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Decision Reference: 2020-0102

## Complainant believed tracker compensation did not adequately compensate for the hardship suffered

This complaint relates to two of four mortgage accounts held by Emmet with the bank. One mortgage was secured on Emmet's home and the other was secured on a buy-to-let property.

The mortgages in question were considered in the course of the Tracker Mortgage Examination directed by the Central Bank 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, which Emmet had moved to from the tracker rate. It found that the language used in the mortgage documentation may have led Emmet to believe that he would be entitled to a tracker rate following the end of the fixed rate term. As a result of its failure, the bank concluded that Emmet had been charged an incorrect interest rate on his two mortgage loans between November 2008 and November 2017. The bank restored a tracker rate to the mortgage accounts and made offers of redress and compensation totalling €55,075.93.

In March 2018, Emmet appealed the redress and compensation offering to the Independent Appeals Panel established as part of the examination. In June 2018 the Appeals Panel decided to uphold the appeal because of the '*significant level of overpayment*' and awarded additional compensation of €5,000. Emmet's complaint was then progressed with the Ombudsman.

Emmet sought €25,000 compensation in respect of '*stress and anxiety*' suffered by him. Emmet's wife died in 2008 and he became the sole parent to his children. He detailed that this was a '*very distressing and worrying*' time.

Emmet also sought redress of €24,303, consisting of a balance adjustment of €23,146 and deposit interest of 5% i.e. €1,157, which relate to two part redemptions on one of the mortgage loans of €62,893.08 in July 2014 and €100,000 in July 2016. He detailed that the second payment was funded by the '*forced voluntary sale*' of a property he held in the UK in 2016. He also sought further compensation of €8,144.65 to '*reflect the time value of money*' on the total redemption amount paid of €162,893. He also sought additional compensation of €49,000 to reflect the lost opportunity for capital appreciation and rental income (£750 pm) from the UK investment property sold in March 2016.

The Ombudsman was of the view that the evidence showed there were other factors outside of the interest rate applying to the mortgage accounts that influenced the sale of Emmet's UK investment property. The evidence showed that the Brexit referendum was the main motivating factor and the uncertainty that existed in the market as to the potential consequences on property holdings in the UK and value of sterling at that time. The Ombudsman also noted that the UK property was an unencumbered property, such that it was a matter entirely within Emmet's discretion to sell the property and Emmet was not required to engage with the bank with respect to the sale.

However, the Ombudsman found that the evidence supported Emmet's submission that he made the redemption payments because of the high repayments on the mortgage accounts. He accepted that the redemption repayments may not otherwise have been made.

Continued on page 17

 **Banking**

Continued from page 16

With regard to Emmet's claims that he was entitled to redress of €24,303 (loan balance adjustment of €23,146 and interest of 5% on that figure of €1,157) and to €8,144.65 to reflect the *'time value of money'*, the Ombudsman was of the view that in circumstances where Emmet did not appear to want to unwind the redemption payments, he did not see a basis for these claims.

However, taking into consideration all of the evidence in terms of the significant level of overcharging that occurred on the mortgage loans and the time period of almost nine years over which the overcharging occurred, the Ombudsman found that the level of compensation offered was not sufficient or reasonable to compensate Emmet. During this nine year period, Emmet's personal circumstances had changed significantly and the Ombudsman found that the unavailability of sums rising from €200 up to €800 on a monthly basis over a near nine year period, was a source of great inconvenience to Emmet and his family. The Ombudsman found it extraordinary that the bank had stated that it did not believe that Emmet demonstrated any inconvenience in the particular circumstances of this complaint.

The Ombudsman upheld the complaint and directed that the bank pay a sum of €22,000 compensation to Emmet (inclusive of the €10,227.03 compensation already paid).

READ THE FULL  
DECISION HERE

Decision Reference: 2020-0048

## Tracker interest rate not offered on new mortgage in 2011

In 2008, Paul and Alice took out two mortgages of €250,000 each, which were secured on their existing private residence. The purpose of the mortgages was for the couple to buy a new house. The mortgage loans were drawn down on tracker interest rates of ECB + 0.75%.

In 2011 Paul and Alice decided to sell their existing house and move into their new house. They used the proceeds of the sale to clear the balance owed on one mortgage in full and to reduce the balance of the other mortgage to €163,000.

Paul and Alice stated that they were told by the bank in 2011 that they were *'not allowed'* to keep the tracker interest rate and that they had to enter into a new mortgage contract for either a fixed or a variable interest rate. They stated that they were put under *'severe duress'* by the bank to accept a new interest rate and also encouraged to borrow an additional €2,000 for solicitor's fees. They eventually agreed to a new mortgage loan of €165,000, which comprised the outstanding mortgage balance of €163,000 plus an additional €2,000. The new mortgage loan was secured on Paul and Alice's new home and was drawn down on a five-year fixed interest rate in March 2011. The two tracker mortgage loan accounts were redeemed in April 2011.

Paul and Alice believed that the terms and conditions of the mortgage agreement they entered into in 2011 allowed them to be *'put back on'* the tracker interest rate when the five-year fixed interest rate expired in 2016.

In their complaint to the Ombudsman, the couple stated that the bank had forced to them to give up their tracker interest rate in March 2011 and then failed to offer them a tracker rate when the fixed interest rate expired on the new mortgage loan in March 2016.

They sought the reinstatement of the tracker interest rate, compensation for losses incurred by them and an apology from the bank.

The bank responded that there was no basis on which Paul and Alice, in redeeming the 2008 mortgage loans, could *'keep'* the rate of interest which applied to that loan after they redeemed the loan. It outlined that a new loan issued to Paul and Alice in March 2011 because they required a new loan secured on their new home. In order to do this they had to redeem the 2008 loans as these were secured against the house they sold in 2011. It further stated that in 2011, the only interest rate options available to Paul and Alice were fixed and variable interest rates as the bank had ceased offering tracker rates for new loans from mid-2008.

The bank stated that Paul and Alice did not have a contractual entitlement to a tracker interest rate when the fixed interest rate period expired in 2016. The terms and conditions of the mortgage stated that, once the fixed rate expired, the couple would be able to choose a new rate from the rates then offered by the bank, which *'may'* include a tracker interest rate. A tracker interest rate was not available from the bank in 2016 and so was not offered.

The Ombudsman found that he had not been provided with any evidence to show that Paul and Alice had been put under duress by the bank to accept a new fixed interest rate loan and to borrow an additional €2,000 for solicitor's fees in 2011. He noted that, notwithstanding what may have been communicated to Paul and Alice by the bank at any such alleged discussions in 2011, the couple had decided to sell their previous property and were therefore seeking to have the security released on that property by the bank.

Continued on page 19

 **Banking**

Continued from page 18

In order to do so, they had to secure additional funds to meet the shortfall. The evidence showed that the bank offered them a new mortgage loan on a 5-year fixed interest rate in the amount of €165,000, which they chose to accept. There was no obligation on the bank to offer Paul and Alice a tracker interest rate on the new mortgage loan.

The Ombudsman did not uphold the complaint as he accepted that there was no contractual or other obligation on the bank to offer Paul and Alice a tracker interest rate at the end of the fixed rate period in April 2016.

READ THE FULL  
DECISION HERE

Decision Reference: 2020-0064

## Tracker interest rate not offered on expiry of fixed interest rate in 2013

Mark applied to the bank for a mortgage loan in August 2005. The bank gave him a mortgage quotation which outlined the available rate options, including fixed rates, a variable rate option and a tracker rate option. Mark selected a two-year fixed rate. He stated that he was advised by the bank that he could take up the tracker rate when the fixed rate expired.

When the fixed rate expired in June 2008, Mark received a letter enclosing a list of interest rates to choose from, which included a tracker rate of ECB + 1.50%. The letter stated that if he did not select another interest rate, the loan would automatically 'default' to the tracker rate. Mark said he took this to mean that this was the 'default position' of the loan. He opted instead to select a further five-year fixed interest rate of 5.5% because interest rates at that time were 'high and rising'. He stated that he did this on the understanding that his mortgage would 'revert back to tracker' after the further fixed rate expired.

When the five-year fixed interest rate expired in June 2013, Mark was not offered a tracker interest rate, as such a rate was no longer available from the bank. His loan defaulted to a variable rate of 4.34%. Mark stated that he should have been offered a tracker interest rate of ECB + 1.50% in 2013 as he had understood this to be the 'default' rate. He stated that the bank's 'description' of the variable rate in his contract was 'general' and 'does not exclude the tracker option as that too is a type of variable rate.'

In his complaint to the Ombudsman, Mark stated he was seeking 'recompense' for the interest overpaid on his mortgage since June 2013.

The bank responded that Mark did not have a contractual entitlement to a tracker mortgage at any time. The mortgage contract he signed and accepted in 2005 provided for an initial fixed rate and for a variable rate subsequently.

The bank did not accept that Mark was advised during the loan application process in 2005 that a tracker rate would apply to his account at a future fixed rate period maturity date.

From mid-2006 to mid-2009 the bank had a policy of offering tracker rates as an option in the options letters to existing customers maturing from a fixed rate period, irrespective of whether or not the customer had a contractual entitlement to be offered a tracker interest rate. The bank stated that if the customer did not select another option, the bank applied a tracker interest rate automatically as the default rate. The bank stated that one of the available rate options in June 2008 was a tracker variable rate of ECB + 1.50%. However, Mark did not select the tracker rate option and instead selected the five year fixed rate.

The bank submitted that it did not offer a tracker interest rate to Mark in May 2013 as the bank was no longer offering tracker interest rates at that time, unless there was a contractual entitlement to be offered such a rate.

The Ombudsman noted that the bank had outlined the option of taking out a mortgage loan on a tracker interest rate of ECB + 1.4% to Mark in 2005, when he submitted his loan application. He did not accept it at the time. Offering a tracker rate at that time did not create an obligation on the bank to offer that tracker interest rate or any other tracker interest rate at a later point in time.

The Ombudsman was of the view that there was no basis for Mark to reasonably expect that the term 'variable rate' in his loan offer would relate to a tracker interest rate. It was clear that the loan offer envisaged a two-year fixed rate of 3.15% and thereafter the option of a variable rate.

Continued on page 23

 **Banking**

Continued from page 22

The variable rate in this case made no reference to varying in accordance with variations in the ECB refinancing rate, rather it was a variable rate which could be adjusted by the bank *'from time to time'*.

The Ombudsman found that Mark did not have a contractual or other entitlement to a tracker interest rate at the end of the fixed rate period in 2008.

The Ombudsman noted that Mark had twice previously been given the option of a tracker interest rate, firstly when he was submitting his application for a mortgage loan in 2005 of ECB + 1.4%, and again on the expiry of the initial two year fixed rate period in 2008 of ECB + 1.5%. He did not pursue this option on either occasion. The Ombudsman did not uphold the complaint.

READ THE FULL  
DECISION HERE

Decision Reference: 2020-0138

## Tracker rate not offered when staff rate 'stopped being beneficial', or on the expiry of a fixed rate period

In 2007, Claire and John held a mortgage with another bank on a tracker interest rate of ECB + 0.8%. In September 2007 they 'switched' their mortgage to the respondent bank where Claire was an employee at the time. The couple's mortgage with the bank was 'split' into two accounts. The first account for €166,000 was placed on a staff interest rate of 2.50% and the second account for €213,400.00 was placed on a tracker interest rate of ECB + 0.80%.

Claire and John stated that in April 2009, the tracker interest rate 'dropped below' the staff rate. They asserted that they should have been offered a tracker rate for the account on the staff rate at that time, when the staff rate 'stopped being a beneficial rate'.

Claire and John further detailed that the European Standardised Information Sheet (ESIS) furnished to them by the bank, provided that the staff rate on the mortgage account was fixed for a period of 2 years and would roll to the tracker rate at the end of that fixed period. They stated that the bank failed to offer them a tracker interest rate for the staff rate account in September 2009 when the two-year fixed rate period expired.

The couple stated that they requested to 'return' to a tracker rate on the staff rate account 'well before February 2015' but were unable to locate correspondence in relation to this request.

In their complaint to the Ombudsman, Claire and John sought compensation for the bank's failure to offer them a tracker rate on the staff rate mortgage account in April 2009 and in September 2009.

The bank responded that the loan offer with respect to the staff rate account specifies that the loan was a Staff Home Loan with an interest rate of 2.5% and makes no reference to the ECB refinancing rate or to a tracker interest rate. It outlined that Claire and John had no contractual right to a tracker interest rate on this loan at any time throughout the period of the loan, and as a result they were not offered a tracker rate in April 2009 or at any other time. The bank further detailed that the loan did not draw down on a 2-year fixed rate and has never been on a 2-year fixed rate.

The bank outlined that the European Standardised Information Sheet served to provide information to a mortgage applicant prior to their acceptance of a mortgage product and was for illustrative purposes only. It accepted that there was a 'manual error' in the information contained in the assumptions at the end of the Illustrative Amortisation Table where it outlined that the 'rate is fixed for 2 year(s)'.

The bank said that it was possible to move from a staff rate to another of its current rate offerings, if requested by the account holders and approved by the bank; however Claire and John did not request to switch the account from the staff home loan rate to a tracker interest rate until February 2015 when tracker interest rates were no longer on offer to new or existing customers other than those with a contractual right to be offered a tracker interest rate.

The Ombudsman was of the view that the loan offer for the staff rate mortgage account envisaged an interest rate of 2.5%, and in the event that Claire's employment with the bank ceased, a variable rate would then apply.

Continued on page 25

 **Banking**

Continued from page 24

The variable rate, in the mortgage loan documentation, made no reference to varying in accordance with variations in the ECB refinancing rate, rather it was a variable rate which could be adjusted by the bank.

The Ombudsman noted from the evidence that when the staff rate ceased to be the most beneficial rate in March 2009, that Benefit in Kind was no longer payable on the mortgage account. There was no provision in the Staff Banking & Credit Policy or in the mortgage loan documentation that obliged the bank to offer Claire and John a tracker interest rate when the staff rate *'stopped being beneficial'*.

The Ombudsman was disappointed that a factually incorrect assumption was erroneously included in the European Standardised Information Sheet by the bank. Notwithstanding this error he found that it was clear that the mortgage loan documentation did not provide for a fixed rate period of 2 years.

The Ombudsman did not uphold the complaint. There was no evidence which showed that Claire and John contacted the bank at any time prior to February 2015 to seek to apply a tracker interest rate to the mortgage loan. Even if they had made a request there was no obligation on the bank to accede to that request. The Ombudsman found that the complainants did not have a contractual or other entitlement to a tracker interest rate on the mortgage loan.

READ THE FULL  
DECISION HERE

Decision Reference: 2020-0077

## Complainant unhappy with tracker interest rate margin of ECB + 2.35%

In 2005, Mairéad took out a joint mortgage account with a third party on a residential investment property on an initial two-year fixed interest rate, which was later switched to a tracker rate of ECB + 1.10% in 2007.

Mairéad outlined that in 2008 she redeemed the joint mortgage and took out a new mortgage with the bank in her sole name secured on the same property, *'with the understanding'* that she would have *'the same'* tracker rate of ECB + 1.10% on the new mortgage account. An interest only fixed interest rate period applied to the mortgage loan for the first year of the mortgage term.

When the fixed interest rate expired in 2009, the mortgage was placed on a tracker rate of 4.85% (ECB + 2.35%). Mairéad asserted that it was *'never'* explained to her by the bank that the tracker interest rate would change. In her complaint to the Ombudsman, she sought to be *'placed back'* on the tracker rate of ECB + 1.10% and reimbursed for interest overpaid.

The bank detailed that Mairéad's loan offer outlined that a one-year fixed interest rate of 4.99% would apply, and at the end of the fixed period the interest rate applicable would be the bank's then current tracker mortgage rate. It stated that there is no provision in the loan offer in respect of a tracker rate margin of 1.10%.

The Ombudsman noted that Mairéad had not provided any evidence or offered any reason as to why she was of the *'understanding'* that a tracker interest rate of ECB + 1.10% had been agreed at the time she applied for the mortgage loan in 2008. The evidence showed that the bank and Mairéad did not have any direct communication at the time as Mairéad had engaged the services of a broker.

The Ombudsman found that it was clear that the loan offer envisaged a one-year fixed interest rate and thereafter the option of the *'then current'* tracker mortgage interest rate.

The evidence showed that the tracker interest rate that the bank had available in January 2009 of 4.85% (ECB + 2.35%) was the same tracker interest rate that was offered to Mairéad for her mortgage loan. The Ombudsman accepted that Mairéad was offered the option of *'the then current [bank] tracker mortgage appropriate to the loan'* on the expiry of the fixed interest rate period and in accordance with the terms and conditions of the loan offer. This rate was applied in the absence of an alternative rate option being chosen by her. He also accepted that it was within the bank's commercial discretion to set an interest rate of ECB + 2.35% in January 2009.

The Ombudsman also found that there was no entitlement on the expiry of the fixed interest rate period in 2009 to the tracker interest rate of ECB + 1.10% that had applied to the joint mortgage loan that was redeemed by Mairéad in February 2008. Each mortgage loan is governed by the terms and conditions applicable to that particular mortgage loan. The fact that both mortgage loans were secured on the same property did not entitle Mairéad to the same interest rates on both accounts. For these reasons the Ombudsman did not uphold the complaint.

 **Banking**[READ THE FULL DECISION HERE](#)

Decision Reference: 2020-0090

## Freezing of a bank account following bankruptcy

Amelia received correspondence from her bank advising that her current account had been suspended with immediate effect, as a result of her having been adjudicated bankrupt. Amelia had been adjudicated bankrupt four weeks before, but claimed that the delay on the bank's part in contacting her, led her to make the assumption that the account would not be disrupted.

She immediately contacted the bank and arranged to attend a branch to withdraw her child benefit money but was unable to do so and arrangements were made to attend a different branch the following day. Amelia said that on both occasions, her requests were escalated by the teller and she felt 'humiliated and embarrassed'.

Amelia further complained that her request to make alternative banking arrangements was unreasonably refused and this left her in a very difficult position. She also queried why she wasn't offered a Basic Bank Account by the bank, in line with the EU Payments Account Directive 2014. She noted that despite the suspension by the bank of 'all operations' on her account, it continued the deduction of bank charges throughout. Finally, she noted that after she was discharged from bankruptcy, the 'no operations' marker on her account was not removed.

The bank acknowledged a delay occurred between the adjudication of the bankruptcy and the suspension of her account but that this delay was due to the manner in which information was provided to it by the Insolvency Service of Ireland. It asserted that as soon as it became aware of the bankruptcy, it had to suspend the operations on the account immediately. It acknowledged and apologised to Amelia regarding the issues she had encountered at the branch but submitted that it was obliged to operate within its policy.

The bank submitted that at the time, whilst bankrupt individuals could nominate an account to use through the petition period it was up to each bank whether or not it would offer banking facilities in circumstances of an un-discharged bankruptcy. It argued that there was no onus on it to offer a Basic Bank Account – although Amelia could have applied for one.

The Ombudsman, while appreciating that Amelia found herself in a difficult position also acknowledged that it was necessary for the bank to freeze the account when it did. However, the Ombudsman also noted that as a matter of good practice, it could have lifted the no operations marker from the account upon the expiry of the bankruptcy period or at least communicated on this matter with Amelia.

In relation to the application of charges, the bank claimed that as the account remained open it was unable to stop the charges, but did offer a refund. It also submitted that Amelia could have withdrawn the balance in the account at any stage. Amelia however, contested that she was not made aware of this and the Ombudsman found that the bank had not acted in accordance with the standards of service which could reasonably have been expected of it in this regard.

Whilst the Ombudsman sympathised in relation to the in-branch experiences, he did not find that the teller acted unreasonably in referring the matter to a more senior member of staff.

The Ombudsman noted that the bank offered Amelia a goodwill gesture of €250 but taking into account the failures in service and poor levels of communication, the Ombudsman partially upheld the complaint and directed compensation of €1,500 in addition to the refund the fees which were charged to the account.