



# Tracker Mortgage Examination Redress and Compensation Update – February 2019

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## Introduction

The Central Bank of Ireland serves the public interest by safeguarding monetary and financial stability and by working to ensure that the financial system operates in the best interests of consumers and the wider economy. The best interests of consumers are protected and confidence and trust in the financial system is enhanced through effective regulation of firms and markets. We recognise the detriment to consumers that can occur if firms do not conduct themselves appropriately.

The Tracker Mortgage Examination (the ‘Examination’) is a case in point. The Central Bank launched the Examination in 2015 after it became clear through earlier extensive supervisory and enforcement work with a number of lenders that tracker-related issues were potentially industry-wide.

The Examination is the largest, most complex and significant supervisory review that the Central Bank has undertaken to date in respect of its consumer protection mandate. The Central Bank put in place a Framework for conducting the Examination in phases and 15 lenders were initially contacted as part of the Examination.<sup>1</sup> The Framework has been designed to enable the various phases of the Examination to run concurrently within lenders and at different times across lenders. The Examination has involved an initial review of more than two million mortgage accounts by lenders to identify the number of in-scope accounts. Accounts in scope include all mortgage accounts from the date the lender commenced offering tracker interest rate mortgages until 31 December 2015, in respect of both Private Dwelling Houses ('PDH') and Buy-to-Let ('BTL') properties:

- that originated on tracker interest rates;
- 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 options for tracker interest rates at any stage during the term of the agreements.

The Central Bank has published regular updates since the Examination began in 2015 in order to inform affected customers and the wider public. As redress and compensation payments to affected customers are largely complete, the purpose of this update is to provide an overview of the number of affected customers and amounts paid in redress and compensation at end December 2018. This update also details progress with regard to our supervisory and enforcement work and outlines the various options which were put in place for affected consumers in the event that they were not satisfied with the redress and compensation payments from their lenders.

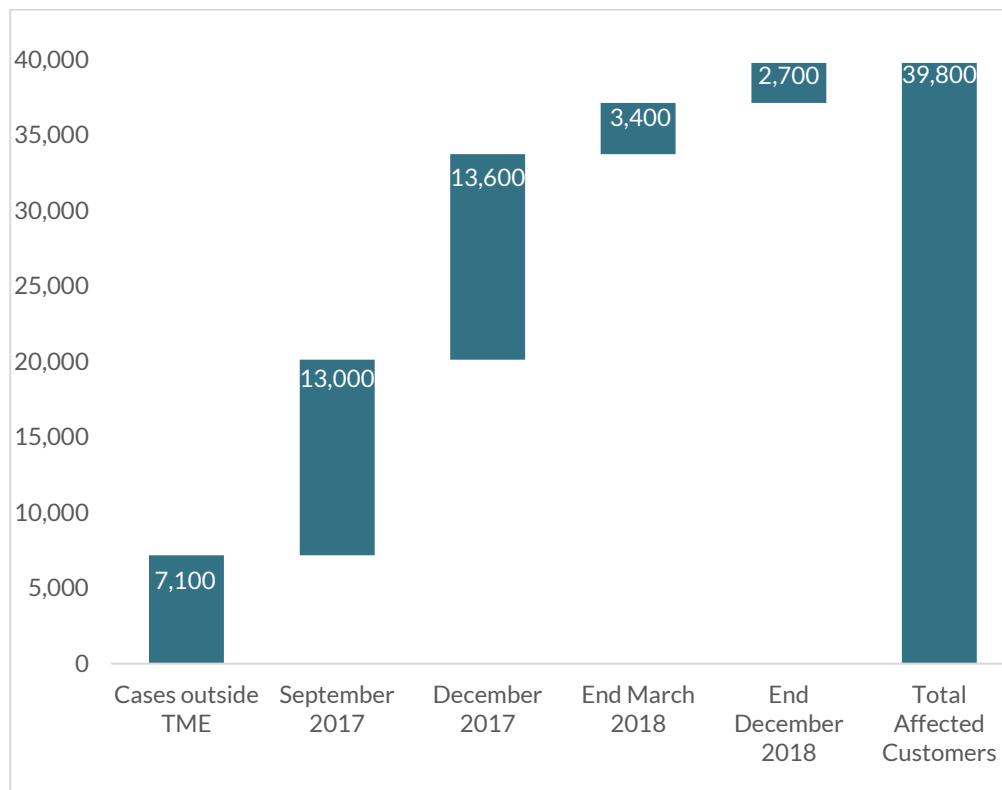
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<sup>1</sup> Dilosk Limited, Leeds Building Society, Pepper Finance Corporation (Ireland) DAC and Start Mortgages Limited DAC are not covered in this report as they do not have affected customers and as a result redress and compensation schemes are not being implemented. The other lenders are: AIB Group (Allied Irish Banks plc, AIB Mortgage Bank, EBS Limited, EBS Mortgage Bank and Haven Mortgages Limited), Bank of Ireland Group (The Governor and Company of the Bank of Ireland and Bank of Ireland Mortgage Bank), permanent tsb plc, Ulster Bank Ireland DAC, KBC Bank Ireland plc, ACC Loan Management Limited, Bank of Scotland plc, Danske Bank, IBRC, Springboard Mortgages Limited and Stepstone Mortgage Funding Limited.

## Customers Affected, Redress and Compensation Paid

As at end December 2018, lenders have identified c.39,800 customers affected by tracker mortgage-related failings.<sup>2</sup> This represents an increase of 2,700 since the April 2018 report and an increase of 1,400 since the Central Bank last updated the Oireachtas Committee.<sup>3</sup> This is an aggregate figure including c.32,700 affected customer accounts accepted by lenders to date as part of the Examination as well as c.7,100 tracker mortgage cases remediated following Central Bank intervention pre-Examination.

**Chart 1: Customers identified as affected by tracker mortgage-related failings**



From Chart 1 (above) it can be seen that the largest volumes of affected customers were identified in the earlier stages of the Examination process. Smaller numbers of affected customers have been identified more recently as assurance work is being closed out.

Chart 2 (below) shows total redress and compensation of €647 million has been paid at end December 2018, representing an increase of €188 million since the April report and an increase of €67 million since the October Committee update. The €647 million figure comprises €600 million paid at end 2018 through the Examination and €47 million paid pre-Examination.

<sup>2</sup> Of these, c.900 were recently identified and remain to be verified by lenders.

<sup>3</sup> Governor Lane informed the Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach on October 4 2018 that as of 31 August, lenders had identified circa 38,400 affected customers (including cases resolved pre-Examination following Central Bank intervention), and paid €580 million in redress and compensation.

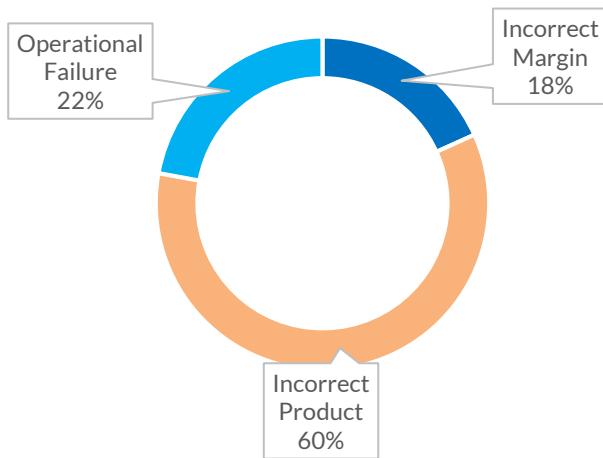
### Chart 2: Value of Redress and Compensation Payments



Breaking this down further, 97 per cent of affected customer accounts already identified and verified have now received offers of redress and compensation. Approximately 1,900 accounts (verified and unverified) remain to be paid which we expect lenders to have substantially completed in Q1 2019.

The accounts remaining to be paid mostly arise from more recently identified accounts (including unverified accounts) and affected customers whom lenders are still attempting to contact. Additionally, it can take some time to complete the processes which must be followed in order to rectify correctly the customer's account and to make the correct payment.<sup>4</sup> It is also important to understand that when groups of affected customers are identified, lenders continue to prioritise firstly redressing those customers who have suffered the most.

<sup>4</sup> For example, to complete redress and compensation payments, lenders have to recalculate mortgage payments and adjust balances often over a number of years and, in some cases, over a number of mortgage systems.

**Chart 3: Breakdown of Affected Customers**

While the range, complexity and variance of cases within the Examination is significant, Chart 3 (above) shows the circumstances of the affected customers, which can be broken into three main categories as follows:

- customers who – despite a contractual entitlement to a tracker rate of interest - lost that tracker interest rate or were not offered that interest rate during the term of their agreements (incorrect product);
- customers who were on an incorrect tracker margin rate of interest (incorrect margin); and
- customers affected by short-term operational type failures and ones who are receiving a flat payment because they were not offered a rate in accordance with the account terms and conditions.

The Central Bank's priority at all times has been to make sure that all affected groups of customers have been identified and remediated and that lenders correctly capture any affected accounts. This work has now been completed at the majority of lenders.

In the case of the remaining lenders, supervision work continues, as the Central Bank must ensure that the work carried out by lenders is sufficiently rigorous and thorough to have addressed satisfactorily any remaining issues affecting groups of customers and to ensure that all eligible groups of customers are included for redress and compensation. We expect this work to complete in the remaining lenders in Q1 2019.

## Enforcement

As the supervisory phase of the Examination moves into its final phases, the Central Bank is – in parallel - progressing its enforcement investigations.

The supervisory outcomes are feeding into the scope of the enforcement investigations. As these investigations are at different stages, they will conclude on different timelines.

Through these enforcement investigations, which span lengthy time periods, the Central Bank is seeking to establish the circumstances in which customers lost

their trackers and how lenders dealt with tracker mortgage issues as they became aware of them. The enforcement investigations are also examining whether the documentation, which customers received from lenders, was clear and what key decisions lenders took (or omitted to take) which resulted in customers losing their trackers or being on the incorrect rate.

In addition, the Central Bank is examining instances where lenders may have failed to have the requisite safeguards in place to ensure that they implemented the 'Stop the Harm' principles set out within the Central Bank's Framework for conducting the Examination. These principles were developed to prevent further detriment to customers from occurring after the Examination commenced.

## Appeals Process

The Central Bank drives a system-wide industry response where we identify issues causing detriment or potential detriment to consumers. Accordingly, the Examination Framework is designed to deliver redress and compensation to affected customers where there has been widespread detriment. Redress is designed to restore affected customers to the position they would have been in had the failure not occurred, while the compensation is to be appropriate and reasonable to take account of the specific circumstances of each customer to reflect the detriment caused.

As the Central Bank does not have a statutory role in dealing with individual customer complaints, the Framework is also deliberately structured to ensure individual affected customers have further options, up to and including recourse to the courts, if they feel the redress and compensation offered by their lender is insufficient. In this way, the Central Bank was in a position to drive redress and compensation on behalf of consumers without prejudicing any further actions they may wish to take. The Central Bank, as part of the Framework, required that lenders would not rely on the Statute of Limitations to deny customers, who might otherwise have been time barred, from bringing a claim against the lenders to secure a remedy.

Lenders were required to set up an independent appeals process to deal with affected customers who are dissatisfied with any aspect of the redress and compensation offer they received from lenders. Importantly, affected customers can accept their offer for redress and compensation while still making an appeal. This ensures that a customer's need to receive payment upfront is not a determining factor in deciding whether to appeal an offer. Appeals panels cannot make a less favourable finding than any offer made to affected customers pursuant to the lenders' redress and compensation schemes. Further, lenders are to reimburse affected customers for their reasonable costs incurred in bringing appeals, in the event that the appeals are successful in part or in whole.

Appeals form an important part of the overall Examination process as they ensure an independent and transparent consideration of issues raised by affected customers about any aspect of the redress and compensation they have been offered. In particular, affected customers who have suffered severe detriment, and feel that their personal circumstances have not been sufficiently taken into account, may wish to bring that information forward for consideration by the

appeals panel within a set period of time from receipt of their redress and compensation offers. Panels must include appropriately qualified professionals and are required to be comprised at a minimum of an independent majority (including an independent chairperson). In respect of appeals from customers who have been affected in a more serious manner, panels are required to be wholly independent of the lender. All panels must include a consumer voice representative.

The independent appeals panels are operational in all relevant lenders and the Central Bank is monitoring the progress and outcomes from the appeals. We expect lenders to consider the outcomes of the appeals including whether they have any wider customer relevance. We will provide further details on appeals progress and outcomes when we publish the Final Report as the appeals process will be further advanced in all lenders.

## Financial Services and Pensions Ombudsman and the Courts

The Examination was initiated to address to the greatest extent possible a widespread problem that arose in respect of tracker mortgages where large groups of customers had been denied a tracker mortgage interest rate they were entitled to or put on the incorrect tracker mortgage interest rate.

Where affected customers have complained to their lender and remain dissatisfied with the outcome of the complaint, and do not accept the findings of the Appeals Panel, they also retain the option to bring a complaint to the Financial Services and Pensions Ombudsman ('FSPO'). Customers deemed by their lender not to be affected by tracker-related failures also have the right to make a complaint on their individual case within specific time periods. The FSPO presents customers with a means of resolving their complaint in an independent, fair and transparent manner, which takes account of their unique personal circumstances, through an informal dispute resolution process or formal investigation (if not resolved through dispute resolution). The FSPO has the power to direct both compensation and rectification as appropriate. Final decisions of the FSPO are legally binding on both the complainant and on the financial services or pension provider, subject only to an appeal to the High Court.

Given that the FSPO considered that the most effective and efficient way to provide redress and compensation to borrowers was for the banks to co-operate fully with the Central Bank's Examination, it considered it was in consumers' best interests to put their complaints on hold pending the outcome of the Examination.<sup>5</sup> However, as the Examination is now in the final stages of supervisory work, the FSPO is now progressing, where possible, some previously paused complaints.

Customers also have the right to directly initiate court proceedings outside of the appeals process and the FSPO, within a specified period of time.

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<sup>5</sup> Presentation to the Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach by Financial Services and Pensions Ombudsman, 7 December 2017

## Conclusion

The Tracker Mortgage Examination has revealed the unacceptable damage that misconduct can cause to consumers up to and including the loss of their homes and properties in some cases. The Central Bank's strategic commitment is to elevate the regulation of the behaviour of firms and the operation of financial markets in order to protect consumers.

In order to deter financial misconduct and promote compliance and high standards in financial services, part of the Central Bank's overall strategy is to take enforcement action that holds both firms and individuals accountable.

In line with our mission, and building on findings from this Examination and other investigations, we continually evolve our system of supervision for the regulated financial services sector as a whole. The findings of our separate Report into the Behaviour and Culture of the Irish Retail Banks set out the reforms that regulated financial services providers can expect in terms of our supervisory and regulatory framework.

These include the proposed introduction of a new Individual Accountability Framework that would go significantly beyond the current requirements for staff in regulated entities to be fit and proper, ensure clearer lines of accountability within firms, as well as providing for an enhanced Fitness and Probity Regime and a unified enforcement process.

The Central Bank will publish a Final Report on conclusion of the Examination.



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