



Banc Ceannais na hÉireann
Central Bank of Ireland

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**CENTRAL BANK OF IRELAND GUIDELINES FOR THE ESTABLISHMENT AND
OPERATION OF AN APPEALS PROCESS TO DEAL WITH APPEALS ARISING FROM
THE TRACKER MORTGAGE EXAMINATION**

December 2016

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The primary purpose of these Guidelines is to assist Lenders with establishing a fair and efficient Appeals Process for dealing with appeals from customers who are dissatisfied with any elements of the Redress and Compensation Offers they have received from Lenders arising from the Tracker Mortgage Examination. These Guidelines should be read in conjunction with previous guidance issued by the Central Bank of Ireland (the “Central Bank”), including the “Principles for Redress” previously provided by the Central Bank in respect of the Tracker Mortgage Examination and the “Clarification of Issues raised by Lenders” document issued on 5 May 2016.

The Central Bank expects that Lenders will establish their Appeals Process in line with the below Guidelines, the “Principles for Redress” and the “Clarification of Issues raised by Lenders” document. The remit of the Appeals Panels established as part of the Appeals Process is to be set out within a Terms of Reference specific to each of the Appeals Panels and the manner in which the Appeals Panels will operate will be set out within a Procedural Rules document. Lenders are required to submit their proposals in respect of their Appeals Process, including the provision of the Appeals Panel Terms of Reference and Procedural Rules, to the Central Bank for consideration in advance of establishing their Appeals Process. As set out in the “Principles for Redress”, Appeals Processes are to be established in advance of any Redress and Compensation Offers being made to customers.

1. Number of Appeals Panels to be established

The Central Bank expects that **two Appeals Panels** will be established to deal with appeals by the following categories of customers;

- **Appeals Panel ‘A’** – To address appeals from customers who have been impacted in a more serious manner, for example, customers who have had legal proceedings issued against them by their lender in respect of mortgage arrears; and customers who have lost ownership of their mortgaged property.
- **Appeals Panel ‘B’** – To address appeals from customers who have been impacted in any other manner, for example, customers who have never been in arrears; customers who are, or were at some time during the relevant period, in arrears; and customers who have entered an alternative repayment arrangement with their lender.

To facilitate the timely assessment of appeals, Lenders should consider whether it may be necessary to establish multiple Appeals Panels, of either category, that may run concurrently.

2. Composition of Panels; Members Qualifications and Experience

It is the Central Bank’s expectation that all members of Appeals Panel ‘A’ and the majority of members of Appeals Panel ‘B’ shall be independent (the Central Bank expects that the chairperson of Appeals

Panel 'B' shall be independent). The Central Bank expects that the panel members should not have an actual or perceived conflict of interest. The Central Bank expects that Appeals Panels should consist of the following members:

- **Chairperson** – Qualified barrister/solicitor with a suggested level of at least 15 years post qualification experience. Legal panel members should have professional experience in respect of personal injuries litigation;
- **Finance** – Qualified accountant/actuary with a suggested level of at least 15 years post qualification experience;
- **Consumer Voice** – With relevant experience.

The Central Bank shall be notified of all proposed appointments and will have a right of veto in respect of the proposed panel members. In addition to the matters outlined above, the Central Bank may consider such other matters as it deems relevant when choosing to exercise its right of veto in respect of a proposed appointment.

The Central Bank also expects that Lenders will make Subject Matter Experts (“SME”) (who have particular experience and expertise in dealing with mortgage arrears) available to assist Appeals Panels with queries of a technical nature as they arise¹.

3. Eligible Appellants

The Central Bank expects that all customers who receive Redress and Compensation Offers shall be entitled to bring an appeal to the appropriate Appeals Panel.

4. What can be Appealed?

The Central Bank expects that appeals may be brought by customers in relation to any elements of the Redress and Compensation Offers made to them, including, but not limited to:

- The period during which the lender has deemed the customer’s account to have been impacted;
- The categorisation of the impacted loan (e.g. Private Dwelling House or Buy to Let);
- The categorisation of the customer (e.g. whether the customer has lost ownership of their mortgaged property as a result of the issues identified with their mortgage account);
- The revised interest rate applied to the customer’s mortgage account;
- The level of balance adjustment, refund, compensation or independent advice payment offered;
- Any additional aspect of the Redress and Compensation Offer made to customers that have lost ownership of their mortgaged property (e.g. debt write-off, the offer of a new mortgage or loss of opportunity payments).

¹ Where a Lender provides an SME to attend an Appeals Panel meeting, the customer must be provided with the opportunity to review information furnished by the SME to the Appeals Panel and to challenge that information.

5. Time Limits for Appeal

The Central Bank expects that customers will be afforded a reasonable period of time (e.g. minimum of 12 months) following receipt of the Redress and Compensation Offer to bring an appeal.

The Central Bank also expects that the Appeals Panels shall have the power to extend time for the bringing of appeals where the individual circumstances of appeals warrant such an extension.

6. Escalation of Appeals

The Central Bank expects that Appeals Panel 'B' will have the power to refer an appeal to Appeals Panel 'A' where such a referral is warranted based on the individual circumstances of an appeal (e.g. due to the complexity of the appeal or the level of compensation claimed by, or likely to be awarded to, the customer).

The Central Bank expects that the decision to refer an appeal to Appeals Panel 'A' will be made by a majority of the members of Appeals Panel 'B' or the Chairperson of Appeals Panel 'B'.

7. Appeals Procedure

Customers making an appeal should be provided with a copy of the relevant Terms of Reference and Procedural Rules for the Appeals Panels. The Central Bank expects that the Procedural Rules will include details in relation to, for example, the expected timeframes within which decisions will be made, the manner in which the Appeals Panels may request information from customers and how that information will be exchanged etc.

Lenders should also consider providing customers with a plain English guide which sets out at a high level how the Appeals Process will operate.

The Central Bank expects that customers will be requested to submit their appeals to the Appeals Panels through an Independent Secretariat (see Section 8 below) by way of a template Appeals Form. The Appeals Form should set out in plain English what is required of the customer to make an appeal and should be designed to seek necessary information, together with supporting documentary evidence where available, to facilitate the Appeals Panels in making determinations. The Appeals Form should be signed by the customer(s) or a nominated proxy.

In the case of joint or co-borrowers on a mortgage, the Central Bank expects that a borrower will not be deprived of an opportunity to appeal on an individual basis where a joint or co-borrower does not pursue an Appeal for any reason.

8. Independent Secretariat

The Central Bank expects Lenders to establish an Independent Secretariat to provide administrative support to the Appeals Panels to facilitate the efficient management of appeals.

It is expected that the role of the Independent Secretariat shall include, but not be limited to:

- Acknowledging receipt of Appeals Forms and conducting an initial review of the Appeals Forms (with any supporting documentation) submitted by customers to ensure that it has been completed properly;
- Liaising with customers in instances whereby the Appeals Forms have not been completed properly;
- Requesting additional information from customers where required to facilitate the Appeals Panels in making determinations;
- Meeting with the Chairpersons of the Appeals Panels on a periodic basis to assess the performance of the Appeals Process.
- Updating customers on the status of their appeals at reasonable intervals.
- Arranging Oral Hearings (see Section 10) and providing witness schedules to customers where required.
- Issuing decisions of the Appeals Panels to customers.
- Providing other administrative support where required.

9. Assessment of Appeals - Panel A & Panel B

The Central Bank expects that Appeals Panels and Lenders will take all necessary steps to progress customer appeals without delay and that Appeals Panels will provide their determinations within the shortest possible time. The Central Bank expects that the time limits for making such determinations and informing customers will be clearly set out within the Procedural Rules for the operation of the Appeals Panels which the Appeals Panels will endeavour to comply with.

The Central Bank also expects that Appeals Panels will at all times observe all legal principles relating to fair procedures, as specified by the Irish Courts from time to time, in dealing with and in considering appeals and that the Appeals Panels will act with impartiality and without bias to any party to an appeal.

The Standard of Proof expected to be applied in making a determination shall be the balance of probabilities. When making a determination the Central Bank expects Appeals Panels to consider the legal principles that a Court would apply, including, but not limited to:

- Evidence of Loss
- The Principle of Remoteness
- Causation

The Central Bank expects that determinations of appeals will be made by consensus among the Panel Members, or where a consensus is not possible, by a majority decision of the Panel Members.

It is expected that appeals will generally be determined by way of a paper-based assessment i.e. on the basis of written submissions and any other relevant documents (including supporting documents such as the underlying loan documents, the redress and compensation offer, correspondence between the parties to the appeal, vouching receipts or expert reports) provided by the parties to the appeal, save where an Oral Hearing is conducted in accordance with Section 10 below (in such circumstances the Panel Members shall have appropriate regard to any oral evidence provided to it).

The Central Bank expects that Panel Members shall have the power to request additional information from the parties to the appeal (including from SMEs provided by the Lender) should the Panel Members think that such information is necessary to fairly determine the appeal.

10. Oral Hearings

The Central Bank expects that Oral Hearings will be held where warranted in the circumstances of an appeal and that any party to an appeal shall have the right to request that an Oral Hearing is held. The Central Bank also expects that Appeals Panels shall have the sole discretion to decide whether to hold an Oral Hearing and may decide to hold an Oral Hearing on their own motion where warranted. Where a request for an Oral Hearing is refused, the Central Bank expects that the reasons for the refusal will be communicated to the parties to the appeal by the Independent Secretariat.

The Central Bank expects that Oral Hearings should be limited to hearing evidence from relevant witnesses and that Appeals Panels, through the Independent Secretariat, should notify the parties to the appeal of the witnesses from whom they require evidence to be taken. The Central Bank also expects that requests from any party to an appeal to admit evidence from other witnesses will be considered on a case by case basis by the Appeals Panels.

The Central Bank expects that Oral Hearings will be held in private and conducted in an informal manner (to the extent possible). The Central Bank also expects that Appeals Panels shall have regard to the legal principles which a Court would apply when conducting Oral Hearings.

11. Representation

The Central Bank expects that all parties to an appeal shall be entitled to representation and advice from third parties in respect of their appeal, including in respect of the preparation of an appeal application and at any Oral Hearing that may be held in respect of an appeal (Please see Section 14 below in respect of the recovery of costs relating to such representation).

12. Decisions available to the Appeals Panels

The Central Bank expects that Appeals Panels shall have the power to:

Panel A & Panel B

- Approve or reject all or part of a customer's appeal;
- Following a decision to approve all or part of a customer's appeal, direct Lenders to take any action necessary to address the issues that are upheld on appeal (e.g. revise an interest rate, process a refund, provide additional compensation, re-categorise a loan, etc.)

Additional Panel A

- Determine that a customer who has lost ownership of their mortgaged property would have been able to afford their mortgage payments (including if an alternative repayment arrangement had been entered between the Lender and the customer) but for the issues identified and, in such circumstances, direct Lenders to take any action necessary to address any detriment suffered by a customer (e.g. by awarding additional compensation or requesting Lenders to assess a customer's suitability for a new mortgage).

For the avoidance of doubt, the Central Bank expects that Appeals Panels will not be entitled to reduce or otherwise negatively vary the original Redress and Compensation Offers made to customers against the interests of customers.

If Lenders Boards decide to impose limits on the powers of Appeals Panels (e.g. in respect of the level of compensation that the Appeals Panels may award) the Central Bank expects that Lenders will clearly inform customers of such limits. Any limits imposed on the powers of Appeals Panels must be reasonable and must not be such that they serve to undermine the effectiveness of the Appeals Process. Where Lenders Boards impose limits on the powers of Appeals Panels and the Appeals Panel determines that an award greater than the limit specified is warranted given the specific circumstances of the case, the Appeals Process must provide for a mechanism whereby such awards can be made e.g. referral of the matter to the Lender for sign-off by the Lenders Tracker Steering Committee/Board.

13. Communication of Appeals Panel Decisions

The Appeals Panels must provide customers with a full written explanation of the reasons for their decisions (including, for example, in respect of requests for further information, Oral Hearings and the final decisions of the Appeals Panels). In this regard sufficient detail should be provided to ensure that customers know why the Appeals Panels reached their decisions. Such detail should be specific to customers' cases and should not be generic.

To ensure consistency in this regard, Lenders should provide Appeals Panels with template decision forms to ensure that all decisions of the Appeals Panels address certain matters relevant to their particular decisions.

Where Appeals Panels provide draft copies of their decisions to Lenders to review for any material factual errors before they are issued in final form, customers should be provided with copies of same and given the opportunity to provide submissions regarding any material factual errors that they can identify and challenge submissions that Lenders make regarding errors also.

14. Costs

The Central Bank expects that customers will be reimbursed for any reasonable costs incurred by them in bringing and progressing appeals, including any costs incurred due to the retention of professional advisers or experts, provided that any aspect of their appeals are upheld by the Appeals Panels and they agree to be bound by the Appeals Panels' decisions.

The Central Bank also expects that Lenders will put a customer friendly process in place for the assessment of the level of costs to be provided to customers in the circumstances outlined immediately above.

Where customers' appeals are unsuccessful, the Central Bank expects that customers will not be liable for Lenders' costs related to their appeals.

15. Options available to Appellants following the Appeal Panel's Final Decision (Including Decisions on Costs)

The Central Bank expects that the final decisions of Appeals Panels will be issued without prejudice to the right of customers to take the following courses of action:

- Bring a complaint to the Financial Services Ombudsman (the "FSO"); and

➤ Issue Legal Proceedings.

It is expected that Lenders shall waive the right to assert any time limit defences which may otherwise apply in such circumstances, provided that complaints are made by customers to the FSO or legal proceedings are issued within a reasonable time (e.g. 12 months) from the date of the communication of the final determinations of the Appeal Panels (including decisions on costs).

Where customers subsequently complain to the FSO, the Central Bank also expects that Lenders will waive the right to assert any time limit defences which might otherwise apply in relation to appeals of any decisions of the FSO to the Courts.

The Central Bank expects that the final decisions of Appeals Panels will advise customers of their right to bring a complaint to the FSO or to issue legal proceedings.

16. Quality Assurance of Appeals Panel Process

The Chairpersons of the Appeals Panels are required to meet with representatives from the Independent Secretariat on a monthly basis to assess the performance of the Appeals Process (for example with regard to: the volume of outstanding appeals; whether timelines for taking particular steps in the Appeals Process are being complied with; customer feedback regarding the Appeals Process; and any operational issues experienced by the Independent Secretariat) in order to ensure that the Appeals Process is operating in line with the Terms of Reference and Procedural Rules. The Chairpersons are to consider any appropriate action to address issues identified.

17. Confidentiality

The Central Bank expects that the Appeals Panels, Independent Secretariat and Lenders will at all times keep confidential all aspects of customers' appeals, including information submitted by customers and Lenders in the course of appeals and evidence provided at any Oral Hearings.