ENFORCEMENT ACTION

The Central Bank of Ireland

and

Permanent TSB p.l.c.

Permanent TSB p.l.c, reprimanded and fined €21,000,000 by the Central Bank of Ireland for regulatory breaches affecting tracker mortgage customers

On 30 May 2019 the Central Bank of Ireland (the "Central Bank") reprimanded and fined Permanent TSB p.l.c. ("PTSB" or the "Firm") €21,000,000 pursuant to its Administrative Sanctions Procedure ("ASP") in respect of serious failings to 2,007 tracker mortgage customer accounts which were impacted for the period between August 2004 and October 2018. PTSB has admitted in full 42 separate regulatory breaches of the Code of Practice for Credit Institutions 2001 and the Consumer Protection Codes 2006 and 2012. This marks the completion of the first in a series of ongoing industry investigations arising from the Central Bank's Tracker Mortgage Examination ("TME").

This fine is the largest imposed to date by the Central Bank under the ASP. It reflects the gravity with which the Central Bank views PTSB's failings and the unacceptable harm PTSB caused to their tracker mortgage customers, from extended periods of significant overcharging to the loss of 12 family homes and 19 buy to let properties. In addition to the reprimand and fine, to date PTSB has also been required to pay €54.3m redress and compensation to its impacted customer accounts prior to and as part of the TME.

The Central Bank's investigation into PTSB's tracker related issues has been conducted in parallel with the TME. Through its intrusive and forensic investigatory approach, the Central Bank has sought to determine how and why PTSB failed to fulfil its regulatory obligations to protect its tracker mortgage customers' best interests and honour their contractual entitlements.

The investigation has found that PTSB denied its customers a tracker mortgage or did not put them on the correct tracker rate resulting from a number of failings:

1. **Failure to warn certain customers about the consequences of decisions they might make relating to their mortgage:** PTSB failed to warn certain customers that they would lose their tracker mortgage entitlements as a consequence of their request to break early from a fixed or discounted interest rate.

2. **Operational and systems failings:** PTSB did not have adequate systems and/or operational controls in place to enable them to meet their contractual and regulatory

obligations to certain customers. This included over-reliance on manual intervention and a lack of clarity at that time in relation to who was responsible for mortgage products within PTSB.

3. **Decision to deny certain customers their correct tracker rate between 2009 and 2010:** PTSB made a decision to deny certain customers their entitlements to the correct lower tracker rate between 2009 and 2010 unless the customer specifically requested it, or queried or complained.

4. **Incorrect legal interpretation of contractual terms and conditions:** PTSB denied certain customers their enduring contractual right to a tracker mortgage as a result of PTSB's incorrect interpretation of the extent of certain customers' contractual entitlements.

The Central Bank determined that the appropriate fine was €30,000,000, which was reduced by 30% to €21,000,000 in accordance with the settlement discount scheme provided for in the Central Bank's ASP.

The Central Bank's Director of Enforcement and Anti-Money Laundering, Seána Cunningham, said:

"*Taking out a mortgage is the single most significant financial commitment most people will make in their lifetimes. Consumers must have confidence that lenders are acting in their best interests, particularly given the complexity of mortgage documents they need to understand in order to make the best decision. Firms must fully adhere to all legal and regulatory obligations, including the Central Bank's Consumer Protection Codes that we have put in place to ensure that consumers are treated fairly by the firms we regulate.*

Our investigation found that PTSB failed to put their customers first, with distressing and, in some instances, devastating consequences. PTSB failed in their obligations to do the right thing by their customers. In doing so, they broke the trust of their customers and damaged the public's confidence in PTSB.

At a minimum, customers should be provided with clear and timely information and warnings about their mortgage, the highest levels of customer service and a commitment from their lender to put things right promptly and fairly should they go wrong.

My message today is clear. Where firms fail to protect their customers' best interests, our response will be robust and the consequences will be serious.

Firms are reminded of their requirement to cooperate and engage with the Central Bank in an open, constructive and meaningful manner at all times. The nature of regulatory engagement provides us with a clear indication of the underpinning culture of any firm, and is a matter taken into consideration in determining the level of fine to be imposed. The Central Bank was encouraged by PTSB's engagement with our investigation.

This marks the completion of the first in a series of ongoing industry investigations which were commenced, and will therefore conclude, at different times. This enforcement action against the Firm is now concluded.”

Background to the Investigation into PTSB

PTSB is a credit institution and a regulated financial service provider, which was authorised by the Central Bank on 21 September 1994. From 1999 to 2012 PTSB was a member of the Irish Life & Permanent Group. It has 78 branches in the Republic of Ireland and approximately 2,400 employees. The Irish government, through the Minister for Finance, owns approximately three quarters of PTSB’s issued ordinary shares.

PTSB introduced tracker mortgages to its range of products in 2004. Tracker mortgages were withdrawn for new customers in July 2008 because PTSB viewed them as financially unsustainable as was the practice across the industry at that time. The Central Bank’s investigation has found that PTSB did not adequately protect the rights of its customers who were either on tracker mortgages at the time of their withdrawal or had a tracker mortgage entitlement in their terms and conditions with the result that those customers suffered significant detriment.

As part of its supervisory work, the Central Bank identified specific issues with PTSB’s treatment of customers with tracker mortgages or tracker mortgage entitlements. PTSB’s initial failure to engage satisfactorily with the Central Bank in relation to these supervisory issues led to the commencement of this investigation in 2014. Following its commencement, PTSB agreed to carry out a full review of mortgage accounts where customers had a tracker rate or a tracker rate entitlement to ensure that each customer received the tracker mortgage rate to which they were entitled. The Central Bank robustly challenged the scope and focus of PTSB’s review and, their redress and compensation proposals for impacted customers. PTSB’s review predated the TME, but was then subsumed into it. From a combination of the TME and other related Central Bank-supervised review projects relating to tracker mortgage customers, PTSB has paid total redress and compensation of €54.3 million.

Regulatory breaches

PTSB has admitted 42 separate regulatory breaches of the Code of Practice for Credit Institutions 2001, the Consumer Protection Code 2006 and the Consumer Protection Code 2012, the first of which commenced in August 2004. These breaches broadly occurred in four ways:

- As a result of PTSB's failure to warn certain customers about the consequences of decisions relating to their mortgage;
- As a result of PTSB's operational and systems failings;
- As a result of a decision by PTSB to deny certain customers their correct tracker rate between 2009 and 2010; and
- As a result of PTSB's incorrect legal interpretation of contractual terms and conditions.

Some customers were affected by more than one of the above issues. Further detail in relation to these failings is set out below.

1. Failure to warn certain customers about the consequences of decisions relating to their mortgage

The first group of impacted customers (totalling 1,130 accounts) in PTSB, which were identified by the Central Bank, were customers who broke early from a fixed or discounted rate up to and including August 2011. The investigation found that PTSB treated those customers who broke early from their rates as having broken their contracts and were not therefore entitled to the tracker rates that would have been available had they completed their fixed or discounted interest rate periods.

PTSB did not warn those customers that the consequence of breaking early from a fixed or discounted rate would result in loss of their tracker entitlements nor has any evidence been provided that such customers were given new terms and conditions applicable to their loans. The investigation found that PTSB failed to put its customers first and take account of its regulatory obligations to make full disclosure of this material information to those customers so that they could make informed financial decisions about their mortgage.

The 8 regulatory breaches admitted by PTSB in relation to its failures to warn customers the consequences of decisions relating to their mortgage are that it:

- did not ensure that, in all of its dealings with customers, it made full disclosure of all relevant material information in a way that sought to inform the customer;
- did not ensure that all information it provided to its customers was clear and comprehensible and that key items were brought to customers' attention;
- did not act with due skill care and diligence in the best interests of its customers; and
- did not have or did not effectively employ adequate resources, policies and procedures and systems and controls.

These breaches continued until PTSB customers were put on the correct interest rates.

2. Operational and systems failings

During the course of PTSB's review of its tracker mortgage book and also within the TME, PTSB identified a number of operational and systems failings which affected 565 customers and resulted in customers being incorrectly denied the right to a tracker rate; denied the right to the correct tracker rate; or not receiving appropriate disclosures in relation to their entitlement or loss of entitlement to a tracker rate.

The investigation found that these failings in PTSB occurred over an extended time period. PTSB did not have adequate systems in place and/or operational controls, including overreliance on manual intervention, to ensure that customers were offered their correct tracker entitlements and that the correct disclosures were given to them in relation to the consequences of decisions relating to their mortgages. In addition, there was a lack of responsibility for mortgage products across PTSB. The investigation found two factors that had significant impact on PTSB's systems failings: firstly, the lack of financial investment to upgrade and maintain PTSB's internal systems and secondly, that the system at that time was not fit for purpose, particularly it could not facilitate the large number and length of special terms and conditions to customers' mortgages.

The evidence shows that these operational and systems failings in PTSB manifested themselves in a variety of ways: certain customers were not offered a tracker mortgage rate or the correct tracker mortgage rate; certain customers were not given appropriate disclosures; loans were set up incorrectly on PTSB's internal systems; there were errors in PTSB's internal IT mortgage systems; loans were switched to products with higher interest rates; loans were not adequately adjusted to reflect rate changes; the original maturity date of fixed term products was varied in error without customer consent; there were inaccuracies and inconsistencies in certain customers' loan documents; PTSB could not evidence that certain customers consented to rate switches; and/or PTSB could not evidence that certain customers received their correct options and the appropriate disclosures.

In all of these cases, PTSB customers were overcharged mortgage interest as a result of these failings.

The 30 regulatory breaches admitted by PTSB in relation to its operational and systems failings include the following:

- did not act with due skill care and diligence in the best interests of its customers;
- did not have or did not effectively employ adequate resources, policies and procedures and systems and controls;
- did not ensure that, in all of its dealings with customers, it made full disclosure of all relevant material information in a way that sought to inform the customer; and,
- did not ensure that all information it provided to its customers was clear and comprehensible and that key items were brought to the attention of the customers.

These breaches continued until PTSB customers were put on the correct interest rates.

3. Decision by PTSB to deny certain customers their correct tracker rate

Approximately 12,800 customers in PTSB had a contractual condition known as special condition 706 ("**SC 706**") in their mortgage terms and conditions. SC 706 was contained in loans where customers initially started on a tracker rate and provided that should a customer fix their rate for a period they could request to return to a tracker mortgage loan 'as described above' at the expiry of the fixed rate period. A customer query arose in 2009 in PTSB as to whether such customers were entitled to the tracker rate which their loan originally commenced on and which was specified in their loan documents or whether they were only entitled to a unspecified tracker rate in which case they would be given the rate on expiry of the fixed rate. At the point in time that the query arose, the original rate referred to in certain customers' terms and conditions was lower than the rate on expiry of the fixed rate. The Central Bank's view is that the relevant clause was clear in providing that customers were entitled under their contract to be given their original lower tracker rate on expiry of the fixed period.

The Central Bank found evidence that initially, in 2009, PTSB took a view that the wording of SC 706 was ambiguous as to the correct tracker rate to apply on expiry of a fixed rate. The investigation found that PTSB decided to only offer the original - and by then more favourable rate - to those customers who specifically requested the lower rate or queried or complained about it. Other customers would receive the tracker rate in being on expiry of the fixed rate, which was a higher interest rate. Thus PTSB failed in its obligations to act in its customers' best interests. This practice continued for approximately a year until PTSB was challenged by the Central Bank on a separate (but related) issue. At that point, PTSB reconsidered its position and decided that the clause was clear and all customers should be given their original (lower) tracker mortgage interest rate on expiry of the fixed rate period. In 2010, PTSB remediated 234 customers who had been impacted as a result of its initial unfair treatment of customers with SC 706. The total amount of remediation paid by PTSB was €1,311,352 in relation to this issue and a related operational issue which affected 45 customers with SC 706.

The 2 regulatory breaches admitted by PTSB in relation to SC 706 are that it:

- did not act fairly in the best interests of customers and the integrity of the market; and
- did not have or did not effectively employ adequate resources, policies and procedures and systems and controls.

These breaches continued until PTSB customers were put on the correct interest rates.

4. Incorrect legal interpretation of contractual terms and conditions

The investigation found that 33 impacted customers were denied their tracker entitlements as a result of PTSB's incorrect interpretation of their mortgage terms and conditions.

These customers' mortgage terms and conditions provided for an entitlement to a tracker rate on expiry of any fixed rate period. The investigation found that PTSB incorrectly interpreted these customers' terms and conditions and only provided them with a tracker rate entitlement on expiry of an initial fixed rate period and not on expiry of a second or subsequent fixed rate period.

The 2 regulatory breaches admitted by PTSB in relation to its failure to correctly interpret customers' tracker mortgage entitlements are that it:

- did not act with due skill care and diligence in the best interests of its customers; and
- did not have or did not effectively employ adequate resources, policies and procedures and systems and controls.

These breaches continued until PTSB customers were put on the correct interest rates.

Penalty Decision Factors

The sanctions imposed on PTSB reflect the seriousness with which the Central Bank regards PTSB's admitted regulatory failings and the unacceptable harm and detriment caused to each of its impacted customers. The sanctions imposed should also serve to act as an effective deterrent both on PTSB and on other regulated firms. In deciding on the appropriate sanctions to impose, the Central Bank has taken the following into account:

- the effect of PTSB's failings on 2,007 customer accounts, including the loss of 12 family homes and 19 buy to let properties;
- PTSB's decision making in the treatment of certain tracker mortgage customers with Special Condition 706;
- the duration and frequency of the breaches, with 2,007 impacted customer accounts identified during the course of the investigation, which were impacted between 1 August 2004 and 10 October 2018, resulting in customers being overcharged interest for extended periods of time, in some cases in excess of a decade;
- the systemic weaknesses in management systems and internal controls that led to failures to protect customers;
- the negative impact on consumer confidence in the market as a result of PTSB's failings; and
- the need for a credible deterrent in respect of these serious regulatory failings.

Aggravating Factor

- PTSB's initial failure to engage satisfactorily with the Central Bank's request for satisfactory remediation proposals in respect of customers who broke early from a fixed or discounted rate.

Mitigating Factors

- the actions taken by PTSB outside of the TME in proactively identifying impacted customers and in providing redress and compensation to those customers quickly once identified, in line with Central Bank expectations;
- the admissions made by PTSB in respect of the matters under investigation; and
- despite the initial failure to engage satisfactorily, the subsequent constructive and timely co-operation with the Central Bank's investigation.

The enforcement action against the Firm has ended.

Where to from here?

The onus is on firms to demonstrate that their cultural outlook places the interests of customers at its centre, that they act fairly towards customers and will do the right thing by them when failings occur. The Central Bank found that PTSB failed its customers with far reaching and damaging consequences. PTSB did not consider and apply the most basic and fundamental of its regulatory obligations to its customers as contained in the Consumer Protection Codes, those of acting fairly and in their best interests.

However, the Central Bank has been encouraged by the purposeful engagement and cooperation that PTSB demonstrated during the investigation, which when compared with the serious breaches under investigation, is a positive indicator of PTSB's cultural outlook. PTSB has reported to the Central Bank that it has made improvements in structures, governance and consumer focus. PTSB also report that they are committed to putting the delivery of fair customer outcomes at the centre of what they do. This commitment will be subject to ongoing and sustained supervisory oversight by the Central Bank.

Notes to Editors

1. For further information on the settlement discount scheme, see the Central Bank's "Outline of the Administrative Sanctions Procedure", which is here.

2. The Central Bank's sanctioning powers were increased in 2013, pursuant to Section 68(b) of the Central Bank (Supervision and Enforcement) Act 2013. The maximum penalty which the Central Bank may now impose is €10,000,000, or an amount equal to 10% of the annual turnover of a regulated financial service provider, whichever is the greater.

3. This is the Central Bank's 129th settlement since 2006 under its Administrative Sanctions Procedure, bringing total fines imposed by the Central Bank to over €90 million, which total includes the €4.5m fine imposed against Springboard Mortgages Limited, which is part of the PTSB Group, in 2016 in respect of breaches of its obligations to tracker mortgage customers.

4. Funds collected from penalties are included in the Central Bank's Surplus Income, which is payable directly to the Exchequer, following approval of the Statement of Accounts. The penalties are not included in general Central Bank revenue.

5. The Consumer Protection Codes 2006 and 2012 are available on the Central Bank's website www.centralbank.ie or to download here.

6. The 2006 Code ceased to have effect on 31 December 2011 and the 2012 Code came into effect on 1 January 2012.

7. The Tracker Mortgage Examination commenced in December 2015. The Examination requires all lenders to review their loan book to ensure compliance with both regulatory and contractual requirements in relation to tracker mortgages. Where impacted customers are identified, the Central Bank expects that those customers will receive redress and compensation commensurate with the detriment suffered. Updates on the examination are available on the Central Bank's website www.centralbank.ie or to download here.

8. The Central Bank has published a report in July 2018 assessing the behaviour and culture of the main retail banks operating in the Republic of Ireland. Titled: "Behaviour and Culture of the Irish Retail Banks ", the report was undertaken in collaboration with the Dutch Central Bank (De Nederlandsche Bank – DNB), leaders in the supervision of behaviour and culture and is available on the Central Bank's website www.centralbank.ie or to download here.