

Banking

Reference: 2019-0341

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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.