Banking

Reference: **2019-0288**

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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.