



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

ENFORCEMENT ACTION

Central Bank of Ireland

and

EBS d.a.c.

EBS d.a.c. reprimanded and fined €13,400,000 by the Central Bank of Ireland for regulatory breaches affecting tracker mortgage customers

On 22 June 2022, the Central Bank of Ireland (the “**Central Bank**”) reprimanded and fined EBS d.a.c. trading as EBS (“**EBS**” or the “**Firm**”) €13,400,000, pursuant to its Administrative Sanctions Procedure (“**ASP**”) for a series of significant and long-running failings in the treatment of its tracker mortgage customers, holding **2,830** mortgage accounts, between August 2004 and June 2020. EBS has admitted to 36 separate regulatory breaches.

The Central Bank determined the appropriate fine to be €19,143,000, which was reduced by 30% to €13,400,000 in accordance with the settlement discount scheme provided for in the Central Bank’s ASP.¹ This will be paid to the Exchequer.²

The fine is separate from the more than €105,000,000 that EBS has been required to pay to date in redress, compensation and account balance adjustments to impacted customers, including as part of the Central Bank’s Tracker Mortgage Examination (the “**TME**”). The TME was established by the Central Bank as an industry-wide review in 2015 to ensure that lenders were providing

¹ The Central Bank’s “Outline of the Administrative Sanctions Procedure” provides for an early settlement discount of up to 30% in order to promote early resolution of matters, which in turn leads to better utilisation of the resources of the Central Bank.

² All fines collected by the Central Bank are returned to the Exchequer.

tracker customers with their tracker mortgage entitlements and to address any circumstances in which they were not.

The investigation found that EBS failed in its obligations towards its customers under the Code of Practice for Credit Institutions 2001 and Consumer Protection Codes 2006 – 2012 (together the “CPC”). EBS’s failings caused unacceptable harm and loss to those impacted customers over the course of 16 years. Thousands of customers were overcharged and, at the worst end of the scale, customers lost 84 properties, eight of which were family homes. The actions of EBS had devastating consequences for its customers.

The key findings from the investigation are that EBS:

- **Failed to properly manage its mortgage services to customers, resulting in breaches of customers’ consumer protection rights and/or contractual rights:** There were significant weaknesses in EBS’s underlying mortgage systems and processes, including: a general over-reliance on outdated manual procedures and workarounds that were prone to human error; incorrect documentation being provided to customers; and customers being put on the incorrect interest rate.
- **Failed to adequately warn customers of the consequences of their decisions relating to their mortgage:** EBS failed to ensure that key information was brought to customers’ attention. EBS failed to warn customers who were considering changing their mortgage terms, or requested a change of party to the mortgage, that they might lose their entitlement to return to or avail of a tracker mortgage rate in the future.
- **Failed to provide clear mortgage documentation to customers:** Customers received documentation with unclear terminology about their mortgage entitlements, including whether customers could revert to their tracker mortgage interest rate after a fixed term expired.
- **Failed to handle customer complaints in a fair and consistent manner:** EBS treated customers differently in some instances depending on whether they complained or not about their tracker rate and failed to provide the same remedy to customers who were equally affected but did not complain.

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

"The Central Bank has imposed a significant fine on EBS in respect of serious and long running failings in meeting its obligations to its tracker mortgage customers.

Mortgage lending is the core of EBS's business, yet this investigation identified serious deficiencies in EBS's mortgage services and systems. These deficiencies meant that EBS did not comply with its obligations to customers and many customers lost their tracker product/interest rate margin as a result, and were overcharged for sustained periods of time.

EBS withdrew its tracker mortgage products in 2008, at which time EBS took no steps to assess the financial, contractual and regulatory implications of this for its existing tracker mortgage customers. Our investigation found that the cumulative effect of the failure to assess the impact of the withdrawal of tracker mortgage products and the existing deficiencies in the provision of mortgage services resulted in significant harm for EBS's customers.

EBS failed to address these deficiencies over many years, despite being made aware of tracker related issues through customer complaints and its own internal audit function. EBS's prolonged failings resulted in extremely damaging consequences for its customers and their families, including the loss of 84 properties, eight of which were family homes.

The Central Bank expects firms to comply with the Consumer Protection Codes in the provision of its services and in all its dealings with customers. Regulated firms are required to have adequate systems and controls in place to ensure compliance with this Code. This investigation has highlighted that even the simplest error, left unresolved, can have far-reaching consequences in the lives of customers.

The Central Bank expects firms to cooperate and engage with the Central Bank in an open, constructive and meaningful manner at all times. The Central Bank welcomed EBS's overall co-operation with this investigation.

The significant fine imposed today serves to emphasise the importance of firms' compliance with key consumer protection requirements and that the Central Bank will take robust action where serious harm is caused to consumers."

Background to the Investigation

EBS is a bank, licensed pursuant to section 9 of the Central Bank Act, 1971. As a mutual society, EBS was run for the benefit of its members, namely its customers, up until July 2011. At that point, it was demutualised and incorporated as a bank, as part of its recapitalisation and

acquisition by Allied Irish Banks p.l.c. (“**AIB**”). EBS has 68 branches and approximately 440,000 customer accounts. Its principal activities consist of retail banking services, including mortgage and savings products.

EBS introduced tracker mortgages to its range of products in early 2004. On 13 October 2008, EBS withdrew tracker mortgages for new customers in a move that was consistent with decisions taken across the banking industry, which saw a number of other lenders withdraw tracker products from their offering. Following the withdrawal of this product, EBS took no steps to assess the impact of any potential issues for customers with tracker mortgages, or tracker mortgage entitlements.

TME and Programme Dawn / Redress and Compensation

In August 2015, AIB (EBS’s ultimate owner) established its own internal tracker mortgage review entitled “Programme Dawn” triggered by industry developments in relation to tracker mortgages. By this time, the Central Bank had identified and pursued a number of lender specific issues in relation to tracker mortgage customers’ entitlements.

Programme Dawn was an internal AIB tracker mortgage review and was responsible for EBS’s early identification of key groups of impacted tracker customers and their subsequent notification to the Central Bank. In October 2015, the Central Bank announced that it was embarking on the TME. The Central Bank notified all lenders in December 2015, including EBS, setting out its framework for carrying out the TME. Although narrower in scope, the work already carried out by EBS in Programme Dawn was then subsumed into the TME.

In total, under Programme Dawn and the TME, EBS paid more than €105,000,000 in redress and compensation. This includes two groups of customers who were identified and deemed impacted in the course of the Central Bank’s enforcement investigation.

Prescribed Contraventions

Based on findings arising from Programme Dawn and the TME, an enforcement investigation in respect of EBS commenced in March 2018.

EBS has admitted to 36 regulatory breaches of the CPC including instances of the following:

- Failed to have or effectively employ adequate resources, policies, procedures, systems, and controls;

- Failed to act honestly, fairly and professionally, in the best interests of customers and the integrity of the market;
- Failed to act with due skill care and diligence in the best interests of its customers;
- Failed to 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;
- Failed to ensure that all information it provided to customers was clear and comprehensible, and failed to bring key items to their attention;
- Failed to correct errors, handle complaints speedily, efficiently, and fairly; and
- Failed to resolve all errors speedily and no later than six months after the date the error was first discovered.

Further detail on the regulatory breaches is set out below, by reference to the key failings identified in the investigation:

- **Failed to properly manage its mortgage services to customers, resulting in breaches of customers' consumer protection rights and/or contractual rights**

It is clear from our investigation that EBS's failure to properly manage its mortgage services for customers during the relevant period contributed significantly to many of the underlying issues in the investigation.

The investigation found that EBS denied 1,673 customer accounts their right to a tracker product or the correct tracker mortgage interest rate margin as a result of systemic failures in how EBS managed and oversaw its mortgage services. This resulted in the loss of one family home and 30 buy to let properties.

There were errors in EBS's internal mortgage systems, which meant that EBS failed to adjust loans to reflect customers' entitlements to a tracker rate based on their loan documentation. This resulted in the Firm charging those customers an incorrect or higher rate of interest every month. The significant impact of these historical issues on customers began to crystallise when the tracker mortgage products were withdrawn in October 2008. Customers who were rolling off a fixed rate period or who requested a top-up/amalgamation of their loan were deprived of their entitlement to choose a tracker mortgage rate, after that date.

The Firm failed to improve processes over a number of years, even after complaints were made by customers and where the internal audit function identified an issue involving 957 tracker

customer accounts, in 2006. At that time, EBS failed to remediate those impacted customers, and they continued to be overcharged until the issue was uncovered due to the enforcement investigation. Those customers were eventually provided with redress and compensation in 2020.

In total, almost two thirds of EBS's impacted customers were affected by these systemic failings in EBS's mortgage processes.

EBS has admitted to 22 regulatory breaches in respect of its failure to properly manage its mortgage services to customers. Specifically, EBS has admitted that it:

- Failed to act with due skill, care and diligence in the best interests of its customers;
- Failed to act honestly, fairly and professionally in the best interests of its customers; and
- Failed to have or effectively employ adequate resources, policies, procedures, systems and controls.

- **Failed to adequately warn customers of the consequences of their decisions relating to their mortgage**

EBS's failure to warn customers of the consequences of changes they might make to their mortgage terms resulted in additional and avoidable harm to certain customers, who lost their right to a tracker rate. This harm included the loss of one family home and 45 buy to let properties. EBS failed to warn customers that they might lose their entitlement to return to or avail of a tracker mortgage rate in the future when they moved to another mortgage interest rate index or sought to request a change of party on their mortgage.

The investigation found that EBS failed to put its customers first and failed in 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. This resulted in higher payments over the lifetime of those mortgages and significant loss of property.

Ultimately, 729 customer accounts were identified in this category and redressed.

EBS has admitted to six regulatory breaches in respect of its failure to warn customers. Specifically, EBS has admitted that it:

- Failed to act with due skill, care and diligence in the best interests of its customers;

- Failed to have or effectively employ adequate resources, policies, procedures, systems and controls;
 - Failed to 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
 - Failed to ensure that all information it provided to customers was clear and comprehensible, and failed to bring key items to their attention.
- **Failed to provide clear mortgage documentation to customers**

Another key theme identified by the investigation was EBS's failure to ensure that mortgage documents provided to customers were clear, easy to understand, and that key information was brought to their attention. EBS failed to provide clear documentation to customers switching from a tracker mortgage interest rate to a fixed mortgage interest rate.

This lack of clear documentation meant that many customers were unaware that the decisions they sought to make regarding their mortgage meant they would lose their existing or future right to a tracker mortgage. This resulted in the significant loss of six family homes.

EBS did not initially deem these customers impacted in the TME – comprising 428 customer accounts. This is despite the fact that EBS failed to provide clear mortgage documentation to those customers and there was clear evidence of customer confusion. Following Central Bank challenge, the Firm deemed those customers impacted and provided them with redress and compensation in 2018.

EBS has admitted to three regulatory breaches in respect of the failure to provide clear documentation. Specifically, EBS has admitted that it:

- Failed to act with due skill, care and diligence in the best interests of its customers;
- Failed to have or effectively employ adequate resources, policies, procedures, systems and controls; and
- Failed to 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 failed to ensure that all information it provided to customers was clear and comprehensible, and failed to bring key items to their attention.

- **Failed to handle customer complaints in a fair and consistent manner**

The Central Bank found that EBS failed to handle customer complaints in a fair and consistent manner, in the following instances.

While investigating customer complaints in 2010, EBS became aware that a number of customers had been provided with a hard copy version of the wrong terms and conditions for a tracker mortgage product, when they drew down their loans. This entitled customers to a tracker rate, in circumstances where they would not otherwise have been entitled to one.

Despite being aware of this error, EBS failed to take appropriate steps to identify all the customers who had been provided with the wrong documents. EBS failed to take the opportunity to address this serious issue when it first became aware of it in 2010. As a result, 401 customers were deprived of the tracker rates to which they were entitled under the incorrect terms and conditions they received. This resulted in significant harm, including the loss of 20 buy to let properties.

EBS also became aware in 2013, following another customer complaint, that some customers received incorrect fixed rate mortgage application forms. These forms entitled those customers to return to a tracker mortgage interest rate following the end of their fixed rate period. EBS failed to offer those customers the option of returning to a tracker mortgage interest rate, when those customers rolled off the fixed rate at the end of the fixed rate period. In response to the complaint, EBS set up an internal review to identify how many customers received the wrong forms and were impacted by this issue. The scope of the review was unfairly limited to customers who had contacted EBS within three months of rolling off their fixed rate *and* who specifically indicated that they were confused about the applicable interest rate. As a result of this narrow scope, only five accounts were identified as impacted and provided with a tracker interest rate.

Ultimately, the Central Bank through the TME went on to find an additional 72 customers' accounts that were impacted by the same issues, including the loss of one family home. These customers received redress and compensation as part of the TME. These losses could have been avoided had EBS conducted a proper review in 2013.

EBS has admitted to five regulatory breaches in relation to its complaints handling. Specifically EBS has admitted that it:

- Failed to act honestly, fairly and professionally in the best interests of its customers;
- Failed to correct errors, handle complaints speedily, efficiently, and fairly;
- Failed to resolve all errors speedily and no later than six months after the date the error was first discovered; and
- Failed to act with due skill, care and diligence in the best interest of its customers.

- **Failed to adequately implement the TME's Stop the Harm ("STH") principles**

There were deficiencies in Stop the Harm processes put in place by AIB in December 2015, as required by the TME Framework. Compliance with the TME's STH principles was managed by AIB and the Central Bank's findings in terms of compliance regarding this process as it related to AIB and EBS customers is dealt with in the AIB case.³ EBS customer accounts were impacted by these failings, including the loss of five buy to let properties.

Penalty Decision Factors

In determining the appropriate sanction to be imposed on EBS, the Central Bank has considered the guidance on the sanctioning factors set out in Part II of the ASP Sanctions Guidance issued in November 2019. The following factors are of relevance in this case:

The nature, seriousness and impact of the contraventions

- EBS's failings impacted 2,830 individual customer accounts from August 2004 to June 2020, resulting in many customers being overcharged interest for an extended period (almost 16 years in some cases);
- 84 properties were lost as a result of EBS's failings, including eight family homes and 76 buy-to-let properties;
- EBS's failings in the proper management of its mortgage services for customers, and issues around the management of customer accounts, resulted in significant detriment to customers;

³ STH failings were considered and sanctioned as part of the AIB Tracker Mortgage Investigation and have not been considered in the context of determining the sanction in the EBS investigation

- In certain cases these failings were compounded by its unfair treatment of and failure to properly consider customer complaints;
- The contraventions represent a significant departure from the requirements of the Consumer Protection Codes; and
- The negative impact on consumer confidence in the market as a result of EBS's failings.

Mitigating Factors

- The work carried out by EBS (as part of AIB) prior to the commencement of the TME to identify certain groups of impacted customers.
- Overall, EBS engaged purposefully and constructively with the Central Bank and co-operated with the Central Bank's enforcement investigation. EBS's proactive engagement with the Central Bank saved time and resources thereby reducing the overall cost of the investigation. EBS co-operated with the investigation in particular, in the timely and fulsome provision of documentation, which facilitated the progress of the investigation.

Other Considerations

- The turnover of EBS; and
- The need to have a credible deterrent for EBS, and the regulated financial services sector in general.

This enforcement action against the Firm is now concluded.

Notes to Editors

1. The Central Bank imposed a fine of €13,400,000 on EBS, which represents the applicable penalty of €19,143,000 with a settlement discount of 30%. The Central Bank's "Outline of the Administrative Sanctions Procedure" provides for an early settlement discount of up to 30% in order to promote early resolution of matters, which in turn leads to better utilisation of the resources of the Central Bank. For further information on the discount scheme, see the Central Bank's 'Outline of the Administrative Sanctions Procedure', which is here [link](#).

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, and the settlement of the ASP against AIB on the same date, are the Central Bank's 148th and 149th settlement under its Administrative Sanctions Procedure. The settlement of EBS and AIB together marks the first concurrent settlements the Central Bank has conducted to date, bringing total fines imposed by the Central Bank to over €298 m.

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](#) and [here](#). The 2006 Code ceased to have effect on 31 December 2011 and the 2012 Code came into effect on 1 January 2012.

6. A copy of the ASP Sanctions Guidance November 2019 is available here: [link](#) This guidance provides further information on the application of the sanctioning factors set out in the Outline of the Administrative Sanctions Procedure 2018 and the Inquiry Guidelines prescribed pursuant to section 33BD of the Central Bank Act 1942 (a copy of which is here: [link](#)). These documents should be read together.

7. The Tracker Mortgage Examination commenced in December 2015. The Examination required all lenders to review their loan book to ensure compliance with both regulatory and contractual requirements in relation to tracker mortgages. Where impacted customer accounts are identified, the Central Bank expects that those customers will receive redress and compensation commensurate with the detriment suffered and to have their account balance adjusted accordingly. Information on the Examination is available on the Central Bank's website www.centralbank.ie.