

RESPONSE TO CUSTOMER'S ADDITIONAL SUBMISSION

BORROWING UNIT	DATE APPEAL RECEIVED BY AIB	DATE ADDITIONAL SUBMISSION RECEIVED	DATE OF PANEL CONSENT TO RESPOND TO ADDITIONAL SUBMISSION	APPEALS REFERENCE
AIB	13/03/2019	01/05/2019	14/05/2019	IRPD0313

SECTION 1: CUSTOMER (S) DETAILS

NAME OF CUSTOMER(S)				DATE OF BIRTH
CUSTOMER ADDRESS(ES)				
PROPERTY ADDRESS(ES)	IN-SCOPE PROPERTY: common			
ANY PREVIOUS APPEALS BY THE CUSTOMER?	No	REFERENCE (IF ANY)	N/A	
NAME(S) OF APPELLANTS				

	ACC NUMBER
	(Impacted)
IN-SCOPE LOAN ACCOUNT NUMBER(S)	
RELATED LOAN ACCOUNT NUMBER(S)	N/A
OPEN/CLOSED	Open
IF CLOSED, DATE OF CLOSURE	N/A
PRINCIPAL BALANCE	

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SECTION 2: SUMMARY OF CUSTOMER'S ADDITIONAL SUBMISSION

The Bank wishes to address the following points made in the Additional Submission:

- A. Two basic arguments, that:
- 1) AIB had an obligation to offer the Customers the prevailing tracker rate and,
 - 2) the prevailing tracker rate did exist and "it was 1.5%".
- The Bank responds to these points under the heading "**The Bank's position**" below.
- B. Statements/quotes attributed to the Bank in relation to the prevailing Tracker rate.
- C. The Customers' responses to the Bank's (specific) responses covering:
- Media release
 - Undated letter extract
 - Reintroduction of Tracker interest rate in 2013
 - Meaning of the words "then prevailing rate"
 - Customers' response to Bank statement re: back book of previously available rates

The Bank refers to its previous response regarding the other points raised in the Additional Submission.

(Please refer to the Customers' letter dated 24/04/2019 for full details of their Additional Submission)

SECTION 3: BANK RESPONSE TO CUSTOMER'S ADDITIONAL SUBMISSION

The Bank does not propose to deal with every point made in the Additional Submission, much of which has been addressed in the Bank's Case Summary and Response. In order to be of assistance to the reader, the Bank has responded to some of the points raised in the Additional Submission in the order that they were raised.

A. The Bank's position

As a preliminary point, the Bank does not accept that it 'keeps changing' its position. We have sought to be clear from the outset. The Bank's position in respect of the 'basic arguments' set out by the Customers is as follows:

1. The 06-09 T&Cs provide that at the end of a Fixed interest rate period, customers were entitled to be given the option of the 'then prevailing' Fixed Rate, the 'then prevailing' Variable interest rate, and the 'then prevailing' Tracker interest rate appropriate to the customers' mortgage loan. The Bank withdrew Tracker interest rates in October 2008 and there was therefore no prevailing Tracker interest rate at the time the Customers' Fixed interest rate period ended. Since there was no prevailing Tracker interest rate to be offered to the Customers at the time, there was no contractual or other obligation to offer a Tracker interest rate.
2. It is a matter of fact that the Bank did not have a prevailing Tracker interest rate on the date that the Customers' Fixed interest rate period ended. The meaning of the words "*then prevailing*" is clear; in this context it means 'available at the time'.

As outlined in our previous response, the compensation payment offered to the Customers in this case is for our service failure in not having a Tracker interest rate available as an option from October 2008 to December 2013. The 06-09 T&Cs do not expressly state that the Bank is required to offer a Tracker interest rate at a particular rate or margin (or indeed any Tracker interest rate) on the expiry of the Fixed interest rate period. The Bank did not have a prevailing Tracker interest rate to offer at the time the Fixed interest rate period ended, and therefore there was no breach of contract.

B. Statements/quotes attributed to the Bank in relation to prevailing Tracker rate

- The Customers include two sentences in quotation marks in their Additional Submission. It is not clear from where the Customers claim to have taken those apparent quotes. However, by way of clarification, it is the Bank's position that it did not have a prevailing Tracker interest rate during the relevant period.
- The second sentence, in quotation marks, stating "*we had a prevailing tracker rate but we did not offer it to you*" is misleading. The Bank did not say this.
- The diagram represented as being a "history" of the Tracker margin which is included in the Additional Submission is not accurate and is not accepted by the Bank.
- The Customers claim that the last Tracker interest margin offered by the Bank continued to be available until Tracker interest rates were reintroduced in 2013. The Bank does not accept this assertion. At the end of the Fixed interest rate period, the Customers did not have a contractual right to the last Tracker interest margin offered by the Bank, or to any Tracker interest rate or margin, and there was no prevailing Tracker interest rate on offer by the Bank on the relevant date.
- As there was no contractual or other obligation on the Bank to offer any particular, or any, Tracker interest rate during the relevant period, then the fact that a Tracker interest rate may have been available generally before the relevant period in no way informs the Customers' entitlement to any particular interest rate in a later period.

C. The Customers' responses to the Bank's (specific) responses

Media Release

- In their response, the Customers have included the AIB Press Release from 10th October 2008 and claim that this Press Release states that the Bank stopped offering Tracker mortgages to new mortgage applicants only. The Customers claim that the Bank had no right to stop offering the prevailing rate to existing customers who, they claim, had the right to roll off the Fixed rate onto the then prevailing Tracker rate at the end of the Fixed rate period.
- The compensation payment offered to the Customers in this case is for our service failure in not having a Tracker interest rate available as an option from October 2008 to December 2013. The 06-09 T&Cs do not expressly state that the Bank is required to offer a Tracker interest rate at a particular rate or margin (or indeed any Tracker interest rate) on the expiry of the Fixed interest rate period. The Bank did not have a prevailing Tracker interest rate to offer at the time the Fixed interest rate period ended.

Undated Letter Extract

- The Customers have referred to an undated regulatory letter issued by the Bank outlining that Tracker mortgages were no longer available for new mortgage applicants from 10th October 2008. The letter also outlines that customers who had received a formal offer of a Tracker Mortgage before 10th October 2008 would still be able to avail of the Tracker Mortgage within the terms of their Letter of Loan Offer.
- Customers who received a formal offer of a Tracker Mortgage before 10th October 2008 would have had the relevant Tracker margin quoted in their Letter of Loan Offer. The Customers' Letter of Offer does not include a Tracker margin.

Reintroduction of Tracker interest rate in 2013

- In 2013, following feedback from its customers, AIB made a commercial decision to reintroduce a prevailing Tracker rate for customers rolling off their Fixed interest rate. The rate was set following a review of mortgage costs and, in particular, funding costs. This rate was then made available to those customers whose terms and conditions entitled them, at the end of their Fixed rate period, to have the option of choosing from the 'then prevailing' Fixed interest rate, the 'then prevailing' Variable interest rate and the 'then prevailing' Tracker interest rate appropriate to their loan.

Meaning of the words "*then prevailing rate*"

- The Customers have quoted text from the Bank's Case Summary and Response and state that it "*makes no sense at all*".

The Bank believes that the text quoted is clear. The meaning of the words "*then prevailing*" is not defined and in those circumstances, it is appropriate to give the words their ordinary meaning, which is to exist or is available

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at the time (i.e. current). This meaning is consistent with the Bank's previous responses on this matter and there is no suggestion of the Bank seeking to import a meaning that did not already exist. The words in the Terms and Conditions are clear: the Customers could choose one of the rates (Fixed, Variable and Tracker) which were on offer at the time and appropriate to their mortgage loan.

- As the meaning of the words "*then prevailing*" is clear, the principle of *contra proferentem* does not apply.

Customers' response to Bank statement re: back book of previously available rates

- It is a matter of fact that the Bank had no prevailing Tracker interest rate on the date that the Customers rolled off their Fixed interest rate. The Tracker interest rate which the Customers claim to have had a right to be offered at the end of their Fixed interest rate period is a Tracker interest rate which was previously on offer by the Bank, which the Customers' mortgage loan was never on, and which was not available on the relevant date. The Customers did not have a contractual entitlement to that historic Tracker interest rate or to any historic interest rate which was previously offered by the Bank.

Submission Date:	21/05/2019
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