



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

Tracker Mortgage Examination

CLARIFICATION OF ISSUES RAISED BY LENDERS

5 May 2016

TRACKER EXAMINATION: CLARIFICATION OF ISSUES RAISED BY LENDERS

GLOSSARY:

“Examination” refers to the broad examination of tracker mortgage related issues being conducted by lenders;

“22 December Letter” refers to the Central Bank’s letter to lenders of 22 December 2015;

“Framework ” refers to the ‘*Framework for Conducting the Tracker Mortgage Examination*’ document (dated December 2015) appended to the 22 December Letter and the Section 22 Notice dated 3 March 2016¹; and

“Principles for Redress” refers to the ‘*Principles for Lenders when Tracker Mortgage Related Issues Identified for Redress (Principles for Redress)*’ document appended to the 22 December Letter and the Section 22 Notice dated 3 March 2016.

GENERAL ISSUES

1. Consistency of Independent Assurance Across Industry

The Central Bank will engage with lenders and the external independent third parties retained by them to independently test all aspects of the Examination to ensure that all lenders within the scope of the Examination adopt a consistent approach to the Examination.

2. Availability of Relevant Documents

All mortgages captured in section 3.2.1 of the Framework are within the scope of the Examination regardless of whether or not documents in respect of such mortgages are available to lenders.

In general, in circumstances where relevant documents are not available, lenders should ensure that this will work to the benefit, and not the detriment, of impacted customers.

However, the Central Bank acknowledges that some relevant documents may have been disposed of in accordance with Data Protection Legislation or the provisions of the Central Bank’s various Codes of Conduct². In such circumstances lenders must provide the following information to the Central Bank:

- (a) specific reasons why documents are not available;
- (b) the number of impacted accounts in respect of which documents are unavailable;
- (c) the level of detail held by lenders in respect of such accounts, if any; and
- (d) proposals to conduct the review in such circumstances.

When formulating proposals to conduct the review in such cases, the Central Bank expects lenders to be cognisant of the purpose of the Examination and to ensure fair outcomes for consumers.

¹ The notice issued by the Central Bank to lenders under section 22 of the Central Bank (Supervision and Enforcement) Act 2013.

² For example, as per Chapter 11, Provision 11.6 of the Consumer Protection Code 2012, the Central Bank requires regulated entities to keep all records for six years from the date on which the regulated entity ceased - to provide any product or service to the consumer concerned, except in the case of individual transactions, which are to be retained for six years after that particular transaction is discontinued/completed.

3. Application of the Statute of Limitations

The Statute of Limitations does not apply to the Central Bank's powers to enforce compliance with regulatory requirements including those relevant to this Examination and does not negate lenders' obligations to comply with the relevant regulatory requirements set out by the Central Bank.

4. Communications with Customers

As set out in paragraph 5.1 of the Principles for Redress, the Central Bank expects lenders to issue public statements in advance of communications with customers in respect of the outcomes of reviews of customer cohorts. The Central Bank expects that such statements will include:

- a) information regarding the steps that lenders are taking to correct the relevant issues;
- b) information to the effect that lenders will write to customers impacted by relevant issues by a specified date to provide further detail in respect of the issues; and
- c) the lenders' proposals to address any detriment suffered by impacted customers as a result of the issues.

It is the Central Bank's view that making such statements shortly in advance of writing to customers will assist with impacted customers' understanding of relevant issues and lenders' proposals to address customer detriment.

Please note that the Central Bank expects that lenders contact the Central Bank in advance of any proposed customer or public communications.

5. Notification of Errors to the Central Bank

The Central Bank is not requesting lenders to submit details of the Examination's findings as reports/notifications of errors as per the normal overcharging error process (as required by the Consumer Protection Code 2012). Instead lenders must report all '*in scope*' cohorts in the Monthly Data Templates. Lenders should note that the Principles for Redress also specifically highlight a number of points where lenders must engage with the Central Bank throughout the Examination.

Prior to incorrect interest rates being rectified, the Central Bank must be informed in accordance with Paragraph 1.3 and Appendix A, Paragraph 1, of the Principles for Redress. In order to streamline reporting of incorrect interest rates and to ensure that the Central Bank is aware of issues in a timely manner in advance of such issues becoming public knowledge, lenders are expected to provide the Central Bank with the following details as part of this notification:

- a) cohort title;
- b) nature of the issue;
- c) timeframe over which the issue occurred (including detail as to whether the issue is on-going);
- d) number of customers impacted by the issue;
- e) type of customers impacted (for example PDH, BTL etc.);
- f) details of the interest rate change;
- g) template customer communications in respect of the issue and interest rate change; and
- h) date by which impacted customers will be contacted by lenders.

Thereafter, the Central Bank expects that a more detailed analysis of each cohort will be provided to the Central Bank in the lenders' final reports.

PAST ISSUES & COMPLAINTS

6. *Previous Tracker Mortgage Related Reviews*

Where customer accounts have been reviewed as part of previous tracker mortgage related reviews and/or investigations, the Central Bank expects lenders to review such accounts again in accordance with the Framework, as the scope of the Examination is broader than previous tracker mortgage issues that may have been reviewed in the past. As soon as possible following independent testing by the external independent third party, the lender should advise the Central Bank, based on the outcome of this review, whether further action is necessary.

7. *Approach to be Adopted Where Customer's Complaints Have Previously Been Investigated by the FSO*

All mortgages captured in section 3.2.1 of the Framework should be included within the scope of the Examination including those mortgages that have previously been the subject of a complaint to the FSO. The Central Bank expects lenders to adopt this approach as the scope of the Examination is broader than issues that may have been raised by individual customers.

This approach is supported by the FSO. The FSO has informed the Central Bank that it issued a letter in early March 2016 to lenders against whom complaints regarding tracker mortgages were previously made, in which it set out its position in respect of this issue. For convenience please see an extract from the FSO's letter below.

"As the scope of the CBI Examination is broader than the criteria considered by the FSO I am firmly of the view, a view which is shared by the CBI, that no mortgage holder who has made a complaint to this office should be treated any differently, with regard to the Examination, by virtue of the fact of having made such a complaint, irrespective of the outcome."

8. *Treatment of Tracker Mortgage Complaints*

Complaints received after 22 December Letter

As previously communicated by way of email on 3 March 2016 the Central Bank expects that all tracker mortgage related complaints received by lenders after the 22 December Letter have been/will be reviewed in accordance with the provisions of the Framework before lenders make decisions in respect of the outcomes of those complaints.

Where lenders are not in a position to make decisions in respect of complaints until such time as the Examination is complete, this position should be clearly communicated to relevant customers in a timely manner.

Complaints received prior to 22 December Letter

All tracker mortgage related complaints closed/or on-going prior to receipt of the 22 December Letter must also be reviewed as part of the Examination, in accordance with the provisions of the Framework.

9. *Timeframes for Addressing Tracker Mortgage Complaints*

In the circumstances of the Examination the Central Bank accepts that customer complaints may be dealt with outside of the specific timeframes for dealing with complaints set out in the Consumer Protection Code 2012. However, where lenders propose to deal with complaints outside of the specific timeframes, the Central Bank expects that lenders will put in place a process for providing updates to customers regarding their complaints at appropriate intervals given the length of time it may take for the Examination to be completed.

The Central Bank is aware that this approach may have an adverse effect on the reporting of the percentage of complaints dealt with within 40 business days, as set out in the Conduct of Business Returns (COBR). Where such delays exist, lenders should indicate this in a supplementary email to consumerrisk@centralbank.ie when uploading the bi-annual COBRs.

STOPPING FURTHER HARM:

10. Progression of ‘In Scope’ Customers through the Legal System

The Central Bank’s expectations in respect of stopping further harm to impacted customers are set out in Section 1 and Appendix A of the Principles for Redress.

As indicated in Paragraphs 2 and 4 of Appendix A of the Principles for Redress, the Central Bank expects that lenders will not take steps in the legal process (including issuing demand letters) to ensure that potentially impacted customers (including those customers who had not been identified as potentially impacted immediately prior to the lender deciding to take steps in the legal process) do not lose possession of their properties after a potentially relevant issue is identified.

Where lenders subsequently become satisfied that customers are not in fact impacted by the potentially relevant issue or any other issues, the lenders may take steps in the legal process after complying with the requirements of the systems that lenders are expected to put in place pursuant to Paragraphs 3 and 4 of Appendix A.

Where there is doubt regarding whether or not the potentially impacted customers are in fact impacted by potentially relevant issues or any other issues, lenders should not take steps in the legal process (including issuing demand letters) until lenders are satisfied that it is fully in order to proceed.

11. Can the Redress Process be ‘Fast Tracked’ in Time Sensitive Cases?

As set out in Paragraph 1.3 of Section 1 and Paragraph 1 of Appendix A of the Principles for Redress, lenders are expected to cease charging incorrect rates of interest to potentially impacted cohorts of customer accounts and to apply correct rates of interest to those accounts after each cohort is identified.

Also, in accordance with Paragraph 2.4 of the Principles for Redress, lenders are expected to provide redress and compensation in a timely manner. The Central Bank expects that redress and compensation will, in general, be provided to impacted customers after external independent third party testing has been completed in respect of the relevant cohort of impacted customer (including in respect of the calculation of redress and compensation).

However, in limited circumstances, where impacted customers are in financial difficulty and the payment of redress and compensation, in advance of independent testing, would have a positive material impact on, for example, the sustainability of a mortgage or a material imminent event like the decision to enter into a voluntary sale or a Personal Insolvency Arrangement, the Central Bank expects that a ‘fast track’ process is implemented whereby redress and compensation is provided to customers prior to independent testing. (Where only redress is provided, compensation should be provided once the independent testing has been completed). Where a ‘fast track’ approach is adopted, lenders should clearly document the reason for this approach and bring it to the attention of the Central Bank prior to implementation. Further, lenders are expected to inform customers that the redress and/or compensation provided is subject to independent testing at a later stage and that the redress and/ or compensation amounts may be subject to variation after testing. However, any variation arising should not disadvantage the customer.

COMPENSATION:

12. Payment of Compensation

In circumstances where impacted customers have suffered detriment, the payment of compensation is necessary to adequately make amends for lenders' failures and to ensure that all detriment sustained by customers are remedied.

The Central Bank acknowledges that lenders will not be in a position to make customer specific awards of compensation upfront as they will not know the specific circumstances of all impacted customers. Accordingly the Central Bank suggests that lenders divide impacted customers into cohorts depending upon the impacts of the lenders' failures and award levels of compensation to customers based on the cohort that they fall into.

For example, customers could fall into the following broad cohorts:

- (a) impacted customers that have never been in arrears;
- (b) impacted customers that are currently, or were previously, in arrears;
- (c) impacted customers that entered into, or are in the process of entering into, a restructuring arrangement regarding their mortgage accounts;
- (d) impacted customers that are currently, or were previously, engaged in legal proceedings with lenders as a result of going into arrears in relation to their mortgages; and/or
- (e) impacted customers that have lost ownership of their mortgaged properties including by way of repossession, voluntary surrender, assisted voluntary sale or customer assisted sale.

Lenders should also consider whether there are any additional known complexities within these cohorts that should be considered when awarding compensation. The monetary amounts of compensation within each cohort must be set by the boards of the lenders.

As it is not practical for lenders to be aware of the individual circumstances of every impacted customer, the Central Bank considers it appropriate that such customers are given the opportunity to Appeal the redress and compensation payments made where they feel that such payments do not reflect their individual circumstances. As such, the Central Bank expects lenders to establish Appeals Panels as set out in the Principles for Redress.

APPEALS PANELS:

13. Reason for Appeals Panels

Given that customer specific detriment may have occurred as a result of lenders' failures to comply with regulatory obligations that may be identified during the course of the Examination, it is necessary for impacted customers to be able to challenge any offer of redress and compensation that may be made to them by lenders as part of the Examination.

In order for such impacted customers to be able to challenge such offers it is the Central Bank's expectation that lenders will establish Appeals Panels, as outlined in the Principles for Redress, in addition to not raising any time limit defences to complaints that impacted customers may make to the Courts or the FSO for a specified reasonable period of time.

The Central Bank is of the view that the establishment of Appeals Panels will be mutually beneficial to both impacted customers and lenders as it will allow for challenges to offers of redress and compensation to be made in a cost effective, confidential and expeditious manner. It will also allow for such challenges to be adjudicated upon by individuals with relevant expertise in respect of the issues that are likely to be raised including the assessment of compensation.

14. Composition of Appeals Panels

The composition of the Appeals Panels that lenders are expected to establish is addressed in Section 2 of Appendix B of the Principles for Redress.

The Appeals Panels established to address complaints from customers who have been impacted in a more serious manner are to be comprised entirely of third parties that are independent of lenders as the Central Bank is of the view that total independence is necessary to ensure that impacted customers have confidence in the Appeals Panel process. This is particularly important in respect of customers who have been impacted in a more serious manner as they will have suffered serious detriment as a result of lenders' failures.

The Appeals Panels established to address complaints from customers impacted in a less serious manner are to be comprised of independent majorities (including independent chairpersons). Again, the Central Bank is of the view that the independence of the Appeals Panels is necessary to ensure that impacted customers have confidence in the Appeals Panel process. However, the Central Bank recognises that lenders may appoint staff members to the panels (provided that they are in the minority) in order to provide expertise in respect of the lenders' internal processes (for example in respect of dealing with arrears) as more customers are likely to have been impacted in a less serious manner.

Examples of Customers who have been Impacted in a More Serious Manner

Customers who have been impacted in a more serious manner may include impacted customers who:

- (a) have lost ownership of their mortgaged properties including by way of repossession, voluntary surrender, assisted voluntary sale or customer assisted sale; and/or
- (b) are currently, or were previously, engaged in legal proceedings with lenders as a result of going into arrears in relation to their mortgages.

Examples of Customers who have been Impacted in a Less Serious Manner

Customers who have been impacted in a less serious manner may include impacted customers who:

- (a) have never been in arrears;

- (b) are currently, or were previously, in arrears; and/or
- (c) entered into, or are in the process of entering into, a restructuring arrangement regarding their mortgage accounts.

The establishment of an Appeals Board, in line with that set out in the Code of Conduct on Mortgage Arrears, does not meet the Central Bank's expectations with regard to this requirement.

15. Limitation of the Powers of Appeals Panels

The Central Bank expects the boards of the lenders to set the governance, process and maximum monetary amounts that may be awarded by the Appeals Panels.

The Central Bank expects that the Appeals Panels' powers to make awards of additional redress and compensation will be limited with respect to the maximum monetary amounts that may be awarded to impacted customers as decided by the lender's Board. Further the Central Bank acknowledges that different monetary limits will be imposed depending upon the level of detriment suffered by customers.

However, the Central Bank also expects that lenders will put a process in place to capture and fully consider circumstances where the Appeals Panels are of the view that awards should exceed the maximum monetary amounts.

16. Costs Associated with Appeals

The Central Bank expects that a customer's reasonable costs associated with bringing an appeal are only to be paid by the lender if the customer is successful in their appeal and they agree to be bound by the Appeals Panels' findings.

The Central Bank expects that in the event the impacted customer and the lender are not able to reach agreement in respect of the quantum of costs to be paid, the issue of costs is referred to the Appeals Panel that dealt with the appeal for an assessment as to the quantum of costs to be paid by the lender in the circumstances. The Central Bank expects that the Appeals Panel will be empowered to seek an opinion from an independent legal cost accountant (at the cost of the lender) which will be considered by the Appeals Panel when making its assessment.