Banking

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Decision Reference: 2020-0061

Tracker rate not offered on expiry of fixed rate period in 2010

In August 2005, Kerry applied to *'switch'* her mortgage to the bank. An initial loan offer letter was issued to her by the bank which provided for a tracker interest rate of ECB + 0.85%. Kerry, instead, decided to opt for a five-year fixed interest rate of 3.79% in order to *'provide certainty of rate'*. She stated that her *'very clear understanding'* was that the tracker rate would apply when the fixed rate period expired. The bank issued a new loan offer letter providing for the fixed rate in September 2005.

Kerry subsequently sought and secured a separate top up loan from the bank in December 2005 which was issued on a tracker rate of ECB + 0.85%.

When the five-year fixed rate period expired in 2010, Kerry was not offered the option of a tracker rate. The mortgage was switched to the bank's standard variable rate.

Kerry submitted that the offer letter she signed in September 2005 did not stipulate that the rate applicable on the expiry of the fixed rate period would be the bank's standard variable rate. She asserted that it was not clear what type of variable rate was referred to in the offer letter, for example, *'Standard Variable Rate, Discount Variable Rate, Tracker Rate etc'*. She submitted that the loan offer was *'unspecific and flawed in its wording'*.

In her complaint to the Ombudsman, Kerry sought for the tracker rate to be *'reinstated'* on the mortgage loan account and backdated to the expiry date of the fixed rate in 2010. She also sought a refund of all interest she believed she had overpaid since 2010.

The bank responded that it issued Kerry with a loan offer letter in August 2005 which provided for a mortgage based on a tracker interest rate of ECB + 0.85%. Subsequently Kerry requested a 5-year fixed rate of 3.79%.

In September 2005 the bank issued a further loan offer letter which provided for the fixed interest rate. The new loan offer stated that it superseded the previous offer.

The bank detailed that as it had withdrawn tracker interest rate products in mid-2008, this product type was not included in the rate options letter sent to Kerry prior to the expiry of the fixed interest rate in 2010.

The Ombudsman found that the terms and conditions of the loan offer letter envisaged that at the end of the fixed interest rate period, the bank *'may'* offer a further fixed interest rate period or *'alternative available products'* and that if no such offer was made or if an offer was made and it was not accepted, then the Home Loan Rate would apply. The Home Loan Rate was stated to be one which could be adjusted by the bank. He found that there was no basis for Kerry to reasonably expect the term *'Variable Home Loan Rate'* to relate to a tracker interest rate, given that there was no reference to a tracker or the ECB rate in the loan offer letter.

The Ombudsman noted that there was no documentary evidence of the discussions in 2005 where it is purported that the *'understanding'* on Kerry's part was formed that the rate *'would revert to tracker variable rate.'* He found that in any event, in order for Kerry to have a contractual right to a tracker interest rate on her mortgage loan at the end of the fixed interest rate period, that right would need to have been specifically outlined in the mortgage loan documentation that was signed by the parties, and it was not. The terms of Kerry's mortgage loan are governed by the terms contained in the offer letter signed by the parties, and not by reference to a previous offer, which was rejected by Kerry and then superseded by a new offer.

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The Ombudsman noted that tracker mortgages had been withdrawn from the market by the bank from mid-2008 and therefore Kerry could not have been offered a tracker interest rate when the fixed rate expired in August 2010.

The Ombudsman observed that the rate options letter issued to Kerry in 2010 detailed that if no response was received the interest rate would roll to the bank's *'Standard Variable Rate'*. He was of the view that, to avoid confusion, the bank should have used the same terminology as contained in Kerry's mortgage loan documentation when referring to rate choices and options in subsequent correspondence with Kerry.

The Ombudsman also noted that Kerry's two mortgage loan accounts were drawn down at two different points in time, commenced on different interest rates (fixed rate and tracker rate) and were subject to different terms and conditions. The fact that the bank offered Kerry a tracker rate for the top-up mortgage and that Kerry accepted that offer, did not create any obligation on the bank to offer the same rate on Kerry's separate mortgage loan account when the fixed interest rate period expired in August 2010. For these reasons the Ombudsman did not uphold the complaint.