An tOmbudsman Seirbhísí Airgeadais agus Pinsean

Financial Services and Pensions Ombudsman

Ombudsman's Digest of Legally Binding Decisions

Volume 4 - Published August 2020

This document contains summaries and case studies based on decisions issued between January and May 2020.

Contents

The Financial Services and Pensions Ombudsman (FSPO)

The FSPO was established in January 2018 by the **Financial Services and Pensions Ombudsman Act 2017**. The role of the FSPO is to resolve complaints from consumers, including small businesses and other organisations, against financial service providers and pension providers.

We provide an independent, fair, impartial, confidential and free service to resolve complaints through either informal mediation, leading to a potential settlement agreed between the parties, or formal investigation and adjudication, leading to a legally binding decision.

When any consumer, whether an individual, a small business or an organisation, is unable to resolve a complaint or dispute with a financial service provider or a pension provider, they can refer their complaint to the FSPO.

We deal with complaints informally at first, by listening to both parties and engaging with them to facilitate a resolution that is acceptable to both parties. Much of this informal engagement takes place by telephone.

Where these early interventions do not resolve the dispute, the FSPO formally investigates the complaint and issues a decision that is legally binding on both parties, subject only to an appeal to the High Court.

The Ombudsman has wide-ranging powers to deal with complaints against financial service providers. He can direct a provider to rectify the conduct that is the subject of the complaint. There is no limit to the value of the rectification he can direct. He can also direct a provider to pay compensation to a complainant of up to €500,000. In addition, he can publish anonymised decisions and he can also publish the names of any financial service provider that has had at least three complaints against it upheld, substantially upheld, or partially upheld in a year.

In terms of dealing with complaints against pension providers the Ombudsman's powers are more limited. While he can direct rectification, the legislation governing the FSPO sets out that such rectification shall not exceed any actual loss of benefit under the pension scheme concerned. Furthermore, he cannot direct a pension provider to pay compensation. He can only publish case studies in relation to pension decisions (not the full decision), nor can he publish the names of any pension provider irrespective of the number of complaints it may have had upheld, substantially upheld, or partially upheld against it in a year.

Formal investigation of a complaint by the FSPO is a detailed, fair and impartial process carried out in accordance with fair procedures. For this reason documentary and audio evidence and other material, together with submissions from the parties, is gathered by the FSPO from those involved in the dispute, and exchanged between the parties.

Unless a decision is appealed to the High Court, the financial service provider or pension provider must implement any direction given by the Ombudsman in his legally binding decision. Decisions appealed to the High Court are not published while they are the subject of an appeal.

Publication of FSPO legally binding decisions

The FSPO has the power to publish legally binding decisions in relation to complaints concerning financial service providers under Section 62 of the **Financial Services and Pensions Ombudsman Act 2017**.

The legislation requires that decisions should be published in a manner that ensures that a complainant is not identified by name, address or otherwise and a provider is not identified by name or address. Publication must also comply with Data Protection legislation and regulations. Decisions appealed to the High Court are not published while they are the subject of legal proceedings.

When the Ombudsman issues a legally binding decision, that decision is subject to a potential statutory appeal to the High Court within 35 calendar days from that date. For this reason the FSPO does not publish decisions before the elapse of the 35 day period available to the parties to issue a statutory appeal to the High Court. In addition, decisions which have been appealed to the High Court are not published, pending the outcome of any such Court proceedings.

Before any legally binding decision is published by the FSPO it undertakes a rigorous and stringent review to ensure that the non-identification requirements of the Act are adhered to in order to protect the confidentiality of the parties.

The legislation also provides the FSPO with the power to publish case studies of decisions relating to pension providers, but not the full decision.

This Digest contains short summaries or case studies of a selection of 22 decisions. Some details within the summaries referenced in this Digest, such as names and locations, have been altered in order to protect the identity of the complainants. It is important to keep in mind that these are only short summaries.

Full decisions are published on the FSPO's online database, which provides the maximum possible access to the Ombudsman's decisions. This can be accessed at www.fspo.ie/decisions. This database now holds the full text of approximately 850 of the Ombudsman's decisions issued since January 2018 in relation to complaints against financial service providers. Decisions will continue to be added on an ongoing basis.

This Digest of Ombudsman's decisions is the fourth volume in a series of digests.

Volume 1 published in January 2019 contains summaries and case studies based on decisions issued between January and December 2018.

Volume 2 published in February 2020 contains summaries and case studies based on decisions issued between January and December 2019.

Volume 3 published in February 2020 contains summaries of decisions in relation to tracker mortgage interest rate complaints, which issued between January 2019 and January 2020.

Volume 4 published in August 2020 contains summaries and case studies based on decisions issued between January and May 2020.

Each of the digests and all published decisions are available at www.fspo.ie.

Information on how to access decisions and search for areas or decisions of specific interest in the decisions database is included on Page 7 of this Digest.

Message from the Ombudsman

Publication of Decisions

This is the fourth occasion on which I have published decisions since the statutory power to do so was provided by the Oireachtas. Our online database of decisions now contains over 800 legally binding decisions issued since the FSPO was established in January 2018. Feedback on the publication of these decisions has been positive. Complainants, providers and their representative bodies have informed us that the published decisions assist them in understanding the root causes of complaints and how disputes can best be avoided or resolved. I believe publication of my decisions also greatly helps to broaden the awareness of the role of the FSPO and promotes a greater understanding of how we deal with complaints against financial service providers and pension providers. I will continue to publish my decisions on a regular basis.

Our role in the broader consumer protection framework

I believe that the broader role of the FSPO as an independent public body aiming, in line with our Strategic Plan, to enhance the financial services and pensions environment by using our powers to resolve disputes in a way which is fair, transparent and accessible to all has become ever more important and evident. Increasingly, providers are applying my decisions to cohorts of customers who are in similar circumstances to those who have received decisions from the FSPO, even if they have not made complaints to the FSPO.

This is particularly evident from decisions I have made in a number of complaints relating to tracker mortgage complaints. It is my understanding that almost 7,000 customers across a number of banks will benefit from the directions I have made in a small number of decisions. There have also been other decisions that have caused providers to apply remedies or change practices to the benefit of a wider group of customers.

I have also drawn attention to practices that I have identified during the investigation of complaints that I believe are of concern. These include the manner in which some banks have denied access to online banking, did not process certain transactions or froze or closed bank accounts in an unreasonable manner. I have also called on insurance companies to exercise caution and prudence when considering cancelling an insurance policy and not to take steps which might reasonably be considered disproportionate.

The key message is that providers should ensure that their conduct is fair, reasonable and proportionate.

In this Digest, I am also reminding financial services providers of the need to be fair, reasonable and proportionate in the very important matter of reporting the credit history of customers to the Irish Credit Bureau (ICB) and the Central Credit Register and to correct any errors quickly, fairly and comprehensively. Incorrect reporting to these agencies can have profoundly negative impacts on both individuals and businesses.

In drawing attention to these issues it is my aim to contribute to our stated mission of enhancing the financial services and pensions environment for all.

Decisions published in conjunction with this Digest of Decisions

We issued a total of 199 legally binding decisions between January and May 2020. I have published 180 of those decisions. As the legislation does not provide for the publication of my decisions in relation to pension complaints, I am not publishing five pension decisions issued during that period. In addition, there are 10 decisions, issued during the period, where the content of the decision is so distinctive that, even when anonymised, it would risk identifying the complainants. For this reason these have not been published.

My decisions are legally binding on both parties, subject only to an appeal to the High Court. This means that a provider must implement any direction made in a decision unless the decision is appealed. Four decisions issued between January and May 2020 were under appeal to the High Court at the time of publication in August 2020. These involve:

- An appeal by a financial service provider against a direction to that provider to reinstate benefit payments to a complainant under an income protection policy.
- An appeal by a complainant against a decision not to uphold a complaint in respect of the refusal by the provider to pay a claim under a travel insurance policy.
- An appeal by a financial service provider against a direction to restore a tracker mortgage interest rate to the complainants' mortgage loan account.
- An appeal by a financial service provider against a decision directing the admission of the complainant's claim for assessment under a professional indemnity insurance policy.

These four decisions will be not be published pending the outcome of those appeal processes.

Summaries and case studies in this Digest

The summaries and case studies in this Digest alone, give a sense of the variety and complexity of the complaints that the FSPO investigates and adjudicates.

Complaints relating to mortgages continue to comprise a major element of our work. At the time of publication, we were dealing with over 1,200 tracker mortgage interest complaints. This Digest includes seven summaries of tracker mortgage decisions and there are now 59 full texts of tracker mortgage decisions in our decisions database.

A number of my decisions in relation to tracker mortgages, where I have upheld the complaint, have profound and positive implications for the complainants concerned, and in some instances, similar implications for other customers of the provider concerned. However, it is evident that we have received a considerable number of complaints from people who would like to have received tracker mortgages, but who have no contractual or other entitlement to a tracker mortgage.

This Digest also includes some detail and summaries in relation to the reporting of customers' credit records. In addition, there are summaries of decisions relating to the freezing of a bank account, the charging of surcharge interest and a complaint about a drop in the value of an investment. A decision that may be of particular interest during the COVID-19 pandemic relating to access to accounts of vulnerable persons, is also included.

Summaries of decisions with regard to complaints relating to insurance include the cancellation of policies, the application of no claims bonuses to insurance policies, auto renewal of insurance policies and rejection of claims.

In addition, two case studies relating to pension complaint decisions are included, one relating to chargeable excess tax and the other to the entitlements of a retired public servant.

Given the complex issues in dispute in these complaints, I would encourage people to read the full text of the decisions. Each summary, in the online version of this document includes a link at the top of the page, to the full text of the decision, which was issued to the parties to that complaint.

COVID - 19

We have implemented a range of measures to ensure continuity of service during the COVID-19 pandemic. The pandemic has also impacted on the nature of complaints we are now receiving.

At the beginning of March, we implemented our Business Continuity Plan. I am very pleased to report that notwithstanding the very challenging operating environment, we have been able to continue to provide our service both efficiently and effectively. We have succeeded in increasing the number of complaints dealt with during the first half of 2020, compared to previous years.

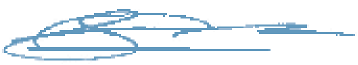
We are currently dealing with over 200 complaints that relate to COVID -19. These include complaints relating to a broad range of areas including credit and travel, event and business interruption insurance. We have put in place a number of measures to deal with these complaints including the prioritisation of complaints where appropriate.

Acknowledgements

I want to thank all complainants and providers for their cooperation with our various processes.

I also want to thank the Council Chairperson, Maeve Dineen, and the members of the Financial Services and Pensions Ombudsman Council and all of our stakeholders for their ongoing support and cooperation.

In particular, in these difficult and challenging times, I want to thank and pay tribute to the Deputy Ombudsman, MaryRose McGovern, the members of the Senior Management Team and all our managers and staff for their tremendous work during the first half of 2020, in the most challenging of circumstances. Together we remain committed to providing our customers with the best possible service and outcomes.



Ger Deering

Financial Services and Pensions Ombudsman

August 2020

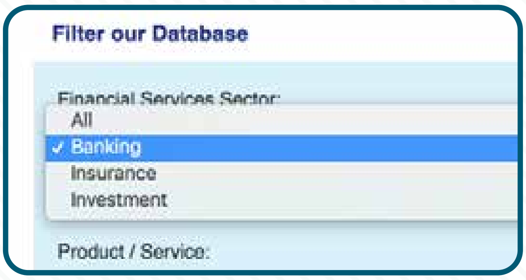
How to search our decisions on **www.fspo.ie**

Accessing our database of decisions

Our database of legally binding decisions is available online at www.fspo.ie/decisions. To refine your search, you can apply one or a number of filters.

1 Applying **filters** to narrow your search

To filter our database of decisions, you can firstly select the relevant sector:

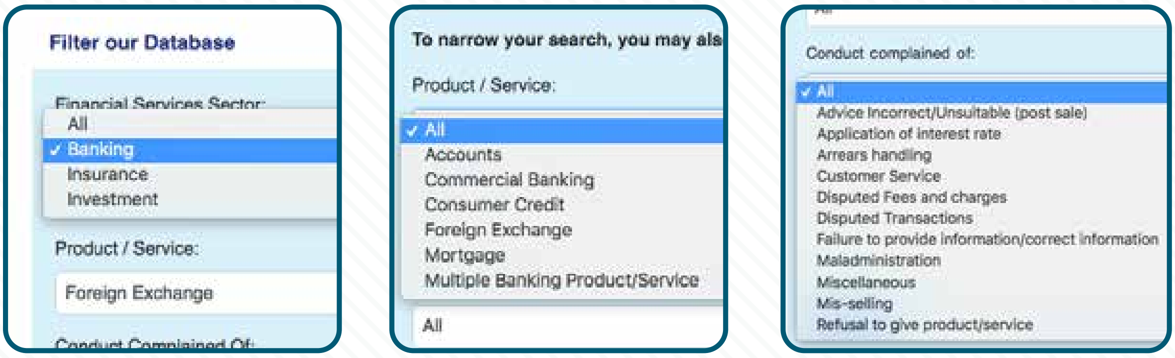


2

Having filtered by sector, the search tool will then help you to filter our **decisions** further by categories relevant to that sector such as:

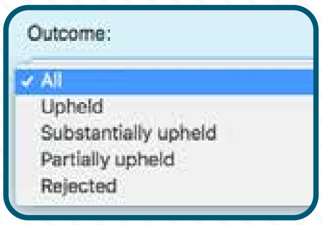
- product / service
- conduct complained of

✓ Sector ✓ Product / Service ✓ Conduct complained of



3

You can also filter our database of decisions by year, and by the outcome of the complaint, i.e. whether the Ombudsman Upheld, Substantially Upheld, Partially Upheld or Rejected the complaint.



Once you have found the decision you are looking for, click **View Document** to download the full text in PDF.

Ombudsman draws attention to reporting of customers' credit profile

A recurring issue which I have featured in these Digests of my decisions is the reporting of credit records to credit agencies.

The ICB describes itself as an electronic database that contains information on the performance of credit agreements between financial institutions and borrowers. It reports that over 300 lending institutions register information with the ICB, usually on a monthly basis. Each time a person applies for credit from one of these lenders, the lender may access that person's credit profile to find out about their performance under previous credit agreements with other lenders. Loans, held with financial service providers can be registered with the ICB, including instances where the borrower may have missed payments in the past. Information is held for five years by the ICB after a credit agreement is concluded. Further information is available from the ICB from its website at this link: www.icb.ie

Separately, the Central Bank of Ireland has established a Central Credit Register, in accordance with the provisions of the *Credit Reporting Act 2013*. This is a national database to which lenders must submit personal and credit information regarding existing loans for €500 or more. Lenders also submit personal and credit information on loan applications for €2,000 or more. Further information is available from the Central Bank's Central Credit Register website at: www.centralcreditregister.ie. The information contained on these databases can have very serious implications for individuals and businesses. Individuals and businesses are entitled to know what information is contained in these databases and can access their own personal record by contacting the Central Credit Register or ICB. However, it is evident from complaints received by this office that people are sometimes unaware of the records held about them. In addition, they may not be aware that they have a negative credit profile until they are refused credit by a financial institution and that institution informs them of the reason. If an individual or business has a credit profile containing inaccurate or incorrect indicators, this could mistakenly lead to them being refused credit, including for such matters as to purchase a home.

In my *Digest of Decisions Volume 1*, I drew attention to a complaint where a financial service provider incorrectly reported to the ICB that Simon's loan had been written off. I upheld the complaint and directed the provider to correct Simon's ICB record and pay €7,000 in compensation. Decision 2018-0163

Also in that volume, I included a decision where I substantially upheld a complaint relating to a dispute Pavel had with his financial service provider about an underpayment on a credit card that led to an adverse ICB record. I directed the provider to correct Pavel's ICB record and pay him €10,000 compensation. Decision 2018-0002

In my *Digest of Decisions Volume 2* I included a decision where a dispute by two sisters about a mortgage repayment due date led to them having an adverse credit profile. I found that the bank was wrong about the date on which it asserted the mortgage was due and that this error had resulted in the bank wrongly reporting an incorrect adverse credit profile. I directed the bank to pay €5,000 in compensation, furnish a letter outlining that the 'missed' payment was incorrectly recorded and to ensure that the sisters' credit profile was in no way negatively impacted by the matter. Decision 2019-0245

Also included in Volume 2, I upheld a complaint in relation to a loan where a bank had informed Anna that it would amend her credit record with the ICB. I found that after trying to update Anna's record, the ICB responded to the bank stating that it had changed its processes, which meant that it would not accept the amendment to Anna's account in the format that the bank had sent it.

On receiving this information, it appeared that the bank stopped trying to correct the record. Instead, the bank got in touch with Anna to inform her that updating the ICB credit record was now something that she needed to request herself directly. I found that this was 'extremely unfair' towards Anna since it was the bank which had made the report to the ICB and only the bank could amend it.

I substantially upheld Anna's complaint and directed the bank to pay €15,000 to Anna, as well as to take the steps necessary to ensure that she does not have a negative credit profile with the ICB or the Central Credit Register in relation to the credit card. Decision 2019-0394

Again in Volume 2, I drew attention to a complaint I upheld where the provider accepted that it had failed to inform the ICB that the balance on Farzad's loan had been cleared. The bank also acknowledged that Farzad's file with the ICB should have read 'C' for complete instead of '9' for 9 months arrears. I found the provider's submissions to be further evidence of its lack of understanding as to the effect of a negative credit profile and the inconvenience it had caused to the complainant.

I directed the provider to pay €15,000 in compensation and to ensure that no negative report in relation to the matter should be contained in Farzad's credit profile, either on the ICB or the Central Credit Register. Decision 2019-0213

On page 12 of this Digest, I have drawn attention to a complaint where the bank wrongly issued a credit card in Oscar's name that he had no knowledge of. As no payments were made and through no fault on the part of Oscar, he acquired a negative credit profile with the ICB. The bank claimed that it had corrected his ICB record when it discovered its error. However, despite being requested by me to do so, the bank failed to submit any evidence to support this contention. I upheld the complaint and directed the provider to pay €10,000 in compensation and to issue a letter to Oscar confirming that the reports it had made to the ICB in relation to this matter, were incorrect. Decision 2020-0184

It must be acknowledged that the FSPO has dealt with complaints where the complainant made a conscious decision to stop paying a loan or was unable to repay a loan or credit facility.

In a number of such complaints, the providers were found to have made correct reports to the ICB and/or Central Credit Register.

It is also evident from the complaints dealt with by the FSPO that incorrect reporting of credit indicators does occur. This is most unfortunate as it can have very serious consequences for the people concerned, in some cases without their knowledge. What can be even more worrying is the unwillingness of some financial services providers to accept when they have made mistakes and their refusal or neglect to correct the record.

I am drawing attention to this matter to raise awareness amongst providers and consumers. I would ask providers to be careful in their reporting and to remedy mistakes quickly. Consumers should also be aware that such reporting takes place, and of their rights to know what information is held about them by the ICB and the Central Credit Register.

Ger Deering

Financial Services and Pensions Ombudsman

August 2020

Banking

READ THE FULL DECISION HERE

Decision Reference: 2020-0227

Application of interest and surcharge interest

In 2003, Molly opened a mortgage account with the bank. It was agreed that the interest rate would be a five-year fixed rate, plus a margin for the bank of 2%, which was reduced to 1.75% in August 2004.

From 2008 to 2015, Molly's mortgage, along with two other loans, were restructured several times. Molly's interest rate remained fixed and included the 1.75% bank margin. From January 2012 to November 2014, Molly missed several payments on her loans. Molly was charged what she considered to be 'extravagant amounts' of surcharge interest on these missed payments, totalling over €11,000.

In 2015, one of Molly's loans was restructured again, but this time the 1.75% margin had been removed and a variable rate was applied. When Molly asked why she had not been offered a fixed rate, the bank informed her that she had not been entitled to receive the rate in 2008. Molly took this to mean that she had been mis-sold the interest rate on her loan in 2008. Molly then requested a term loan of 30 years to deal with her remaining debts, to deter the bank 'changing the terms' of the loan again. The provider refused.

Molly's complaint to the Ombudsman was that the bank:

1) Unfairly withdrew the interest margin of 1.75% and refused to refund overpaid interest
2) Mis-sold a fixed interest rate in 2008 and refused to refund overpaid interest
3) Improperly applied surcharge interest from January 2012 and
4) Refused to offer her a 30-year 'term loan' to repay her debts in January 2016.

The bank rejected Molly's complaint, claiming it had always acted within its 'commercial discretion' and within the terms agreed. It stated that its policy on surcharge interest was set out clearly in Molly's contract, which entitled it to charge an additional 9% per annum on Molly's missed payments.

The Ombudsman did not uphold the first, second or fourth elements of Molly's complaint, finding that the bank had acted within its commercial discretion in relation to these matters. For the second element, he noted that the bank had informed Molly in 2016 that the letter stating that she was 'not entitled' to a fixed rate in 2008 was incorrect. He accepted, on the basis of the evidence furnished that Molly had not been 'mis-sold' a fixed rate.

With regard to the bank's surcharge interest, however, while the Ombudsman accepted that the contract provided for the application of surcharge interest, he identified an issue with the bank's entitlement to apply surcharge interest.

He noticed the issue of surcharge interest had been considered by the courts. Drawing from this Irish case law, the Ombudsman identified the main issue to be whether the surcharge interest clause in Molly's contract could be considered a penalty clause. A penalty clause is a clause which demands payment as punishment for a breach of contract. Such clauses are unenforceable.

According to the case law, such a clause may be allowed if it is included to protect the bank from an estimated financial loss but not to punish the customer.

Continued on page 11

Banking

Continued from page 10

Therefore, the Ombudsman applied a test, based on recent decisions of the superior courts, to determine if the interest which Molly was charged, when the contract was breached, was based on an estimate of the amount of financial loss that would be sustained by the bank, and therefore determine if it could be considered to be a penalty.

The Ombudsman was provided with no evidence that demonstrated the bank's surcharge of 9% per annum was based on any estimate of the financial loss it would have suffered from Molly missing payments on her loans. In fact, the clause detailing the surcharge rate was contained in the bank's general terms and conditions, which proved that it could not have been calculated based on Molly's specific situation. As a result, the Ombudsman found that the surcharge interest rate constituted a penalty clause.

For this reason, the Ombudsman partially upheld the complaint and directed the bank to refund all of the surcharge interest charged on Molly's three loans, accounting for any compounding or capitalising of that surcharge interest.

Banking

READ THE FULL DECISION HERE

Decision Reference: 2020-0184

ICB record negatively impacted by issues relating to a credit card

In November 2016, Oscar was in the process of moving to a new house. While moving, he found a letter from March 2015 addressed to him, which stated that he owed €2,209.35 on a credit card issued by the provider. Oscar had never seen this letter before nor had he applied for a credit card with the provider at any point.

It transpired that, in February 2015, a third party had applied to the provider for a credit card using Oscar's identity. Oscar believed that the third party had lived with him at the time and had hidden the letters about the account. The account defaulted in June 2015 and the provider closed the account and reported it to the Irish Credit Bureau (ICB).

Oscar contacted the provider in November 2016 following his discovery of the letter. He explained the situation, stating that he had 'never applied' for a credit card and expressed his dissatisfaction that he had been reported to the ICB as a result of the fraud. He then raised his concerns about fraudulent activity with the Gardaí.

In December 2016, Oscar asked the provider for documents to send to the Gardaí to assist them with their investigation. Following several correspondences and failed call backs, Oscar was still requesting documents from the provider well into May 2017. In June 2017, the provider contacted Oscar to inform him that it would not be holding him liable for the debt and an emergency request had been submitted to rectify his ICB record. Oscar asked if the provider was going to investigate how it allowed the account to be opened, but the provider stated that the case was now closed.

Oscar then proceeded to send several emails to the provider, expressing his unhappiness over the situation. Oscar only ever received an out of office response to his emails.

In his complaint to the Ombudsman, Oscar stated that the provider had reported him to the ICB for missed payments that he was not liable for, that he had received poor customer service and that his complaint was not dealt with appropriately.

In response, the provider insisted that it complied with all its obligations in dealing with Oscar's complaint. When Oscar expressed unhappiness that the provider had closed the case, it stated that it had been made clear to Oscar that it would not correspond by email. When he continued to email, it felt it 'necessary' to block his email address, as his correspondence was verging on 'being threatening.'

The provider did not agree that it should compensate Oscar as it had not caused the fraud and had put him back into the situation he would have been in had it not taken place. It did offer Oscar €80.00 as 'a gesture of goodwill' for the inconvenience caused.

In his decision, the Ombudsman found 'significant shortcomings' in the provider's customer service. He found that it had failed to contact Oscar when promised, on several occasions. The Ombudsman also found that the provider's refusal to respond to Oscar's emails was 'most unreasonable.'

The Ombudsman concluded that the provider had not dealt with any of Oscar's complaints adequately and it had caused Oscar inconvenience and distress. The Ombudsman was also concerned that the provider seemed to be 'unable to comprehend' the serious impact of a negative credit profile with the ICB. At the time of the Ombudsman's decision, the provider had still not furnished evidence to the Ombudsman that it had corrected Oscar's credit profile with the ICB.

The Ombudsman upheld the complaint. He directed the provider to pay €10,000 in compensation and to issue a letter to Oscar confirming that the reports it made to the ICB, in relation to this matter, were incorrect.

Banking

READ THE FULL DECISION HERE

Decision Reference: 2020-0078

Access to the bank account of a vulnerable person

Maureen was in her 80s and was partially sighted and had hearing difficulties. In 2016, Maureen's daughter Tina found what she considered to be multiple irregularities on Maureen's bank account, with large withdrawals going back to at least 2009. Tina claimed that she found documents showing approximately €2,000 per month being taken out of Maureen's account from the bank's branch. Tina stated that Maureen couldn't have made these withdrawals from the bank herself as she had undergone hip replacement surgery some years earlier.

Tina discussed the issue with the assistant manager of the bank's branch. It was found that the withdrawals had been made by third parties, including Maureen's neighbour and others related to her neighbour, without Maureen herself being present. These withdrawals were permitted by the bank on the grounds that the parties withdrawing the funds, were known to the bank.

The bank also authorised the issuing of an ATM card after speaking to a third party, thereby enabling the third party to remove funds without scrutiny. This card was then used up to eight times per day.

In her complaint to the Ombudsman, Tina argued that this amounted to 'gross negligence' by the bank, stating that it had not protected Maureen's funds in accordance with banking regulations, and wrongfully permitting a third-party access to a vulnerable person's finances.

The bank responded that there was clear evidence that each of the transactions in the period specified by Tina were authenticated by Maureen at her request and Tina had not provided any evidence to the contrary.

The bank provided evidence that demonstrated that Maureen was making withdrawals from her bank following her hip surgery, stating that the assistant manager at the branch would often sit in the lobby with her to assist when she was not able to make her way to the cash desk.

When Maureen was not able to come to the branch, her neighbour would come instead, with a signed letter of authority from Maureen to withdraw money on her behalf.

The bank stated all proper verification procedures were followed regarding the ATM card. While it was the case that a third party had requested the card, the bank followed up with Maureen, who verified her information and gave the bank the authority to speak to the third party on her behalf. The card was sent to Maureen's address. It also stated that Maureen later admitted that she gave the ATM card and PIN to a third party to help her with the management of day-to-day expenses. The bank argued that it is the responsibility of the customer to keep these details safe.

The Ombudsman noted in his decision that Tina was making serious allegations of fraud against her Mother's neighbour and the neighbour's relatives. These allegations were a matter for An Garda Síochána and the courts and not the Ombudsman. The Ombudsman only considered if there was any wrongdoing on the part of the bank. The Ombudsman also noted that no statement was provided from Maureen herself on any of the transactions that were made.

The Ombudsman found evidence that Maureen had authorised, with her signature, all the in-branch transactions made on her account. When Maureen's neighbour or the neighbour's relatives withdrew cash from Maureen's account, each transaction was authorised by Maureen with her signature and these signatures were always verified by the bank using proper procedure. The Ombudsman also agreed that it was Maureen's responsibility as to what she should do with her ATM card and PIN. The Ombudsman did not uphold the complaint as he found that no wrongful behaviour by the bank had been established.

Banking

READ THE FULL DECISION HERE

Decision Reference: 2020-0175

Credit card rejected for online transaction

Sally held a credit card with the bank. In July 2017, at 22:21, while she was on annual leave, she attempted to purchase flights on a travel website with her credit card. At 22:29, the travel website informed Sally that her payment had been declined.

Sally states that she immediately called her bank's credit card department to find out why. The bank stated that it could not give Sally any information, as she had incorrectly answered one of the security questions. The bank told Sally that she would have to go to a branch with two forms of ID and proof of her address to get the issue resolved. Sally then checked her online banking and discovered that she could no longer access the account.

As a result, Sally had to ask a relative to buy the flights for her. By the time the relative booked the flights, Sally states that the price had increased by over €900.

Sally went to the branch, where she was told to contact the bank's credit card department. She phoned the credit card department again but did not receive any clarification on the issue and was again referred to the branch.

In her complaint to the Ombudsman, Sally stated that the bank had wrongfully declined her payment, failed to give a valid reason for the decline or for blocking the card and had behaved unreasonably when dealing with her grievance.

In response, the bank stated that it received a call from Sally at 18:00 on the same date in July, before the attempted purchase of flights at 22:21. The bank inferred from this that Sally 'must have' attempted to buy flights before 18:00. In support of its position, the bank provided call logs showing a call at 18:00 from Sally's place of work.

The bank insisted that Sally's account was blocked as she had failed to answer the security questions. It argued that this is something it could not be held responsible for and therefore, the bank was not willing to accept responsibility for the increased cost of the flights.

The bank also stated that Sally had not brought her ID and proof of address when she initially visited the branch, which was why she was told to call the credit card department instead.

The bank did offer Sally €250 in light of all the above as a 'goodwill gesture.' Sally refused this offer.

Having listened to the initial phone call between Sally and the bank, the Ombudsman noted that Sally's payment had clearly been declined before the security questions had been asked. This was why she was calling. This meant that the bank's security check could not have had anything to do with the payment being blocked. The bank gave no other explanation, to Sally or the Ombudsman, as to why the initial payment was blocked.

In relation to the bank's claim that Sally 'must have' used her card initially before 18:00 to attempt the purchase, the Ombudsman noted that no party offered any evidence to support this version of events. He pointed out that he had to arrive at decisions based on 'evidence' and not 'suppositions.' The Ombudsman also noted that Sally was on annual leave on the date in question and Sally was therefore unlikely to be calling from her place of work. In addition Sally furnished receipts to the Ombudsman that suggested that she was nowhere near her place of work at the time the bank claimed she made the call from there. Furthermore, Sally's employer provided confirmation that she was on annual leave at the time the bank stated she made the call. Simply put, the Ombudsman stated that the bank's version of events did not add up.

The Ombudsman accepted Sally's version of events regarding the advice from the bank in branch and over the phone, calling the bank's behaviour 'unreasonable and poor service.' For these reasons, the Ombudsman substantially upheld the complaint and directed the bank to pay €2,500 to Sally for the inconvenience caused.

Banking

READ THE FULL DECISION HERE

Decision Reference: 2020-0063

Closure of a credit union account

In December 2015, Sinéad opened a new account with her credit union using a new address indicating she would do her business in a branch nearer her new home. She instructed the credit union to transfer her shares to her new credit union account, and to confidentially send her a new account book to her new address.

In July 2017, Sinéad states that her estranged husband escorted her 'under duress' to the credit union. She found out during this visit that the account which she had requested to be closed, had in fact remained open. She asked again for the account to be closed.

Once the account had been closed, the member of staff offered to pay out her remaining shares on the account. Sinéad states that her husband requested for the remaining shares to be transferred into his account. Sinéad says she signed this off 'under duress' and the staff member carried out the request. Sinéad stated that her estranged husband verbally abused her at the counter and she 'felt embarrassed, violated and indeed robbed,' asserting that she was 'not being afforded the correct privacy and confidentiality' by the staff during this time.

Sinéad subsequently sent letters of complaint in August, September and November 2017, to the credit union, but only received a response in December. Sinéad sought to discuss the matter in the branch and when she came to the branch, she was advised to 'enter through a side door.'

Sinéad asserted that her estranged husband was using the account without her knowledge. When she pointed out what she described as 'irregularities' on her account she asserts that the credit union 'sought to discredit' her by stating the figures were added by the system and were not transacted by any third party.

In her complaint to the Ombudsman, Sinéad accused the credit union of failing to process instructions in a timely manner, provide adequate security measures or provide adequate communication.

The credit union accepted that, due to an administrative error, Sinéad's account was not closed in 2015 as she had instructed. The account balance was cleared at that time, however, and Sinéad was issued the remaining funds.

Because the account remained open, it accumulated dividends. As a result, the balance went from €0 in 2015 to €36 in July 2017. The credit union stated that this money was applied automatically and not by any third party.

During Sinéad's visit, the credit union's staff member stated that she noticed 'some tension' but nothing to suggest Sinéad was under duress. The credit union also stated that it had suggested Sinéad enter through the side door to prevent her seeing a relative of her estranged husband, who worked at the branch. The credit union stated that it offered Sinéad €5,000 as a gesture of goodwill, but Sinéad had rejected the offer.

In his decision, the Ombudsman accepted the credit union's explanation that the money in the account was from automatic transactions and not from a third party accessing the account.

The Ombudsman found no evidence to suggest that the staff member in July 2017 was aware that Sinéad was under duress and was not acting under her own free will. Since she was not aware of any duress or anything untoward, the Ombudsman found that the staff member was not obligated to protect Sinéad from her estranged husband during this visit. The Ombudsman also accepted that the credit union's request for Sinéad to come to the branch through the side door was made to assist her and not to humiliate her in any way.

The Ombudsman did find that the credit union had failed to follow the instruction to close the account and failed to respond to Sinéad's complaint in a timely manner. He also stated, however, that the credit union's offer of €5,000 to rectify the matter was reasonable in the circumstances. As he found the credit union's offer to be a reasonable attempt to resolve the situation, the Ombudsman did not uphold the complaint.

Banking

READ THE FULL DECISION HERE

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.

Continued on page 17

Banking

Continued from page 16

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).

Banking

READ THE FULL DECISION HERE

Decision Reference: 2020-0048

Tracker interest rate not offered on new mortgage in 2011

In 2008, Paul and Alice took out two mortgages of €250,000 each, which were secured on their existing private residence. The purpose of the mortgages was for the couple to buy a new house. The mortgage loans were drawn down on tracker interest rates of ECB + 0.75%.

In 2011 Paul and Alice decided to sell their existing house and move into their new house. They used the proceeds of the sale to clear the balance owed on one mortgage in full and to reduce the balance of the other mortgage to €163,000.

Paul and Alice stated that they were told by the bank in 2011 that they were *'not allowed'* to keep the tracker interest rate and that they had to enter into a new mortgage contract for either a fixed or a variable interest rate. They stated that they were put under *'severe duress'* by the bank to accept a new interest rate and also encouraged to borrow an additional €2,000 for solicitor's fees. They eventually agreed to a new mortgage loan of €165,000, which comprised the outstanding mortgage balance of €163,000 plus an additional €2,000. The new mortgage loan was secured on Paul and Alice's new home and was drawn down on a five-year fixed interest rate in March 2011. The two tracker mortgage loan accounts were redeemed in April 2011.

Paul and Alice believed that the terms and conditions of the mortgage agreement they entered into in 2011 allowed them to be *'put back on'* the tracker interest rate when the five-year fixed interest rate expired in 2016.

In their complaint to the Ombudsman, the couple stated that the bank had forced to them to give up their tracker interest rate in March 2011 and then failed to offer them a tracker rate when the fixed interest rate expired on the new mortgage loan in March 2016.

They sought the reinstatement of the tracker interest rate, compensation for losses incurred by them and an apology from the bank.

The bank responded that there was no basis on which Paul and Alice, in redeeming the 2008 mortgage loans, could *'keep'* the rate of interest which applied to that loan after they redeemed the loan. It outlined that a new loan issued to Paul and Alice in March 2011 because they required a new loan secured on their new home. In order to do this they had to redeem the 2008 loans as these were secured against the house they sold in 2011. It further stated that in 2011, the only interest rate options available to Paul and Alice were fixed and variable interest rates as the bank had ceased offering tracker rates for new loans from mid-2008.

The bank stated that Paul and Alice did not have a contractual entitlement to a tracker interest rate when the fixed interest rate period expired in 2016. The terms and conditions of the mortgage stated that, once the fixed rate expired, the couple would be able to choose a new rate from the rates then offered by the bank, which *'may'* include a tracker interest rate. A tracker interest rate was not available from the bank in 2016 and so was not offered.

The Ombudsman found that he had not been provided with any evidence to show that Paul and Alice had been put under duress by the bank to accept a new fixed interest rate loan and to borrow an additional €2,000 for solicitor's fees in 2011. He noted that, notwithstanding what may have been communicated to Paul and Alice by the bank at any such alleged discussions in 2011, the couple had decided to sell their previous property and were therefore seeking to have the security released on that property by the bank.

Continued on page 19

Banking

Continued from page 18

In order to do so, they had to secure additional funds to meet the shortfall. The evidence showed that the bank offered them a new mortgage loan on a 5-year fixed interest rate in the amount of €165,000, which they chose to accept. There was no obligation on the bank to offer Paul and Alice a tracker interest rate on the new mortgage loan.

The Ombudsman did not uphold the complaint as he accepted that there was no contractual or other obligation on the bank to offer Paul and Alice a tracker interest rate at the end of the fixed rate period in April 2016.

READ THE FULL DECISION HERE

Decision Reference: **2020-0103**

Complainant unhappy with compensation for not being offered a tracker interest rate at the end of a fixed interest rate period

Susan accepted and signed a mortgage loan offer letter in March 2007 which provided for an initial 3-year fixed interest rate. Susan submitted that under the terms and conditions of the offer letter the bank was contractually obliged to offer her '*the then prevailing tracker rate in April 2010 when [the] fixed rate period expired*'. However, when the fixed interest rate expired in April 2010, Susan was not given the option of a tracker interest rate.

In 2017, as part of the Central Bank directed Tracker Mortgage Examination, the bank identified that a failure had occurred on Susan's account, because the terms and conditions of Susan's mortgage account state that at the end of a fixed rate period she had the option to choose from the then prevailing fixed, variable or tracker interest rates. When the fixed interest rate on Susan's account expired in 2010, the bank had withdrawn tracker rates. Because of this, Susan did not have the option of choosing the then prevailing tracker rate at that time.

The bank detailed that the reason it withdrew tracker interest rates from late 2008 until late 2013 '*was because this rate type would have been prohibitively expensive*'. It stated that as a result, Susan did not suffer any financial detriment as a result of the prevailing tracker not being available during that period. The bank, described the matter to be a '*service failure*' and made a compensation payment of €1,615 to Susan.

In July 2018, Susan appealed the compensation offering to the Independent Appeals Panel established as part of the tracker mortgage examination. The Appeals Panel decided in February 2019 that the appeal was unsuccessful. Susan's complaint was then progressed with the Ombudsman.

Susan argued that although the bank was entitled to change the prevailing tracker interest rate, it was not entitled to withdraw it.

She said that just because the bank stopped offering tracker interest rates to customers between 2008 and 2013 that the prevailing tracker interest rate '*did not vanish into thin air*'. She described the failure of the bank to offer her a tracker rate upon expiry of the fixed rate period in April 2010 as '*a breach of an inherent and fundamental element of the contract*' as opposed to the bank's description of the conduct as a '*service failure*'.

Susan further submitted that the bank had not '*provided any evidence to support its assertion that the Tracker interest rate would have been more expensive than their Variable or Fixed rates which were available during that time*'. She said that a tracker interest rate had the exact same costs as a standard variable rate mortgage, stating '*They are funded from the same sources. The cost of risk is the same. The cost of capital is the same*'.

Susan sought to have the interest rate of ECB + 1.5% applied to her mortgage loan account backdated to April 2010; a refund of the interest overcharged; and compensation at the rate of 15% of the overcharged amount on her mortgage loan account.

The bank responded that because it withdrew tracker interest rates, it was unable to offer Susan a tracker interest rate when her fixed interest rate period ended in April 2010 and that any prevailing tracker interest rate that would have existed in April 2010, would have been much more expensive than the variable rates that were available during that time. The bank submitted since there was no prevailing tracker interest rate available generally by the bank, by not having one to offer '*there was a service failure on the [bank's] part, but there was no breach of contract*'.

Continued on page 21

Banking

Continued from page 20

In its submission to the Ombudsman, the bank detailed that to retrospectively calculate what the *'prevailing'* tracker rate would have been in 2010, if it had set one at the time, it *'used an international standard mortgage pricing model and the best available objective information to estimate what the prevailing margin and rate would have been at the time, had the bank maintained the rate'.* The bank submitted that components such as: (a) funding costs; (b) capital risk costs; (c) capital costs; and (d) operating costs, were used in calculating the estimate.

The Ombudsman found that the bank's offer of redress of €1,615 to Susan for its failure on her mortgage loan account was totally inadequate. The Ombudsman was of the view that the bank failed to comply with an important contractual provision of Susan's mortgage loan in April 2010 by not giving her the option of conversion to a *'tracker interest rate mortgage loan'* at the *'then prevailing rate'.* Further, and following from its breach, he found that the bank had sought to rely on a sophisticated and unmerited construction of the phrase *'then prevailing rates'* in order to deny Susan her contractual rights. The bank initially denied there was any issue with its conduct in April 2010 and subsequently sought to downplay the severity of the breach of contract by classifying it as a *'service failure'* in March 2018. The Ombudsman was of the view that the bank's proposed remedy to the breach of contract was unreasonable.

The Ombudsman further found that it was unreasonable for the bank to attempt to retrospectively create the tracker interest rate margin that it argued it would have offered Susan when the fixed interest rate period on the mortgage loan account expired in April 2010, by using post-breach factors that could not have been known to it in April 2010.

The Ombudsman upheld this complaint and directed that the bank apply a once off reduction (write down) of 12% off the capital balance on Susan's mortgage loan account as it stood at the end of the fixed interest rate period which expired on 29 April 2010 (approximately €314,000). He also directed the bank to repay Susan to an account of her choosing, the difference between (1) the amount of interest she actually paid from 30 April 2010 to date, and (2) the amount of interest that she would have paid at the same rate on the reduced (written down) capital balance from 30 April 2010 to date.

Banking

READ THE FULL DECISION HERE

Decision Reference: 2020-0064

Tracker interest rate not offered on expiry of fixed interest rate in 2013

Mark applied to the bank for a mortgage loan in August 2005. The bank gave him a mortgage quotation which outlined the available rate options, including fixed rates, a variable rate option and a tracker rate option. Mark selected a two-year fixed rate. He stated that he was advised by the bank that he could take up the tracker rate when the fixed rate expired.

When the fixed rate expired in June 2008, Mark received a letter enclosing a list of interest rates to choose from, which included a tracker rate of ECB + 1.50%. The letter stated that if he did not select another interest rate, the loan would automatically *'default'* to the tracker rate. Mark said he took this to mean that this was the *'default position'* of the loan. He opted instead to select a further five-year fixed interest rate of 5.5% because interest rates at that time were *'high and rising''*. He stated that he did this on the understanding that his mortgage would *'revert back to tracker'* after the further fixed rate expired.

When the five-year fixed interest rate expired in June 2013, Mark was not offered a tracker interest rate, as such a rate was no longer available from the bank. His loan defaulted to a variable rate of 4.34%. Mark stated that he should have been offered a tracker interest rate of ECB + 1.50% in 2013 as he had understood this to be the *'default'* rate. He stated that the bank's *'description'* of the variable rate in his contract was *'general'* and *'does not exclude the tracker option as that too is a type of variable rate.*

In his complaint to the Ombudsman, Mark stated he was seeking *'recompense'* for the interest overpaid on his mortgage since June 2013.

The bank responded that Mark did not have a contractual entitlement to a tracker mortgage at any time. The mortgage contract he signed and accepted in 2005 provided for an initial fixed rate and for a variable rate subsequently.

The bank did not accept that Mark was advised during the loan application process in 2005 that a tracker rate would apply to his account at a future fixed rate period maturity date.

From mid-2006 to mid-2009 the bank had a policy of offering tracker rates as an option in the options letters to existing customers maturing from a fixed rate period, irrespective of whether or not the customer had a contractual entitlement to be offered a tracker interest rate. The bank stated that if the customer did not select another option, the bank applied a tracker interest rate automatically as the default rate. The bank stated that one of the available rate options in June 2008 was a tracker variable rate of ECB + 1.50%. However, Mark did not select the tracker rate option and instead selected the five year fixed rate.

The bank submitted that it did not offer a tracker interest rate to Mark in May 2013 as the bank was no longer offering tracker interest rates at that time, unless there was a contractual entitlement to be offered such a rate.

The Ombudsman noted that the bank had outlined the option of taking out a mortgage loan on a tracker interest rate of ECB + 1.4% to Mark in 2005, when he submitted his loan application. He did not accept it at the time. Offering a tracker rate at that time did not create an obligation on the bank to offer that tracker interest rate or any other tracker interest rate at a later point in time.

The Ombudsman was of the view that there was no basis for Mark to reasonably expect that the term *'variable rate'* in his loan offer would relate to a tracker interest rate. It was clear that the loan offer envisaged a two-year fixed rate of 3.15% and thereafter the option of a variable rate.

Continued on page 23

Banking

Continued from page 22

The variable rate in this case made no reference to varying in accordance with variations in the ECB refinancing rate, rather it was a variable rate which could be adjusted by the bank *'from time to time'*.

The Ombudsman found that Mark did not have a contractual or other entitlement to a tracker interest rate at the end of the fixed rate period in 2008.

The Ombudsman noted that Mark had twice previously been given the option of a tracker interest rate, firstly when he was submitting his application for a mortgage loan in 2005 of ECB + 1.4%, and again on the expiry of the initial two year fixed rate period in 2008 of ECB + 1.5%. He did not pursue this option on either occasion. The Ombudsman did not uphold the complaint.

Banking

READ THE FULL DECISION HERE

Decision Reference: 2020-0138

Tracker rate not offered when staff rate *'stopped being beneficial'*, or on the expiry of a fixed rate period

In 2007, Claire and John held a mortgage with another bank on a tracker interest rate of ECB + 0.8%. In September 2007 they *'switched'* their mortgage to the respondent bank where Claire was an employee at the time. The couple's mortgage with the bank was *'split'* into two accounts. The first account for €166,000 was placed on a staff interest rate of 2.50% and the second account for €213,400.00 was placed on a tracker interest rate of ECB + 0.80%.

Claire and John stated that in April 2009, the tracker interest rate *'dropped below'* the staff rate. They asserted that they should have been offered a tracker rate for the account on the staff rate at that time, when the staff rate *'stopped being a beneficial rate'.*

Claire and John further detailed that the European Standardised Information Sheet (ESIS) furnished to them by the bank, provided that the staff rate on the mortgage account was fixed for a period of 2 years and would roll to the tracker rate at the end of that fixed period. They stated that the bank failed to offer them a tracker interest rate for the staff rate account in September 2009 when the two-year fixed rate period expired.

The couple stated that they requested to *'return'* to a tracker rate on the staff rate account *'well before February 2015'* but were unable to locate correspondence in relation to this request.

In their complaint to the Ombudsman, Claire and John sought compensation for the bank's failure to offer them a tracker rate on the staff rate mortgage account in April 2009 and in September 2009.

The bank responded that the loan offer with respect to the staff rate account specifies that the loan was a Staff Home Loan with an interest rate of 2.5% and makes no reference to the ECB refinancing rate or to a tracker interest rate. It outlined that Claire and John had no contractual right to a tracker interest rate on this loan at any time throughout the period of the loan, and as a result they were not offered a tracker rate in April 2009 or at any other time. The bank further detailed that the loan did not draw down on a 2-year fixed rate and has never been on a 2-year fixed rate.

The bank outlined that the European Standardised Information Sheet served to provide information to a mortgage applicant prior to their acceptance of a mortgage product and was for illustrative purposes only. It accepted that there was a *'manual error'* in the information contained in the assumptions at the end of the Illustrative Amortisation Table where it outlined that the *'rate is fixed for 2 year(s)'.*

The bank said that it was possible to move from a staff rate to another of its current rate offerings, if requested by the account holders and approved by the bank; however Claire and John did not request to switch the account from the staff home loan rate to a tracker interest rate until February 2015 when tracker interest rates were no longer on offer to new or existing customers other than those with a contractual right to be offered a tracker interest rate.

The Ombudsman was of the view that the loan offer for the staff rate mortgage account envisaged an interest rate of 2.5%, and in the event that Claire's employment with the bank ceased, a variable rate would then apply.

Continued on page 25

Banking

Continued from page 24

The variable rate, in the mortgage loan documentation, made no reference to varying in accordance with variations in the ECB refinancing rate, rather it was a variable rate which could be adjusted by the bank.

The Ombudsman noted from the evidence that when the staff rate ceased to be the most beneficial rate in March 2009, that Benefit in Kind was no longer payable on the mortgage account. There was no provision in the Staff Banking & Credit Policy or in the mortgage loan documentation that obliged the bank to offer Claire and John a tracker interest rate when the staff rate *'stopped being beneficial'*.

The Ombudsman was disappointed that a factually incorrect assumption was erroneously included in the European Standardised Information Sheet by the bank. Notwithstanding this error he found that it was clear that the mortgage loan documentation did not provide for a fixed rate period of 2 years.

The Ombudsman did not uphold the complaint. There was no evidence which showed that Claire and John contacted the bank at any time prior to February 2015 to seek to apply a tracker interest rate to the mortgage loan. Even if they had made a request there was no obligation on the bank to accede to that request. The Ombudsman found that the complainants did not have a contractual or other entitlement to a tracker interest rate on the mortgage loan.

Banking

READ THE FULL DECISION HERE

Decision Reference: 2020-0061

Tracker rate not offered on expiry of fixed rate period in 2010

In August 2005, Kerry applied to *'switch'* her mortgage to the bank. An initial loan offer letter was issued to her by the bank which provided for a tracker interest rate of ECB + 0.85%. Kerry, instead, decided to opt for a five-year fixed interest rate of 3.79% in order to *'provide certainty of rate'*. She stated that her *'very clear understanding'* was that the tracker rate would apply when the fixed rate period expired. The bank issued a new loan offer letter providing for the fixed rate in September 2005.

Kerry subsequently sought and secured a separate top up loan from the bank in December 2005 which was issued on a tracker rate of ECB + 0.85%.

When the five-year fixed rate period expired in 2010, Kerry was not offered the option of a tracker rate. The mortgage was switched to the bank's standard variable rate.

Kerry submitted that the offer letter she signed in September 2005 did not stipulate that the rate applicable on the expiry of the fixed rate period would be the bank's standard variable rate. She asserted that it was not clear what type of variable rate was referred to in the offer letter, for example, *'Standard Variable Rate, Discount Variable Rate, Tracker Rate etc'*. She submitted that the loan offer was *'unspecific and flawed in its wording'*.

In her complaint to the Ombudsman, Kerry sought for the tracker rate to be *'reinstated'* on the mortgage loan account and backdated to the expiry date of the fixed rate in 2010. She also sought a refund of all interest she believed she had overpaid since 2010.

The bank responded that it issued Kerry with a loan offer letter in August 2005 which provided for a mortgage based on a tracker interest rate of ECB + 0.85%. Subsequently Kerry requested a 5-year fixed rate of 3.79%.

In September 2005 the bank issued a further loan offer letter which provided for the fixed interest rate. The new loan offer stated that it superseded the previous offer.

The bank detailed that as it had withdrawn tracker interest rate products in mid-2008, this product type was not included in the rate options letter sent to Kerry prior to the expiry of the fixed interest rate in 2010.

The Ombudsman found that the terms and conditions of the loan offer letter envisaged that at the end of the fixed interest rate period, the bank *'may'* offer a further fixed interest rate period or *'alternative available products'* and that if no such offer was made or if an offer was made and it was not accepted, then the Home Loan Rate would apply. The Home Loan Rate was stated to be one which could be adjusted by the bank. He found that there was no basis for Kerry to reasonably expect the term *'Variable Home Loan Rate'* to relate to a tracker interest rate, given that there was no reference to a tracker or the ECB rate in the loan offer letter.

The Ombudsman noted that there was no documentary evidence of the discussions in 2005 where it is purported that the *'understanding'* on Kerry's part was formed that the rate *'would revert to tracker variable rate.'* He found that in any event, in order for Kerry to have a contractual right to a tracker interest rate on her mortgage loan at the end of the fixed interest rate period, that right would need to have been specifically outlined in the mortgage loan documentation that was signed by the parties, and it was not. The terms of Kerry's mortgage loan are governed by the terms contained in the offer letter signed by the parties, and not by reference to a previous offer, which was rejected by Kerry and then superseded by a new offer.

Continued on page 27

Banking

Continued from page 26

The Ombudsman noted that tracker mortgages had been withdrawn from the market by the bank from mid-2008 and therefore Kerry could not have been offered a tracker interest rate when the fixed rate expired in August 2010.

The Ombudsman observed that the rate options letter issued to Kerry in 2010 detailed that if no response was received the interest rate would roll to the bank's *'Standard Variable Rate'*. He was of the view that, to avoid confusion, the bank should have used the same terminology as contained in Kerry's mortgage loan documentation when referring to rate choices and options in subsequent correspondence with Kerry.

The Ombudsman also noted that Kerry's two mortgage loan accounts were drawn down at two different points in time, commenced on different interest rates (fixed rate and tracker rate) and were subject to different terms and conditions. The fact that the bank offered Kerry a tracker rate for the top-up mortgage and that Kerry accepted that offer, did not create any obligation on the bank to offer the same rate on Kerry's separate mortgage loan account when the fixed interest rate period expired in August 2010. For these reasons the Ombudsman did not uphold the complaint.

Banking

READ THE FULL DECISION HERE

Decision Reference: 2020-0095

Unhappy with tracker mortgage compensation because mortgage loans had to be restructured

Andrew and Julie held two mortgage accounts with the bank, secured on their private dwelling home. In February 2006, the mortgages were placed on a tracker interest rate. In March 2007, the couple moved the accounts to a fixed interest rate for 3 years. Andrew and Julie submitted that they were not offered their tracker rate back, as they should have been, when the fixed interest rate periods expired in March 2010. As a result, they stated that they had paid more interest than they should have on the mortgage loans for 5 years.

The couple outlined that in 2010 Julie was diagnosed with a serious illness and had to give up her employment and that Andrew had to close his business in 2011 due to the *'collapse'*. They submitted that between 2011 and 2013 they *'struggled'* with their repayments and they met with the bank *'many times'*. They enquired about reinstating the tracker interest rate but were *'informed it was no longer available'*. They detailed that on two occasions it was suggested by the bank to them that they sell their home, pay off the mortgages and move into rented accommodation.

In 2013, the couple entered into a restructure of their two mortgage loans. The term of one loan was extended by 6 years. The other loan was split into two separate mortgage loans (which meant that the couple now had three mortgage loans) and the term extended by 10 years.

The mortgages in question were considered 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 when Andrew and Julie had moved from their tracker rate as to what would happen at the end of their fixed rate.

It found that the language used in the mortgage documentation may have led Andrew and Julie to believe that that they 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 Andrew and Julie had been charged an incorrect interest rate on their three mortgage loans between March 2010 and January 2018. The bank restored a tracker rate of ECB + 1.10% to the mortgage accounts and made offers of redress and compensation totalling €19,658.28.

In January 2018, Andrew and Julie appealed the redress and compensation offering to the Independent Appeals Panel. In February 2018 the Appeals Panel decided to uphold the appeal because of the *'impact of the level of overpayment on the customers' personal circumstances'* and awarded additional compensation of €2,000. Andrew and Julie's complaint was then progressed with the Ombudsman.

Andrew and Julie contended that if the tracker interest rate had been applied to the mortgage loan accounts on the expiry of the 3-year fixed interest rate period in March 2010, they would have *'made all the payments'* and would not have had to enter into the restructuring arrangement in 2013.

The couple sought that the mortgage loan which was split into two accounts as part of the restructure in 2013, be *'combined'* back into one mortgage loan account with a maturity date of December 2018 as opposed to October 2028, with the bank incurring any financial loss this incurs. They also sought that the third mortgage loan account be given a maturity date of March 2022 as opposed to March 2028 with the bank incurring any resulting financial loss.

Continued on page 29

Banking

Continued from page 28

Having considered the evidence, the Ombudsman was of the view that the restructure that took place in November 2013 would have been necessary regardless of the error of the bank in overcharging interest on the mortgage loan accounts from 2010. The evidence showed that Andrew and Julie had entered into arrears on the mortgage loans in late 2009 and then had to agree a number of short-term arrangements with the bank in order to clear those arrears. The purpose of the short-term arrangements was also to assist the couple to make repayments on the mortgage loan accounts, in circumstances where both of their incomes had been reduced owing to *'business failure'* and *'illness'*.

The Ombudsman noted from the evidence that both Andrew and Julie underwent periods of unemployment during the period of the overcharge and Julie was diagnosed with a serious illness. He was of the view that for a couple dealing with a very serious illness, struggling within the economic climate and relying solely on social welfare for financial support, an overpayment of interest on average of €141.39 per month for a period of 92 months was significant.

Taking into consideration all of the evidence before him in terms of the particular circumstances of the couple, the level of overcharging and the extended period over which the overcharging occurred, and the impact such overcharging had on Andrew and Julie, the Ombudsman was of the view that the level of compensation paid of €5,000 was not sufficient or reasonable to compensate them for the loss, stress and inconvenience suffered by them during the impacted period.

The Ombudsman upheld the complaint and directed that the bank pay a sum of €8,000 compensation to Andrew and Julie (inclusive of the €5,000 compensation already paid).

Banking

READ THE FULL DECISION HERE

Decision Reference: 2020-0077

Complainant unhappy with tracker interest rate margin of ECB + 2.35%

In 2005, Mairéad took out a joint mortgage account with a third party on a residential investment property on an initial two-year fixed interest rate, which was later switched to a tracker rate of ECB + 1.10% in 2007.

Mairéad outlined that in 2008 she redeemed the joint mortgage and took out a new mortgage with the bank in her sole name secured on the same property, '*with the understanding*' that she would have '*the same*' tracker rate of ECB + 1.10% on the new mortgage account. An interest only fixed interest rate period applied to the mortgage loan for the first year of the mortgage term.

When the fixed interest rate expired in 2009, the mortgage was placed on a tracker rate of 4.85% (ECB + 2.35%). Mairéad asserted that it was '*never*' explained to her by the bank that the tracker interest rate would change. In her complaint to the Ombudsman, she sought to be '*placed back*' on the tracker rate of ECB + 1.10% and reimbursed for interest overpaid.

The bank detailed that Mairéad's loan offer outlined that a one-year fixed interest rate of 4.99% would apply, and at the end of the fixed period the interest rate applicable would be the bank's then current tracker mortgage rate. It stated that there is no provision in the loan offer in respect of a tracker rate margin of 1.10%.

The Ombudsman noted that Mairéad had not provided any evidence or offered any reason as to why she was of the '*understanding*' that a tracker interest rate of ECB + 1.10% had been agreed at the time she applied for the mortgage loan in 2008. The evidence showed that the bank and Mairéad did not have any direct communication at the time as Mairéad had engaged the services of a broker.

The Ombudsman found that it was clear that the loan offer envisaged a one-year fixed interest rate and thereafter the option of the '*then current*' tracker mortgage interest rate.

The evidence showed that the tracker interest rate that the bank had available in January 2009 of 4.85% (ECB + 2.35%) was the same tracker interest rate that was offered to Mairéad for her mortgage loan. The Ombudsman accepted that Mairéad was offered the option of '*the then current [bank] tracker mortgage appropriate to the loan*' on the expiry of the fixed interest rate period and in accordance with the terms and conditions of the loan offer. This rate was applied in the absence of an alternative rate option being chosen by her. He also accepted that it was within the bank's commercial discretion to set an interest rate of ECB + 2.35% in January 2009.

The Ombudsman also found that there was no entitlement on the expiry of the fixed interest rate period in 2009 to the tracker interest rate of ECB + 1.10% that had applied to the joint mortgage loan that was redeemed by Mairéad in February 2008. Each mortgage loan is governed by the terms and conditions applicable to that particular mortgage loan. The fact that both mortgage loans were secured on the same property did not entitle Mairéad to the same interest rates on both accounts. For these reasons the Ombudsman did not uphold the complaint.

Banking

READ THE FULL DECISION HERE

Decision Reference: 2020-0090

Freezing of a bank account following bankruptcy

Amelia received correspondence from her bank advising that her current account had been suspended with immediate effect, as a result of her having been adjudicated bankrupt. Amelia had been adjudicated bankrupt four weeks before, but claimed that the delay on the bank's part in contacting her, led her to make the assumption that the account would not be disrupted.

She immediately contacted the bank and arranged to attend a branch to withdraw her child benefit money but was unable to do so and arrangements were made to attend a different branch the following day. Amelia said that on both occasions, her requests were escalated by the teller and she felt 'humiliated and embarrassed'.

Amelia further complained that her request to make alternative banking arrangements was unreasonably refused and this left her in a very difficult position. She also queried why she wasn't offered a Basic Bank Account by the bank, in line with the EU Payments Account Directive 2014. She noted that despite the suspension by the bank of 'all operations' on her account, it continued the deduction of bank charges throughout. Finally, she noted that after she was discharged from bankruptcy, the 'no operations' marker on her account was not removed.

The bank acknowledged a delay occurred between the adjudication of the bankruptcy and the suspension of her account but that this delay was due to the manner in which information was provided to it by the Insolvency Service of Ireland. It asserted that as soon as it became aware of the bankruptcy, it had to suspend the operations on the account immediately. It acknowledged and apologised to Amelia regarding the issues she had encountered at the branch but submitted that it was obliged to operate within its policy.

The bank submitted that at the time, whilst bankrupt individuals could nominate an account to use through the petition period it was up to each bank whether or not it would offer banking facilities in circumstances of an un-discharged bankruptcy. It argued that there was no onus on it to offer a Basic Bank Account – although Amelia could have applied for one.

The Ombudsman, while appreciating that Amelia found herself in a difficult position also acknowledged that it was necessary for the bank to freeze the account when it did. However, the Ombudsman also noted that as a matter of good practice, it could have lifted the no operations marker from the account upon the expiry of the bankruptcy period or at least communicated on this matter with Amelia.

In relation to the application of charges, the bank claimed that as the account remained open it was unable to stop the charges, but did offer a refund. It also submitted that Amelia could have withdrawn the balance in the account at any stage. Amelia however, contested that she was not made aware of this and the Ombudsman found that the bank had not acted in accordance with the standards of service which could reasonably have been expected of it in this regard.

Whilst the Ombudsman sympathised in relation to the in-branch experiences, he did not find that the teller acted unreasonably in referring the matter to a more senior member of staff.

The Ombudsman noted that the bank offered Amelia a goodwill gesture of €250 but taking into account the failures in service and poor levels of communication, the Ombudsman partially upheld the complaint and directed compensation of €1,500 in addition to the refund the fees which were charged to the account.

READ THE FULL DECISION HERE

Decision Reference: 2020-0163

Application of a no claims bonus on a car insurance policy

In April 2018, Maya took out a car insurance policy with an insurer through a broker. In July 2018, the insurer cancelled the policy, on the grounds that Maya had failed to declare that she owned another vehicle and had submitted proof of a no claims bonus in relation to another vehicle that was covered by a separate policy. The insurer cancelled the policy and declared it void from inception.

Maya argued that she had not failed to declare she owned another vehicle; she had simply failed to notice the requirement to do so as it was in 'size eight font.' She also suggested that the insurer should have already known she owned another vehicle as it was insured with the Insurer's Northern Ireland division.

Regarding the no claims bonus, Maya insisted that a no claims bonus should be associated with an individual, rather than any particular vehicle. She also stated that notwithstanding this, the other policy was for a vehicle in Northern Ireland and therefore not applicable to any policy based in the Republic of Ireland.

In her complaint to the Ombudsman, Maya sought for the insurer to reinstate her cancelled policy and compensate her for it being wrongfully cancelled in the first place.

The insurer countered that it could not have known that Maya already held an insurance policy with its Northern Ireland division, as all the information provided had been furnished through Maya's broker and her ownership of another vehicle should have been disclosed in the documentation that she provided. It also stated that the Statement of Fact sent to Maya specifically asked if she owned, insured or had full-time use of any other vehicle.

The insurer acknowledged that the terms and conditions in the documentation sent to Maya did not specifically ask if the no claims bonus had been used on another vehicle. It subsequently offered to reinstate the voided policy and to refund any premiums paid on any new insurance policy she had taken out.

However, it maintained that it was 'not possible' to use one no claims bonus on multiple policies and rejected Maya's claim that the jurisdiction in which each car was located was relevant.

In his decision, the Ombudsman concluded that Maya should have disclosed that she owned another vehicle. The Ombudsman rejected Maya's argument that she had missed the requirement to do so as it was in 'size eight font,' stating that the document could be 'clearly read without difficulty.'

However, the Ombudsman also concluded that it was not reasonable for the insurer to expect Maya to be aware that she had to disclose the use of her no claims bonus on another car insurance policy. The insurer gave no evidence to back up its claim that it was 'not possible' to use one no claims bonus on multiple policies, or that it ever informed Maya that this was the case. If it was 'not possible' for Maya to use her no claims bonus on multiple policies, the Ombudsman stated that this should have been made explicit in the documentation. As a result, he found it was unreasonable and unjust for the insurer to void Maya's insurance because she had not disclosed this information. The Ombudsman partially upheld the complaint and directed the insurer to pay €8,000 to Maya. Following the issuing of the preliminary decision, Maya also accepted the insurer's offer to reinstate the policy and refund premiums paid.

The Ombudsman also stated in his decision, that he accepted that it was completely reasonable for Maya to believe that a no claims bonus should be associated with an individual rather than a specific vehicle, as it is an indication of a person's claims history and their risk, not the risk of vehicle. In response, the insurer stated that this practice is common across the industry. On the basis of this assertion by the insurer, the Ombudsman referred this decision to the Central Bank of Ireland and the Competition and Consumer Protection Commission (CCPC) for any action those bodies would deem necessary.

Insurance

READ THE FULL DECISION HERE

Decision Reference: 2020-0035

Cancellation of a car insurance policy as no claims bonus had expired

In October 2017, Ritvik applied online for a motor insurance policy from the insurer. In the course of filling out his application form, he filled out the details required to show he was eligible for a no claims discount. The insurer issued a quote for €512 and Ritvik made an initial payment of €128.

The insurer received Ritvik's no claims discount certificate on 11 October. On 13 October, the insurer cancelled Ritvik's policy, on the basis that he had 'failed to disclose material facts.' In particular, the insurer asserted that Ritvik had failed to disclose a gap in his driving experience or that his no claims discount certificate had expired more than four weeks before the beginning of the policy. It stated that Ritvik had also failed to disclose the fact he was a member of the 'motor trade.' The insurer returned Ritvik's initial payment but deducted a €50 administration fee.

Ritvik insisted that the insurer was wrong to cancel his insurance policy. He asserted that he was never informed that the gap in his insurance or the information on his no claims certificate could possibly invalidate his insurance policy. He also questioned why the insurer did not simply increase his premium rather than resort to cancellation.

Ritvik also asserted that the insurer should have already known of the information in his no-claims certificate as he had sent in the exact same one when he applied for a policy with the insurer in August 2017. In his complaint to the Ombudsman, Ritvik stated that the insurer wrongfully cancelled his insurance policy on the basis of non-compliance in respect of a no-claims discount certificate.

The insurer insisted that Ritvik's insurance policy was cancelled in accordance with its terms and conditions and Ritvik had been made aware of the requirements regarding his no-claims discount certificate. As evidence, it provided screenshots of the online insurance application form.

Beside a field on the form titled 'About Your Car,' there was a '?' symbol, which revealed text in a 'pop up box' when clicked. This text stated that Ritvik's policy would be cancelled if the no claims discount certificate showed there to be any gaps in coverage or that the policy had been inactive in the last four weeks. Ritvik's certificate confirmed that there were gaps in the coverage and that the cover had expired in August, two months before his application.

The insurer stated that it was not aware of Ritvik's no claims discount certificate beforehand. Although it received the certificate on 28 August as part of an initial insurance application, Ritvik then cancelled this application on 29 August. As a result, it did not inspect the certificate at the time.

The Ombudsman accepted that Ritvik's no claims certificate did not comply with the insurer's requirements. He also found it reasonable that the insurer did not review the initial submission of the certificate since Ritvik cancelled his application the day after.

However, the Ombudsman found that the insurer had not clearly communicated important information to Ritvik. Putting important information in a 'pop-up' box, according to the Ombudsman, could lead a customer to believe that the information was optional and therefore not crucial. A customer was also able to complete the application form without reading this information. When questioned, the insurer could not confirm if Ritvik had in fact accessed the pop-up text.

Because of the insurer's failure to adequately communicate its requirements to Ritvik, the Ombudsman upheld the complaint. He directed the insurer to amend its records to reflect the ending of the cover as a voluntary cancellation, rather than a voided policy, to refund the €50 administration fee and to pay an additional sum of €250 in compensation.

Insurance

READ THE FULL DECISION HERE

Decision Reference: 2020-0159

Auto-renewal of a car insurance policy

Louise took out a car insurance policy through a broker in 2015, which she complained was automatically renewed without her permission, twice, at an inflated price. Louise complained that the broker failed to tell her about the auto-renewal during phone calls and that she received poor customer service and complaints handling throughout. Louise sought a refund of the cost of her policy and for the broker to review its auto-renewals policy.

In response, the broker submitted that Louise had provided it with a signed credit agreement which agreed to the automatic renewal of the policy. The broker denied inflating the cost of the car insurance and argued that it had acted appropriately in seeking to provide the best policy and rate.

The Ombudsman found that it was clear that Louise was not notified that the policy would automatically renew during a phone call on the date when the policy was taken out and in fact she was expressly told on this call that her policy would expire on 29 July 2016. The broker conceded this fact and that the agreement of the customer should have been obtained on the call, but was not.

The Terms of Business which were issued at the inception of the policy contained a section entitled 'Renewals/Premium Payments/Insurance Premium Direct Debit Default Policy'. There was no mention of an automatic renewal in this. There was a statement in the Credit Agreement Terms and Conditions relating to the rollover of a direct debit, however the Ombudsman's view was that this was a separate matter from automatic renewal of cover.

An email from Louise enquiring why the auto-renewal had taken place in 2016 was not responded to by the broker and in a further call querying the renewal, Louise was informed that a cancellation fee would apply if she wished to cancel. Having not taken this option, Louise again queried a further automatic renewal on a call in August 2017, stating that she had told them previously she did not want this to happen. She was told this time she needed to make the request formally in writing.

The Ombudsman noted that the broker appeared to rely on the credit agreement as agreement for automatic renewal, but that evidence of Louise's informed consent was absent. It was not readily identifiable from the wording of the documents she received, that the policy would automatically renew. It was also noted that the broker failed to respond to queries raised by the Ombudsman until after his preliminary decision had been issued. Evidence subsequently received was not adequate to demonstrate an informed decision and the Ombudsman upheld this aspect of the complaint.

The Ombudsman noted that despite her enquiries, Louise chose not to cancel her policy or take out motor insurance elsewhere and appeared to be aware of the cover which she held. Therefore, the Ombudsman did not consider it appropriate to direct a refund of the total cost of the policies.

In relation to the renewal cost, there was a significant increase for the policy period commencing in July 2017, yet evidence showed one quote recorded by the broker was €322 less than the premium paid, albeit without 'bonus protection'. The Ombudsman stated that a discussion regarding policy options before auto-renewal would have been appropriate in these circumstances.

In relation to poor customer service and poor complaints handling the Ombudsman was satisfied that the complaint was handled in a manner that was compliant with the Consumer Protection Code but that there was, as a whole, very poor customer service.

The broker offered Louise €350 in compensation, which the Ombudsman did not consider adequate. The Ombudsman substantially upheld the complaint and directed the broker to pay Louise €1,000 in compensation and given the absence of any evidence of informed consent to automatically renew cover or to the costs incurred, referred the matter to the Central Bank of Ireland.

Insurance

READ THE FULL DECISION HERE

Decision Reference: 2020-0206

Claim for chimney damage due to alleged chimney fire

Ted held a multi-peril insurance policy on his farm. In October 2018, Ted's loss assessor notified the insurer that a chimney fire in September 2018 had caused cracking to the chimney stack and gable wall of his property, which would cost over €13,000 to repair.

Ted's loss assessor provided evidence of the damage to the insurer's loss adjuster, including photographs of the damage and a report from a specialist in chimney repairs. The report detailed that the fire had caused extensive damage, highlighting the vertical crack on the gable wall that 'would demonstrate a recent chimney fire.'

Following its own loss adjuster's inspection, the insurer declined Ted's claim for insurance cover, stating that the evidence did not show that the damage to the chimney stack and gable wall was caused by a chimney fire.

In his complaint to the Ombudsman, Ted stated that the insurer had wrongly or unfairly declined his insurance claim and he sought for it to admit his claim.

The insurer insisted that it had declined Ted's claim in line with its terms and conditions. In the evidence provided by the chimney repair specialist, the insurer found the flue of the chimney to be in a satisfactory state, with no evidence of damage from a chimney fire. The insurer also commissioned a structural engineer to examine the evidence. The engineer found that there was no internal damage to the chimney.

The insurer also used images from a Google Earth survey from July 2009, which showed the same crack to the gable wall that Ted was submitting as proof of fire damage.

The combined evidence led the insurer to the conclusion that the damage being claimed for was historical in nature and not caused by a chimney fire. The insurer stated that it does not provide cover for incidents arising from gradual wear and tear and while it appeared clear that the damage had been evident for some time, it had never been informed of it by Ted. Taking all of this into account, the insurer was satisfied that it had acted fairly when declining Ted's claim.

In his decision, the Ombudsman accepted the insurer's assertion that one would reasonably expect damage to the internal lining of the chimney after a chimney fire. He also stated that the onus rested on Ted to prove the chimney had been damaged by a chimney fire, but he was not satisfied that Ted had been able to do so.

The Ombudsman accepted the evidence that the damage was historic in nature. As the insurer's terms and conditions clearly stated that any damage caused by wear and tear or gradual deterioration was excluded from cover, the Ombudsman accepted that it had dealt with Ted's claim in accordance with the terms and conditions of the policy.

The Ombudsman did not uphold the complaint.

Insurance

READ THE FULL DECISION HERE

Decision Reference: 2020-0011

Refusal of house insurance claim due to limited information, documentation and access

Tony had held an insurance policy with the insurer since 1996. Since that time, he had made two claims for theft from the insurer, in 2004 and 2009. In a review of the policy in 2010, the insurer stated that, following the two thefts, 'stealing' cover would be excluded from the policy unless a burglar alarm was installed to the proper standard and was set and working when the house was unoccupied. Tony installed an alarm and sent an invoice to the insurer as proof.

In December 2015, while Tony was on holiday, there was a burglary at his home, with over €40,000 worth of valuables stolen. Tony's neighbour informed him of the incident and he reported it to the insurer within two days.

Details were exchanged and in April 2016, Tony contacted the insurer to request a loss adjuster visit his home to discuss the claim. Tony stated that he found the insurer's loss adjuster to be 'condescending and rude' and he appointed his own loss assessor to act on his behalf.

In a meeting with Tony, the insurer's loss adjuster requested proof that Tony lived in the property in question, a copy of his flight boarding pass to prove that he had been on holiday, the Engineering Code and Access Log for the house alarm and to allow an alarm engineer to inspect the alarm system. Tony described this meeting as 'more like an interrogation.'

Tony submitted 12 months of utility bills as proof of residence, his boarding pass for his return flight as proof he was on holiday but refused to allow the alarm system to be inspected, as he was worried that a 'third party' might tamper with the alarm system. He did not understand why the insurer did not ask him about any 'strangers visiting the house' during his questioning.

The insurer declined Tony's claim. In his complaint to the Ombudsman, Tony stated that the insurer had not dealt fairly or appropriately with his claim and that he was unhappy with the loss adjuster's handling of the investigation.

In response, the insurer noted that no alarm activation was noted by the Gardaí or the neighbour when the break in was said to have occurred. Because of this, a technical examination of the alarm was necessary, to ensure that it complied with the proper standard. It requested access to the alarm on several occasions during 2016 but did not receive the necessary permission from Tony.

As proof of residence in the property, the insurer stated that Tony provided 12 months of 'estimated bills,' not 'consumption-based' utility bills. The estimated bills did not confirm residency in the property.

Without this information, the insurer informed him that it could not process the claim. Its terms and conditions state that all details relating to any claim must be provided within 30 days. The insurer gave Tony until June 2017, 18 months after the burglary, to provide the information it needed before declining his claim, basing its decision on the 'limited information, documentation and access.'

In his decision, the Ombudsman stated that he was 'at a loss' as to why Tony would not allow an alarm inspection. As a fully functioning alarm system was a necessary provision in his contract with the insurer, the insurer was entitled to verify that the alarm was of the proper standard. The Ombudsman also accepted that the insurer was entitled to ask for consumption-based utility bills.

The Ombudsman listened to phone call recordings between Tony and the insurer's loss adjuster and found no evidence that the loss adjuster had been 'rude and condescending,' nor any evidence that the insurers agents had acted improperly in any way. For these reasons, the Ombudsman did not uphold Tony's complaint.

Investment

READ THE FULL DECISION HERE

Decision Reference: 2020-0092

Drop in value of an investment because of Brexit referendum

In January 2016, Dan invested €30,000 in a UK property fund on the advice of a financial adviser. The value of the funds was €26,975.46 when the monies were transferred out of the fund in July 2016, shortly after the Brexit referendum.

Dan complained that he was pressurised into making this investment and that the product was unsuitable for him given his risk profile. He sought compensation in the amount of €3,024.54 which he described as the 'loss incurred after the Brexit Vote'.

The financial adviser disputed that Dan was pressurised into making the investment and maintained that the investment carried a low to mid-range risk designation which was entirely appropriate and in line with his various other investments.

In his decision the Ombudsman stated that he was not satisfied that Dan had substantiated any suggestion that the financial adviser pressurised him into making the investment. On the contrary the process leading up to the investment appeared to have been quite slow, deliberate and considered and Dan was provided with ample advice and afforded ample time to make his decision. More than one correspondence regarding the fund specifically outlined that 'the value of investments within the fund can fall as well as rise and is not guaranteed – you may get back less than you pay'.

The Ombudsman did not accept that Dan was sold an investment that was inappropriate for him given his risk profile. The fund carried a mid to low-range risk profile (3 out of 7 on the ESMA scale) identical to various other products in which he was invested.

In his post-preliminary decision submission Dan contended that the Ombudsman had not addressed 'the panic which ensued by the financial adviser to get me switched out of the UK property fund resulting in the losses already stated.'

The Ombudsman noted that correspondence from the financial adviser amounted to informing Dan of the possible impact of the result of the Brexit vote and that remaining in the market was not, in its view, advisable. As the outcome of the referendum was an event that it was not possible to predict with complete accuracy, the Ombudsman viewed this as one of the vagaries of the market for which the financial adviser cannot be held accountable.

The Ombudsman also stated that it was clear that Dan was acutely aware of the impending referendum at the time he made the investment and would also have known that a vote by the UK to leave the EU would result in a drop in UK property values. The Ombudsman accepted that his decision to invest was informed insofar as he was aware of this risk and chose to invest nonetheless.

The financial adviser at all times indicated that investments could decrease in value and as unfortunate as the loss was, it did not represent any breach of law or procedure on the part of the financial adviser. For these reasons the Ombudsman did not uphold the complaint.

Dispute over period for collecting Chargeable Excess Tax on pension

Nessa worked in the public sector, entitling her to benefits under her employer's pension scheme (the pension provider). Due to certain benefits from her pension scheme, in the context of her retirement, she was obliged to pay a Chargeable Excess Tax (CET) on her pension. In line with guidelines set out in the Taxes Consolidation Act (TCA) 1997, Nessa notified her pension scheme in March 2016 that she wished to pay the CET over a 20-year period.

In April 2018, the pension scheme notified Nessa that she should pay the CET over a 10-year period. According to Nessa, agreeing to the pension scheme's repayment period would have significantly decreased her pension entitlements. Nessa refused to agree and insisted she was entitled to the 20-year period.

Nessa retired in December 2018. Because of the dispute with the pension scheme, she was not able to draw down any of her pension payments before the complaint came to the Ombudsman.

In her complaint to the Ombudsman, Nessa insisted that the pension scheme had wrongfully refused her decision to repay the CET over a 20-year period. To support her argument, Nessa pointed to the TCA 1997, stating that it did not contain any express wording to require the payment period to be agreed with the pension scheme. Because of this, Nessa argued, the repayment period was at her discretion alone.

The pension scheme argued that the repayment period must be a joint decision between Nessa and itself, as both parties are jointly liable for the payment of the tax. To support this claim, it also pointed to the TCA 1997, which requires that the reduction in pension payment be sufficient to reimburse the scheme. This, according to the scheme, necessitated agreement between the pension scheme and Nessa on the repayment period.

It also argued that the TCA 1997 does not state that the repayment period should be decided by the member alone and the context of the legislation as a whole clearly indicates a 'consensus approach.' The pension scheme also noted that it is not given any additional funding to pay the CET and Nessa's option would have an impact on its cash flow.

In his decision, the Ombudsman disagreed with the pension scheme's interpretation of the TCA 1997. While the legislation does require the tax repayment to be sufficient to reimburse the scheme, he found this does not mean that the scheme must agree to the length of the period of repayment. The Ombudsman rejected the scheme's interpretation of the legislation 'as a whole' and found nothing in its contents that would allow the pension scheme to insist that Nessa must accept its agreement. The Ombudsman also found the scheme's insistence that Nessa accept its preferred option to be 'unreasonable.' As the payment of the CET is a legislative requirement, the Ombudsman did not accept that any inconvenience to the scheme's 'cash flow' should be passed on to Nessa.

For these reasons the Ombudsman upheld the complaint. He directed the pension scheme to comply with Nessa's request to have the gross annual amount of the pension payable to her reduced for a period of 20 years from the date of her retirement, rather than over a period of 10 years, as the scheme had sought to implement.

Pensions

Incorrect application of tax class to salary resulting in dispute over pension contributions

Moira, a former public servant, retired in 2015. Before she retired, Moira was being paid a salary of €102,225 and was paying Class A PRSI contributions.

Moira had challenged these payments and it was found that, as an employee of the public sector recruited before 1995, she should not have been paying full Class A PRSI contributions but should have been paying Class D contributions instead. Because of this finding, however, Moira's employer claimed that Moira's annual salary should have been based on 'Class D scale.' For Moira, this meant that the salary that her pension payments were based on, was reduced from €102,225 to €97,237. As a result, Moira would receive a lower pension and she would have to pay additional pension contributions.

Moira was also concerned about her payments to the Spouses' and Children's pension scheme as part of her pension. When the scheme came into effect in 1984, before she had moved to work with the employer, Moira had declined to join it. She was later informed on her retirement that she had been a member of the scheme since beginning her employment with the employer, and as a result now owed a significant amount of unpaid contributions to the scheme – over €20,000.

There were two aspects to Moira's complaint to the Ombudsman. Firstly, she sought to have her pension benefits based on the salary rate of €102,225 that she was actually paid at, rather than the lower salary rate of €97,237 that the employer claimed was the salary rate at which she should have been paid. Secondly, she sought a refund of the contributions that she made to the Spouses' and Children's scheme while she was employed with the employer, as she asserted she should not have been a member of this scheme to begin with.

In response, the employer insisted that its policy, when employees are reclassified from Class A PRSI to Class D, is to retrospectively apply the lower salary scale, as Class D PRSI contributors make smaller pension contributions and are entitled to fewer benefits. This is based on the two-tier salary scale of the public service.

Regarding the Spouses' and Children's scheme, the trustees of the pension scheme referred to the rules of the scheme, which stated that any member of Moira's employers' main scheme must also be a member of the Spouses' and Children's scheme.

In his decision, the Ombudsman observed that the lower tier of the civil service's two-tier salary scale only applied to employees who did not pay any contribution to the main pension scheme. However, in the employer's pension scheme, it was compulsory for all members to make contributions to the main pension scheme. As a result, the two-tier system did not apply to Moira, as she was paying contributions to the main pension scheme, and she was entitled to have her pension paid at her actual salary rate, rather than at the lower rate.

The Ombudsman also found, however, that when she obtained her role with the employer, guidelines set out by the Department of Public Expenditure and Reform indicated that membership of the Spouses' and Children's pension scheme was a condition of her employment, and therefore compulsory. Because of this, the trustees of the employer pension scheme had no choice but to admit Moira to the scheme, even if she had not opted in and actively declined participation during previous employment.

For these reasons, the Ombudsman partially upheld Moira's complaint and directed the employer to instruct the trustees of the pension scheme to calculate and arrange to pay the Complainant's pension on the basis of the salary of €102,225.

3 STEPS to making a complaint to the FSPO

1 Contact your provider

You should make your complaint with whoever provided the service or product to you, this could be your bank, insurance company, credit union, money lender etc.

You should speak or write to either the person you usually deal with, or ask for the complaints manager to make a complaint.

What information should you give them?

- **Make it very clear that you are making a complaint.**
- **Explain your complaint.**
- **Suggest how they should put it right.**

Provide detailed information, including:

- **Relevant dates, places and times**
- **Details of any phone conversations and meetings** (e.g. who was involved, when they took place and what was said)
- **Copies of relevant documents,** such as contracts, statements, emails, letters, invoices and receipts.

BEFORE MAKING A COMPLAINT TO THE FSPO, YOU MUST GIVE YOUR PROVIDER A CHANCE TO SORT OUT THE PROBLEM.

2 Be patient and persistent

The provider should deal with your complaint through its complaint handling process. The provider may take up to 40 working days to deal with your complaint.

When you complain to the provider be persistent. If nothing happens, call the provider to check on the progress of your complaint.

The provider should fully investigate your complaint.

Resolved
In the majority of cases the provider will resolve your complaint.

Not yet resolved
If they don't resolve it, they will issue a final response letter to you.

A final response should set out what the provider has done to investigate your complaint through its complaint handling process. It should advise you to contact the FSPO as your next step, if you remain unhappy.

3 Contact the FSPO

If you remain unhappy after receiving your final response letter, you may contact the FSPO. To progress your complaint, we will need:

A A completed complaint form

&

B A copy of your final response letter.

If you are having difficulty getting the final response and 40 working days has passed or if your provider is not engaging with you please let us know and we will follow up on the complaint for you.

An tOmbudsman Seirbhísí Airgeadais agus Pinsean

Financial Services and Pensions Ombudsman

Lincoln House,
Lincoln Place,
Dublin 2,
D02 VH29

Phone: +353 1 567 7000
Email: info@fspo.ie