

# Banking

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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.