



<u>Decision Ref:</u>	2019-0298
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Tracker Mortgage
<u>Conduct(s) complained of:</u>	Failure to offer a tracker rate throughout the life of the mortgage
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

This complaint relates to a mortgage loan account that the Complainant held with the Provider. The mortgage loan is secured on the Complainant's principal private residence. The Provider has transferred its interest in the mortgage loan to another regulated lending institution.

The Complainant's Case

The Complainant entered into a loan agreement with the Provider in March 2008 on a fixed rate with a roll over date of 01 January 2012.

In December 2011, before the expiry of the fixed rate term, the Complainant asserts that a number of options were outlined to him. One of the options was a Loan to Value ("LTV") tracker interest rate. He states that it was explained to him that if his LTV was less than 80%, based on a fresh valuation at the time, he would have the option of switching his mortgage to a LTV tracker rate.

Based on that valuation, the Provider found that the Complainant's LTV was over 80% thereby not allowing him to avail of the tracker rate option. The mortgage loan reverted to a variable rate with a discount as the Complainant had a Named Product Type current account in January 2012.

Between December 2015 and January 2016, the Complainant submits that he paid a lump sum off his mortgage in order to reduce the LTV to below 80% and avail of the tracker rate and the Provider refused his request by letter dated 27 January 2016. The Complainant submits that the Provider's letter of 27 January 2016 details that the Provider was no longer conducting new business in Ireland and that the entitlement to apply for a LTV discount on Standard Variable Rate products were withdrawn in late 2013.

The Complainant also asserts that he ought to have been informed of the withdrawal of the tracker rate in 2013. The Complainant submits that if he was informed that the option to apply for an LTV was being taken away in late 2013, he may have decided to pay a lump sum off his mortgage earlier in order to avail of the tracker rate. The Complainant also submits he would not have conducted business with the Provider had he known that the Provider would cease to provide services in this jurisdiction and that his options would be curtailed on this basis.

The Complainant submits that it was reasonable for him to believe that the LTV tracker option as offered in December 2011 would remain available to him until 2016.

The Complainant is seeking that the Provider switch his mortgage loan account to a tracker interest rate, effective from January 2016.

The Provider's Case

The Provider submits that the Complainant drew down a loan for the sum of €295,300 on 01 May 2008, pursuant to a facility letter dated 25 March 2008. The facility letter confirmed that the loan was for a period of 27 years and the interest rate was fixed at 4.73% per annum until the roll over date of 1 January 2012.

The Provider submits that the fixed rate of 4.73% was a LTV rate which was available to customers who chose an LTV product and *"amongst other criteria, whose ratio of total borrowings as compared to the value of the property securing the loan was below 80%"*. The Provider submits that the Complainants executed additional terms and conditions known as the "LTV Terms and Conditions" on 27 April 2008, which amended the general terms and conditions in the facility letter dated 25 March 2008.

The Provider submits that on 16 November 2011, the Complainant was sent a roll over notification which informed the Complainant that his fixed interest rate period was due to expire in January 2012. The Provider submits that this letter confirmed that the Complainant may have the option to move to a variable rate, agree a new fixed rate or *"revert to an ECB tracker rate (with the margin which had applied before your fixed rate period), subject to certain qualification criteria."*

The Provider submits that in an email of 09 December 2011, the Provider set out the fixed and variable options available to the Complainant. This email also outlined as follows;

"The loan to value at 27/04/2008 was 79.38% LTV, to renegotiate an LTV rate you would need to provide a fresh valuation on the [Provider's] standard form and at your

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own cost, and the LTV would need to be below 80%. If the LTV is now above 80% then you no longer qualify for a LTV rate. LTV is calculated on the total borrowing held."

The Provider submits that the Complainant had a valuation of his property commissioned on 3 February 2012 by a third party. The property is located in the South East area of the country. This valuation assessed the value of the property at €449,000. The Complainant forwarded this valuation report to the Provider with a request to transfer his interest rate to a LTV tracker rate on 16 February 2012.

The Provider submits that it subsequently commissioned its own valuation of the property which valued it at €285,000 on 02 April 2012. The Provider submits that Clause 4 of the LTV Terms and Conditions gave the Provider the discretion to commission an independent valuation. The Provider submits that the LTV is calculated on the total borrowings of a customer and the Complainant had a separate ECB Tracker interest rate mortgage loan previously drawn down in 16 May 2008, in the sum of €89,000. The Provider submits that the valuation it received calculated the Complainant's LTV as 123% in April 2012.

The Provider submits that it advised the Complainant on 02 May 2012 that as the LTV was greater than 80%, that he could not avail of any LTV product. The Provider submits that as per the LTV Terms and Conditions and the terms and conditions of the facility letter the loan reverted to the Provider's standard variable rate. The Provider submits that as the Complainant upgraded his current account, this entitled him to avail of a Named Product Type discount of 0.45% on the variable interest rate at that time.

The Provider submits that from May 2012, the Complainant was *"aware that he was no longer on an LTV interest rate and as confirmed in Clause 4 of the LTV Terms and Conditions he did not have the right to renegotiate a future LTV interest rate"*. The Provider submits that on 31 May 2012 the Complainant executed the "Conditions for [Provider] [Product Name] Mortgage Discount" to obtain a discount off his standard variable rate and Clause 4 of these conditions confirmed as follows;

"This [PRODUCT NAME] Mortgage Discount cannot be used with any other discount or preferential terms on the same Housing loan(s). For the avoidance of doubt, customers who have an ECB Tracker rate or who are eligible to return to an ECB Tracker Rate during the lifetime of their loan will not be eligible for the Prestige Mortgage Discount."

The Provider also submits that the LTV Terms and Conditions are clear. The Provider submits that Clause 4 of the LTV Terms and Conditions states as follows:

"The right to renegotiate the Weighted Difference for any loan within your total borrowing shall only apply if at the date of request for renegotiation your LTV Rate for that loan is an LTV fixed interest rate or LTV ECB Tracker interest rate."

The Provider submits that the Complainant was not offered a tracker interest rate on his mortgage loan account in January 2016 as he *"had no regulatory or contractual entitlement"* to a tracker interest rate.

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The Provider submits that it withdrew the LTV ECB Tracker product in October 2008 and then withdrew the LTV Fixed Rate product in November 2011 and that there was no obligation on it to inform the Complainant that LTV rates were being withdrawn from the market;

“...there was no obligation on the Provider to inform the Complainant when particular loan products were being withdrawn. All lending institutions withdraw different products and introduce new products at various times and there is no obligation on a lending institution to contact all customers when a particular product is being withdrawn.”

The Provider submits that although it has transferred its interest in the mortgage loan to another regulated lending institution, that institution is bound by the existing terms and conditions of the facility letter.

The Complaint for Adjudication

The conduct complained of is as follows:

- (a) The Provider failed to inform the Complainant in late 2013 that the tracker interest rate option was being withdrawn from the market by the Provider;
- (b) The Provider incorrectly denied the Complainant the option of applying a tracker interest rate on his mortgage loan account in January 2016 when his LTV was reduced below 80%.

Decision

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainant was given the opportunity to see the Provider's response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

In arriving at my Legally Binding Decision I have carefully considered the evidence and submissions put forward by the parties to the complaint.

Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties on 29 July 2019 outlining the preliminary determination of this office in relation to the complaint. The parties were advised on that

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date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

In the absence of additional submissions from the parties, within the period permitted, the final determination of this office is set out below.

At the outset, I must point out that that the Provider has provided conflicting information as to when LTV Tracker Rates were withdrawn by the Provider, as set out in the following paragraphs.

In the letter from the Provider to the Complainant dated 14 July 2017, the Provider details as follows;

- *“The Bank withdrew LTV Tracker Mortgage on 14 October 2008*
- *The Bank withdrew LTV Fixed Rate Mortgages for new customers on 11 November 2011.*
- *The Bank withdrew LTV Fixed Rate Mortgages completely on 1 November 2013”.*

It cannot be the case that the Provider withdrew the LTV Tracker Mortgage Product on 14 October 2008, in circumstances where this was a product option that was offered to the Complainant some 4 years later in January 2012. I am disappointed with the misinformation that has been given. That said, these events have no impact on the complaint as by January 2016, the Provider was no longer offering any LTV discount products, tracker or otherwise, as the Provider had withdrawn them from the market.

In order to ascertain if the Complainant had an entitlement to a tracker interest rate on his mortgage loan account in 2016, it is necessary to review and set out relevant provisions of Complainants loan documentation. This loan documentation comprises the Fixed Rate Home Loan, together with General Terms and Conditions signed on 17 April 2008, the LTV Terms and Conditions signed on 27 April 2008 and the Conditions for [Provider] [Product Name] Mortgage Discount signed on 31 May 2012. It is also necessary to consider the interactions between the Complainant and the Provider around the expiry of the fixed interest rate period in 2012.

The Fixed Rate Home Loan, signed on 17 April 2008 details as follows:

“Fixed rate: Roll-over date: 1 January 2012. The Roll-over date is the start date of the standard variable interest rate at that time. The fixed rate period expires on the date preceding this day”

Condition 12.1 of the Fixed Rate Home Loan details that *“If the Loan is a variable rate loan which is not linked to the ECB Refinance rate, the rate of interest applicable to the Loan will be our applicable variable home loan rate.....Our variable home loan rate is subject to variation from time to time in response to market conditions....”*

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The Fixed Rate Home Loan conditions were amended by the LTV Terms and Conditions signed on 27 April 2008.

Clause 1 of the LTV Terms and Conditions provided for the application of a LTV Interest Rate on the following condition;

“Provided that the ratio of the amount of your total borrowing to the value of your property, expressed as a percentage (LTV), is not more than 80%, the LTV interest rate applicable to your loan (the “LTV Rate”) is calculated by reference to your LTV and the [Provider] Reference Rate (if your loan is a fixed rate LTV loan) or ECB Base Rate (if your loan is an ECB Tracker LTV loan) (in either case the “Reference Rate”), on a weighted, tiered pricing basis. For this purpose, we determine what portion of your loan falls within each of the following tiers of difference between your Reference Rate and your LTV Rate (the “Difference”), and calculate the average weighted Difference for your loan (“Weighted Difference”) accordingly;

- (a) Lowest Tier: LTV of 0% - 50% = Difference of 0.5%*
- (b) Next Tier: LTV of 50% - 60% = Difference of 0.6%*
- (c) Highest Tier: LTV of 60% - 80% = Difference of 0.8%*

Your LTV Rate is then the sum of your Reference Rate and your Weighted Difference.

In the event that your LTV increases above 80% at any time during the term of your LTV mortgage, we reserve the right to convert your LTV Rate to our then applicable Home Loan rate (fixed or variable as the case may be. Your LTV Rate at the date of drawdown of your loan will be our LTV Rate (fixed LTV or ECB Tracker LTV as the case may be) applicable at that date.”

Clause 2 of the LTV Terms and Conditions identified that the LTV for the Complainant’s mortgage loan was 79.38% as of April 2008.

It is clear to me that the Fixed Rate Home Loan conditions, as amended by the LTV Terms and Conditions, envisaged that a fixed rate LTV would apply to the mortgage until 31 December 2011 and the loan would then roll to a standard variable interest rate on 01 January 2012. The terms and conditions of the mortgage loan did not link the standard variable interest rate to an ECB rate.

I note that the Provider issued a letter to the Complainant dated 16 November 2011, advising him that the fixed rate period was coming to an end and *“you now have the opportunity to review and agree the interest terms for the remaining term of your loan”*. This letter detailed that if no response was received the interest rate would revert to the applicable variable rate. I accept that this was in accordance with the terms and conditions of the mortgage loan, as I have detailed above.

I note that the letter of 16 November 2011 also detailed that there *“may”* be options to choose between other rates, as follows, and the Complainant could contact the Provider to discuss them;

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- *“To move to a variable rate*
- *To agree a new fixed rate period*
- *To revert to an ECB tracker rate (with the margin which had applied before your fixed rate period), subject to certain qualification criteria.”*

The Complainant did contact the Provider by telephone on 09 November 2011 to discuss options. A note of this call has been submitted in evidence, which details, *“Explained Standard Variable Rate changes are NOT linked to ECB rate changes.”*

Following this, there were email interactions between the Complainant and the Provider between 09 and 12 December 2011, whereby the Provider offered the Complainant four options. One of these options was a LTV tracker;

Option D is an LTV tracker and is only available if a fresh valuation is less than 80% LTV, Valuation has to be completed by IAVI qualified or higher, the bank may commission their own valuation if they feel valuation received does not accurately reflect current market value.

LTV is calculated on the total borrowing held. LTV Tracker and Fixed rates available, Underlying ECB tracker rate today is 1.00% (ECB rate)”

The Provider also detailed in the email exchange, that;

*“The loan to value at 27/4/2008 was 79.38% LTV, to renegotiate an LTV rate you would need to provide a fresh valuation on the [Provider’s] standard form and at your own cost, and the LTV rate would need to be below 80% **If the LTV is now above 80% then you no longer qualify for a LTV rate.** LTV is calculated on the total borrowing held.” [Emphasis added]*

I note that the Complainant submitted a valuation to the Provider in February 2012, along with a request to move the account to the LTV tracker. The Provider subsequently commissioned its own valuation, as it was entitled to do under the LTV Terms and Conditions. By letter dated 02 May 2012, the Provider informed the Complainant that it had commissioned its own valuation and that it could not *“apply an LTV Tracker Rate”* to the mortgage loan account, as the LTV was greater than 80%.

I accept that it was made clear to the Complainant during the exchanges, that there were conditions to be satisfied before an LTV Tracker Rate could be applied to the mortgage loan. The Complainant did not satisfy these conditions and therefore the LTV Tracker Rate would not be applied to his mortgage loan. For the avoidance of doubt, I am of the view that there was no contractual obligation on the Provider to offer the Complainant an LTV Tracker interest rate on his mortgage loan account on the expiry of the fixed rate LTV period in January 2012. The default position under contract was that the standard variable rate would apply. The Complainant engaged with the Provider at the time to explore options and the potential option of the LTV Tracker Rate was explored, however the conditions were not satisfied by the Complainant, thus that option could not be pursued by him.

I note Clause 4 of the LTV Terms and Conditions provided for “Renegotiation of LTV Rate”. This allowed the Complainant to “request” a renegotiation of the “*Weighted Difference based on a variation of your LTV since drawdown or since any previous renegotiation*”. Per Clause 4, that right to renegotiation of the Weighted Difference could “only apply” if at the date of request for negotiation the LTV Rate for the loan was an LTV fixed interest rate or LTV ECB Tracker interest rate”. In the interests of clarity, it appears to me that a request for a renegotiation of weighted difference of the LTV fixed interest rate did not occur in December 2011.

In the circumstances, the Complainant elected to pursue another option that had been offered to him in the email exchange in December 2011, of obtaining a discount of 0.45% on the standard variable rate, by upgrading his current account to a Named Product type account. The Complainant signed the Conditions for [Provider Product] discount to apply this to his mortgage loan on 31 May 2012.

The Complainant then contacted the Provider by letter on 06 January 2016, and detailed that the LTV was then 79.1% and requested that the Provider apply an LTV tracker interest rate to his mortgage loan. The Provider responded by letter dated 18 January 2016 and informed the Complainant that the Provider was not in a position to facilitate the request as the “*entitlement to apply for an LTV discount on the Standard Variable Rate (SVR) products were withdrawn circa late 2013*” and the Provider was “*no longer conducting any new business in Ireland*”.

The Complainant submits that the option of applying a LTV tracker to his mortgage loan account should have been made available to him in January 2016, because he wasn’t made aware that the option of applying an LTV rate was withdrawn in late 2013 and it also wasn’t made clear to him in early 2012 that the tracker option constituted buying a new product. On this basis, the Complainant submits that it was “*reasonable for [him] to believe that this option would still be available to me.*”

I do not accept that the Complainant could have reasonably expected or assumed that a LTV tracker rate offered in November 2011 would remain available for approximately four years and be available to the Complainant in January 2016.

I am of the view that it was made clear by the Provider to the Complainant in late 2011 and early 2012, that the LTV fixed rate had come to an end and the default position was the application of the standard variable rate, in accordance with the terms and conditions of the mortgage loan. The Complainant and the Provider explored other options available at the time. I note that these were options that the Provider was not contractually obliged to offer the Complainant. The Complainant did not satisfy the condition to apply the LTV tracker option and therefore could not enter into a contract for the application of that rate. As such, the Complainant ultimately elected for the discounted variable option, with the Provider, and signed the Conditions for [Provider Product] to apply that rate in May 2012.

Furthermore Condition 4, of those terms made it clear that the variable discount could not be used with any other discount and that customers “*who have an ECB Tracker Rate or who are eligible to return to an ECB Tracker Rate during the lifetime of their loan will not be*

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eligible for the [Product] Mortgage Discount.” If the Complainant did believe in 2012 that he would be eligible for a tracker interest rate in the future, this provision should have prompted him to query this with the Provider. As this provision made it clear that this product was not available to customers with a future entitlement to a tracker interest rate.

With regards to the Provider not informing the Complainant of the withdrawal of LTV rates in 2013, the Provider has responded with the following, in its response to this office, as follows;

“...there was no obligation on the Provider to inform the Complainant when particular loan products were being withdrawn. All lending institutions withdraw different products and introduce new products at various times and there is no obligation on a lending institution to contact all customers when a particular product is being withdrawn. Regardless of whether a loan product is withdrawn a customer remains on a particular loan product which is governed by the terms and conditions of the relevant facility letter.”

I accept that there was no obligation on the Provider to inform the Complainant when the LTV product was being withdrawn from the market and the withdrawal of a product from the market generally, cannot affect the contractual rights of a customer, which is governed by the terms and conditions applicable to their mortgage loan. It remains the case with respect to the Complainant, that there was no contractual right to be offered a LTV tracker on the mortgage loan either at end of the fixed rate period in January 2012 or when the Complainant requested that one be applied in January 2016.

For the reasons set out above, I do not uphold the complaint.

Conclusion

My Decision is that this complaint is rejected, pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**.

The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.

**GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

26 September 2019

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Pursuant to *Section 62* of the *Financial Services and Pensions Ombudsman Act 2017*, the Financial Services and Pensions Ombudsman will publish legally binding decisions in relation to complaints concerning financial service providers in such a manner that—

(a) ensures that—

(i) a complainant shall not be identified by name, address or otherwise,

(ii) a provider shall not be identified by name or address,

and

(b) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.

