



Decision Reference: 2020-0102

Complainant believed tracker compensation did not adequately compensate for the hardship suffered

This complaint relates to two of four mortgage accounts held by Emmet with the bank. One mortgage was secured on Emmet's home and the other was secured on a buy-to-let property.

The mortgages in question were considered in the course of the Tracker Mortgage Examination directed by the Central Bank 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, which Emmet had moved to from the tracker rate. It found that the language used in the mortgage documentation may have led Emmet to believe that he would be entitled to a tracker rate following the end of the fixed rate term. As a result of its failure, the bank concluded that Emmet had been charged an incorrect interest rate on his two mortgage loans between November 2008 and November 2017. The bank restored a tracker rate to the mortgage accounts and made offers of redress and compensation totalling €55,075.93.

In March 2018, Emmet appealed the redress and compensation offering to the Independent Appeals Panel established as part of the examination. In June 2018 the Appeals Panel decided to uphold the appeal because of the 'significant level of overpayment' and awarded additional compensation of €5,000. Emmet's complaint was then progressed with the Ombudsman.

Emmet sought €25,000 compensation in respect of 'stress and anxiety' suffered by him. Emmet's wife died in 2008 and he became the sole parent to his children. He detailed that this was a 'very distressing and worrying' time.

Emmet also sought redress of €24,303, consisting of a balance adjustment of €23,146 and deposit interest of 5% i.e. €1,157, which relate to two part redemptions on one of the mortgage loans of €62,893.08 in July 2014 and €100,000 in July 2016. He detailed that the second payment was funded by the 'forced voluntary sale' of a property he held in the UK in 2016. He also sought further compensation of €8,144.65 to 'reflect the time value of money' on the total redemption amount paid of €162,893. He also sought additional compensation of €49,000 to reflect the lost opportunity for capital appreciation and rental income (£750 pm) from the UK investment property sold in March 2016.

The Ombudsman was of the view that the evidence showed there were other factors outside of the interest rate applying to the mortgage accounts that influenced the sale of Emmet's UK investment property. The evidence showed that the Brexit referendum was the main motivating factor and the uncertainty that existed in the market as to the potential consequences on property holdings in the UK and value of sterling at that time. The Ombudsman also noted that the UK property was an unencumbered property, such that it was a matter entirely within Emmet's discretion to sell the property and Emmet was not required to engage with the bank with respect to the sale.

However, the Ombudsman found that the evidence supported Emmet's submission that he made the redemption payments because of the high repayments on the mortgage accounts. He accepted that the redemption repayments may not otherwise have been made.

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With regard to Emmet's claims that he was entitled to redress of €24,303 (loan balance adjustment of €23,146 and interest of 5% on that figure of €1,157) and to €8,144.65 to reflect the 'time value of money', the Ombudsman was of the view that in circumstances where Emmet did not appear to want to unwind the redemption payments, he did not see a basis for these claims.

However, taking into consideration all of the evidence in terms of the significant level of overcharging that occurred on the mortgage loans and the time period of almost nine years over which the overcharging occurred, the Ombudsman found that the level of compensation offered was not sufficient or reasonable to compensate Emmet. During this nine year period, Emmet's personal circumstances had changed significantly and the Ombudsman found that the unavailability of sums rising from €200 up to €800 on a monthly basis over a near nine year period, was a source of great inconvenience to Emmet and his family. The Ombudsman found it extraordinary that the bank had stated that it did not believe that Emmet demonstrated any inconvenience in the particular circumstances of this complaint.

The Ombudsman upheld the complaint and directed that the bank pay a sum of €22,000 compensation to Emmet (inclusive of the €10,227.03 compensation already paid).