Up to Date Facts
On
The Ongoing Tracker Investigation

As the investigation has developed it brings about more questions everyday, some of which remain unanswered for affected customers and I want today to address some of the key issues that remain outstanding.

I want to briefly update you on the key matters that remain unresolved by some of the lenders.

Of the lenders affected by the investigation the following lenders still have 'cohorts' of customers not corrected and some who have not been even deemed impacted.

AIB/EBS:
The main group remaining outstanding here is EBS homeowners who have not been returned to the tracker rates. This could number somewhere around 3,000 cases.

There is a key matter with this cohort and it remains that no customer was told they were foregoing the variable basis of their loan by applying a fixed rate for a period of the loan.

There is also the area of the 'Variable Base Rate' that tracked ECB perfectly until July 2008 and then magically transformed into a 'Standard Variable rate'. There are outstanding issues here also that must be dealt with by EBS in a satisfactory manner.

Are AIB/EBS sorry for how these customers are being treated.

Bank of Ireland:

There remain outstanding cases with this lender especially those who were staff and fixed for 2 years on the understanding their loans were to revert to a Tracker rate of ECB plus 0.75%. Of the cases corrected I have seen none that have been restored to ECB plus 0.75% as was supposed to happen but there is a small cohort of cases that could have availed of Tracker rates but chose 2 years fixed as there was certainty given that the roll over position was ECB plus 0.75%.

There also remain cases outstanding became Tracker loans after loan offers were issued that have not, as yet been restored to the Tracker rate. Total here could be approx. 800 cases.

Danske Bank:

This lender also has outstanding cases remaining that it has not deemed are impacted. There is a stated position from Danske Bank that it seems to have forgotten which is, if the loan was on Tracker prior to fixing them it was to revert to that basis of interest. This bank has a lot of questions to answer in relation to Tracker Mortgages, especially as it is also the lender that began the race to the bottom in terms of the margin being changed on Tracker Mortgages. This lender introduced, in October 2006, a product called the LTV (Loan to Value) Tracker product. This resulted in all other lenders immediately putting in place retention departments within their mortgage areas as it became clear to the other lenders that retaining their book of business was just as important as garnering new business and indeed it was maybe more important to some Banks especially the main lenders who wanted to protect their market share.

This key issue had a dramatic fall out effect with other lenders.

In summary in relation to the accounts affected Danske Bank have many account holders still not restored to their Tracker product even though Danske Bank stated in the communications, that I have seen and hold in my office,

"You have the option to choose between one of the following

- *To move to a Variable Rate*
- *To Agree a new fixed rate period*
- *To revert to an ECB Tracker rate (with the margin which had applied before your fixed rate period."*

This has not occurred with accounts with Danske and remains an issue that is still ongoing.

The above statement is from this lender's own communications, it should be applied to those loans affected but this has not been done to date on many accounts that I have reviewed.

KBC Bank formerly IIB Homeloans:

This bank, it can be said, resisted all matters relating to Tracker Mortgages for many years. It has consistently attempted to suggest it never had an issue, of denying people their right to a Tracker mortgage even though it was clear to me from the outset the opposite was the case.

Their loan offers stated clearly;

"The interest rate shall be no more than x above the European Central Bank Main Referencing Operations Bid Rate ("REFI" Rate) for the term of the loan"

I have listened to statements given by this bank to this committee and I want to pose the following questions and thoughts to the committee.

1. Have you been given the communication KBC made reference to in their last presentation, supposedly issued in February 2008.
2. The communication sent to all brokers now being described as a 'flyer' was never removed, discontinued by any subsequent communication that I know of and if it did I should have been sent an email.
3. The communication (flyer) did not reference any preference that it only applied to Home Owners. That is simply not true.

It is clear to me that there seems to be some agreed/negotiated position adopted in relation to this issue between the Central Bank and KBC but it is wrong to try and dismiss the other affected cohorts within KBC.

The communication is actually crystal clear:

"Fantastic News From IIB Homeloans"

'All IIB Homeloan fixed rates will now roll onto tracker rate upon expiring. Offering your clients even better value'.

It did not apply to new business only. Why….., because all lenders at this time were reacting to the launch by Danske Bank of the Loan to Value Tracker product. KBC did so with this announcement in late 2006.

It applied to existing business as well as new business but was primarily directed towards existing business.

Indeed, the new business aspect of the communication was covered in bold print with a further offering which was available to

"ALL NEW CUSTOMERS* who want to take out a mortgage with IIB Homeloans."

I show this to highlight the differentiation between existing business and new business in the communication.

I will be asked today what is the current position in relation to these matters and unfortunately I don't know the answer as I do not know what was agreed by KBC in their discussions with the Central Bank.

What I know for certain is that the communication of November 2006 was not withdrawn in February 2008 as claimed.

Another matter that has not been addressed by KBC as yet in the investigation is the loan applicants that began on a fixed rate of 3 years or more.

The only reason why KBC did this was because, (astonishingly) fixed rates of 3 and 5 years were not stress tested by KBC which allowed KBC lend more money than any other lender could have who would have stress tested the rate which was generally done at plus 2% from the rates on offer.

To now suggest that, because this bank lent more money because of this non stressing of the loan cost, is the reason why customers cannot go to a Tracker rate is wrong and utterly unfair and the flyer issued in late 2006 addressed this issue of concern that existed at the time with customers and brokers alike.

There are still many of these cases with KBC. I did I'm pleased to report meet with KBC management recently and I hope to expand on these issues and matters in future meetings but for now there are a large cohort of customers still in the waiting room of not knowing what is going to happen.

PTSB:

The level of ongoing issues with this lender is staggering. What is more remarkable is that this lender will inform this room that it believes it has addressed the issues regarding Tracker mortgages. It has not and many issues remain.

However, I am pleased to report today that I have reopened lines of communication with this lender and I hope some of the key matters that remain will at least be discussed in the coming meetings. I do believe there is a growing acceptance with PTSB that if it is serious in putting its customers first then it needs to revisit some areas that remain unresolved. I have begun recently with broad based matters like the treatment of appeals, the restoration of accounts that were moved to another bank to mention some.

The margin issue is not gone away. I am today putting on record that I am certain I am 100% right on the issue which is central to the big remaining issue within PTSB. I am 100% certain that the position I hold on what the correct margins should be for each individual loan account is the right one.

The loan offer and ESIS sheets applicable to each loan informs, with an accuracy of 100%, what the correct rate should be.

I want to give an sample example of what is occurring here with this matter.

Many of these loans that remain unresolved were commenced on a discounted tracker rate.

I have only one question, what was the rate discounted from:
There is a parent rate that applies to enable the discount to apply from and the is the rate these loans should be returned to.

PTSB never did have what is now calls “*The non price promise tracker”.* It simply did not exist in 2006 2007 or 2008.

I will report on the progress I make on this matter and I am continuing to challenge the Central Bank to deal with the matter, properly.

<u>Ulster Bank:</u>

The key issue on going with this bank is the matter of First Active account holders, few of which have been reimbursed and redressed to their Tracker Mortgage. There is also the ongoing delay with the issuing of the Redress letters and statements

Ulster Bank – (in relation to First Active) in their replies to me over the years seem satisfied that the documents customers signed to apply a fixed rate for a short period were clear and that these forms also included what Ulster Bank now title “A Tracker Removal letter”. Of course it was not titled or stated or even indicated when customers went to fix their interest rates, but nobody was told directly they were forgoing their tracker rate.

Not one person was told by any member of staff of First Active that fixing their interest rate also had the effect of removing and altering the variable interest rate basis of their loan. If it was the case then this is what should have been printed and stated in all communications between the customer and the bank

“If you fix the interest rate on this loan you will lose the right to go back to tracker”

If it was said and printed in this clear fashion then I would have no argument and that applies to all lenders.

Ironically the Terms and Conditions of a First Active Tracker loan state the following clear and unequivocal condition as part of its conditions.

“In order to transfer from the Tracker Mortgage product to another mortgage product the Borrower must (among other things) <u>first</u> redeem the tracker mortgage loan.”

No loans were or have ever redeemed by First Active when a customer chose to fix the rate and the reference number never changed for the accounts I have reviewed.

On the first page of the same book of conditions the following is stated

(m) "fixed rate period" means the period during which First Active has agreed to fix the interest on the loan"

That is the key: First Active agreed to fix the interest rate for a period without firstly redeeming the loan then the underlying variable basis of the loan continues to remain in force.

OVERALL

From an overall assessment there are what I would term, outliers that are still outstanding across all of the lenders but these are more individual and singular arguments by nature. The areas above however are large cohorts in each bank that are not as yet addressed. It raises the question, are the relevant lenders sorry for these customers or apologetic for their actions.

Or are these lenders glad, that to date, each has not been forced to fully correct the position in relation to these account.

Another matter that still comes up on a regular basis is an area I call ***churning*** of loans. This has occurred in different volumes across all lenders.

I mention, as an example, Marian Kenny who took a loan from PTSB for €550k interest only for the full term of the loan through a broker. She then went for a top up loan of €80k but went direct to a branch of PTSB and ended up with a new loan of €630k but interest only but only for 3 years and lost not only her competitive tracker rate but also crucially the basis the main loan was agreed on.

The branch gained a 'new' lending figure of €630k when all that needed to change was a top up facility of €80k.

That is just one example of how churning can affect customers when the drive for new lending was at its highest and this occurred across all lenders.

A branch manager of a bank told me in 2007 “I have to get €7,000,000 out that door each week and they don’t care how I do it.”

Briefly on appeals, I had established a Triage process to deal with matters directly with AIB bank and that has now been set aside, wrongly in my view and I must submit all aspects of an appeal through the relevant appeal process. I have spent the last number of weeks putting in place a process that will assist customers who have grounds for appeals to submit same in a detailed and formatted way.

I hold grave concerns, however, in relation to the issue of data access requests as some pertinent documents seem to be withdrawn by banks. It is utterly unfair and wrong that a process that requires high level of proof to substantiate an appeal, is restricted because banks are not making paperwork or evidence available to support a position. This is relevant to appeals and indeed in proving if in case should be deemed impacted.

Importantly all customers do not or need not take appeals but for some the impact this issue has had on their lives has left scars that are difficult to heal if an appeal is not brought.

Some summary items.

I have not heard from the Competition and Consumer Protection Commission.

I am meeting with the Financial Ombudsman in the coming weeks.

I have held meetings in the recent past with senior management of Ulster Bank, Bank of Ireland, KBC, AIB, Permanent TSB in the hope of resolving outstanding matters for their customers.

I have an ongoing communication with the Central Bank

The appeals process is difficult for people to complete simply because the customers who most need to bring appeals are the ones most affected by what has occurred. Travelling back over that period of time is not easy.

I began this issue in 2009 and it is not acceptable that some matters are still unresolved 9 years later. I am aware of the customers looking in that I may not have covered all the relevant accounts affected.

There could be at least another 5,000 cases outstanding and while "Tracker Fatigue" could become a factor it is vitally important for all those families who as yet are deemed not impacted, by the banks I might add.

So I am posing the following for consideration to all those lenders that remain with issues regarding tracker mortgages.

1) Where there is doubt about the meaning of a term , the interpretation most favourable to the consumer shall prevail, that is not a desire its Law.

2) If there is any doubt about what was to occur following a fixed rate period take out the fixed rate period as if it never occurred, that will address the lack of clear information.

3) If a tracker Mortgage was one of the options then your lender must offer you the Tracker rates even if they are no longer available.

4) If the Bank truly mean the sincere apologies and the need to put customers first is real and desired then resolve these outstanding matters which will send the clearest signal yet that attitudes and the culture within banks has changed for the better.

I was asked a question recently by a reporter if I would do it all again given the tough journey this has been for me and my staff.

I said Yes, but I also said the question should be, would the banks do it all again I fear the answer to that might also be yes.

But I do hope I am wrong……………. for once.

Finally I want to thank this Committee for all the work it has done in this whole area and I will now take questions. To finish my opening comments

"Sorry" is just not good enough for what has happened and I will now take your questions

Thank you

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