the couple had decided not to proceed with a valuation in February 2012 as they had engaged informally with an estate agent who said he could not give them a valuation in excess of €635,000. The Ombudsman said that it was not reasonable for the couple to expect the bank to rely on the 2007 valuation of €1,100,000 some five years later in 2012.

The Ombudsman believed that the bank had acted fairly giving the couple a tracker interest rate of ECB 0.99% and did not uphold the complaint.

Banking

READ THE FULL
DECISION HERE



Reference: 2019-0084

Complainant thought compensation offer from the bank did not take account of financial impact

Joan and Julia, a mother and daughter, held a mortgage loan with a bank on a fixed interest rate. In January 2009, they decided to break from the fixed rate 10 months before it was due to expire. As a result, they gave up their contractual entitlement to a tracker interest rate of ECB + 0.80%, which was due to apply at the end of the fixed interest rate period.

The mortgage loan ended up on a higher interest rate, making their monthly payments considerably higher. The mortgage fell into significant arrears, at one point in excess of €18,000.

In 2015, the bank accepted that it had made an error on their mortgage account by failing to inform them that they would lose their future right to a tracker interest rate from November 2009 when they broke from the rate early. To provide redress, the bank offered to move them to the tracker rate of ECB + 0.80%, adjust their mortgage balance by €40,430.08 to where it would have been had they been on a tracker rate, refund overpayments of €21,137.27 in interest for the impacted period of November 2009 to November 2015 and pay compensation of €6,265.53 in recognition of its failure.

The complainants accepted the application of the tracker rate on their mortgage loan but rejected the mortgage adjustment, overpayment refund and the level of compensation, stating that it did not adequately take account of the financial hardship, distress and upset that they suffered. Their calculations showed that they had been deprived of €63,567.35 during the impacted period and believed their mortgage balance should be adjusted accordingly. Julia also stated that her quality of life was so severely impacted by the stress caused by the overcharge that she had to seek professional help to deal with the stress levels.

On top of this, their credit rating with the Irish Credit Bureau (ICB) was severely impacted by the whole affair, to the point where they were unable to secure finance from any other institution. They requested that the bank arrange for all the records of non-payment with the ICB to be removed, for €63,567.35 to be repaid to them and for a realistic offer of compensation to be offered. They also wanted the capital balance of the mortgage loan to be reduced so that they would be put in the position they would have been in, had the bank's failure not occurred.

They initially took their appeal to an independent appeals panel established by the bank, which rejected their submission.

The bank stood by the decision from the appeals panel and affirmed its belief that the level of redress and compensation offered was correct. However, in recognition of the delay in providing the compensation, due to the complaint being taken to the Ombudsman, it increased the offer of compensation to €15,000. It also stated that it would conduct a review of the ICB record once the account has been redressed.

The Ombudsman found that, had the correct tracker rate been applied to the mortgage loan, it would have never been in arrears. He outlined that the evidence demonstrated that they had, in fact, made significant prepayments on the mortgage loan, for example:

- › In June 2013, when they were being informed by the bank that they were in arrears of €16,495.37, they had actually made prepayments on their mortgage loan of €10,766.38
- › In April 2014 when they were being informed by the bank that they were in arrears of €17,576.77, they had in fact made prepayments of €12,989.01

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The Ombudsman noted Julia's circumstances, in particular, as she was servicing the loan herself and had a period of unemployment during the six year period when the mortgage loan was being overcharged. He outlined that this would have caused significant stress and difficulties for Julia and impacted her finances, including her disposable income, her wellbeing and her standard of living. The Ombudsman found that the difference between the interest that was charged and the interest that should have been charged, was often substantial. In both October 2014 and March 2015, for example, the difference was €1,131 per month.

The Ombudsman rejected a number of their arguments. The Ombudsman found they were not entitled to compound interest of 8% per annum on the overall interest overcharged of €63,567.35, as the Ombudsman pointed out they were not deprived of the use of that sum for the full period of overcharging. The Ombudsman pointed out that there was no entitlement to legal fees for making a complaint to the Ombudsman. The Ombudsman also rejected the argument that they were entitled to a refund of the interest overcharged as well as a capital reduction of circa €40,000, as that would result in them receiving a sum over and above what was overpaid by them. The Ombudsman could also not request that the bank confirm that the rate of ECB + 0.80% would remain on their loan until it was paid off, as it was not for the Ombudsman to interfere with any prospective or future changes to the mortgage which might be mutually agreed by the parties.

Given the significance of the overcharge, and the considerable stress that it caused, the Ombudsman agreed that the level of compensation offered by the bank was "*not at all reasonable*".

The Ombudsman substantially upheld the complaint and directed the bank to pay €45,000 in compensation. This included the sums already offered by the bank but was in addition to the balance adjustment and refund of interest. He also directed the bank to carry out rectifications to the ICB record.

Banking

[READ THE FULL DECISION HERE](#)

Reference: 2019-0410

“High” tracker rate of 5.93% (ECB + 1.68%) rejected in 2008 with expectation that it would be offered again

Dylan and Ciara took out a mortgage on their home in 2006 for €430,000 repayable over a period of 35 years, initially on a two-year fixed interest rate of 4.39%.

Upon expiry of the fixed rate in September 2008, the couple stated that they were offered a further fixed rate or a tracker rate 5.93 (ECB + 1.68%). They opted for a fixed rate of 5.99% as the tracker rate was “high” at the time. When this fixed rate was due to expire in 2013, the bank sent an options form which included variable and fixed rates. The couple did not select an interest rate and the mortgage loan defaulted to the variable rate. The couple stated that the bank informed them that a tracker rate did not apply to them.

In their complaint to the Ombudsman, the couple stated that the bank failed to offer them a tracker rate on their mortgage following the expiry of their five-year fixed rate in 2013 despite previously doing so. They sought to restructure the mortgage for a further 30 years at “a better rate which people are now paying.” The couple stated at the time of the complaint that they had not paid off much of their loan and that they were struggling.

The bank submitted that the application for the mortgage was made through the couple’s chosen broker. The mortgage offer accepted and signed by the couple did not contain an entitlement to a tracker interest rate. The bank stated that in 2008, its policy had been to offer a tracker rate upon expiration of fixed rate periods, whether or not the customer had an entitlement to a tracker rate in their contract. The couple did not accept the tracker rate when it was offered and instead opted for a five-year fixed rate. The documentation they signed stated that a tracker interest rate option may not be made available at the end of the fixed interest rate period. From mid-2009, the bank had stopped offering tracker rates to customers maturing from fixed rates, unless they had a contractual entitlement to such a rate.

The couple did not have a contractual entitlement to a tracker interest rate.

The Ombudsman decided that the couple did not have a contractual entitlement to a tracker interest rate on their mortgage loan either in 2008 or on the expiry of the further fixed interest rate period in 2013. He acknowledged that the couple were offered a tracker interest rate of 5.93 (ECB + 1.68%) in September 2008, as a matter of policy, but they did not accept it.

The Ombudsman was of the view that the options letter made it clear that the options were current options and the couple were encouraged to carefully consider their options. They were also informed that if they chose a fixed rate, they may not have the option of a tracker rate of interest on expiry of the fixed rate period. He stated that if they were unsure about the rates that were being offered to them, they could have decided to seek further advice or not to accept the offer made by the bank. However they proceeded to select the five-year fixed rate. The Ombudsman noted that the couple themselves had acknowledged that they did not select the tracker interest rate in 2008 as it was “high”.

The Ombudsman did not uphold the complaint.

Banking

Reference: 2019-0414

READ THE FULL
DECISION HERE



Complainant thought she had “special agreed” tracker rates with the bank

Louise had two mortgage loans with the bank. One was on a holiday home and one was on her relative's place of residence. From 2009 to 2011, both mortgages were on variable interest rates. From 2011 to 2014, Louise had both mortgages on fixed rates.

When the fixed interest rate periods expired in 2014, Louise called the bank to discuss interest rates going forward and requested a tracker interest rate on both mortgages with, according to her, “the margin she had prior to fixing the loans”. The bank told her she was not entitled to a tracker rate on either mortgage as neither mortgage had been on a tracker rate previously. Louise asserted that both the accounts were on tracker rates.

The mortgages were put on variable interest rates. Louise stated that the high interest rates forced her to rent out her relative's place of residence.

In her complaint to the Ombudsman, Louise insisted that the bank failed to offer her a tracker mortgage on either of her accounts when the fixed interest rates expired in March and April 2014 respectively. She was looking to be repaid all the interest overcharged since the fixed interest rates expired and for compensation for the stress inflicted on her and her relative.

The bank submitted that neither of Louise's mortgages had ever been on a tracker interest rate. While the bank did send letters to Louise stating that she could move to a tracker rate “subject to certain qualification criteria” in 2014, neither of her mortgage loans met those criteria.

The Ombudsman found that the terms and conditions of the loan agreement did not entitle Louise to a tracker rate. The documentation made it clear that the mortgages would be put on a variable rate after the fixed rates expired and the variable rate was clearly defined as one which may be increased or decreased by the bank at any time, rather than a rate that was tied to

the European Central Bank. Therefore, it was a standard variable rate and not a tracker rate.

The Ombudsman did state, however, that sending Louise letters in 2014 that stated she could move to a tracker rate “subject to certain qualification criteria” when it was known her mortgages did not meet those criteria, was confusing. The bank should have instead only included options that were actually available to Louise. Despite this, he accepted that these letters did not give Louise an entitlement to a tracker rate.

While Louise did have a discounted variable rate on her relative's residence from 2009 to 2011, this was given as a goodwill gesture, given that Louise was a staff member of the bank and her relative was living in the property, but it was not a tracker rate.

The Ombudsman did not uphold the complaint as Louise had no contractual or other right to a tracker interest rate on either account.

Banking

[READ THE FULL DECISION HERE](#)

Reference: 2019-0413

Complainant was only offered rate of ECB + 1.25% at the end of the first fixed interest rate period in 2007

Sé took out a mortgage in 2006. He started on a one-year fixed interest rate. On expiry of the fixed rate in January 2007, he asked the bank to provide him with all his interest rate options. The bank sent him an options letter, which included three fixed rate options and a tracker rate option.

Sé initially opted for a further one-year fixed interest rate on 8 January 2007. He then asked to change his choice and the bank sent him another options letter on 17 January 2007 which only included the fixed rate options. Sé then opted for a three-year fixed interest rate. He then sought, in December 2008, to break out of this fixed interest rate period, in favour of a variable interest rate. The new rate was applied in 2009.

Sé stated that in June 2009 and October 2009, he again requested all available interest rate options from the bank. A tracker interest rate was not offered.

Sé was convinced he was entitled to a tracker rate. In his complaint to the Ombudsman, he stated that the bank failed to offer him the option of a tracker interest rate in January 2007, December 2008 and between June and October 2009. He also complained that the bank failed to inform him of the consequences and cost implications of not opting for the tracker interest rate in January 2007.

The bank stated that Sé did not have a contractual entitlement to a tracker interest rate. The bank had offered him a tracker interest rate in January 2007, based on the bank's policy at the time, but he opted for the fixed rate. It stated that there was *"no commitment or indication given that any rate available then would be available in the future"* and that the options form clearly stated that *"if you choose a fixed rate, the standard fixed-rate conditions apply."* The bank stated that they did not offer Sé a tracker interest rate at any point in 2008 or 2009 because the fixed rate mortgage loan was not due to expire.

The Ombudsman ruled that Sé did not have a contractual or other entitlement to a tracker interest rate at the end of the fixed rate period in January 2007. The Ombudsman noted that the bank had made this option available as a matter of policy and stated that the options form contained all the information needed for Sé to make an informed decision whether or not to accept the tracker rate of ECB + 1.25% (4.75%). However he instead elected to choose the one-year fixed interest rate of 4.75%.

While the tracker rate option did not appear on the options letter from 17 January 2007, the Ombudsman was provided with evidence of correspondence between Sé and the bank that showed he had changed his mind and had asked for further fixed interest rate options so that he could select the three-year fixed rate option. The bank accordingly sent him the options letter with just the fixed rates on it so he could choose from that option. By the time his three-year fixed rate had expired in 2010, the bank was no longer offering tracker rates.

The Ombudsman accepted that there was no way the bank could have known in January 2007 that the ECB base rate (then at 3.5%) was going to fall to 0% nine years later, and so could not have advised him of the long-term cost implications of not opting for a tracker rate. The Ombudsman did not uphold the complaint.

Banking

Reference: 2019-0224

READ THE FULL
DECISION HERE



Bank refused to “switch” the property on which the tracker mortgage was secured

In 2007, Saoirse and Stuart secured a mortgage for their property with the bank. The term of the mortgage loan was 11 years and included a tracker interest rate.

Around November or December of 2012 the couple entered negotiations with the bank as they had decided to sell the mortgaged property and buy a new property.

The couple's complaint was that the bank failed to facilitate them to switch the property that the mortgage was secured on. Saoirse and Stuart wanted the bank to offer them an option to substitute the mortgaged property with the new property, so they could keep the tracker mortgage. Saoirse and Stuart claimed that the bank's communications were “*wholly unsatisfactory*” and they were given no option other than to redeem the existing mortgage loan and pay all outstanding amounts before taking out a new mortgage. They said they had no option but to seek a mortgage with another bank at a much higher interest rate.

The couple wanted the bank to reinstate the tracker interest rate mortgage and pay compensation for the difference in interest paid on the new loan taken out with the other bank.

In response, the bank stated that it had no record of informing the couple that their only option was to redeem the mortgage but submitted that there were no terms and conditions in their loan offer that allow for a “*substitution*” of a property provided as security in a mortgage loan agreement.

The bank further submitted that the couple had already been in touch in 2011 to discuss a settlement offer to pay off the remaining mortgage loan, signalling their intent to redeem the mortgage first, before seeking a new loan. It provided correspondence between the parties in evidence to support this. The bank also pointed out that it had stopped offering any mortgage products.

The Ombudsman accepted the evidence which showed that the couple were considering settling their mortgage loan with the bank before securing another mortgage and that the couple were aware that the tracker interest rate they held was a beneficial rate. He also stated that no evidence had been submitted by either party to show that the pair had specifically requested that the bank substitute the mortgaged property with a new one.

The Ombudsman detailed that there was no provision in the original loan agreement for the couple to “*switch*” the property so they could hold on to the original tracker mortgage rate. He remarked that it is “*usual banking practice*” when a person seeks to sell their property, for a bank to require the person to redeem their mortgage loan on the secured property they are selling and apply for a new mortgage for the new property.

He made the point that, if the couple had not decided to sell, then they would have continued to have the tracker rate of ECB + 0.55% on the mortgage loan. However, the couple had voluntarily elected to redeem their mortgage loan with the bank in November 2012.

The Ombudsman decided that the bank was under no obligation to facilitate the substitution of a property as security in the mortgage agreement and that it was the couple's choice to sell their property and terminate the mortgage account with the bank. As a result, the Ombudsman did not uphold the complaint.

Banking

[READ THE FULL DECISION HERE](#)

Reference: 2019-0403

Tracker mortgage not offered when the couple applied for their mortgage loan in 2004

Peter and Sheila applied for a mortgage loan with the bank in November 2004. They signed an Acceptance of Loan Offer in January 2005 for a one-year fixed interest rate of 2.74%. The couple made a complaint that they were not offered a tracker interest rate at the time they took out their mortgage, despite having learned that the bank was offering tracker mortgages to new customers from early 2004.

They also contended that when their fixed rate was due to expire in April 2006, they were again not offered the option of a tracker interest rate, instead automatically defaulting to a variable rate at the discretion of the bank. They believed that the bank was applying the tracker interest rate to customers' mortgage loan accounts as the default rate on expiry of fixed periods from mid-2006.

They complained that they were not offered a tracker rate at any point before the bank ceased offering trackers in mid-2009. In their complaint to the Ombudsman, the couple sought for the bank to put them onto the appropriate tracker rate from the appropriate time and for excess interest to be repaid accordingly.

The bank responded that all available rate options would have been discussed at the time and that the couple had requested to have a fixed rate of interest, choosing not to apply for a variable or tracker interest rate loan. It pointed out that at the time, the fixed rate being offered was lower than the tracker rate.

The bank outlined that the couple's loan terms and conditions did not provide an entitlement to a tracker rate at the end of the fixed rate period. It was not until later in 2006 that it commenced offering a tracker rate to customers whose contract did not include the option of a tracker rate.

The bank had no record of the couple having enquired about alternative interest rates at any time after the expiry of their fixed rate period and noted that its interest rates were published in branches, on its website and in national press, as well being available on enquiry, at all times.

The Ombudsman noted that tracker interest rates were on offer generally by the bank when the couple applied for the mortgage loan. Although there was a dispute between the parties as to whether it was discussed, with all lending interest rates clearly published by the bank at the time, he believed that they could have informed themselves of all options before proceeding with any application and could have sought a tracker interest rate mortgage, if they had wanted one. Notwithstanding this, it was clear from the evidence that the couple had intentionally chosen a lower fixed rate over a higher, variable type one. With the tracker rate being higher still, it was difficult to accept that they would have chosen the tracker interest rate, in such circumstances.

In relation to the expiry of the fixed rate term, the Ombudsman found that the terms of the mortgage that the couple accepted included a one-year fixed rate and thereafter a variable rate. It made no reference to a tracker or the ECB rate and there was no contractual or other obligation on the bank to offer a tracker interest rate on the expiry of the fixed period. The expiry of this period also pre-dated the bank introducing the practice of offering tracker interest rates in these circumstances. There was no evidence that the couple had ever contacted the bank seeking a tracker interest rate while they were available. The Ombudsman did not uphold the complaint.

Banking

Reference: 2019-0421

READ THE FULL
DECISION HERE



Tracker interest rate was not offered on an equity release loan in 2006

Rebecca and Brian held a mortgage loan with the bank. In 2006, the couple were seeking additional finance of €95,000 from the bank to clear other personal lending and carry out home improvements. They said they were being quoted by another bank which was offering 1% tracker rates.

They said that they wanted a single mortgage to cover both their current mortgage and an additional amount to release equity in their home, at a tracker interest rate. The couple stated that the bank advised them they were not entitled to a tracker rate for a single mortgage and instead offered them an equity release loan for the additional finance of €95,000 at a variable interest rate. They also stated that the bank informed them that it did not offer tracker rates on their type of equity release loan.

In their complaint to the Ombudsman, the couple stated that the bank failed to offer them a tracker interest rate on their second loan in 2006, accusing the bank of “*holding back*” an option that would have allowed them to avail of a tracker rate. The couple submitted that they were advised by a family member who had worked for the bank that “*a tracker rate would and should have been available for my entire mortgage regardless of how or whether it was split.*”

The couple sought for a tracker interest rate to be applied to both mortgages going forward and a refund for lost funds from 2006 due to the higher interest rate that they were put on, calculated by them to be approximately €30,000.

The bank stated that its equity release product was designed to enable customers to release equity in their homes and allowed customers to draw down the funds as required. It denied that it “*held back*” any tracker rate options, stating that the equity release loan offered to Brian and Rebecca was offered because it was the best product for their circumstances.

The bank stated that it made a commercial decision not to apply tracker interest rates to its equity release product.

The bank stated that the couple accepted the equity release product on a variable rate and the bank agreed to move the couple's primary mortgage loan to a tracker rate of ECB + 1.1% in September 2006. The bank stated that in November 2007 the couple were offered loans with a lower interest rate by a competing bank. In response, the bank offered to change the rate of interest on the primary mortgage loan to an even lower tracker rate of ECB + 0.8% at that time and a further reduced variable rate on the equity release loan.

The Ombudsman was of the view that it was clear from the documentary evidence that the couple had not been denied the option of potentially pursuing a single mortgage loan on a tracker interest rate. The evidence showed that the couple had discussed with the bank the possibility of taking out a new single mortgage loan on a tracker rate, but the couple entered into further negotiations and decided to go with the equity release loan, with their original loan on a tracker rate.

He stated that the bank was under no obligation to accede to the request to apply a tracker interest rate to the equity release loan and found there was no evidence the couple were “*denied*” a tracker interest rate mortgage. If the couple were unhappy with the offer that was made, they could have pursued the offer from the competing bank instead. The Ombudsman did not uphold the complaint.

Banking

[READ THE FULL DECISION HERE](#)

Reference: 2019-0380

Complaint regarding error in the loan acceptance document

In August 2008, Padraic and Beth accepted a mortgage loan with a two-year fixed interest rate from the bank. In the previous month, they had discussed interest rate options with a bank employee, who they say informed them that the fixed interest rate was “*very competitive*” and that “*interest rates were about to increase*”. The couple confirmed their decision on the rate by signing a suitability statement.

The couple also signed a loan acceptance document which made a reference in the documentation to a “*tracker mortgage*”. They stated that the mortgage quotation given to them by the bank at this time also led them to believe that the mortgage would be on a tracker rate once the fixed rate had expired.

The couple insisted that, when they began to draw down the mortgage in September 2008, the bank did not provide them with an opportunity to consider whether their interest rate decision was still appropriate. The bank, they asserted, would have been aware that other variable interest rates were now decreasing but it did not inform them that this was the case.

In July 2010, the bank set out the interest rates available to the couple following the expiration of the fixed interest rate. Padraic and Beth noticed that a tracker rate option was not included.

In their complaint to the Ombudsman, the couple stated that the bank misadvised them in relation to the interest rate on their mortgage between July and September of 2008 and failed to offer them a tracker interest rate when their fixed interest rate expired in September 2010.

The bank denied that it had ever advised the couple on their mortgage, so could not have “*misadvised*” them. Instead, it stated that it had merely provided “*information*” to them on their options. Padraic and Beth rejected this, highlighting that the bank representative’s job title was “*mortgage advisor*”.

The bank also asserted that the mortgage quotation given to the couple was not a formal loan offer and was for “*illustrative purposes only*”, with the intent of summarising their mortgage application.

The bank pointed to the fact that the letter of loan offer given to the couple at the beginning of their loan term did not contain any condition indicating that a tracker rate would be made available once the fixed rate period ended. While the loan acceptance document did make one reference to the mortgage as a “*tracker mortgage*” this was, according to the bank, a “*typographical error*”. It argued that this one error was not enough to change the whole meaning of the loan. By the time the bank set out the interest rates available to the couple in 2010, it had ceased offering tracker rates to customers.

In his decision, the Ombudsman stated while it was reasonable for the couple to believe they were receiving advice, rather than information, due to the employee’s job title, it was not reasonable to believe that the employee was offering independent advice on the best rate, as they worked for the bank. At any rate, the Ombudsman stated that describing an interest rate as “*very competitive*” does not amount to advice to choose one rate over another. This, along with the fact that the couple had signed the suitability statement stating that they had chosen the interest rate “*based on their requirements*” meant that the Ombudsman did not uphold this aspect of the complaint.

The Ombudsman outlined that the “*typographical error*” by the bank, while entirely unsatisfactory, did not change the fact that the mortgage was clearly being offered on a fixed rate. He also accepted that the mortgage quotation, which mentioned the tracker rate, did not form part of the mortgage loan contract, so did not entitle the couple to a tracker interest rate on their mortgage.

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However, he found that these documents were confusing, and he said that the bank did not act with due skill, care and diligence in its dealings with the couple and the documentation should have been more explicit to make it clear that there was no entitlement to a tracker interest rate arising from the mortgage quotation. The Ombudsman accepted that a “*typographical error*” can occur but the bank should have been more proactive and brought this to the attention of the customers and highlighted how it occurred, in advance of a complaint having to be made to the Ombudsman.

The Ombudsman partially upheld the complaint and directed the bank to pay €2,500 in compensation to the couple.

Banking

[READ THE FULL DECISION HERE](#)

Reference: 2020-0004

Complainant disappointed with compensation offered for loss of tracker interest rate on holiday home mortgage

In 2004, Damien took out a 20-year mortgage loan of €164,000 to purchase a holiday home in Spain and carry out home improvements. The mortgage loan was secured on Damien's private dwelling house which was valued at €450,000 at the time and was mortgage free.

The mortgage was initially on a tracker interest rate, then changed to a fixed interest rate in 2005 at Damien's request. It was then put on a variable rate following the expiration of the fixed rate term in November 2008. Damien paid off the mortgage early in 2015.

The mortgage in question was considered in the course of the Central Bank directed Tracker Mortgage Examination in 2017. As part of the Examination, the bank identified that it had failed to provide sufficient clarity as to what would happen at the end of the fixed rate, when the loan moved to the fixed rate from the tracker. It found that the language used in the mortgage documentation may have led Damien to believe he would be entitled to a tracker rate following the end of the fixed rate term. As a result, the bank concluded that Damien had been charged an incorrect, higher interest rate between November 2008 and October 2015. It made an offer of redress and compensation of €5,765.25.

Damien submitted an appeal to the bank's independent appeals panel in February 2018, appealing the level of compensation offered by the bank. The panel rejected the appeal, stating that Damien did not demonstrate how the amount offered by the bank was inadequate. Damien's complaint was then progressed with the Ombudsman.

Damien submitted that the bank's failures had a "substantial negative impact" on himself and his family. He made substantial lump sum payments, totalling €110,000, between 2009 and 2012 to the mortgage to avoid falling into arrears. The decision to make these payments, Damien insisted, was "directly influenced" by the high interest rate on the mortgage at the time.

Damien also stated that he increased his monthly repayments by €500 in 2014 to mitigate against the high interest rate. He also stated that if the mortgage had been operating on the correct interest rate, he would not have decided to pay off the mortgage early.

According to Damien, some "key impacts" of having to make excess payments to the mortgage, because of the higher interest rate, include his daughter not being able to take up a university scholarship in the USA as there was not enough money for the flights, having to "limit" his children's university selection to Dublin as he could not pay accommodation costs and not being able to put down a deposit for a house for his children when house prices were low. This was in addition to missing out on interest he would have accrued on the €110,000 that he had paid off the mortgage.

The Ombudsman found no evidence to link Damien's lump sum payments to the higher interest rate. The Ombudsman noted that interest rates were in fact falling during the period when the lump sum payments were being made, which showed that these payments were not related to an incorrect, higher interest rate being applied. By way of example, when the first lump sum payment of €50,000 was made in September 2009, the interest rate on the mortgage was actually lower than it had been for months, dropping to 2.54% from 4.04% in January 2009. When Damien increased his monthly repayments in 2014, the interest rate had stayed the same at 4.54% for 18 months. Nowhere in any correspondence with the bank did Damien suggest he was struggling to pay off the mortgage.

With respect to some of the "key impacts" Damien mentioned, it was noted that his oldest child had only turned 17 in 2014, so was not in a position to go university or buy a house at the time the lump sums were being made.

There was also no evidence that Damien was at risk of falling into arrears. The Ombudsman did not uphold the complaint and deemed the compensation offered by the bank reasonable in the circumstances.

Banking

Reference: 2019-0028

READ THE FULL
DECISION HERE



Complainants believed compensation offered was inadequate because they had to restructure and borrow

Eimear and Chris took out a mortgage loan for €100,000 in 2003 and a top-up loan of €30,000 in 2009. The bank considered the couple's mortgage loan under the Central Bank directed Tracker Mortgage Examination and identified that an error had occurred on their mortgage loan. The bank had failed to apply the correct tracker interest rate on the loan from 2008 to 2016.

The bank apologised and returned the couple's mortgage loan account to a tracker interest rate. In December 2016, the bank stated that the interest overcharged from 2008 to 2016 totalled €9,759.24. The bank repaid the interest overcharged in full and paid the couple compensation of €1,515.92.

In their complaint to the Ombudsman, the couple stated that they had not been offered adequate compensation by the bank.

As a result of being overcharged, the couple stated that they had to borrow from a credit union in order to keep up with their payments for the mortgage and top-up loan. They estimated that this cost almost €11,000.

The couple also claimed that they had been advised by the bank in 2012 to extend the term of both their loans by 13.5 years in order to reduce payments. They contended that they had to restructure their loans due to the wrong rate being applied and that if the correct rate had been applied, more of the mortgage would have been repaid. They sought €47,000 to compensate for extra repayments and additional compensation for stress and hardship.

The bank submitted that there was no evidence to suggest that the credit union loans were directly related to the failure of the bank to apply the correct interest rate. It further claimed that at the time of the extension of the loan, the financial circumstances of the couple were such that even had the correct interest rate been applied, the bank still would have had to extend the terms of both loans.

Based on the evidence available to him the Ombudsman did not accept that the credit union loans had been taken out as a result of the bank's interest overcharge. The credit union loans were taken out because the couple were forced to move out of their home and seek rental accommodation, due to issues arising with their neighbours. The couple were not able to sell their home during this time.

The Ombudsman stated that even if the couple had not been overcharged, they would have been unable to afford the expense of rental accommodation and their mortgage loan due to their personal circumstances and financial means. He accepted that the term extension was therefore necessary in order to reduce their mortgage expense. He also did not accept the complaint regarding the restructuring of the loan as the evidence showed the couple did not have the capacity to make the repayments required, even if the tracker interest rate had been applied.

The Ombudsman did accept that for a family of four relying on a single income, who lived a modest lifestyle, the overcharge of interest caused additional hardship and inconvenience to them. The evidence showed that the couple were seriously challenged financially as they were servicing their mortgage and paying the rent. The Ombudsman found that €1,515.92 was not sufficient or reasonable compensation for the loss, expense and inconvenience suffered.

The Ombudsman upheld the complaint and directed that the bank pay a sum of €4,500 (inclusive of the €1,515.92 offered by the bank) to the couple.

Banking

[READ THE FULL DECISION HERE](#)

Reference: 2019-0341

Complainant felt the tracker rate should have been applied to the mortgage loan from an earlier point

In December 2004, Lisa took out a tracker mortgage loan over a term of 35 years. In 2007, she decided to fix her interest rate for four years. In 2008, she decided to break from the fixed rate early and a variable interest rate was applied to the mortgage. In 2014, Lisa decided to buy a new property. To do this she redeemed her mortgage loan and took out a new mortgage loan with the bank for 35 years commencing on a variable rate.

In 2015, the bank wrote to Lisa and told her it had made an error on her initial mortgage loan account. The bank informed Lisa that it should have informed her when she was breaking from the fixed interest rate period early in 2008, that she was losing her contractual right to a tracker interest rate. The bank offered to pay €3,000 in compensation and refund interest overpayments from 2011, when Lisa's fixed interest rate was due to expire, to 2014 when the loan was redeemed, which totalled €15,352.86.

Lisa appealed the decision to the bank's independent appeals panel. She stated that the bank should have applied the tracker interest rate to the loan from 2008, when she decided to leave the fixed interest rate and should, in addition, have applied a tracker rate to her new mortgage on her new house from 2014, which was on a variable interest rate.

The appeals panel accepted Lisa's appeal and decided that the bank should offer Lisa the portability product on the part of the new mortgage loan that would have been eligible for the product in 2014. This would result in a 22-year mortgage with a tracker interest rate on the new house and a further net refund of €5,174.01 on the mortgage loan taken out in 2014. The balance of the new mortgage loan would remain on the variable rate. Lisa initially accepted this decision on 21 December 2015. The bank was obliged to then action the decision within ten working days but instead wrote to the appeal panel in April 2016 to state that it was having difficulties implementing the decision.

Lisa then withdrew her acceptance of the appeal panel's decision in July 2016, upon discovering that the new tracker rate included an additional 1% "*portability rate*" – a margin added to the tracker mortgage rate being transferred to the new property. Lisa's complaint progressed with the Ombudsman. She maintained that the bank should have applied the tracker interest rate to the original loan from 2008 and that the bank unfairly added a 1% margin to her tracker portability rate from 2014. She also stated that the term of the new mortgage should be the same as the new loan taken out in 2014, 35 years, rather than 22 years.

In his decision, the Ombudsman noted that the terms and conditions of Lisa's initial mortgage loan did not specify what interest rate would be applied to the loan if she decided to break from the fixed rate early. As a result, there was no obligation for the bank to offer Lisa a tracker interest rate on the mortgage at the time she broke out of the fixed interest rate in 2008. Nevertheless, he found that it was disappointing that the bank had failed to highlight to Lisa that she would lose the contractual entitlement to the tracker rate at the end of the fixed period. He believed the bank had failed in its duty to Lisa in that respect. These were failings which the bank had already accepted.

With respect to the addition of 1% on the portability margin, the Ombudsman found this to be a misunderstanding. Lisa had assumed that 1% would be added to her new tracker rate because of a letter sent by the bank on 21 December 2015, weeks after Lisa had succeeded in her appeal. However, this letter had nothing to do with Lisa's appeal, or her new rate, but was instead issued to amend an error in documentation she had received when she took out the mortgage on her new house in 2014.

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The Ombudsman noted that what Lisa was in fact being offered by the bank, was a tracker interest rate of ECB + 1.25% on the tracker portability part of her new mortgage loan from 2014, which was more favourable than the rate that she would have been offered at the time of ECB + 1.4% + 1% (2.4%).

The Ombudsman also found no issue with the 22-year term that the bank was offering, as the terms and conditions of the portability product provided for the tracker interest rate to be applied for the term remaining on the original loan. For Lisa, this amounted to 22 years. The Ombudsman said it was a matter for Lisa to decide if she wanted to accept this.

The Ombudsman noted that Lisa had outlined that she had the added stress of waiting for the ECB to put interest rates up, which would add more hardship to her and she felt that this was just another mess that the bank had caused and she had been left to suffer financially. The Ombudsman observed that it was for Lisa to decide whether she wanted to apply the bank's offer of the tracker portability product of ECB + 1.25% to her new mortgage from 2014. He said it was important for Lisa to be aware that in doing so, the bank has no control over the ECB base rate applicable to a tracker interest rate. The ECB base rate is a fluctuating rate set by the European Central Bank. The ECB rate, at the time the Ombudsman made his decision, was 0%, but that ECB base rate can vary upwards.

The Ombudsman detailed that he expected that the bank would issue updated figures to Lisa promptly so that she could decide whether she wished to pursue the offer of the tracker portability mortgage rate of ECB + 1.25% from 2014 and the interest adjustment.

The Ombudsman partially upheld the complaint, due to the bank's delay in offering the tracker portability product from August 2015 and another failure in the application of the variable rate in 2008. He directed the bank to pay an additional €3,000 in compensation.

Banking

[READ THE FULL DECISION HERE](#)

Reference: 2019-0352

Quality of the information provided regarding the consequences of moving from a tracker

Sean and Abigail took out a mortgage loan in July 2006 with a tracker interest rate of 1% over the European Central Bank (ECB) rate, with a 0.55% discount for the first two years.

In July 2007, the couple applied for a three-year fixed interest rate to be applied to the mortgage loan. When the fixed rate expired in July 2010, the bank applied “a standard variable interest rate” to the mortgage loan.

Sean and Abigail insist that they did not agree to the application of the standard variable interest rate on the mortgage. They say they requested that their mortgage loan be restored to the original tracker interest rate of ECB + 1% from July 2010 and that the bank provide compensation for overpayments on their mortgage account due to the incorrect interest rate being applied. The couple also objected to the fact that their mortgage loan was sold by the bank, to a different financial service provider in September 2018 without their consent.

The bank rejected the couple's complaint. The bank stated that its standard variable rate “contained a ‘price promise’ meaning that the interest rate would never be more than 1.5% over the ECB rate”. It argued that the meaning of the term “standard variable rate” was communicated in a sufficiently clear and transparent manner. It said the standard variable rate was defined in the bank's rate guide and on the bank's website.

The Ombudsman accepted that the bank had the right to sell on the mortgage loan as this was provided for in the terms and conditions of the mortgage. Therefore, he did not uphold this aspect of the complaint.

The Ombudsman accepted that the interest rate amendment letter signed in 2007 made it clear that the couple were making changes to the terms and conditions of their mortgage loan.

However, he believed that the nature of those changes or the specific terms and conditions of the mortgage that were being amended were not set out in adequate detail. He noted that the term “standard variable rate” was not defined in the couple's loan documentation and therefore the couple could not have been aware that it was a completely different rate from the “variable tracker rate”, defined in the loan documentation. He stated that the bank was wrong to seek to rely on a rate guide that did not form part of the couples' loan contract.

He also stated that it was not made clear to the couple that the effect of signing the interest rate amendment letter, was that the specific terms and conditions of the mortgage loan that related to the tracker variable rate, no longer applied. He found that the bank's communication fell short of what was expected of it under the Consumer Protection Code, which states that the bank should make full disclosure of all relevant material information and that key terms should be brought to a customer's attention.

In his preliminary decision, the Ombudsman indicated his intention to substantially uphold the complaint and set out his proposed direction.

The bank made lengthy and detailed post-preliminary decision submissions, again submitting that a “rate guide” was provided to the couple in 2006 and in 2007, which clearly explained the differences between the rates. It also stated that it clearly set out the meaning of the different rates in its marketing material. The bank, however, never supplied this rate guide in its evidence to the Ombudsman, or any evidence that it had sent it to the couple. It also never provided any evidence that the rates were set out in its marketing material. Even if it had, it was an “untenable position”, according to the Ombudsman, to rely on marketing material.

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The bank, in its post-preliminary decision submission also stated that the interest rate amendment form which was signed by the couple in 2007, set out clearly the contractual entitlements and obligations that would apply at the end of the fixed rate period. The bank argued that *"As a matter of law, where the specific obligations that are to apply are set out; then those are what apply"* and that *"There is no obligation to exclude other extraneous matters i.e. to set out that the Tracker Rate would not apply."* The Ombudsman was concerned that the bank was of the view that it did not have an obligation to bring certain information to the attention of its customers. Reiterating the need for banks to set out all important information clearly to its customers he referred this decision to the Central Bank of Ireland for its consideration and any action it deemed necessary.

Despite the bank's submissions to the contrary the Ombudsman remained of the view that the documentation lacked sufficient clarity on the key question of the effect of applying the fixed interest rate to the mortgage loan. He noted that the interest overpaid during the eight year period from July 2010 to September 2018, if the tracker interest rate of ECB + 1% had been applied, was €6,315.80.

In his legally binding decision, the Ombudsman substantially upheld the complaint. He decided that the complainants were entitled to a tracker interest rate of ECB + 1% at the end of the fixed rate period. He directed the bank to apply a tracker interest rate of ECB + 1% from July 2010 and to repay the interest overpaid by the couple between July 2010 and September 2018. He also directed that the bank come to an agreement with the new owner of the loan to reinstate the tracker interest rate of ECB + 1% from September 2018 for the lifetime of the mortgage and pay a sum of €2,500 in compensation to the couple.

At the time this decision issued there were a number of other, similar complaints against that same bank being investigated by the Ombudsman. The bank has indicated its intention to apply the outcome of this decision to other customers in similar circumstances.

Banking

[READ THE FULL DECISION HERE](#)

Reference: 2019-0288

Complainants had tracker on two mortgage loans and believed they were entitled to tracker on a third mortgage

Eileen and James took out a mortgage loan on their home in August 2004 on a two-year discounted variable interest rate of 3.13%. Upon expiry of the discount rate, in October 2006, Eileen and James decided to fix the interest rate on the mortgage account at a rate of 4.54% for a period of two years. When this fixed rate was due to expire in October 2008, the couple claimed that they contacted a manager of the bank to find out their interest rate options. They say the bank manager informed them that the “*the five-year fixed rate at 4.9% was very attractive*” and consequently, they decided to opt for this rate.

Eileen and James then attempted to break from their fixed rate early. They were informed by the bank that in order to do so, a discontinuance fee would be incurred and financially, they were unable to do so.

In their complaint to the Ombudsman, the couple stated that the bank failed to offer them a tracker interest rate on the expiry of the discounted period in October 2006 and in October 2008. They contended that the bank was offering tracker interest rate products between January 2004 and September 2008 and they even had tracker mortgage rates with the bank on two other mortgage loan accounts themselves. They also complained that they were incorrectly advised by the bank to enter a fixed rate period for five years in October 2008.

Eileen and James sought to recoup the excess monies they believed they had paid on their fixed interest rate, calculated by them to be in excess of €25,000, and compensation for the resulting stress.

The bank stated that there was no reference to a tracker interest rate in the mortgage offer accepted by the couple in 2004, or in the fixed interest rate documentation sent in 2006, nor did the documents specify that such a rate would be made available to them in the future. By October 2008, it had ceased offering tracker mortgages altogether.

Although the bank was offering tracker interest rate products from January 2004 until September 2008, it stated that it was under no obligation to offer all mortgage types, including tracker interest rates, to all customers. The bank also stated that in their mortgage loan application, Eileen and James were offered a tracker option and they opted for the discounted variable rate. With regards to James and Eileen's other two mortgage accounts, the bank stated that they were separate borrowings, issued on different terms and conditions.

The bank claimed that it was satisfied that the bank manager did not provide them with advice to opt for the five-year fixed rate option.

The Ombudsman noted that the couple were given the option of applying for a mortgage loan on a tracker interest rate in 2004, but they instead applied for a discounted variable rate loan. He said it was clear in the documentation that, on expiry of the discounted variable interest rate period in 2006, the loan would revert to the “*appropriate variable rate*.” As a result, the bank was under no contractual obligation to offer them a tracker interest rate on their mortgage loan. The fact that the bank was offering tracker interest rates to new or existing mortgage customers, including on the couple's other properties, did not create an obligation to offer a tracker rate in all situations. While the Ombudsman accepted that the bank did not include a specific definition of “*variable rate*”, in this instance he took the view that there was no reason for the couple to reasonably expect that the term “*variable rate*” related to a tracker interest rate, given that their account drew down on a standard variable rate.

The Ombudsman stated that the bank had informed the couple of the discontinuance fee and it was not under any obligation to provide more assistance. He also stated that the bank manager describing the interest rate as “*very attractive*” did not amount to advice on which rate to choose. The Ombudsman did not uphold the complaint.

3 STEPS to making a complaint to the FSPO

1

Contact your provider

You should make your complaint with whoever provided the service or product to you, this could be your bank, insurance company, credit union, money lender etc.

You should speak or write to either the person you usually deal with, or ask for the complaints manager to make a complaint.

What information should you give them?

- ✓ Make it very clear that you are making a complaint.
- ✓ Explain your complaint.
- ✓ Suggest how they should put it right.

Provide detailed information, including:

- Relevant dates, places and times**
- Details of any phone conversations and meetings** (e.g. who was involved, when they took place and what was said)
- Copies of relevant documents**, such as contracts, statements, emails, letters, invoices and receipts.

BEFORE MAKING A COMPLAINT TO THE FSPO, YOU MUST GIVE YOUR PROVIDER A CHANCE TO SORT OUT THE PROBLEM.

2

Be patient and persistent

The provider should deal with your complaint through its complaint handling process. The provider may take up to 40 working days to deal with your complaint.

When you complain to the provider be persistent. If nothing happens, call the provider to check on the progress of your complaint.

The provider should fully investigate your complaint.

Resolved

In the majority of cases the provider will resolve your complaint.

Not yet resolved

If they don't resolve it, they will issue a final response letter to you.

A final response should set out what the provider has done to investigate your complaint through its complaint handling process. It should advise you to contact the FSPO as your next step, if you remain unhappy.

3

Contact the FSPO

If you remain unhappy after receiving your final response letter, you may contact the FSPO. To progress your complaint, we will need:

- A** A completed complaint form &
- B** A copy of your final response letter.

If you are having difficulty getting the final response and 40 working days has passed or if your provider is not engaging with you please let us know and we will follow up on the complaint for you.



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