



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

Tracker Mortgage Examination

FRAMEWORK FOR CONDUCTING THE TRACKER MORTGAGE EXAMINATION

December 2015

1. GENERAL

1.1 The Central Bank of Ireland (the “**Central Bank**”) requires lenders to conduct a broad examination of tracker mortgage related issues (the “**Examination**”) in four phases:

- 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).

1.2 This document sets out the Framework for Conducting the Tracker Mortgage Examination (the “**Framework**”).

1.3 PLAN

1.3.1 The lender is to develop a plan (the “**Plan**”) to conduct the Examination incorporating the Framework and within the timelines prescribed herein.

1.3.2 The Plan, including the appropriate Governance Framework and Controls and Assurance Regime, is to be approved by the Board of the lender (the “**Board**”), and submitted to the Central Bank by 31 March 2016. Further details outlined below.

2. GOVERNANCE FRAMEWORK AND CONTROLS

2.1 The Board is responsible for ensuring that the appropriate governance framework and controls are put in place to ensure the successful delivery of the Plan.

2.2 The Board is to establish a Steering Group to oversee the implementation of the Plan.

2.3 The Board should ensure that any conflicts arising from the fact that members of the Steering Group may have been previously involved in reviews of tracker related issues, which may be part of the Examination, are appropriately managed.

2.4 The Steering Group membership must include a ‘consumer voice’ representative, who may be an internal party.

2.5 The Board is to appoint a Project Sponsor with relevant experience, who is in a Pre-Approval Control Function (PCF) position with responsibility for the Plan.

2.6 This Project Sponsor is to appoint a key contact for liaising with the Central Bank in relation to the Examination.

3. EXAMINATION

3.1 RELEVANT PERIOD

3.1.1 The relevant period is the period of time from when the lender commenced offering Tracker Interest Rates to 31 December 2015 (the “**Relevant Period**”).

3.2 IN-SCOPE MORTGAGE ACCOUNTS

3.2.1 In the course of the Examination the lender is to review all mortgage accounts in respect of both Private Dwelling Houses and Buy-to-Let properties:

- that originated on Tracker Interest Rates¹;
- that had Tracker Interest Rates applied at any stage during the term of the underlying mortgage agreements; and/or
- 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.

For the avoidance of doubt, this includes all mortgage accounts 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).

3.3 SEGMENTATION

3.3.1 For the purposes of the Examination, the lender is to identify all circumstances where:

- Tracker Interest Rates were applied to mortgage accounts at any stage during the Relevant Period but are no longer being applied to those accounts;
- a Tracker Interest Rate margin applying to a mortgage account at any stage during the Relevant Period is higher than any previous margin applied to that mortgage account;
- customers had contractual rights to have Tracker Interest Rates applied to their mortgage accounts at any stage during the Relevant Period and the Tracker Interest Rates were not applied to their mortgage accounts at the appropriate and/or any stage during the Relevant Period; and
- customers had contractual rights to be offered the option of having Tracker Interest Rates applied to their mortgage accounts at any stage during the Relevant Period and were not offered the option of having Tracker Interest Rates applied to their accounts at the appropriate and/or any stage during the Relevant Period

and to determine whether or not all:

- contractual rights and obligations regarding Tracker Interest Rates were adhered to and/or honoured during the Relevant Period; and
- obligations arising pursuant to the consumer protection regulations as set out in the “Regulatory Framework” section below were complied with.

3.4 REGULATORY FRAMEWORK

3.4.1 In the course of the Examination, the lender is to determine whether or not in all circumstances it has complied with its consumer protection regulatory obligations arising pursuant to the following:

- Code of Practice for Credit Institutions, 2001;
- Consumer Protection Codes, 2006 and 2012;

¹ For the purposes of the Examination, a “Tracker Interest Rate” refers to the interest rate applied to a mortgage product: 1) which tracks a rate which comes from a publicly available source which can be verified by both the customer and the regulated entity, including without limitation, a rate that tracks the European Central Bank (ECB) main refinancing operations rate; and 2) which is calculated in a manner similar to a rate which falls within 1) above, and includes interest rates calculated on the basis of a fixed rate margin and/or pricing promise.

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

- Code of Conduct on Mortgage Arrears, 2010 and 2013, specifically the relevant tracker mortgage related provisions;
- Consumer Protection Act, 2007; and
- Any other applicable legislation.

3.4.1 The Examination should also take into account the contents of the Central Bank's Industry Letter issued in August 2010 following the Central Bank's *Desk Based Review of Tracker Rate Mortgage Switches*.

3.4.2 When completing the Examination and when assessing compliance with regulatory requirements, the lender is to demonstrate that it is ensuring that customers' interests are protected, that customers are being treated fairly and that it has considered customers' reasonable expectations with regard to their entitlement to a Tracker Interest Rate, in the context of the information provided and the disclosures made by the lender to customers.

3.5 INFLUENCING FACTORS³

3.5.1 In the course of the Examination, the lender is to consider all influencing factors when determining whether detriment has arisen or may have arisen including:

- call scripts used by the lender in communications with customers in relation to Tracker Interest Rate mortgages and/or interest rate changes.
- any relevant training material used by the lender when selling Tracker Interest Rate mortgages and/or training material regarding interest rate changes during the in-scope period, including any training given to mortgage intermediaries.
- relevant management or policy decisions (and the point in time at which they were made) which led to, for example:
 - a change in product offering;
 - an alteration to the terms and conditions of products offered; or
 - targeted engagement or communication with customers.
- issues raised via complaints received from customers with regard to Tracker Interest Rate mortgages, including complaints dealt with via the lender's internal complaints process and those dealt with by the Financial Services Ombudsman, closed and pipeline cases. The focus should be on the underlying issue(s) complained of, regardless of the decision reached in each case.
- the point in time at which information was provided to customers. For example, was the rate change agreement provided in a timely manner in advance of the customer's decision to switch, thereby allowing the customer to make an informed decision?

3.6 TRANSPARENCY CONSIDERATIONS⁴

3.6.1 In the course of the Examination, and in the context of the transparency of the documentation provided to customers, the lender is to consider whether there was potential to confuse or mislead customers including, but not limited to:

- a particular term pertaining to the loan agreement was given different meanings by the lender at particular points in time or whether certain terms had dual meanings, with the potential to confuse customers;

³ This is not an exhaustive list. It is intended to act as guidance to lenders when carrying out the Examination. The information set out in 3.5 must be considered in conjunction with each lender's own product offerings, processes, procedures and documentation.

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- products or interest rates were given different names with the potential to confuse customers in relation to the nature of the product or rate;
- complicated terminology that had the potential to confuse or mislead a customer was ever used;
- definitions of product/rate types were clearly set out, for example, in loan offers;
- terminology used by the lender pertaining to the loan agreement was consistent across all documentation provided to a customer, for example, in both a Rate Change Authority and the Loan Offer.

4. REDRESS

- 4.1 A redress and compensation scheme is to be implemented in respect of impacted customers in line with the '*Principles for Redress*' issued with the Central Bank's letter dated 22 December 2015.
- 4.2 The lender is not to provide redress until assurance work has been undertaken as set out in Section 5⁵. For the avoidance of doubt this does not apply to Principle 1 (Stopping further harm to impacted customers) of the *Principles of Redress*.
- 4.3 Lenders must be able to demonstrate and show that the decisions they make in respect of findings from the review are evidenced-based. Where such documentation, including customer documentation, is not available/cannot be located lenders should ensure that this will work to the benefit, and not the detriment, of the customer.

5. ASSURANCE

- 5.1 The Central Bank requires that robust independent assurance work be undertaken by an external independent party. This excludes lenders' external auditors. This party will be expected to engage directly with the Central Bank where required, to provide written reports regarding all aspects of the Examination, redress and compensation process to the Central Bank and to provide additional information to the Central Bank and be available to meet with the Central Bank upon request.
- 5.2 This independent assurance work is to be undertaken with regard to all aspects of the Examination, to include (but not be limited to) the:
- adequacy of the processes put in place by the lender to stop further detriment to potentially impacted and impacted customers, as previously notified to the Central Bank following the Central Bank's industry letter of 23 June 2015;
 - adequacy of the governance and reporting structures in place to oversee the conduct of the Examination to conclusion (Phase 1);
 - methodology applied in respect of the:
 - planning and scoping of the Examination, including confirmation that the Plan is adequate so as to ensure that, if adhered to, all relevant customer detriment is identified (Phase 1);
 - conduct of the review element of the Examination (Phase 2);
 - identification of impacted and non-impacted customers (Phase 2);
 - assessment of the detriment suffered by impacted customers (Phase 2)
 - accuracy of the information provided in the monthly updates and final reports provided to the Central Bank (Phase 2) and all other information provided to the Central Bank in the course of the Examination;

⁵ This does not include the assurance testing to be carried out by the Central Bank in accordance with Section 5.3.

- calculation of redress and compensation payments (where relevant) (Phase 3); and
- implementation of the redress and compensation scheme including compensation and redress payments to customers (where relevant) (Phase 4).

5.3 The Central Bank will also complete assurance testing later in the process. Further details in relation to this testing will be provided in due course.

6. ONGOING QUERY/COMPLAINTS HANDLING MECHANISM

6.1 The lender is establish a dedicated unit to deal with any queries, complaints, and/or concerns that customers may have during the course of the Examination. This does not include appeals to the appeals panel, as set out in the *Principles of Redress*.

6.2 Adequate resources are to be allocated to the unit to deal with such queries, complaints and/or concerns and must continue to be available for at least 6 months after the four phases of the Examination have been completed and until all complaints have been adjudicated on.

7. COMMUNICATIONS

7.1 The lender is to develop an on-going Communications Plan for dealing with customers throughout the Examination.

7.2 The lender to ensure that it has adequate capacity to address queries from its customers in a comprehensive, accurate and timely manner during the course of the Examination.

8. REPORTING TIMELINES

8.1 The Plan is to be provided to the Central Bank by no later than close of business on 31 March 2016. As part of this submission, the Central Bank requires confirmation from the external independent party appointed by the lender, in line with Section 5, with regard to the adequacy or otherwise of the:

- governance structures put in place to oversee the conduct of the Examination; and
- processes put in place by the lender to stop further detriment to potentially impacted customers.

The Central Bank also requires the external independent party to opine on the adequacy or otherwise of the Plan.

8.2 Monthly updates to be provided by the lender to the Central Bank in respect of the progress of the completion of Phase 2 of the Examination in line with the *'Tracker Mortgage Examination Data Template'* and *'Notes on Completion for Tracker Mortgage Examination Data Template'* as set out in *Appendices 3 and 4* of the letter issued by the Central Bank on 22 December 2015.

The monthly updates to be submitted by the lender to the Central Bank by no later than close of business on the last day of the month, commencing April 2016 with the final update to be provided end September 2016.

8.3 A final report, following completion of Phase 2 of the Examination, to be submitted to the Central Bank by no later than close of business on 30 September 2016, along with 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.