Unit A3 Nutgrove Office Park, Rathfarnham, Dublin 14.
PH: 01 2051305 2051306
Email: info@padraickissane.ie
www.padraickissane.ie

Oireachtas Finance Committee Meeting 21/02/2017

Presentation by Padraic Kissane of Padraic Kissane Financial Services.

About Padraic

Charlie Weston, Personal Finance Correspondent, Irish Independent says;

"Padraic Kissane is the foremost expert on Tracker Restoration cases in this Country. His work in this area is the main reason the Central Bank has ordered an Industry wide investigation. I have recommended to readers who have contacted me after losing tracker mortgage to speak to Mr Kissane."

Chairman and members of the committee, thank you for inviting me here today.

I am here today speaking on behalf of the thousands of customers and their families who have been affected by what has now become known as the Tracker Debacle.

It is affecting customers across all lenders and within that confirmed fact lies the clear indication that this matter and how it came about was based on deliberate actions within each lender. I am here today to tell you how it occurred and why.

The sole aim at the beginning of this debacle, was for each lender, who had the product of tracker mortgages, to come up with ways, tricks, attempts, efforts and strategies to achieve one outcome, get as many of the customers who had an entitlement to a tracker rate, away from their Tracker interest rate or create circumstances that denied each customer a return to their tracker rate of interest.

I believe that before we can move forward we must first look back.

There was an infamous advert that was put on the air which has the now infamous line;

“I don’t know what a tracker is”

This advert was for the general public but i believe the management within these lenders did not fully know what a Tracker mortgage was or its implications.

(Interestingly One bank did know Irish Nationwide who never sold the product)

So what is a tracker mortgage?

To answer this I believe the best way of understanding the product is to hear the following definitions from a selection of lenders and it should give you a clear understanding of what a Tracker Mortgage was. I have taken the definitions from documentation of the relevant bank

AIB
A tracker rate mortgage is a variable rate product that provides customers with certainty on their margin over the European Central Bank (ECB) rate ***<u>for the life of the loan.</u>*** *The tracker mortgage will “track” changes in that rate. While the overall rate will move in line with the ECB rate, the customers’ margin will remain the same.*

More customers are option for Tracker rates given the certainty on the margin it offers them, coupled with the flexibility to switch to a fixed rate at any time. 4/5/2006

Or

Bank of Ireland’s definition
The interest rate applicable to the loan is a variable and may vary upwards or downwards. The interest rate shall be no more than 1% (example) above the

European Central Bank Main Refinancing Minimum Bid Rate (Repo rate) ***<u>for the term of the loan.</u>***

Variation in interest rates shall be implemented by the lender not later than close of business on the 5th working day following a change in the Repro rate by the European Central Bank.

or

PTSB's Definition
Tracker mortgage Loans

The Interest rate applicable to Tracker Mortgage loans is made up of the European Central Bank Refinancing Rate ("The ECB rate") plus a percentage over the ECB rate. The amount of the percentage will not be exceeded ***<u>during the term of the loan.</u>***

Or

EBS

Important note on Tracker Mortgages
*With the tracker mortgage the margin is linked to a specified index or indices and remains constant for the life of the loan. In this case the tracker mortgage will be no more than 1.25% above the prevailing Central Bank main refinancing operations minimum bid rate (Repo rate***<u>) for the term of the loan.</u>***

or

Ulster Bank's
Tracker mortgages track the European Central Bank rate giving you a margin which ***<u>is guaranteed for the life of the loan.</u>***

The interest rate you pay depends on the amount you wish to borrow relative to the value of your home (loan to value)

UFirst tracker mortgage is exclusive to holders of Ufirst/Ufirst Gold current accounts who receive a special discount of 0.1% on our flexible tracker mortgage rate for the life time of your loan.

KBC Bank

Tracker Rate

*With a tracker mortgage movements in the European Central Bank (ECB) rate are fully transmitted in a defined timeline to the customer. In effect from the customers perspective this is a lock in to current market rates. This is a variable rate type mortgage **<u>which guarantees to track the ECB reference rate</u>** within a specified margin (percentage points)*

Price Guarantee

Our Tracker mortgage is a variable rate product that guaranteed full European Central Bank (ECB) rate changes will be passed on to customers within 30 working days.

The product gives a price guarantee to customers locking them in at various rates above the ECB rate, dependent on other factors, such as loan amount, loan to value and the type of securities against (ie primary residence or residential investment property.)

This booklet is intended to assist our customers in understanding detailed aspects of the mortgage they have taken with KBC (IIB Homeloans) and aims to provide in "plain English" as clear understanding of how mortgages work.

First Active

Special Conditions

*(Example) As the loan to value is less than or equal to 80% but greater than 60% **<u>the rate of interest will never be higher than the ECB rate plus 1.15%.</u>***

What is clear from all of the above definitions is that the variable basis of the loan was established at the outset and at the commencement of the loan and that is what a tracker mortgage was and practitioners like me and customers were informed that this was the basis of the product.

SO WHAT WENT WRONG WITH THIS PRODUCT;

The difficulty that was created for each lender was how the product was set up namely it tracked the Base Rate of the ECB. (European Central Bank). This one issue was going to have a huge bearing on each lender when the banking difficulties began to manifest themselves from mid 2008.

All Tracker loans without exception in domestic lending tracked the base ECB rate at a set margin for the term of the loan.

The banks however borrowed funds on the Euribor Market

(For information: The Euro Interbank Offered Rate (**Euribor**) is a daily reference rate, published by the European Money Markets Institute, based on the averaged interest rates at which Eurozone banks offer to lend unsecured funds to other banks in the euro wholesale money market (or interbank market).

basis and while both ECB rates and Euribor rates were closely aligned at the outset of the tracker product in 2001 onwards this suddenly changed in 2008 when money markets hit difficulty. This became known as the Financial Crisis

All looked okay until June/July to October 2008 when Euribor rates began to differ substantially from ECB rates.

This posed a major problem for the lenders in terms of funding but the bigger problem was that contractually each Tracker loan was aligned to the ECB base rate.

Each bank set about finding ways to alter the existing contracts in both its intention and actions as you have begun to see from the current investigation.

The elephant in the room of all lenders in mid 2008 were Tracker mortgages and what to do with them. Or how to get the problem these products were creating sorted.

I am certain that high level meetings were held in each Bank to address the issue. I don’t know of one lender who has admitted to this or made available the minutes to any meetings that were held but it is clear to me that meetings would have had to be held. Then the messing with customers accounts began

For example PTSB thought up the idea of, let's get customers to break from their fixed rates without penalty because a word within the loan state that the tracker rate was only available on expiry.

If a customer doesn't naturally expire they can't get their tracker rate back.

EBS in some cases simply said, don't offer the rate at all even though it was in the conditions but it was buried (or so they thought).

Bank of Ireland tried the same line we don't do tracker mortgages any more so tough.

KBC tried to claim that because the form used to apply a fixed rate of interest had the words, "thereafter reverting to a standard variable rate", that KBC should simply say sorry the fixed form is clear even though all their Tracker loans were variable. KBC did not even have a standard variable rate for home owners at this point in 2006-2007 2008.

AIB have tried every excuse that could be gleamed from the documentation even though as stated in an Ombudsman decision "the underlying contractual position of the variable basis of the loan was clearly set out at the commencement of the loan and was not altered in the customer selecting a fixed period"

Danske Bank arranged meetings with clients and introduced a prestige product which had the aim of presenting one thing but doing another.

The question that arises is that if no banking issues ever arose what would have occurred.

The answer to that question is clear because each customer up to mid 2008 who expired from a fixed rate were allowed to go back to their tracker rate or were given the option of an improved margin rate. In other words it did what it said on the tin "the margin was for the life of the loan".

The product was as designed and the margin was for the term of the loan as stated repeatedly earlier in the various definitions outlined earlier from each bank but importantly this margin will not

"be exceeded during the term of the loan" (*by PTSB)*

It was the customers, according to the banks, in their various replies to me over the years that were meant to be legal, financial and banking experts in understanding the documentation.

But the contracts were clear from 2002 onwards the variable basis for most loans being done at this time were Tracker mortgages.

All that differed in each application was the margin above ECB that was to be allocated to each loan.

The only reason any of this changed **<u>and it is the only reason</u>** was the banking difficulties that arose in mid 2008 onwards and the reduction in the ECB base by the European Central Bank.

I am here today to talk on behalf of customers I have met since 2009 and the effects the banks actions have had on them and their families.

I have met with hundreds of the affected customers across all lenders and the impact and effects of the banks actions have been catastrophic especially on families and children.

You are aware from some of the lenders that the banks actions have resulted in the loss of homes. However I wish to state that what needs to be looked at here is the numbers that have had any type of loss of ownership.

The only numbers put forward by the banks to date are the cases that they can officially classify as homes lost and that suits the banks perfectly.

It is no different in my view if a home is sold to trade down to meet the overcharging.

Or, selling a home to emigrate,

Or the selling of a property abroad to help meet with the payments

or the voluntary sale of a property to avoid the inevitable happening, which was to empty all the savings each had first, then ask friends, parents for help.

Then approach the Credit Union for a short term loan.

Then run up the debts on cards, current accounts to their max to meet the payments.

And when that was not enough going into arrears.

Homes are not all that have been lost in this debacle, lives have been lost for sure and most people affected have had their lives and outlook changed.

These lenders have used our “irish-ness” against us, and what I mean by that, is the desire of Irish people to own a home and put down roots is fundamental to our makeup. To attack that section of their customer base is appalling behaviour, customers who would have done everything possible, in the majority of cases, of avoiding going into arrears on their home

Add in the unique economic circumstances that prevailed at the time and what was created by the banks actions was the perfect storm.

But for the lenders to deliberately set about attacking and robbing home owners and essentially amateur investors is what is truly appalling.

There are unwritten rules in place that are not covered in any consumer protection codes or laws or directives but are sacrosanct when it comes to the home owner.

Banks should be able to be trusted in how they deal with home owners especially, but i wish to read into the record a piece I wrote in 2014 one morning.

....I cannot understand the continual erosion of a time sound basis of business namely the customer is always right to one now where the customer is always wrong.

The acceptance as a requirement by these lenders of time as the important ingredient as well as cheap capital in order to restore their basis of becoming pillar banks but to then use the very opposite weapons namely no time or cheap rate to help their customers recover is wholly unfair that it has been allowed to happen.

But the cunningness of how it has been done to include our Government and the Central Bank as co perpetrators of these actions is unacceptable.

It is become clearly obvious to me that far from becoming pillar banks that will support our economy there is only one requirement for the heads of all

lenders and this is to squeeze the customers to the very limit of what they get away with because in the new financial world within Ireland the customer is always wrong. By Padraic Kissane June 2014

Well the customers are not wrong and were never wrong.

I wish to commend the customers out there who challenged these lenders and believe me this was no easy journey for anyone. I know firsthand what it takes to take on these lenders with their power and might and financial strength. I stated it in 2009 and no one listened. It's now 2017 and we are still here with the problems.

The banks held all the aces in this tracker scandal.

They had the money, power, deeds and the position of strength to set about telling customers you are wrong, we are right, and now put up with it. The lesser party here at all times was the customers but in reading some of the replies I have received over the years from the lenders you would think it was the bank who were the lesser party. The rule of Contra Proferentem does not seem to apply in Ireland when it comes to our banks.

For information contra Proferentem means

Contra proferentem is a Latin term used to describe a legal doctrine of contractual interpretation known as "interpretation against the draftsman." The term literally translates as "against the offeror," and that is basically what the doctrine calls for.
If a written agreement includes a term that is confusing or ambiguous, *Contra proferentem* calls for the term to be interpreted against the interests of whoever drafted that confusing or ambiguous term.

I challenged my first tracker case in 2009 and since then I have been challenging lenders initially through the process of the Financial Services Ombudsman's Bureau culminating in getting the matter to the Central Bank Industry wide investigation.

You would think that at this stage the banks would accept that their game and trickery is up and each has been caught, not a bit of it.

I want to state on the record that there is not one morsel of regret within any bank for what each has done, their only regret is that they have been caught.

You need to remember that until August 2015 for PTSB customers and August 2016 onwards for the other lenders each customer affected by this tracker issue thought it was their own fault and of their own making,

Blaming themselves for buying that nicer home, or trading up and keeping the existing home as an investment, or having to borrow so much money to even get on the ladder.

It was all their own fault and these became known as the 'Celtic tiger' fools.

It seems conveniently forgotten that the levels of stamp duty and vat and fees that contributed to the finances of the Irish State were enormous mainly from this affected sector of property owners.

The Central Bank

I wish to address some comment in relation to the Central Bank.

I want it noted on record that I support and acknowledge the efforts the Central Bank have made in this investigation.

While accepting that the Central Bank may have arrived to the matter somewhat later than was ideal, none the less it must be acknowledged that it has arrived with their investigation.

There is currently an Enforcement investigation underway into PTSB and Ulster Bank and an industry wide tracker investigation across all lenders.

The difficulty for the Central Bank at present is that it cannot make my statements of note other than updates until the investigation is complete.

I disagreed with the treatment of Governor Lane at his most recent appearance here at this committee. Governor Lane and the Central Bank have not taken one cent from any customer, our banks did. I would ask this committee and indeed all who are affected to place a degree of trust in our Central Bank to do their job as I have but they must be allowed the time to complete their work.

I accept the difficulties the waiting is causing to the families and individuals affected and for that it is the lenders who should be ashamed.

I know firsthand the levels of work being done by the Central Bank and the commitment of the staff numbers it has given to what is an enormous investigation, which tells you to some degree of the wrong done.

To the CEO's of the lenders.

You are each holding the reins of responsibility for how your bank is behaving. I cannot accept and will not accept a reply of "I wasn't there when this occurred".

The legacy of this issue is being written as each day passes but the word apology is being used without the support of any degree of true remorse.

There is still a level of resistance within each lender to correct the matter fully. I am still being told on a daily basis that I am wrong. Each lender is attempting to tell me I am wrong about a matter that is within the banks own loan conditions.

I am today challenging each CEO of each bank to take full control and responsibility of its investigation and have at its core their own customers first and your bank second.

Double your award on every case and you might begin to create the understanding with your customers that you at least understand the effects of what you have done or do you dare me to leave it to judges to decide the levels of damages that are appropriate for what you have done to your customers.

PTSB Redress Process

The Central Appeal Panel (CAP) of PTSB who are handling some appeals relating to what has been done to customers of PTSB are issuing decisions that are frankly a disgrace and are causing as much upset as what the bank have done. Matters we have brought through in appeals are either not considered or don't fit in with their definition of non financial losses.

Some matters we have raised are not even addressed in decisions. It is truly appalling that I must now bring each of these appeals to the courts or the FSO for hearing.

There is a predetermined position within the Central Appeals Panel and their views of the whole matter. I am stating on record today that they are wrong. They believe customers are being greedy and should not be looking for further appropriate compensation.

A process that was established to allow affected customers air their concerns has utterly failed them.

The more serious Redress cases are referred to an Independent Review Panel where I have 100% confidence in their ability to deal with the issues in a fair but thorough way.

The opposite is my view of the other CAP panel. The lack of understanding within that panel must be addressed by PTSB urgently.

I have met and sat with each case that have appealed and listened through hours of tears, upset, and the difficulty of re telling what occurred over some very difficult years, then express it in an appeal to be told by this panel:

"The customers appeal panel has decided that X has been unsuccessful in her appeal on the following grounds:

Reason for Decision:

Having fully considered the facts of the appeal as submitted by X the customer appeals panel arrived at it's decision for the following reasons:

It had not been shown that the financial and non-financial damages claimed by X were caused by the banks failure(s) and /or would not have occurred but for the Bank's failure(s); and

It has not been shown that it was foreseeable or could be anticipated X would suffer the non-financial losses claimed as a result of the banks failure(s).

During the hardest of economic times that most of us have ever been through how many young families had an extra €500 to €1000 per month to spare, this is what the banks were over charging an average mortgage holder, most with young families or starting their families in a home they bought at the height of the Celtic Tiger.

But according to this panel this illegal over-charging didn't cause any financial loss to anyone, how can they even claim this.

It is a disgrace and I am certain 10% (which is what has been awarded to date by PTSB) of their overcharged interest is not appropriate.

Then again you must remember I was told I was wrong in 2009 by these banks, it didn't or shouldn't come as any surprise that a panel with a bank representative on it has also told me I am wrong, again.

To help this matter in a meaningful way the finance committee must begin to look at putting in place legislation that allows for a class actions to be brought against the offending banks on any matter not resolved to the satisfaction of what is deemed fair. Take some of the aces away from these lenders it will at least help prevent it from occurring again.

I have been in Financial Services for over 33 years and I am appalled at the level of wrong done to customers by their banks.

When I first challenged the matter in 2009 nobody listened. We are now in 2017 and it is still not resolved.

I have listened to the heads of some of the banks come to this room and give you the number of accounts affected. Everything is scripted to perfection to ensure that nothing wrong is said. That caution and care reflects a bank who has concerns of ensuring that it does not cause further damage to the bank itself.

Each of these banks have made provisions without any degree or knowledge to the harm and tragedy their actions have caused. I have spoken to 1,000's of these customers.

It is truly appalling the level of hurt this has caused and I am certain that each lender has no real sense or understanding of this.

I am mindful today of the people who have met with me to tell me their story.

The brave couple who took the matter to the High Court at enormous cost to them and their family, both health wise and financially, who won the case in court only to be redressed by PTSB with a margin of 3.25% which was never allowed for. Their fight continues today.

Or
the lady who felt humiliated when she had to leave the Christmas shopping trolley 4 days before Christmas who was being overcharged by 1,000 per month
or
a client who was only able to meet with me because the rope snapped when he attempted to take his own life because of the financial stress he was under.

Or
the man who had to take a back office position in a bank

or
the man who couldn't accept his redress cheque as he had no bank account after losing his home.

Or
the many couples who have split up and the effects of that on the children.

Or
the many families who have had to emigrate.

Or
the people who had their homes and properties taken from them, illegally.

The list goes on and on, and on
15,000 times or more.

I cannot forget and indeed I applaud the sacrifices made by the parents of these affected customers, who while their children were being deliberately overcharged by banks, assisted their children with payments to meet the loan. Ironically some of these parents had lost their entire share value in these banks at this time also.

The economic circumstances at the time made the actions of the banks a perfect storm for the affected customers and their families.

It is a truly appalling and horrific what the behaviours of these lenders has done to its customers.

The customer's and their families did nothing wrong.

So you will forgive me as a committee when I get angry but especially at the replies I get from these lenders who appear to not have one morsel of regret for their actions, their only regret is that they were caught.

I made a commitment to each customer that has engaged with me, I would go shoulder to shoulder with them wherever that journey takes us.

I will continue to do so until the matter is resolved to our complete satisfaction be it in this investigation, a redress process, the Financial Ombudsman, the courts or indeed the European Court.

To give each customer the opportunity to enable them to draw the line of conclusion to this sorry matter should have been the desired outcome from the very outset.

Issues within families, relationships, careers, and the health, shame, isolation, and social exclusion are but a few of the effects I have encountered in my dealings with the customers. No bank has escaped in this debacle. The question is not why the question is why not?

When you realise that it should never have occurred you begin to realise the tragedy of the whole matter.

Life will go on for sure but the scars of this will remain with people forever.

To delay that healing process will be a further continuation of the wrong doing.

I will now take questions and give further information regarding each lender as required and on behalf of each customers out there I want to thank you for the opportunity to present the real effects of these lenders actions, which were of their own making and had nothing to do with their customers. For that they should be ashamed.

Prepared by
Padraic Kissane Independent Financial Advisor
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