



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

2017

UPDATE ON THE CENTRAL BANK OF IRELAND'S EXAMINATION OF TRACKER MORTGAGE-RELATED ISSUES



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

Table of Contents

Executive Summary.....	3
Part I: Update on the system-wide Examination.....	8
PART II: Outline of the Central Bank’s Policy and Supervisory Interventions and Enforcement Activity in relation to Tracker Mortgage-Related Issues in the Pre-Examination Period.....	21
Part III: Next Steps.....	26
Appendix I: Table Summary of Identified Customers.....	27
Appendix II: Legal Framework/Statutory Powers.....	28

EXECUTIVE SUMMARY

The Central Bank of Ireland (the “**Central Bank**”) is acutely aware of the unacceptable impact that lenders’ failures have had on tracker mortgage customers, up to and including instances involving the loss of ownership of mortgaged properties. This is why, in 2015, and building on previous supervisory and enforcement work, the Central Bank launched an industry-wide examination of tracker mortgage-related issues (the “**Examination**”) and put in place a comprehensive framework for lenders to conduct the Examination and provide appropriate redress and compensation to impacted customers. This Report provides an update regarding the progression of the Examination to date. A further update will be published by the Central Bank in Autumn 2017 and a final report will also be published after the conclusion of the Examination.

The Examination is the largest, most complex and significant supervisory review that the Central Bank has undertaken to date in respect of its consumer protection mandate and involved an initial review of more than two million mortgage accounts by lenders (being the total mortgage book in the relevant period) to identify the number of in scope accounts. Following this review, 5% of the total mortgage book in the relevant period (approximately 100,000 accounts) has been identified to date for further review under the Examination. The 19 December 2016 update indicated that lenders’ reviews had identified approximately **8,200** impacted accounts. As at end February 2017 this figure had increased to approximately **9,900** impacted accounts.

This Report addresses:

1. the scope and framework of the Examination;
2. the progress of the Examination to date;
3. redress and compensation provided by lenders in respect of tracker mortgage issues;
4. enhancements to the regulatory framework to protect tracker mortgage holders;
5. supervisory activity undertaken by the Central Bank in respect of tracker mortgages; and
6. information on the Central Bank’s supervisory and enforcement powers that are relevant to the Examination.

This report also provides an update of the Central Bank’s enforcement activity in respect of tracker mortgages. To date the Central Bank has concluded an enforcement investigation in respect of tracker mortgage failures identified at a regulated entity and imposed a monetary penalty of €4.5m, on that entity in respect of the failures. The Central Bank has also commenced two other tracker mortgage related enforcement investigations that are currently being pursued. The Central Bank may also

commence other investigations, as appropriate, into other lenders and persons concerned in the management of such entities where there is evidence of non-compliance with regulatory requirements.

Aim:

The aim of the Examination is to ensure that all relevant lenders conduct a comprehensive and robust review, which delivers fair outcomes for all customers. Lenders are required to ensure that they conduct a complete review of their mortgage loan books to assess compliance with both contractual and regulatory requirements relating to tracker mortgages. In line with the Central Bank's mandate to ensure that the best interests of consumers are protected, our immediate focus is to ensure that lenders prioritise the identification of impacted customers, stop the harm, and then provide appropriate redress and compensation in line with the '***Principles for Redress***' developed by the Central Bank. The purpose of redress is to return the customer to the position they would have been in had the issue not occurred. Compensation should be reasonable and reflect the level of detriment suffered by the customer.

Scope:

The Examination requires lenders, which offered tracker interest rate mortgages to their customers, to review all mortgage accounts from the date when the lender commenced offering tracker interest rate mortgages until 31 December 2015 in respect of both Private Dwelling Houses and Buy-to-Let properties:

1. that originated on tracker interest rates;
2. that had tracker interest rates applied at any stage during the term of the underlying mortgage agreements; and/or
3. where the underlying mortgage agreements provided for contractual rights to or options for tracker interest rates at any stage during the term of the agreements.

Framework:

The Central Bank requires lenders to complete the Examination in four phases, being:

- Phase 1: Development and Submission of Detailed Plan;
- Phase 2: Information Gathering/Review/Report Submission;
- Phase 3: Calculation of Redress and Compensation (where relevant); and
- Phase 4: Implementation of Redress Programme (where relevant).

Redress and Compensation:

The Central Bank does not have the statutory power to compel lenders to implement redress and compensation programmes in respect of failures that occurred prior to the introduction of the Central Bank (Supervision and Enforcement) Act 2013 (the “**2013 Act**”). However, where customer detriment is identified, the Central Bank has clearly articulated its expectations of lenders to provide appropriate redress and compensation to impacted customers in line with prescribed Principles for Redress.

Key elements of the Central Bank’s expectations in respect of redress and compensation for impacted customers include:

- any harm is stopped at the earliest possible time after each group of impacted customers is identified;
- the interest rates applied to impacted customers’ accounts revert to the appropriate tracker interest rate or impacted customers are given the opportunity to revert to such a rate where relevant;
- redress will be provided to impacted customers to return them to the position they would have been in had lenders’ failures not occurred;
- reasonable compensation, that reflects the detriment suffered by individual customers, is provided;
- redress and compensation is to be paid to impacted customers up front at the point of offer and compensation cannot be reduced by virtue of a customer lodging an appeal;
- an additional payment is to be provided to impacted customers at the point of offer to enable them to take independent professional advice regarding the redress and compensation offers made to them;
- an independent appeals process is to be established to address complaints from customers who are dissatisfied with any aspect of the redress and compensation package that they receive from lenders; and
- lenders will undertake not to raise any time limit defences that may otherwise apply if impacted customers make complaints to the Financial Services Ombudsman (the “**FSO**”) or initiate proceedings before the courts.

The Principles for Redress are designed to ensure that impacted customers receive appropriate redress and compensation in a timely manner. The appeals element of the Principles for Redress ensures that customers have an option to challenge any aspect of the redress and compensation

package, which is additional to the options of bringing a complaint to the FSO or initiating court proceedings.

Progress to date:

The following lenders were written to as part of the Examination:

AIB Group (Allied Irish Banks plc, AIB Mortgage Bank, EBS Limited, EBS Mortgage Bank and Haven Mortgages Limited)
Bank of Ireland Group (The Governor and Company of the Bank of Ireland and Bank of Ireland Mortgage Bank)
permanent tsb plc
Ulster Bank Ireland DAC
KBC Bank Ireland plc
ACC Loan Management Limited
Bank of Scotland plc
Danske Bank
Dilosk Limited
Irish Bank Resolution Corporation Limited
Leeds Building Society
Pepper Finance Corporation (Ireland) DAC T/A Pepper Asset Servicing
Springboard Mortgages Limited
Start Mortgages Limited DAC
Stepstone Mortgage Funding Limited

Phase 1 of the Examination is complete.

Phase 2 of the Examination is on-going. As at December 2016, 9 lenders have submitted Phase 2 reports. The remainder are still engaged in their Phase 2 reviews and interim reports/status updates have been provided as appropriate. The Central Bank invoked its powers under Section 22 of the 2013 Act to set specific timelines for lenders to complete Phase 2 of the Examination, the last of which will be completed by no later than end September 2017. By this date, the Central Bank expects all lenders to have identified all impacted accounts and have commenced engagement with most impacted customers. The Central Bank will be rigorously monitoring the completion of this work.

While the Central Bank expects that Phase 2 will be completed by end September 2017, payment of redress and compensation by the lenders and the Central Bank's assurance work will continue beyond this point for some lenders. The Central Bank expects lenders to commence Phases 3 and 4 as impacted customers are identified. It is important to note that Phases 3 and 4 (calculation of redress and compensation and implementation of the redress programme) can run concurrently with Phase 2.

In all, approximately 9,900 customer accounts have been identified as impacted by lenders, as part of the Examination, as at end February 2017. Lenders have commenced contacting impacted customers identified as at end February 2017 and have rectified the interest rates applied to such impacted customers' accounts, thus stopping further detriment. As at the date of this Report, interest rates have been rectified on more than 90% of the accounts that require such rectification.

To end February 2017, approximately €78m has been paid in redress and compensation to approximately 2,600 impacted customers identified as part of the Examination.

The Examination is a priority for the Central Bank. The Central Bank will continue to engage with lenders in respect of the conduct of the Examination. The Central Bank will consider appropriate supervisory action, up to and including enforcement action, where necessary. Enforcement measures will be deployed as appropriate, including investigating issues and taking cases under the Central Bank's Administrative Sanctions Procedure together with the use of our fitness and probity powers. In the enforcement investigations, the Central Bank will consider all possible angles, including potential individual culpability, and will thoroughly investigate and analyse these matters in the context of the legal framework.

Notice:

When reading this Report, it is important to note that due to statutory confidentiality requirements, the Central Bank may not publicly disclose much of its supervisory engagement with individual firms. In particular, the Central Bank can, generally speaking, only disclose such information in summary or aggregate form so that individual firms cannot be identified. The Central Bank has to be careful that any public disclosures made by it do not breach its statutory confidentiality requirements or prejudice any ongoing or possible future supervisory or enforcement actions.

PART I: THE EXAMINATION

Background

In line with its mandate to ensure that the best interests of consumers are protected, the Central Bank intervened with a number of lenders over the 2008-2015 period in relation to tracker mortgage-related issues. These interventions ranged from, more generally, strengthening the statutory protections for tracker mortgage customers (specifically the Consumer Protection Code and the Code of Conduct on Mortgage Arrears) to more lender-specific actions. Where appropriate, the Central Bank required certain lenders to offer impacted customers the right to return to a tracker rate and/or payment of redress and compensation. The Central Bank also commenced enforcement investigations into tracker mortgage-related matters at permanent tsb plc and its subsidiary Springboard Mortgages Limited, as a result of which these lenders were required to implement a comprehensive Mortgage Redress Programme to address the issues identified. The Central Bank has also commenced an enforcement investigation into tracker mortgage-related matters at Ulster Bank Ireland DAC. These matters are covered further in Part II of this Report.

While considerable work had been undertaken in the 2008-2015 period to ensure tracker mortgage customers were appropriately protected, as the Central Bank identified more cases across lenders through a combination of ongoing supervisory work and lenders' reporting of issues identified, it was decided that an industry-wide Examination was required. The Central Bank [published](#) details of its intention to commence the Examination in October 2015 and having completed the scoping and development of a framework (the "**Framework**"), notified lenders of the Framework in December 2015¹, following which they were required to conduct the Examination.

Objective of the Examination:

The overriding objective of the Examination is to ensure the fair treatment of tracker mortgage customers:

- by ensuring that lenders conduct a complete review of their mortgage loan books to assess compliance with both contractual and regulatory requirements relating to tracker mortgages; and

¹ The following lenders were written to as part of the Examination:

AIB Group (Allied Irish Banks plc, AIB Mortgage Bank, EBS Limited, EBS Mortgage Bank and Haven Mortgage Limited), Bank of Ireland Group (The Governor and Company of the Bank of Ireland and Bank of Ireland Mortgage Bank), permanent tsb plc, Springboard Mortgages Limited, Ulster Bank Ireland DAC, KBC Bank Ireland plc, ACC Loan Management Limited, Bank of Scotland plc, Danske Bank, Dilosk Limited, Irish Bank Resolution Corporation Limited, Leeds Building Society, Pepper Finance Corporation (Ireland) DAC T/A Pepper Asset Servicing, Start Mortgages DAC and Stepstone Mortgage Funding Limited.

- in situations where customer detriment is identified from the Examination, requiring lenders to provide appropriate redress and compensation in line with the Principles for Redress developed by the Central Bank, which seek to ensure fair outcomes for impacted customers.

Scope and Framework of the Examination:

The Examination is the largest, most complex and significant supervisory review that the Central Bank has undertaken to date in the context of its consumer protection mandate, involving a review of more than two million mortgage accounts by lenders. The Examination has been carefully planned and a Framework for its conduct has been provided to lenders to ensure a systematic and comprehensive approach, which ensures that all relevant mortgage lenders are included and all customers impacted by these matters are identified and offered redress and compensation.

The Framework requires lenders to review all mortgage accounts, including those that have been redeemed, sold or transferred to another entity by the lender, together with mortgage accounts where the customer has lost possession of the secured property for any reason (including by way of voluntary and involuntary sale).

The Central Bank also expects that customer accounts reviewed as part of previous tracker mortgage related reviews and/or investigations and deemed not impacted as part of those previous reviews/investigations will be reviewed again in accordance with the Framework.

In respect of some of the smaller lenders, a bespoke approach has been adopted in respect of certain phases of the Examination due to the nature of the loan book/particular circumstances of the lender. Where lenders are referenced in the following sections, the reference is to the majority of lenders.

The Framework requires lenders which offered tracker interest rate mortgages to their customers to review all mortgage accounts from the date when the lender commenced offering tracker interest rate mortgages until 31 December 2015 (the “**Relevant Period**”) in respect of both Private Dwelling Houses and Buy-to-Let properties:

1. that originated on tracker interest rates;
2. that had tracker interest rates applied at any stage during the term of the underlying mortgage agreements; and/or

3. where the underlying mortgage agreements provided for contractual rights to or options² for tracker interest rates at any stage during the term of the agreements.

The Framework requires lenders to conduct their Examinations in four phases (listed here and then outlined in greater detail below):

- Phase 1: Development and Submission of Detailed Plan;
- Phase 2: Information Gathering/Review/Report Submission;
- Phase 3: Calculation of Redress and Compensation (where relevant); and
- Phase 4: Implementation of Redress Programme (where relevant).

The Framework has been designed so that the phases of the Examination can run concurrently within a lender and at different times across lenders. The aim of this approach is to ensure that the first action which a lender must take is to stop charging the incorrect rates of interest to impacted cohorts of customer accounts to prevent any further detriment.

The Framework also requires lenders to appoint an external independent party to oversee the conduct of their Examination. The external independent parties are to provide the Central Bank with confirmation in respect of the adequacy of the lenders':

- processes to stop further detriment to potentially impacted customers;
- governance and reporting structures to oversee the conduct of the Examination; and
- plans to ensure that the Examination, if carried out in accordance with the Framework set down by the Central Bank, will identify all relevant impacted customers.

The external independent parties are also required to report to the Central Bank in respect of the conduct of the reviews undertaken by lenders with regard to:

- whether the methodologies applied by the lenders are in line with the Framework laid down by the Central Bank for conducting their reviews;
- the appropriateness of the methodologies used by the lenders for identifying and categorising customers as in or out of scope and, for in scope customers, whether they were impacted or not;

² Both enduring and one-off contractual rights and options are to be included within the scope of the Examination.

- the reasonableness of the lenders' conclusions as to whether they have met their contractual and consumer protection obligations; and
- the reasonableness or otherwise of the lenders' assessments of detriment suffered by impacted customers.

The assurance work by lender's appointed external independent parties, together with the assurance work undertaken by the Central Bank, is designed to challenge lenders in respect of the adequacy and robustness of their plans to ensure that their reviews are being carried out in line with the requirements of the Framework and that the outcomes of the Examination are comprehensive and accurate.

To supplement its resources, the Central Bank has appointed a panel of experts to provide professional expertise to support its assurance work at critical points in the Examination. This panel is comprised of EY, Grant Thornton and Oliver Wyman. The Central Bank assurance work is being carried out through a combination of reviewing elements of the conduct of the Examination by lenders, conducting on-site testing and review work including testing of conclusions by lenders in relation to in-scope but not impacted customers, and other testing and assurance work as deemed appropriate.

Details of the Examination Framework documents including Principles for Redress and the Appeals Process are published in conjunction with this report

Phase 1 - Development and Submission of Detailed Plan

Requirement to submit proposals for the conduct of the Examination and appoint an external independent party:

The Central Bank invoked its powers under Section 22 of the Central Bank (Supervision and Enforcement) Act, 2013³ (the "**2013 Act**") to set specific timelines for lenders to complete Phase 1 and submit to the Central Bank for review a detailed plan with respect to how each lender proposed to conduct the Examination. The board of each lender is responsible for ensuring that the appropriate

³ Section 22 of the 2013 Act provides that "Where it is necessary to do so for the purpose of the performance of the Bank's functions under financial services legislation relating to the proper and effective regulation of financial service providers, the Bank may, by notice in writing given to a person to whom this Part applies, require the person –
(a) to provide to the Bank the information specified in the notice..."

governance framework and controls are put in place to ensure the successful delivery of the Plan and to establish a Steering Group to oversee the implementation of the Plan. Lenders, within the scope of the Examination, appointed external independent parties and submitted the information required for the purposes of Phase 1. The adequacy of this information has been confirmed by lenders' appointed external independent parties in accordance with the Framework and has been reviewed by the Central Bank and, where necessary, challenged to ensure full adherence to the Framework.

Current Status of Phase 1:

Phase 1 of the Examination has been completed.

Phase 2 – Information Gathering/Review/Report Submission

The Central Bank invoked its powers under section 22 of the 2013 Act to set specific timelines for lenders to complete Phase 2 of the Examination. Timelines have been set and will continue to be monitored on a lender-by-lender basis. The prescribed timelines have necessarily taken account of the size of the relevant lender's loan book, the scale and complexity of issues in the lender and the complexities associated with it completing a thorough review. As such, some lenders will have their reviews completed sooner than others. However, the Central Bank expects that all lenders will have completed Phase 2, and commenced engagement with most impacted customers, by end September 2017, in accordance with the timelines set by the Central Bank.

Requirements of Phase 2:

Phase 2 of the Examination requires lenders to conduct the review of their mortgage loan books in line with the Framework in respect of in-scope mortgage accounts.

In order to complete Phase 2 of the Examination, lenders must review the underlying loan documentation and customer files for the in-scope accounts to determine their specific contractual obligations, and also to determine if the documentation that each customer received had the potential to confuse or mislead the customer, both on a stand-alone basis and when read in conjunction with other communications (both written and verbal) made to the individual customer. The Examination is therefore wider than a review of contractual matters only and also requires lenders to consider other influencing factors.

Central Bank monitoring in respect of the conduct of Phase 2:

In order to monitor lenders' progress against completion of Phase 2, lenders have been required to provide the Central Bank with monthly updates in respect of their progress and findings. During the course of Phase 2, the Central Bank has challenged and continues to challenge lenders through a combination of bilateral engagements and on-site assurance work to ensure that it is completed as quickly and accurately as possible. This challenge is necessary to ensure that all in scope impacted customers are identified. Of particular importance in this regard is the necessity to ensure that lenders are appropriately challenged where lenders have determined certain cohorts of customers as not impacted.

Requirement on lenders to submit a Final Report:

In line with the Framework, lenders are required to submit reports to the Central Bank in respect of their Phase 2 reviews. These reports include, where applicable, details of:

1. each cohort of customers deemed to be impacted/not impacted by a tracker mortgage-related issue;
2. the methodology used by the lender in conducting Phase 2 of the Examination;
3. assurance and sign-off from the external independent party with regard to all aspects of the work carried out by the lender during Phase 2 of the Examination;
4. details of each cohort of impacted customers identified where customer detriment has arisen by reference to the requirements outlined in the Framework. In this regard, the Final Report is to include, among other things, a detailed explanation of the issues that resulted in the identified customer detriment including their causes, the relevant period during which the issues occurred, the number of customers impacted by the issues and a detailed explanation of the detriment suffered by customers;
5. details of each cohort of customers who were in scope for the Examination, based on their circumstances, but where the lender's review has concluded that they were not impacted. The Final Report is to include a detailed explanation of the circumstances of each cohort and the reasons why the lender believes that it has met its contractual and regulatory obligations in respect of those customers within the cohorts; and
6. with reference to each of the cohorts of customers included in section 4 above, provide details of the lender's proposals in respect of redress and compensation where relevant, with reference to the Principles for Redress developed by the Central Bank for the purposes of the Examination (the **"Principles for Redress"**).

Current Status of Phase 2:

Phase 2 initially involved the review of more than two million mortgage accounts by lenders (being the total mortgage book in the Relevant Period) to identify the number of in scope accounts. Following this review, 5% of the total mortgage book (approximately 100,000 accounts) to date was identified for further review under the Examination.

As at December 2016, 9 of the 15 lenders that were written to as part of the Examination have submitted Phase 2 reports. The remainder are still engaged in their Phase 2 reviews and interim reports/status updates have been provided as appropriate.

Approximately **9,900** accounts have been identified as impacted by lenders as at end February 2017.

Lenders have commenced contacting impacted customers identified as at end February 2017, and have rectified the interest rates applied to such impacted customers' accounts, thus stopping further detriment, on over 90% of identified impacted accounts requiring rate rectification as at the date of this Report.

The Central Bank is in the process of reviewing Phase 2 reports that have been submitted by lenders. The Central Bank has and will continue to challenge lenders with regard to the content of their Phase 2 reports and their activities related to the Examination. Lenders will not be considered to have completed their reviews until the Central Bank has completed its review and assurance work.

The Central Bank is working to ensure that those lenders that have not yet completed Phase 2 of the Examination do so as soon as possible and continues to challenge these lenders to ensure that deadlines for completion are met. Based on current progress, the Central Bank expects that all lenders will have completed Phase 2 and identified all impacted customers by end September 2017. It also expects that lenders will have commenced engagement with most impacted customers by this date.

It is critical that each lender carries out a thorough, comprehensive and robust review, which achieves fair outcomes for all customers. Therefore, while significant progress has been made, due to its scale and complexity, it will take some further time to complete the Examination. Importantly, however, the Framework has been designed such that the phases of the Examination can run concurrently

within a lender and at different times across lenders, the purpose being to ensure that, as and when groups of impacted customers are identified, in the first instance, the lender must stop charging the incorrect rate of interest on the customer's account to prevent any further detriment. This means that an impacted customer will not necessarily have to await the completion of Phase 2 by his/her lender before further detriment is stopped in his/her individual case. As noted above, the vast majority of customers identified to end February 2017 have already been contacted and rates have been rectified on accounts identified for rate rectification. In some of these cases, redress and compensation has also been completed. To end February 2017, approximately €78 million has been paid in redress and compensation to approximately 2,600 impacted customers further to the Examination. The principles underpinning the calculation of redress and compensation are detailed below.

Phase 3 and Phase 4: Calculation of Redress and Compensation and Implementation of Redress Programme (where relevant)

Development of "Principles for Redress":

Phase 3 of the Examination relates to the calculation of redress and compensation for customers identified during the lenders' review of their loan books as having been impacted by tracker mortgage-related issues. Phase 4 relates to the implementation of a redress programme in respect of these customers. Phases 3 and 4 may run concurrently with Phase 2 and, as such, identified impacted customers may receive redress and compensation in advance of lenders completing Phase 2.

The Central Bank is acutely aware of the unacceptable impact that lenders' failures have had on tracker mortgage customers, up to and including instances involving the loss of ownership of mortgaged properties. The Central Bank expects lenders to provide appropriate redress and compensation to all impacted customers.

Although a significant portion of the lenders' failures occurred prior to the introduction of the Central Bank's customer redress powers, which were sought by the Central Bank and which are set out in section 43 of the Central Bank (Supervision and Enforcement) Act 2013, the Central Bank has been clear in its expectation that lenders must comply with the spirit of the Principles for Redress in their

dealings with all customers regardless of whether or not they sustained impacts prior to the introduction of the powers⁴.

Given the number of different ways that customers have been impacted, **the Central Bank has developed a detailed approach to redress and compensation.** In doing so, the Central Bank's work was influenced by its previous engagement with lenders in respect of tracker mortgage issues and in particular by the experience the Central Bank gained during the development of the redress and compensation programme arising from the enforcement investigations into tracker mortgage-related issues at permanent tsb plc and its subsidiary Springboard Mortgages Limited (further details of which are included in the "Supervisory Interventions" section of Part II of this Report).

The core objective of the Central Bank's work in this area has been to develop a redress and compensation process that requires lenders to fully address the impact their actions have had on customers. To achieve this aim, the Central Bank has developed and issued to lenders a set of Principles for Redress (being published in tandem with this report) which clearly set out its expectations of lenders in this area, as follows:

1. Stopping further harm to impacted customers

- As soon as groups of impacted customers are identified, any harm potentially being caused to them must be stopped at the earliest possible time;
- This includes ceasing charging impacted customers the incorrect interest rate and applying the appropriate tracker interest rate (or, where this cannot be determined, applying an interim reduced interest rate); and
- Lenders are required to submit detailed information in relation to the controls they have put in place to ensure no further loss of ownership events occur or litigation is progressed in respect of potentially impacted customers. The Central Bank has and continues to challenge lenders in respect of the adequacy of these controls.

2. Redress and compensation to impacted customers

- All redress and compensation programmes must at least return impacted customers to the position they would have been in had the relevant issue not occurred;
- Redress and compensation is to be paid to customers up front at the point of offer;
- Redress and compensation offers cannot be reduced by virtue of a customer lodging an appeal;

⁴ It is important to note that the Central Bank's customer redress powers do not have retrospective effect.

- Compensation must be reasonable and reflect the level of detriment suffered;
- Redress and compensation programmes must be fair, clear, provided in a timely manner and be easily accessible for impacted customers;
- Where impacted customers are identified, lenders must develop a specific redress and compensation programme to address the impact on those customers and submit it to the Central Bank for review prior to implementation. The Central Bank has and will continue to challenge lenders in respect of the development of these programmes to ensure that they are as customer-friendly as possible; and
- Lenders must have appropriate governance and clear lines of responsibility around their redress and compensation programmes and such programmes must be overseen at board level.

3. **Independent Advice Payment**

- An additional payment is to be provided to impacted customers at the point of offer to enable them to take professional advice regarding the redress and compensation offers made to them; and
- This payment is expected to be commensurate with the complexity of the advice required by the customer depending on the individual circumstances of the impacted customer's case.

4. **Establishment of an Independent Appeals Process**

- An independent appeals process must to be established to deal with customers who are dissatisfied with any aspect of the redress and compensation package they receive from lenders;
- Given the key role the appeals process will have in delivering fair outcomes for impacted customers, the Central Bank has also developed and issued guidance to lenders (being published in tandem with this report) outlining its expectations in respect of the establishment and operation of their appeals processes; and
- This guidance includes the expectation, mentioned above, that redress and compensation paid to customers at the point of offer cannot be reduced by virtue of those customers lodging an appeal – whatever those customers receive, they keep. This ensures that a customer's need to receive payment up front is not a determining factor in deciding whether or not to appeal an offer.

5. **Additional Protections – Time Limit Defences**

- The Central Bank also expects lenders not to raise any time limit defences, such as defences based on the Statute of Limitations, that might otherwise apply in

circumstances where impacted customers make complaints to the Financial Services Ombudsman or initiate proceedings before the courts.

6. **Customer Friendly/Plain English Communications Approach**

- The Central Bank expects that once impacted customers are identified, lenders will communicate with them in a clear and timely manner setting out the context and next steps in plain English so that they fully understand how they have been impacted, how the lender proposes to address the impact and what actions, if any, are required of the customer.
- Given the importance of a clear and comprehensive communications approach, the Central Bank has also issued lenders with guidance in respect of its expectations for their interactions with customers. The Central Bank requires lenders to submit details of their proposed communication approach prior to engaging with impacted customers.

Examples of issues being identified as in-scope and impacted as part of the Examination

Example 1- Contractual Issue Resulting in Loss of Tracker Product

- The customer drew down on a tracker interest rate that had an enduring right to a tracker rate at the end of every fixed rate period entered into;
- The customer received the option of a tracker rate when they rolled off their initial fixed rate period and decided to fix their interest rate again for another period;
- At the end of the second fixed rate period the customer was not offered the tracker rate option which they were entitled to.

Example 2 – Transparency Issue Resulting in Loss of Tracker Product

- The customer drew down on a tracker interest rate;
- Subsequently the customer then moved to a fixed interest rate for a specified period, and on expiry rolled to a variable interest rate which was not a tracker rate;
- However, the documentation provided to the customer in advance of switching to a fixed interest rate, including the information contained in the

forms signed by the customer at the time of switching, was not clear with respect to the default interest rate to be applied to the customer's mortgage account at the end of the fixed interest rate period.

Example 3 – Other Communications Customer may have Considered Resulting in Expectation of a Right to, or Option of, a Tracker Product

- The customer drew down on a tracker interest rate;
- The lender's marketing and/or sales material conveyed the right to, or the option of, a tracker rate of interest on expiry of a fixed interest rate period;
- Subsequently the customer moved to a fixed rate for a specified period;
- The information contained in the Letter of Offer or the form signed by the customer when moving to the fixed rate did not provide for the right or option of a tracker rate of interest on expiry of the fixed interest rate period and as a result a tracker interest rate was not provided to the customer.

Example 4 – Margin Issue Resulting in Wrong Margin applying to the Tracker Mortgage

- The customer drew down on a tracker interest rate;
- However, the actual tracker margin applied to the customer's account at origination was higher than the tracker margin set out in the terms of the mortgage as the lender's rates changed prior to drawdown of the mortgage. However, this rate change was not disclosed to the customer.

What will happen once a customer is identified as impacted?

Rate Rectification:

The Examination Framework provides that when groups of impacted customers are identified, in the first instance, the lender must stop charging the incorrect rate of interest on the customer's account and apply the appropriate tracker interest rate. The lender must then communicate this to the customer, to ensure that any further customer detriment is stopped as early as possible.

Redress & Compensation:

Once a full review of the customer's account is complete, following external independent party assurance, the lender will then issue a letter to the customer explaining the nature of the error and

providing information on the next steps in the Tracker Examination, including the redress and compensation process. The purpose of redress is to return the customer to the position they would have been in had the issue not occurred. Compensation should be reasonable and reflect the level of detriment suffered by the customer.

Appeals Process:

The Framework also provides that lenders should establish an independent appeals process to deal with customers who are dissatisfied with any aspect of the redress and compensation offers that they receive from lenders in respect of these matters. As the Principles for Redress provide that all redress and compensation payments are made to customers on an upfront basis, customers can accept the redress and compensation offered and still make an appeal. In addition, the impacted customer has the option of bringing a complaint to the FSO or initiating court proceedings.

PART II: OUTLINE OF THE CENTRAL BANK'S POLICY AND SUPERVISORY INTERVENTIONS AND ENFORCEMENT ACTIVITY IN RELATION TO TRACKER MORTGAGE-RELATED ISSUES IN THE PRE-EXAMINATION PERIOD

The Central Bank, as a regulator and supervisor, has a key role in ensuring that there is a strong consumer protection framework in place for consumers and in supervising firms' conduct, under that framework, on a risk- and evidence-basis. During the period pre-commencement of the Examination, the Central Bank intervened with a number of individual lenders where it was concerned that tracker mortgage customers were not being treated fairly. The Central Bank also kept the regulatory framework, as it relates to tracker mortgage customers, under constant review, leading to much enhanced statutory protections for customers, including those who are in arrears and pre-arrears. The following is an outline of the Central Bank's supervisory and policy work in relation to tracker-mortgage related issues during the period.

POLICY AND SUPERVISORY INTERVENTIONS IN RESPECT OF TRACKER MORTGAGES

During the period 2010 to 2013, the Central Bank strengthened the protections for mortgage-holders generally, through enhancements and additions to the statutory framework for all lenders, specifically the Consumer Protection Code (the “**Code**”) and the Code of Conduct on Mortgage Arrears (the “**CCMA**”). These Codes place requirements firmly and clearly on lenders to provide the right information at the right time, to allow consumers to make fully informed decisions. During 2010 to 2013, significantly enhanced protections were introduced for tracker mortgage customers, including those in arrears and pre-arrears. For example, the transparency provisions in the Code were enhanced, requiring lenders to fully inform tracker mortgage customers of the consequences of switching from their tracker rates. The CCMA was also updated and provides that a lender must only require a borrower, who is in arrears or pre-arrears, to change from an existing tracker mortgage to another rate as a last resort, and where all other options, which would retain the tracker rate, have been considered to be unsustainable. A subsequent [review](#) of lenders' compliance with the CCMA in 2015 revealed weaknesses in lenders' monitoring of compliance with their internal policies on compliance with this important protection. The Framework has been designed to capture any detriment which may have arisen due to such control weaknesses.

The Central Bank also intervened with a number of individual lenders (as outlined in greater detail below), where it was concerned that tracker mortgage customers were not being treated fairly, including circumstances where the Central Bank was concerned that lenders were not meeting their

contractual obligations to, or obligations in respect of transparent communication with, tracker mortgage customers.

- In late 2008, the Central Bank issued a [public warning](#) to lenders in respect of their duty to act in the best interests of their customers when recommending a switch from tracker to fixed or variable rate mortgages;
- In 2009 the Central Bank issued a [public notice](#) to warn lenders to treat fairly, mortgage holders who seek to address issues before they become problematic. In the notice, consumers were also urged to fully inform themselves about the consequences of changing the terms and conditions of existing mortgages and loans, to consider the longer term effects of any changes and to balance the benefits of short term manageability of monthly repayments against the overall costs associated with the changes.
- In 2009, the Central Bank determined that a lender failed to afford a group of **224** customers their contractual entitlements to specified tracker interest rates at the end of their fixed rate periods. Therefore, the Central Bank required the lender to refund customers the amounts that they had been overcharged as a result of being on the incorrect interest rate and offer all of the impacted customers the option of having their tracker rates reinstated.
- In 2010, the Central Bank took action against a lender in circumstances where the lender failed to fully inform its customers of the consequences of switching from tracker interest rates to fixed rates, before such customers decided to switch rates. The Central Bank's intervention occurred prior to actual customer detriment being sustained. The Central Bank required the lender to give the relevant customers the option to revert to a tracker rate at the end of the fixed rate terms they had switched to. The lender was also required by the Central Bank to enhance the clarity of its future customer communications, specifically addressing the longer term effects of changing interest rate terms.
- Following the public warnings, the Central Bank conducted a desk-based review of tracker mortgage switches during the period April 2008 to March 2009 ("**the 2010 Review**"). The 2010 Review sought data on the number of switches from tracker interest rates and also examined certain aspects of transparency of customer communications, with a focus on ensuring that lenders were not incentivising consumers to switch from their tracker interest rates where it was not in the consumers' interests to do so. The 2010 Review did not seek to examine contractual rights relating to tracker mortgage customers. [Details of the 2010 Review](#) were published on 23 August 2010. The 2010 Review did not find evidence that lenders were offering customers incentives to move off tracker rate mortgages.

- As a result of the 2010 Review, further protections were introduced by way of an industry/Dear CEO letter⁵ to ensure that all customers were informed of the implications of switching from tracker mortgages. Lenders were required by the Central Bank to enhance the information provided in all customer communications regarding switches from tracker mortgages. The requirement to provide additional information seeks to ensure that customers are fully informed prior to making decisions regarding switching.
- During the 2010 Review, the Central Bank also found that customer communications issued by Bank of Ireland and ICS Building Society were not sufficiently transparent in respect of the interest rates to be charged to certain customers at the end of their fixed rate periods. The Central Bank required Bank of Ireland and ICS to reinstate the tracker rates set out in the original loan documentation for the **2,096** customers impacted by the issue and to pay redress to the customers. The Central Bank also required Bank of Ireland and ICS to take preventative action to stop the issue from recurring, by requiring it to offer a further group of customers, who had switched from their tracker rates to fixed rates, their original tracker rates when their fixed rate periods came to an end (in circumstances where the fixed interest rate periods had yet to expire).
- A further approximate **2,000** accounts that had incorrect tracker interest rates applied to them were identified by lenders and rectified in accordance with Consumer Protection Code requirements. In such instances the incorrect tracker rate as opposed to the incorrect mortgage product was applied to the relevant accounts. The rate differential was often small and therefore resulted in significantly lower levels of overcharging than in other circumstances. Rectification for the impacted customers resulted in their accounts being returned to the correct interest rate and overcharged amounts being refunded.
- An additional approximate **1,400** accounts where customers had not been afforded their right to, or option of, a tracker interest rate in respect of a small number of lender-specific issues, which were identified by lenders and rectified in accordance with Consumer Protection Code requirements. Rectification for the impacted customers resulted in their accounts being returned to the correct interest rate and overcharged amounts being refunded.
- The Central Bank also found tracker mortgage issues at permanent tsb plc and its subsidiary, Springboard Mortgages Limited. The Central Bank found that permanent tsb failed to inform certain customers of the consequences of breaking early from fixed rate or discounted tracker rate periods and also failed to inform other customers of their rights to be offered tracker rates

⁵ A 'Dear CEO letter' is an important supervisory tool which is used to alert firms, at senior levels, to the Central Bank's concerns and to provide them with guidance regarding actions that the Central Bank expects them to take, where warranted.

at the end of any fixed rate periods that they entered (where such customers had recurring rights to be offered tracker rates at the end of fixed rate periods). The Central Bank found that Springboard failed to apply correct interest rates to certain customers' accounts. The consequences of the failures were very significant and included mortgage overpayments; mortgage arrears; legal proceedings; and loss of ownership of mortgaged properties. In response to the detriment sustained by the **1,374** customers impacted, the Central Bank required permanent tsb and Springboard to put a customer-focused redress and compensation programme in place. The key features of the redress and compensation programme required by the Central Bank were:

- Tracker mortgage rate reinstatement;
 - Balance adjustment and return of overpayments;
 - Compensation;
 - Advice payments;
 - Charges and costs refunds;
 - Offer of a new mortgage (in limited circumstances where warranted);
 - Access to appeals panels; and
 - Protections around statutory time limits.
- The redress and compensation programme implemented by permanent tsb and Springboard represented an unprecedented outcome for impacted customers that was achieved in circumstances where the Central Bank did not have the statutory power to compel its implementation in respect of failures that occurred prior to the introduction of the 2013 Act but rather had to achieve its implementation through effective engagement with permanent tsb and Springboard.
 - Information obtained during the development of permanent tsb's and Springboard's redress and compensation programme (together with the related enforcement investigations referred to below) assisted the Central Bank in the development of its expectations of lenders in respect of key areas of the Examination including redress, compensation and appeals processes.

Enforcement Activity:

In support of its supervisory activities the Central Bank has also utilised its enforcement powers and continues to pursue enforcement actions in response to tracker mortgage issues that have been identified at certain lenders. Enforcement investigations are detailed and forensic and routinely involve the scrutiny of thousands of documents and the conduct of interviews as part of the

investigative process in order to establish the exact circumstances of matters under investigation, including the culpability of regulated entities and individuals.

The Central Bank's enforcement investigation powers arise under Part IIIC of the Central Bank Act 1942. The Central Bank also has a range of powers available to it to investigate individuals who are performing certain functions in regulated financial services providers where concerns arise about their fitness and probity. Those powers are set out in Part 3 of the Central Bank Reform Act 2010.

- The Central Bank has concluded an enforcement investigation of Springboard Mortgages Limited, related to the entity's failure to apply correct interest rates to 222 customer accounts over a seven-year period between August 2008 and July 2015. Pursuant to the settlement agreement entered with the entity to conclude the investigation, the Central Bank issued a reprimand and imposed a monetary penalty of €4.5m on the entity. The monetary penalty paid by the entity is the highest penalty ever collected by the Central Bank further to an enforcement investigation. In addition to the reprimand and monetary penalty, the Central Bank also required the entity to implement a major redress and compensation programme for impacted customers during the course of its investigation. To date the entity has provided redress and compensation in the amount of approximately €5.8m to impacted customers. The average amounts overcharged to impacted customers' accounts was €19,351, with overcharged amounts ranging from approximately €100 to approximately €68,000.
- Two other tracker mortgage related enforcement investigations are currently ongoing into permanent tsb plc and Ulster Bank Ireland DAC. These investigations are being pursued and will be influenced by further information that becomes available during the course of the Examination.
- It is possible that other enforcement investigations may also be commenced, as appropriate, into other lenders and persons concerned in the management of such entities where there is evidence of non-compliance with regulatory requirements. In this regard, enforcement activity will be influenced by the outcome of the reviews currently being conducted as part of the Examination.
- The Central Bank also has statutory reporting obligations to An Garda Síochána, and other agencies, where it suspects a criminal offence may have been committed. The Central Bank takes these obligations very seriously and complies with them on an on-going basis as appropriate.

PART III: NEXT STEPS

The Examination continues to be a priority for the Central Bank.

The Central Bank will continue to engage with lenders in respect of the conduct of the Examination. The Central Bank will consider appropriate supervisory action, up to and including enforcement action, where necessary. Enforcement measures will be deployed as appropriate, including investigating issues and taking cases under the Central Bank's Administrative Sanctions Procedure together with the use of our fitness and probity powers. In the enforcement investigations, the Central Bank will consider all possible angles, including potential individual culpability, and will thoroughly investigate and analyse these matters in the context of the legal framework.

The Central Bank will continue to provide public updates as the Examination progresses to conclusion and publish a comprehensive report upon completion of the Examination.

APPENDIX I⁶

Table 1 – Cases identified pre-commencement of the system-wide Examination

Tracker related issues resolved in the pre-Examination period	Impacted Customer Accounts
Tracker related issues, the details of which were not previously in the public domain (2008 lender-specific issue)	224
Self-reported issues, the details of which were not previously in the public domain	approx. 1,400
Bank of Ireland/ICS Building Society (2010-2011)	2,096
Self-reported issues, the details of which were not previously in the public domain	approx. 2,000
permanent tsb (2015): permanent tsb accounts (1,152) Springboard accounts (222)	1,374
Total accounts impacted	approx. 7,100⁷

Table 2 – Cases identified end February 2017, as part of the system-wide Examination

Tracker related Issues identified through the 2015 Examination	Impacted Customer Accounts
Total accounts impacted	approx. 9,900⁸

⁶ The figures in these tables only include accounts where customers were impacted by a tracker-related issue and do not include accounts that were identified by the Central Bank in advance of any detriment crystallising.

⁷ Approximately **70%** of impacted accounts arise as a result of customers not receiving a tracker product and approximately **30%** of impacted accounts arise from customers not receiving the correct tracker margin.

⁸ Approximately **60%** of impacted accounts arise as a result of customers not receiving a tracker product and approximately **40%** of impacted accounts arise from customers not receiving the correct tracker margin.

APPENDIX II

LEGAL FRAMEWORK/STATUTORY POWERS

The Central Bank's Powers of Investigation and Inquiry:

Part IIIC of the Central Bank Act 1942, as amended, (the “**Act**”) provides that the Central Bank of Ireland (the “**Central Bank**”) may conduct an Inquiry where it suspects on reasonable grounds that a prescribed contravention is being or has been committed by regulated financial service providers (“**RFSP**”) and/or by persons concerned in their management⁹.

Where a concern arises that a prescribed contravention has been or is being committed, the Central Bank may investigate. Following an investigation, an Inquiry may be held. The Inquiry shall decide if the prescribed contravention has occurred and determine the appropriate sanctions (details of the Central Bank's Sanctioning Powers are outlined below).

A prescribed contravention means a contravention of:

- a) A provision of a designated enactment or designated statutory instrument (a non-exhaustive list of these is set out in Schedule 2 of the Act;
- b) A code made, or direction given, under such a provision;
- c) A condition or requirement imposed under a provision of a designated enactment, designated statutory instrument, code or direction;
- d) Any obligation imposed on any person by Part IIIC of the Act, or imposed by the Central Bank pursuant to a power exercised under Part IIIC of the Act¹⁰.

The Central Bank's Settlement Procedure:

The Act provides that if the Central Bank suspects on reasonable grounds that a RFSP and/or a person(s) concerned in their management is committing or has committed a prescribed contravention, the Central Bank may enter into an agreement with the RFSP to resolve the matter¹¹. The terms of such a settlement agreement may contain sanctions of a kind referred to in section 33AQ of the Act (set out below in “**The Central Bank's Sanctioning Powers**”).

⁹ Section 33AY(1)

¹⁰ Section 33AN of the Act.

¹¹ Section 33AV(1) of the Act

The Central Bank's Sanctioning Powers:

The Central Bank, either under a Settlement Agreement or following an Inquiry, may impose one or more of the following sanctions:

- a) caution or reprimand;
- b) direction to refund or withhold all or part of an amount of money charged or paid, or to be charged or paid, for the provision of a financial service;
- c) imposition of a monetary penalty (in the case of a corporate and unincorporated body an amount not exceeding €10,000,000 or 10% of the annual turnover of the regulated financial service provider in the last financial year, whichever is the greater, or in the case of a natural person an amount not exceeding €1,000,000);
- d) a direction disqualifying a person from being concerned in the management of a regulated financial service provider;
- e) except where the provisions of Council Regulation (EU) No 1024/2013 apply, suspension of the authorisation 56 of a regulated entity, in respect of one or more of its activities, for a period not exceeding 12 months;
- f) except where the provisions of Council Regulation (EU) No 1024/2013 apply, revocation of a regulated entity's authorisation;
- g) direction to cease a contravention, if it is found the contravention is continuing; and
- h) a direction to pay to the Central Bank all or a specified part of the costs incurred by the Central Bank in holding the Inquiry and in investigating the matter to which the Inquiry relates¹².

Criminal Prosecution:

The Central Bank has statutory reporting obligations in circumstances where the information obtained by it at any stage prior to, during, or after an Investigation, gives rise to a suspicion that a criminal offence may have been committed. In such circumstances, the Central Bank has a statutory obligation to refer the matter to the relevant agency e.g. An Garda Síochána, Revenue Commissioners, Director of Corporate Enforcement, the Competition and Consumer Protection Commission. These reports are required to be made pursuant to our reporting obligations under Section 33AK of the Act. The Central Bank takes its obligations under Section 33AK of the Act very seriously and complies with them on an on-going basis as appropriate.

¹² Section 33AQ of the Act.

The Central Bank has limited power to prosecute offences itself in certain circumstances. This power is limited to the prosecution of summary criminal offences. In the case of Hybrid or Indictable offences, responsibility for the prosecution of these offences rests with the relevant agencies such as the DPP.

A reporting obligation under Section 33AK of the 1942 Act does not arise in respect of breaches of the Central Bank's Consumer Protection Codes (2006 and 2012) as breaches of the provisions of those Codes are not designated criminal offences.

The Central Bank's Fitness and Probity Regime:

In addition to the Powers available to the Central Bank as outlined above, the Central Bank has a range of powers available to it to investigate individuals who are performing Pre-Approval Controlled Functions ("PCF") and Controlled Functions ("CF") in regulated financial services providers where concerns arise about their fitness and probity. Those powers are set out in Part 3 of the Central Bank Reform Act 2010 (the "**2010 Act**"). Ultimately, these investigations may result in these individuals being prohibited from performing PCF and CF in regulated financial services providers.

The Central Bank's Powers to Request Information under Section 22 of the Central Bank (Supervisory and Enforcement) Act 2013:

Pursuant to Section 22 of the Central Bank (Supervision and Enforcement) Act 2013 the Central Bank may require that it be provided with documents and information for the purpose of ensuring proper and effective regulation of financial services providers (a "**Section 22 Request**").

The Central Bank may require that it is provided with: specific information; records; and forecasts, plans, accounts or other documents (that it can require to be prepared also).

If a Section 22 Request is not complied with the Central Bank can certify the failure to the High Court, which can hear evidence in relation to the matter and make such order as it sees fit. It is also a criminal offence to fail to comply with a Section 22 Request, without reasonable excuse, or to provide false or misleading information in response to a Section 22 Request, punishable by a fine and/or imprisonment.

The Central Bank's Redress Powers:

Under section 43 of the Central Bank (Supervision and Enforcement) Act 2013 the Central Bank may direct that redress be given to customers where they have suffered are suffering or will suffer loss as

a result of a regulated financial service provider: charging an amount which it is not entitled to; providing a financial service other than by agreement; providing an unsuitable financial service; providing inaccurate information which influences a customer in making a decision about a financial service; experiencing a system or controls failure; or committing a prescribed contravention. The section limits redress to monetary or other redress which does not exceed the loss/anticipated loss plus interest, as appropriate.



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

Bosca PO 559, Baile Átha Cliath 1, Éire
PO. Box No 559, Dublin 1, Ireland