

Complaints regarding tracker mortgages continue to comprise a considerable amount of the work of this Office. As will be evident from the decisions published, and some of the summaries in this Digest, there are certain complaints made to the FSPO which relate only to the amount of compensation offered to customers who have been deemed impacted, because they were denied a tracker rate of interest. It is disappointing that in such limited complaints, one particular bank continues to argue that the customers in question have no entitlement to a tracker rate of interest.

This bank persists in this line of argument, even in circumstances where it has already conceded the customers' entitlement to a tracker rate, as part of the Tracker Mortgage Examination directed by the Central Bank of Ireland. This is not helpful in terms of seeking to resolve these complaints. In addition to the additional inconvenience caused to the bank's customers, this approach needlessly increases the resources required by the bank itself, and by this Office, for the investigation of the complaint.

That same bank regularly argues that its customers have not demonstrated any inconvenience caused by its overcharging. In my opinion, such statements demonstrate a complete lack of empathy or understanding of the consequences of the bank's actions.

I have upheld a number of tracker mortgage complaints where the complaint was that the compensation offered was not adequate.

These include directing a bank to pay €20,000 (to include €3,854 already paid), directing a bank to pay a sum of €22,000 compensation (inclusive of the €15,936 compensation already paid) and directing a bank to pay €15,000 in compensation, (inclusive of the €9,199 already offered).

As I indicated in my third Digest, which focused on tracker mortgages, it can be seen from the tracker related decisions published that a significant number of tracker mortgage complaints continue to be not upheld. Some complainants continue to have unrealistic expectations, believing that their desire to have a tracker interest rate provides a basis for requiring their bank to grant them one. There seems to be a lack of understanding, by some complainants, that for a person to have an entitlement to a particular tracker interest rate, there must be some contractual or other obligation on their bank entitling them to such a rate. Simply wanting to have a tracker interest rate, or knowing someone who was put on a tracker rate at a particular point in time, is not sufficient to entitle a person to such a rate.

[READ THE FULL DECISION HERE](#)

Decision Reference: 2020-0331

Complainant unhappy with compensation offered by bank in respect of its failures on her tracker mortgage loan account

In 2004, Sinead took out a mortgage with the bank, which was also her employer at the time. Her mortgage was initially drawn down on a tracker interest rate of European Central Bank (ECB) base rate plus a margin of 1.1%. The margin above ECB was reduced to 0.85% in December 2005.

Sinead decided to move the mortgage to the staff non-tracker variable rate in August 2006 and she subsequently availed of a two-year fixed rate of 3.95% in January 2007. On the expiry of the fixed rate period in January 2009, Sinead was not offered the option to revert to the tracker rate and the mortgage moved instead to a variable rate of 3.75%.

In 2012, Sinead decided to avail of voluntary redundancy and so her employment with the bank ended. In 2015, she was unfortunately diagnosed with a serious illness.

In February 2015, Sinead requested a six-month interest-only payment period for the mortgage, which the bank agreed to. When the six-month interest-only period expired in August 2015, Sinead requested a further six months of interest-only. At that time, she was seeking employment and she had also just finished a course of medical treatment and was recovering from surgery. The bank agreed to a further six-month interest-only period, but advised Sinead that in the absence of a viable long-term solution to her situation, she may have to consider selling her home.

In June 2016, Sinead informed the bank that due to her illness she was unable to return to work for the foreseeable future. She requested a further six months of interest-only payments. The bank agreed to this but on the condition that Sinead agree to sell her home within that 6 month period. Sinead did not agree to this, but she did place her house on the market for sale.

Throughout this period, Sinead's mortgage never fell into arrears.

Sinead's mortgage was considered by the bank in the course of the Central Bank directed Tracker Mortgage Examination 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 when Sinead had moved from the tracker rate to the non-tracker variable rate and then to the fixed rate. The bank found that the language used in its communications to Sinead may have been confusing or misleading. As a result of its failure, the bank concluded that it had charged an incorrect interest rate on Sinead's mortgage between January 2009 and November 2017. The bank offered Sinead redress and compensation of €15,900, including a refund of the overpaid interest of €13,546, compensation of €1,354, and €1,000 to cover the cost of independent professional advice.

In January 2017, Sinead appealed the bank's offer to the Appeals Panel, which decided to uphold the appeal and awarded her additional compensation of €2,500. Sinead's complaint with the Ombudsman was then progressed.

In her complaint to the Ombudsman, Sinead detailed that she believed that the bank should have calculated her compensation payment from the date of inception of the mortgage in 2004. She felt that the offer did not adequately compensate her for "the sleepless nights, constant worry, depression and pure terror" she had experienced.

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In response, the bank stated that Sinead had not demonstrated that any inconvenience was brought about because of the overpayment on the mortgage. It stated that her financial difficulties arose due to her voluntary redundancy and could not be linked to the tracker rate issue. The bank was of the view that the compensation offered to Sinead was adequate.

In his decision the Ombudsman did not accept that the redress period should begin earlier than 2009, in circumstances where Sinead was on a tracker rate in 2004 and had voluntarily moved her mortgage to a variable rate.

However, the Ombudsman found that there was no doubt that the money overcharged by the bank had caused Sinead additional hardship and inconvenience, at a time when she was dealing with a very serious illness which left her unable to take up employment. He was “at a complete loss” as to how the bank, or “any reasonable person” could arrive at the view that Sinead had not demonstrated any inconvenience. He found that this statement by the bank demonstrated a complete lack of empathy or understanding of the consequences of its actions. He was of the view that the compensation already paid was not at all reasonable or sufficient to compensate for the inconvenience Sinead had suffered.

The Ombudsman upheld the complaint and directed the bank to pay €20,000 compensation to Sinead (inclusive of the €3,854 already paid).

[READ THE FULL DECISION HERE](#)

Decision Reference: 2020-0369

Complainants dissatisfied with the tracker interest rate and margin offered

In 2008, Dan and Gwen took out a mortgage loan of €218,000 over a 25-year term with the bank. The bank's initial loan offer provided for a loan amount of €210,000 and a tracker interest rate of 4.75% (ECB + 0.75%). However, the loan amount required was subsequently amended to €218,000. Therefore Dan and Gwen were ultimately offered, and accepted, a loan offer which provided for a loan amount of €218,000 and an initial two-year fixed rate of 4.99%.

Dan and Gwen asserted that the loan amount was only increased from €210,000 to €218,000 because the bank required them to clear other borrowings before it would issue the loan cheque to them. However, the bank stated that the request to increase the loan amount was instigated not by the bank, but by Dan and Gwen themselves.

Dan and Gwen opted to exit the two-year fixed rate period early in February 2009 and switched the mortgage to a variable interest rate of 4.55%.

Dan and Gwen made a complaint to the then Financial Services Ombudsman's office in 2011. They detailed that the bank had failed to fully advise them of the consequences of breaking the fixed interest rate period that applied to their mortgage loan account in February 2009 and refused to return them to a tracker interest rate. The complaint to the Ombudsman was placed on hold between May 2012 and February 2015 as a result of High Court and Supreme Court litigation that was ongoing at that time. The litigation was not in relation to Dan and Gwen's complaint but dealt with similar issues to those arising in relation to their complaint. The Supreme Court appeals were ultimately withdrawn.

Dan and Gwen's mortgage loan account was subsequently considered by the bank under its redress programme in 2015.

The bank found that it had failed to inform Dan and Gwen that by breaking early from the fixed interest rate period in 2009, they would lose their entitlement to a tracker rate in the future. It offered them the tracker rate that they would have been offered at the maturity of the fixed rate period (ECB + 3.25%). It also offered them redress and compensation of €7,835.

Dan and Gwen were dissatisfied with the tracker rate and margin of ECB + 3.25% that the bank offered to them. They believed they were entitled to the tracker interest rate of ECB + 0.75% on the basis that their original loan offer provided for that rate. They said that the original loan offer was only withdrawn because the bank had wanted them to increase the loan amount to clear other borrowings.

The bank stated in response that the original loan offer was not accepted or signed by the couple, and therefore its terms were not relevant. It submitted that the loan offer that was signed and accepted by Dan and Gwen, did not contain a specific promise to a particular tracker rate. It further stated that the calculation of the appropriate tracker rate margin of 3.25% was based on a commercial decision that the bank was entitled to make.

In his decision, the Ombudsman found that the evidence showed that Dan and Gwen had submitted a request to the bank, via their broker, to increase the loan amount in 2008. He noted that while the original loan offer provided for a tracker interest rate of ECB + 0.75%, it was not in dispute that the couple did not sign or accept this offer. Therefore the Ombudsman was of the view that there was no contractual or other obligation on the bank to offer the couple the tracker rate of ECB + 0.75% on the expiry of the two-year fixed interest rate period.

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Having regard to all of the evidence before him, the Ombudsman did not accept that the bank had failed to apply the correct tracker interest rate margin to Dan and Gwen's mortgage loan account. He found that there was no evidence to demonstrate an entitlement to a tracker interest rate of ECB + 0.75%. He accepted that the bank applied the correct tracker interest rate margin (ECB + 3.25%) to the mortgage loan account from July 2015 to redress the mortgage loan account.

However, the Ombudsman stated that he was most disappointed with the bank's response when Dan and Gwen originally raised the tracker issue with the bank in May 2011. He pointed out that had the bank investigated the matter correctly and restored the tracker interest rate then, the retrospective application of the tracker rate in 2015 would not have been necessary. Having regard to all of the evidence before him in terms of the particular circumstances of Dan and Gwen, the level of overcharging and the period over which the overcharging occurred, and the bank's failure to correct the matter when it was brought to its attention by Dan and Gwen, the Ombudsman did not accept that the amount of compensation paid by the bank was reasonable in the circumstances.

The complaint was partially upheld and the bank was directed to pay €5,000 compensation (inclusive of the €3,000 already offered).

[READ THE FULL DECISION HERE](#)

Decision Reference: 2020-0334

Complainants did not believe compensation for overcharging on tracker mortgage was adequate, given the impact on their ability to repay other debts

Sarah and John held a mortgage with the bank. In 2017, as part of the Central Bank directed Tracker Mortgage Examination, the bank found that it had charged them an incorrect interest rate on their mortgage between February 2009 and November 2017. It found that after the couple moved from a tracker rate to a variable rate and then to a fixed rate, the bank failed to provide them with sufficient clarity as to what would happen at the end of that fixed rate. The bank restored Sarah and John's mortgage to a tracker interest rate of ECB + 0.85% and offered them redress and compensation of €47,184.

In 2018, Sarah and John appealed the bank's offer to the Independent Appeals Panel. The appeal was upheld and Sarah and John were awarded additional compensation of €5,000.

In their complaint to the Ombudsman, Sarah and John stated that the compensation offered did not adequately compensate them for the "direct financial impact" the bank's overcharging had on them. They outlined that they were dealing with a short-term debt problem during the period of the overcharging, and their ability to pay off this debt was significantly impacted as a result. They stated that consequently, they were forced to renegotiate their loans with the bank a number of times. John detailed that he was an employee of the bank and had to engage with his own colleagues in relation to the restructuring of their debts, which caused him great embarrassment.

The couple sought additional compensation of €28,657, which was based on the additional interest that they estimated would arise on the impacted mortgage and their other loans, due to the restructuring of those facilities. They also sought compensation of €8,274 for the "personal stress and embarrassment" they suffered.

In response, the bank stated that the couple had not demonstrated any inconvenience caused by the overcharge on their mortgage. The bank argued that the couple's financial issues were "accumulated of their own volition" and had "nothing to do with their mortgage loan".

In his decision, the Ombudsman noted that by June 2009, the couple had accumulated debts of over €62,000 that were unrelated to the mortgage. The couple took out a loan of €63,000 from the bank to repay these debts. At that time, the overcharging on their mortgage account averaged approximately €50 per month. The Ombudsman found that the evidence showed that there were other factors outside of the overcharging on Sarah and John's mortgage which influenced their decision to take out this loan at that time.

The Ombudsman further stated that based on the evidence before him, he did not accept that the overcharge on the mortgage loan "significantly impacted" Sarah and John's ability to repay the personal debt between 2010 and 2011, as they suggested. He noted that the monthly loan repayments on the loan at that time were €988, which was significantly larger than the monthly overpayments that the couple were making on their mortgage loan.

However, the Ombudsman was of the view that for a single income family with a number of children, an overpayment of interest which averaged €380 per month for a period of 105 months, was significant.

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He found that throughout the nine year period of the overcharge, the couple were denied the opportunity of making informed decisions about their finances, as they did not know the true position with respect to the repayments that were actually due and owing on the mortgage loan account. During this time, they were challenged financially as they were paying off both their mortgage loans and the personal loan. As a result, the Ombudsman found the level of compensation offered was not sufficient or reasonable.

The Ombudsman also stated that he was at a “total loss” as to how the bank could have come to the conclusion that its conduct had not caused “any inconvenience” to the couple. He observed that this showed a serious lack of understanding on the part of the bank as to the impact of its conduct on John and Sarah, which he found most disappointing.

The Ombudsman partially upheld the complaint and directed the bank to pay €15,000 in compensation to John and Sarah (inclusive of the €9,198.55 already offered).

[READ THE FULL DECISION HERE](#)

Decision Reference: 2020-0282

Complainant unhappy with the level of compensation offered in relation to her tracker mortgage and the manner of calculation

Eva took out a 20-year mortgage of €125,000 with the bank in her sole name in 2013. The purpose of the loan was to redeem an existing joint home loan held by Eva and another party, which had a balance of €13,664 and for Eva to purchase the other party's share in the property. That mortgage loan account was on a tracker interest rate of ECB + 0.95% at the time of redemption.

In 2016, Eva's new sole mortgage was considered by the bank as part of the Central Bank directed Tracker Mortgage Examination. The bank identified that an error had occurred on the €13,664 portion of the mortgage that was used to redeem the joint mortgage, in that it had failed to offer Eva a tracker interest rate on that portion of her mortgage loan. As a result, the bank switched Eva's new loan to a tracker interest rate of ECB + 0.95% in August 2016 and also offered her redress and compensation of €1,918. Her mortgage balance was also adjusted by €499.

In November 2017, Eva appealed the redress and compensation offer to the Independent Appeals Panel. In February 2018, the appeal was rejected on the basis that "there was insufficient evidence to support the claims" for financial and non-financial losses.

In her complaint to the Ombudsman, Eva stated that the redress and compensation offer was "wholly inadequate". She submitted that a tracker interest rate should have been applied to the entirety of her loan from the date of drawdown in January 2013, rather than just the sum used to pay off the joint mortgage. She also sought compensation of €3,000 for the loss of the use of money overpaid, and a further €1,000 for the stress and worry caused. She also queried the manner in which the bank calculated the "weighted interest rate" used to calculate her redress.

The bank detailed that Eva should have been entitled to retain the tracker rate only on the €13,664 portion of the loan, but the bank chose not to separate this portion from the total balance going forward. Instead the bank outlined that it applied the tracker rate of ECB + 0.95% to the full remaining balance of the mortgage loan from 03 August 2016 until maturity. It stated that by choosing this option Eva had been placed in a better position going forward than she would have been in, if its failure had not occurred. The bank also stated that it had removed any inconvenience caused by separating her loan between two accounts on two different interest rates. For the calculation of Eva's redress, the bank explained that it applied a "weighted interest rate" to reflect the fact that only a portion of the borrowing was impacted by its failure. The bank acknowledged that this could have been explained more clearly in its redress and compensation letter to Eva.

In his decision the Ombudsman found that Eva did not have a contractual entitlement to the application of the tracker interest rate of ECB + 0.95%, which was previously held on the joint mortgage account, on the new mortgage loan that she was applying for. He accepted that there was no obligation on the bank to offer Eva a tracker interest rate of ECB + 0.95% on the entire mortgage loan, as the additional funds of circa €111,000 were new lending and the bank was entitled to make an offer using its then available interest rates.

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However, the Ombudsman found it most disappointing that the bank did not set out the options for redressing Eva's mortgage account to her, or explain the reason that it took the approach that it did in applying redress to her mortgage loan account. He observed that if the bank had done so, perhaps it would have been more apparent to Eva that there was a significant benefit to her in the approach taken by the bank.

The Ombudsman found that the evidence did not support Eva's submission that there had been an interest overcharge of €11,259 on the mortgage loan account. He was of the view that the redress and compensation given by the bank to date was more than reasonable and he did not uphold the complaint.