

Complaint (18)

Background & Complaint

The Complainants applied for a mortgage loan for a new home in August 2008. On 2 September 2008 they received an offer of a tracker loan at 1.25% above the ECB, said rate to apply for the term of the loan. On 28 October 2008, a letter offering a 2 year fixed rate of interest was offered and accepted.

The Complainants contend that they never received advice or explanation as to the difference between a tracker variable rate and a bank home loan variable rate of interest. They contended they were of the belief that at the end of the 2 year fixed period they would be permitted to avail of the tracker rate which had been originally offered.

The Complainants contended that the letter offering the 2 year fixed rate of interest was not clear as to what situation would arise for them at the end of the 2 year period.

Respondent's Case

The Respondent contended that the Complainants made a choice in accepting the terms of the letter of 28 October 2008 and that the letter of offer was clear as to what the contractual situation would be post the 2 year period [General Condition 7 (b)]. It was also contended that the Complainants had the option and election as to how they would proceed at the end of the 2 year period and in default of election by them, the default provisions were clear.

Finding

It was found that the letter of 28 October 2008 was the basis of the loan and this letter superseded the earlier letters. The said letter clearly provided for the application of a variable rate at the end of the 24 month period and the details of repayments to be made after the 24 month period were set out. The letter went on to detail the repayments to be made, i.e. 276 instalment payments variable at 5.450%.

It was further noted that the Complainants had the benefit of a solicitor "*who looked after the legalities*" when they were buying their house.

Comment

A clear, well reasoned ruling and findings in the context of quotations from the written contractual documents identified as governing the relationship between the parties.

Question

Given that the Complainants accepted the offer contained in the letter of 28 October 2008 in the belief that they would be permitted to avail or revert to the tracker terms at the expiration of the 2 year period it may have justified or required an Oral Hearing to test if there was any basis that the belief was caused by something said, written or done by the Respondent !

Complaint (19)

Background

The Complainants took out a mortgage loan with the Respondent which was drawn down on 2 February 2006 at a tracker rate 0.95% above ECB rate. In February 2007 they decided to switch the loan to a fixed rate 5.05% until 5 March 2010.

The Complainants “*understood*” that after 5 March 2010 their loan repayments would revert to the original tracker rate as that rate was to apply for the term of the loan. They also allege that they were assured by the Respondent that the loan would revert to the tracker rate agreed originally. They claim they never agreed to the standard variable rate nor was there an agreement that the original tracker rate would be relinquished by them except for the period ending on 5 March 2010.

Respondent’s Case

The Respondent rejected the claim that an employee had advised the Complainants that they could or would return to the original tracker rate – though the identified employee could not remember the precise conversation he had, he was adamant that he would have advised that at the end of the fixed rate period, they would return to the variable or fixed rates as would be available after 5 March 2010.

Finding

The Ombudsman was faced with a conflict of evidence, a conflict between the Complainants on the one part who were contending that they had been given a verbal assurance in relation to the rate of interest that would apply at the end of the fixed rate and the evidence of the employee that he would never have given the advice which the Complainants claimed they had received. This dispute was resolved in favour of the Bank on the basis of the employee’s statement that he would never have given the type of advice that the Complainants claimed they had received and the fact that the written contract and terms of the agreement were notified to the Complainants and also that the Complainants were on notice that the Bank’s standard variable rate would apply in March 2010 if they failed to select one of the interest rate options offered by the Bank and certain other correspondence between the parties.

The complaint was found to be not substantiated.

Comment

This decision, like any case with a conflict of evidence, is very difficult to resolve and I assume that if the Complainants' assertion that the employee gave them verbal advice on which they acted and in which they believed that the dispute would have been resolved in favour of the Complainants, rather than in favour of the Respondent, then perhaps this is a case in which oral evidence, in fairness (and with the benefit of hindsight) might have been used to explore the veracity or likely accuracy of what was spoken on the telephone.

Complaint (23)

Background & Complaint

The Complainant held a mortgage with the Respondent Bank from March 2006 to May 2009. The loan was drawn down on 31 March 2006 at a discounted tracker interest rate of 0.85% above the ECB rate, due to the Complainant's status as a holder of a specific current account. In July 2006 in view of interest rates rising the Complainant applied to fix the interest rate applying to her mortgage until 31 July 2008. She claims that she was assured by her broker and an official of the Respondent that she would be entitled to return to the original tracker rate upon expiry of the fixed rate period. She also claimed that her original mortgage agreement stipulated that the tracker rate of interest would apply "*for the life of the home loan term*".

However when the fixed rate term concluded, her account was placed on the Bank's standard variable rate and not on the tracker rate which had applied earlier. The Complainant also alleged that she was not given the option of switching to an alternative tracker rate and claimed that her account was simply switched to the standard variable rate without her being given option or explanation in the latter.

The Complainant denies that she was issued with a letter dated 1 July 2008 wherein the Respondent claimed she was informed of the interest rate options available to her on the expiry of the fixed rate term. The Complainant claimed that in a telephone conversation on 14 July 2008 she was given no choice but informed that she would be switched to the Bank's standard variable rate after 31 July 2008 – she also noted that no reference had been made to the letter allegedly sent by the Respondent to her on 1 July 2008 outlining the interest rate options which would be available to her at the expiry of the fixed rate term.

Note

The Complainant moved to another Provider in May 2009 being dissatisfied by the manner in which she had been dealt with by the Respondent.

Remedy Claimed

The Complainant sought the difference in interest paid by her from the end of the fixed rate term compared with what would have been paid under the tracker arrangement which governed the initial period of the mortgage and the reinstatement of the tracker or alternatively payment of the difference in cost to her for the duration of the mortgage.

Finding

A very thorough evaluation of the facts and after significant questions had been addressed to and answered by the Complainant and Respondent, the Respondent was not able to produce a copy of the letter allegedly sent, or provide any proof of it having been sent to the Complainant. Similarly, there was no recording of the telephone call above referred to.

It was found that there was an ambiguity/discrepancy in the documents which could have misled the Complainant and that the Respondent should have alerted the Complainant to the ECB rate 0.85% on 1 August 2008.

The complaint was substantiated.

Remedy

The Complainant had since moved to a new Provider over whom the Ombudsman had no jurisdiction.

The compensation computation was complex, though balanced and fair and as well reasoned, resulting in an award of €25,000 to the Complainant.

Comment

This was an immensely complex and difficult case, well researched and investigated, resulting in a Finding and a just award well reasoned.