



Banc Ceannais na hÉireann Central Bank of Ireland

Eurosystem

ENFORCEMENT ACTION

The Central Bank of Ireland

And

KBC Bank Ireland plc

KBC Bank Ireland plc reprimanded and fined €18,314,000 by the Central Bank of Ireland for regulatory breaches affecting tracker mortgage customer accounts

On 22 September 2020, the Central Bank of Ireland (the “**Central Bank**”) reprimanded and fined KBC Bank Ireland plc (“**KBC**” or the “**Firm**”) €18,314,000 pursuant to its Administrative Sanctions Procedure (“**ASP**”) in respect of KBC’s serious failings to certain tracker mortgage customers holding 3,741 customer accounts from June 2008 to October 2019. KBC has admitted in full to 12 regulatory breaches.

The Central Bank has imposed a fine at the highest end of its sanctioning powers, reflecting the gravity with which the Central Bank views KBC’s failures. The impact of KBC’s failings on its customers, which related to 3,741 accounts, was devastating and included significant overcharging and the loss of 66 properties. Additionally, KBC’s engagement and co-operation with the Central Bank’s Tracker Mortgage Examination (the “**TME**”) was deeply unsatisfactory. KBC caused avoidable and sustained harm to impacted customers due to the Firm’s unwillingness to acknowledge its failings until December 2017 and to take immediate action to apply the protections of the TME. Had KBC adhered to the TME guidelines sooner, without the need for significant and sustained Central Bank intervention, the harm to its customers – particularly incidences of property loss - would have been significantly reduced. The Central Bank determined that the appropriate fine was €26,162,857, which was reduced by 30% to €18,314,000 in accordance with the settlement discount scheme provided for in the Central Bank’s ASP¹. This will be paid to the Exchequer².

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.

This fine is in addition to the €153,524,363 that KBC has been required to pay to date in redress and compensation and account balance adjustments under the TME to its impacted tracker mortgage customers.

The enforcement investigation, which was conducted in parallel with the TME, sought to determine how and why KBC failed to fulfil its obligations to their customers. The investigation also examined KBC's failure to adhere to the Central Bank's requirements under the TME.

Over the course of 2008, tracker mortgages were becoming increasingly unprofitable for KBC, resulting in the withdrawal of the product by July 2008. The Central Bank's investigation found that in doing so, KBC failed to treat its existing tracker mortgage customers fairly and put KBC's financial interests above the protections their customers should have been afforded. In particular, KBC's failures resulted from:

- (i) **A proactive strategy to convert customers off their tracker rates:** In 2008, KBC devised a strategy to permanently convert certain customers from their low-cost tracker rates. This applied to customers seeking fixed rates or interest only periods at a time when KBC knew that trackers were unprofitable for them. KBC failed to adequately warn the customers concerned that such amendments would result in the permanent loss of their tracker rates. The impact of this strategy was that certain customers, some of whom were already in financial distress, were required to make higher monthly mortgage repayments over the remaining term of their mortgages. This in turn increased the profit margin KBC made on these mortgages.
- (ii) **Failure to adequately warn customers entering interest only or fixed rate periods that they would be unable to return to their tracker rates:** At a time when KBC was withdrawing tracker products, it failed to provide customers with clear documentation and/or to provide customers with vital information that their request to fix their interest rate or move to an interest only period would lead to the permanent loss of their tracker interest rate. KBC also failed to warn customers seeking an interest only arrangement that they stood to pay more interest over the lifetime of their loan.
- (iii) **Failure to adequately comply with the Central Bank's Framework for the TME:** KBC failed to adhere to the guidelines set out in the Central Bank's TME Framework, requiring significant intervention from the Central Bank to ensure that all impacted customers were identified, redressed and compensated.
- (iv) **Failure to adequately comply with the Stop the Harm Principles of the TME:** From the outset of the TME in December 2015, KBC failed to take adequate steps to prevent customers from suffering any further harm or detriment pending the outcome of the TME review. This included failing to stop charging higher, incorrect rates of interest and failing to halt legal activity and loss of ownership of customers' properties. Of the 66 properties referenced above that were lost as a

result of KBC's tracker mortgage failures, 39 of these could have been avoided had KBC implemented the Stop the Harm Principles immediately and as required. The Firm's approach to, and implementation of, these protections was grossly inadequate.

- (v) **Provided incorrect information to the Financial Regulator³ in respect of KBC's treatment of certain tracker customers:** In 2009, KBC advised the Central Bank that customers who sought interest only arrangements did not lose their tracker rates for the remaining term of their loans. This was incorrect. As a result, certain interest only customers were denied redress and compensation and an account balance adjustment until identified as having wrongfully lost their tracker through the TME 8 years later. KBC only acknowledged that it had not treated these customers fairly following robust and sustained intervention by the Central Bank during the TME.
- (vi) **Operational and systems failings:** In addition, the investigation found that KBC had inadequate mortgage systems and/or operational controls in place to enable them to meet their regulatory and contractual obligations to certain customers.

In total there were 12 separate regulatory breaches of the European Communities (Unfair Terms in Consumer Contracts) Regulations 1995 ("**1995 Regulations**"), the Consumer Protection Codes 2006 and 2012 ("**2006 Code**" and "**2012 Code**" respectively).

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

"The Central Bank's investigation into KBC has revealed a stark example of the very real harm caused to people when financial service providers fail to treat their customers fairly. By placing their own financial interests ahead of their customers' best interests, KBC failed to adequately consider their obligations under the Consumer Protection Codes, which were put in place in order to protect customers in their dealings with financial service providers.

The impact of KBC's actions on their customers was devastating and avoidable. By overcharging customers over extended periods, KBC forced people into arrears, including certain customers whom KBC knew were already facing financial difficulties. Some customers suffered the most severe impact with 66 properties being lost by customers, 11 of which were family homes.

Our investigation found KBC persistently refused to accept its failings despite having multiple opportunities to remedy the detriment that it was causing to its customers over an extended period. KBC's actions in this regard, including the failure to adequately comply with the Stop the Harm Principles of the TME, were simply unconscionable. KBC's initial review of their mortgage loan book during the TME identified only 93 impacted customer accounts. The total

³ The Financial Regulator was re-unified with the Central Bank on 1 October 2010.

number of impacted customer accounts has since increased to over 3,700 but only following the sustained challenge and intervention of the Central Bank.

We expect firms to engage in an open, timely and constructive manner with the Central Bank and to do the right thing by their customers, not because they are told to but because it is the right thing to do. KBC's failures reinforce the Central Bank's view that the financial services industry has a long way to go in breaking down the deep-set cultures that cause such terrible damage to people's lives.

Our message today is clear, and goes beyond the tracker mortgage related issues to all regulated firms: Firms should act in the best interest of their customers and consider their Consumer Protection Code obligations when making decisions that impact their customers. Where firms fail to do so, our response will be robust and the consequences will be serious."

Background to the investigation into KBC

KBC Mortgage Bank (formerly IIB Homeloans Limited) is a credit institution and a regulated financial service provider. IIB Homeloans Limited applied for authorisation as a retail credit firm by the Central Bank in May 2008 following the enactment of legislation introducing the retail credit firm regime, thereby becoming subject to the Consumer Protection Codes from 1 June 2008. IIB Homeloans Limited subsequently obtained a banking licence from the Central Bank on 24 October 2008, at which time it officially renamed its operations in Ireland 'KBC Mortgage Bank.' In or around June 2009, KBC Mortgage Bank transferred its business to KBC Bank Ireland plc, amalgamating the businesses formerly conducted by IIB Bank plc and IIB Homeloans Limited/KBC Mortgage Bank.

KBC introduced tracker mortgages to its range of products in 2003, ultimately withdrawing them from the market on 4 July 2008, as KBC viewed them as no longer profitable.

In September 2015, the Central Bank notified lenders that it was developing the Framework for the TME, which was to be grounded on consumer legislation, including both the 2006 Code and the 2012 Code. In December 2015, the TME was established. Lenders were required to determine whether or not in all circumstances it had complied with its consumer protection regulatory obligations.

The TME was designed to ensure that lenders met their consumer protection obligations by requiring lenders to:

1. Conduct a complete review of their tracker mortgage loan book to identify customers who may not have been treated fairly.
2. Take steps - pending the determination of impact under the TME - to (i) stop charging the incorrect rate of interest at the earliest possible time, (ii) halt all legal activity and (iii) ensure that customers did not lose ownership of their properties. The objective

of this requirement was for lenders to take early steps to Stop the Harm, thus shielding potentially impacted customers from further harm and detriment.

3. Return impacted customers to the position they would have been in but for the tracker mortgage failings, which included, rate rectification or the option to return to a tracker rate. Furthermore, lenders were required to pay compensation commensurate to the harm caused to each customer given their specific circumstances.

In early 2016, as part of its early engagement on the TME, the Central Bank notified KBC that it should consider whether the documentation provided to customers entering into an interest only or a fixed rate period may have led to an expectation that they could return to a tracker rate on expiry. When KBC failed to include those customers in the TME in September 2016, the Central Bank continued to challenge KBC's assessment of whether particular groups of customers were impacted under the TME and therefore entitled to redress and compensation and have their account balance adjusted. KBC persistently refused to accept its tracker mortgage failings until December 2017, further evidencing KBC's failure to put its customers first. KBC's failings uncovered as part of the TME led to the commencement of the Central Bank's enforcement investigation.

Regulatory breaches

KBC has admitted 12 regulatory breaches of the 1995 Regulations, the 2006 Code and the 2012 Code, which were identified during the Central Bank's investigation. These breaches occurred as a result of the following:

- i) **A proactive strategy to convert customers off their tracker rates;**
- ii) **Failure to adequately warn customers entering into interest only or fixed rate periods that they would be unable to return to their tracker rates, at a time when KBC was withdrawing tracker products;**
- iii) **Failure to adequately comply with the Central Bank's Framework for the TME;**
- iv) **Failure to adequately comply with the Stop the Harm Principles of the TME;**
- v) **Provision of incorrect information to the Financial Regulator in respect of KBC's treatment of certain tracker customers; and**
- vi) **Operational & Systems failings.**

Further detail of these failings is set out below.

1. A proactive strategy to convert customers off their tracker rate

In 2008, KBC devised a strategy to permanently convert customers from their low-cost tracker rates, with the result that they were required to make higher monthly mortgage repayments over the remaining term of their mortgages and in turn increased the profit margin KBC made on the mortgage.

At a time when KBC knew trackers were unprofitable, KBC implemented this strategy of seeking to permanently convert customers from their tracker rates through two separate direct mailings to customers in August and September 2008 (the “**direct mailings**”). KBC’s strategy was to convert its customers from their tracker rates to fixed rates, immediately increasing their margin, while ensuring that those mortgages would revert to standard variable rates and not a tracker on the expiry of the fixed rate period. Once this occurred, KBC could control the interest rate being charged. KBC failed to adequately warn those customers that they would not return to their tracker at the expiry of the fixed rate period. Following intervention by the Financial Regulator in 2008, KBC agreed to give the option to direct mailings customers who had switched from a tracker rate to a fixed to return to their tracker rates.

Furthermore, during the course of 2008 and early 2009, KBC took the opportunity to move certain customers, some of whom were in arrears, from their pre-existing tracker rate when the customer requested to enter into or extended an existing interest only period. For example, in some circumstances, KBC required customers to switch to a standard variable rate to avail of the break in capital payments arising from the interest only arrangement, whereas in other instances, customers were required as a condition of approval for the interest only period to first enter into a fixed rate period that would not revert to their tracker on its expiry. In doing so, KBC failed to adequately warn those customers that they would not return to their tracker on the expiry of the interest only period. The resulting loss of the tracker rate invalidated the benefit to customers of availing of a temporary repayment break with the customers then making higher monthly mortgage repayments over the remaining term of their mortgages and increasing the profit margin KBC made on the mortgage.

This practice continued into early 2009 in respect of certain interest only customers. Due to the fact that KBC provided incorrect information to the Financial Regulator in 2009 when challenged on this matter and failed to properly engage with the TME, the position of interest only customers was not fully rectified until late 2017, as explained in more detail below. This failure to rectify was despite the fact that KBC reviewed the position of some of their interest only customers’ accounts and customer documentation in 2011 as part of an internal review.

KBC failed to adequately consider the impact of the strategy on their customers and their obligations under the 2006 Code. KBC has admitted that this strategy did not meet its obligation to act honestly, fairly and professionally in the best interests of its customers.

The Central Bank also found that KBC failed to have and/or effectively employ necessary and/or adequate resources, procedures, and systems and control checks in place to ensure that it adequately considered its consumer protection focused obligations when taking strategic and financial decisions in relation to its tracker book.

KBC has admitted breaches of the 2006 Code in respect of this behaviour, as follows:

- KBC failed to ensure that in all its dealings with customers and within the context of its authorisation it acted honestly, fairly and professionally in the best interests of its customers and the integrity of the market;

- KBC failed to ensure that in all its dealings with customers and within the context of its authorisation it acted with due skill, care and diligence in the best interests of its customers; and
- KBC failed to ensure that in all its dealings with customers and within the context of its authorisation, it had and employed effectively the resources and procedures, systems and control checks that are necessary for compliance with the 2006 Code.

2. Failure to adequately warn certain customers entering into interest only or fixed rate periods that they would be unable to return to their tracker rates

The Central Bank found that KBC failed to comply with the requirements of the 2006 Code, the 2012 Code and the 1995 Regulations with regard to its obligation to ensure that documentation provided to customers at key points was clear and comprehensible and that key information was brought to their attention. These failures manifested in three distinct scenarios:

Interest Only Customers

Certain customers who sought forbearance on their mortgages through an interest only arrangement were impacted over the period from 19 June 2008 to 3 October 2018, many of whom were in financial distress and thus particularly vulnerable. The Central Bank found that contractual documentation that issued to certain interest only customers did not specifically refer to the rate that those customers would default to on maturity of the interest only period and thus it was not clear that those customers would lose their tracker rate for the remaining term of their mortgage. Certain customers lost their low cost tracker rates for the remaining term of their mortgage when they took up an interest only facility.

Customers entering into a fixed rate using a Fixed Rate Instruction Form (“FRIF”)

Certain customers were impacted when they sought to enter into a fixed rate period on their mortgage and completed a FRIF. Certain FRIF documents, when read in conjunction with other loan documentation, were unclear as to the rate to which the mortgage would default to at the end of the fixed rate period. These customers were therefore not clearly informed that they would not be able to return to their pre-existing tracker rate as a consequence of entering into the fixed rate period.

Customers entering into a fixed rate after trackers were withdrawn

Certain tracker mortgage customers who sought to enter into a fixed rate period after KBC had withdrawn tracker mortgages as a product offering were impacted. KBC failed to inform these customers in advance of fixing that they would no longer be able to avail of their tracker rate at the end of the fixed rate period, as trackers had been withdrawn from KBC’s product offering.

KBC has admitted breaches in relation to its failures to warn customers as follows:

- KBC 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;
- KBC failed to ensure that all information it provided to its customers was clear and comprehensible and that key items were brought to customers' attention;
- KBC failed to act with due skill, care and diligence in the best interests of its customers;
- KBC failed to ensure that contractual terms were drafted in plain, intelligible language;
- KBC failed to have or did not effectively employ adequate resources, policies and procedures and systems and controls.

Certain of these breaches continued until the end of 2018, when KBC corrected the interest rates, paid redress and compensation and adjusted their account balances as part of the TME.

3. KBC's failure to adequately comply with the Central Bank's Framework for the TME

The Central Bank's Framework for the TME required lenders to conduct the TME and determine whether or not in all circumstances they had complied with their consumer protection obligations arising from a number of pieces of consumer legislation including the 2006 and 2012 Codes. The Framework also specified the manner in which lenders were required to conduct the TME, as follows:

"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."

The Central Bank found that KBC's approach to the TME evidenced a failure to comply with the consumer protection principles at the heart of the TME requirements that the Central Bank put in place in order to protect customers. KBC did not give adequate consideration to its regulatory obligations, to customer fairness or to the transparency of communications with customers, as required. Instead, KBC's decision-making during the TME resulted in the identification of only a fraction of the customers rightly entitled to redress and compensation and have their account balance adjusted. In this regard, KBC did not deem interest only customers or customers who had received the FRIF as being impacted. KBC initially concluded that interest only customers had no entitlement to inclusion and that the Fixed Rate Instruction Form was clear. KBC took this position despite the Central Bank having raised concerns regarding both interest only and fixed rate customers at the outset of the TME. KBC ultimately conceded that these customers should be included in the TME in late 2017, following prolonged and consistent challenge from the Central Bank on these and other matters.

From the commencement of the TME in 22 December 2015 to April 2019, KBC failed to:

- i) adequately consider whether, in all the circumstances, it had complied with its regulatory obligations arising pursuant to the 2006 Code;
- ii) adequately consider all influencing factors when determining whether detriment had arisen or may have arisen; and
- iii) adequately consider, in the context of the transparency of documentation provided to customers, whether there was potential to confuse or mislead customers

each of which is contrary to the TME Framework which was designed to ensure the protection of impacted customers. KBC's failure to adhere to the guidelines set out within the TME Framework resulted in the continued overcharging of certain customers' accounts until KBC customers were put on the correct interest rates and paid redress and compensation and had their account balance adjusted.

KBC has admitted breaches in respect of its failure to protect customers and apply the Central Bank's Framework for the TME, as follows:

- KBC failed to ensure that in all its dealings with customers and within the context of its authorisation it acted, fairly and professionally in the best interests of its customers and the integrity of the market;
- KBC failed to ensure that in all its dealings with customers and within the context of its authorisation it acted with due skill, care and diligence in the best interests of its customers;
- KBC failed to ensure that in all its dealings with customers and within the context of its authorisation it had and employed effectively the resources, policies and procedures, systems and control checks, including compliance checks, and staff training that are necessary for compliance with the 2012 Code.

These breaches continued until KBC customers were put on the correct interest rates, paid redress and compensation and had their account balance adjusted.

4. Failure to adequately comply with the Stop the Harm Principles of the TME

In June 2015, the Central Bank issued a letter to industry which set out the Central Bank's regulatory expectations in respect of mortgage lenders, including those in respect of customers in financial difficulty. These regulatory expectations were grounded upon the 2006 and 2012 Codes. The purpose of this letter was to set out the outcomes and feedback from a themed inspection of mortgage lenders in respect of compliance with the Code of Conduct on Mortgage Arrears. The letter set out the regulatory expectations on mortgage lenders in respect of "*Customer Impacting Issues for Borrowers in Financial Difficulty*". These regulatory expectations were the Stop the Harm Principles, which lenders were required to comply with to stop further detriment to potentially impacted customers.

The Central Bank subsequently reiterated the Stop the Harm Principles specifically with regard to accounts within the scope of the TME, again grounded upon the 2006 Code and the 2012 Code.

The core objective of the Central Bank's work in the TME was to require lenders to seek to address the impact their actions had on impacted customers. To help achieve this aim, the Principles of Redress, including the 'Stop the Harm' Principles, required lenders to put in place, amongst other things, controls and measures to ensure that potentially impacted or impacted customers did not suffer any further detriment.

These measures were designed to ring-fence and protect customers until such time as the lender could either satisfy themselves that the relevant customers were not affected or until such time as the lender had paid them redress and compensation and had their account balance adjusted. The 'Stop the Harm' Principles were designed to ensure that lenders ceased charging the incorrect rate at the earliest possible time, that lenders did not take steps in the legal process in relation to potentially impacted and impacted customers and that potentially impacted and impacted customers did not lose ownership of their properties.

The Central Bank found that between December 2015 and September 2016, KBC failed to adequately implement the Central Bank's Stop the Harm Principles with the procedures adopted failing to prevent further detriment from occurring to customers. KBC's 'Stop the Harm' policy allowed it to take steps in the legal process, up to and including obtaining orders for possession in the Courts and appointing receivers over properties. This included instances whereby KBC authorised the progression of legal activities before they had made a final determination on the cohorts of customers that it considered 'impacted' under the TME.

In September 2016, KBC incorrectly deemed customers who lost their tracker rates on taking up interest only arrangements as 'not-impacted' under the TME. Consequently, KBC removed the Stop the Harm protections for these customers. As a result of this action, 11 properties were unnecessarily lost by these customers.

Finally, during the course of the TME, KBC failed to inform many customers seeking to sell, or otherwise dispose of their properties, including by way of assisted voluntary sale or surrender, that they may be impacted under the TME and may be entitled to redress and compensation and to have their account balance adjusted. Therefore, in some instances, the customer's decision to dispose of their property was not fully informed.

These failures resulted in additional and avoidable harm to certain customers and in some cases legal proceedings were progressed, up to and including loss of ownership.

KBC has admitted breaches in respect of its failure to apply the Stop the Harm Principles, as follows:

- KBC failed to ensure that in all its dealings with customers and within the context of its authorisation it acts fairly and professionally in the best interests of their customers and the integrity of the market;
- KBC failed to ensure that in all its dealings with customers and within the context of its authorisation it acts with due skill, care and diligence in the best interests of their customers;
- KBC failed to ensure that in all its dealings with customers and within the context of its authorisation it has and employs effectively the resources, policies and procedures, systems and control checks, including compliance checks, and staff training that are necessary for compliance with the 2012 Code;
- KBC 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
- KBC failed to supply information to consumers on a timely basis. KBC failed to have regard to the urgency of the situation and the time necessary for consumers to absorb and react to the information provided.

5. Provided incorrect information to the Financial Regulator

Following media reports in 2009, which referenced that KBC were allegedly exploiting interest only customers by requiring them to move to a standard variable rate as a condition of taking up an interest only facility, the Financial Regulator sought clarification regarding the manner in which KBC treated those customers.

KBC confirmed to the Financial Regulator that it did not remove tracker interest rates from both arrears and non-arrears customers who entered into interest only arrangements for the remaining term of their mortgages. This was not in fact the case as certain arrears and non-arrears customers had lost their tracker rates at the time.

This investigation found that, through KBC's failures to undertake proper due diligence and care in the gathering of information, KBC provided incorrect information thus misleading the Financial Regulator in 2009 in respect of the treatment of KBC's interest only customers. This had far-reaching consequences for these customers. Having assured the Financial Regulator that these customers returned to their tracker rates on the expiry of the interest only facility, no further regulatory action was taken at that time. Consequently, customers who sought forbearance on their mortgage repayments continued to be charged higher rates of interest for the remaining term of their mortgages. The provision of this incorrect information to the Financial Regulator facilitated the persistent and ongoing breaches of the Consumer Protection Codes by KBC in relation to these customers until this issue was later identified and ultimately rectified under the TME.

The Central Bank examined KBC's treatment of interest only customers again in the context of the TME. At that point, the Central Bank became aware that KBC had provided incorrect information to the Financial Regulator in 2009.

KBC ultimately conceded that interest only customers were impacted for the purpose of the TME in October 2017. This came only after robust challenge from the Central Bank regarding KBC's initial decision in September 2016 to exclude these customers from the TME. Interest

only customers finally received redress and compensation and had their account balance adjusted in late 2017, approximately 8 years following the incorrect information that had been provided by KBC to the Financial Regulator on the same issue.

KBC has admitted breaches in relation to providing inaccurate information to the Financial Regulator, as follows:

- KBC failed to provide information, which is full, fair and accurate in all respects and not misleading, and to do so in any reasonable period of time or format that may be specified by the Financial Regulator.

6. Operational and systems failings

During the course of KBC's review of its tracker mortgage book and also within the TME, KBC identified a number of operational and systems failings which affected customers and resulted in, amongst other things, customers being placed on the incorrect interest rate; placed on the incorrect product type; provided with incomplete, inaccurate and unclear documentation; offered the incorrect tracker rate or not receiving appropriate information in relation to their entitlement or loss of entitlement to a tracker rate. In addition, due to operational and systems failings, KBC failed to comply with an undertaking given to the Central Bank in 2009 to return all of the direct mailing customers to their previous tracker rates.

The investigation found that KBC had inadequate operational and systems controls in place to enable them to meet their regulatory obligations to certain tracker mortgage customers. Procedural and systems weaknesses, deficient processes, administrative errors including the failure to implement amendments to customer accounts in a timely manner, operational errors, reliance on standard documentation not tailored to the particular customers' circumstances and reliance on manual interventions were all factors which contributed to KBC's failings which occurred over an extended period of time.

KBC has admitted breaches in relation to these operational and systems failings, as follows:

- KBC failed to ensure that in all its dealings with customers and within the context of its authorisation it acted with due skill, care and diligence in the best interests of their customers;
- KBC failed to have adequate systems and controls in place to ensure compliance with the 2006 Code and the 2012 Code;
- KBC failed to ensure that in all its dealings with customers and within the context of its authorisation it had and employed effectively the resources, policies and procedures, systems and control checks, including compliance checks, and staff training that are necessary for compliance with the 2012 Code.

Impacted numbers

In summary, our investigation found that a total of 3,741 customer accounts were impacted as a result of KBC's numerous failures over an extended period of time, with some customers being affected by more than one of the above issues.

Penalty Decision Factors

In deciding the appropriate penalty to impose, the Central Bank considered the ASP Sanctions Guidance issued in November 2019. The following particular factors are highlighted in this case:

The Nature, Seriousness and Impact of the Contraventions

1. KBC proactively devised and implemented a strategy to permanently convert customers off their tracker rate resulting in KBC's financial interests being prioritised over the best interests of customers;
2. The duration and frequency of the breaches, with 3,741 impacted customer accounts identified during the course of the investigation, the earliest breach having commenced on 1 June 2008 and the latest breach being 2 October 2019, resulting in customers being overcharged interest for extended periods. The duration is particularly serious given the historic intervention by the Regulator, a pattern of intervention which was repeated throughout the TME;
3. 66 properties were lost as a direct result of KBC failing their customers, which is particularly serious when 39 of those losses arose from KBC's failures to Stop the Harm to its customers during the conduct of the TME;
4. The contraventions represent a serious departure from required standards under the Consumer Protection Codes and the Principles of the TME;
5. The failure by KBC to include all impacted customer accounts in the TME quickly and without intervention by the Central Bank, leaving over 3,600 customer accounts without redress and compensation and to have their account balance adjusted for a period of up to 2 years;
6. The negative impact on consumer confidence in the market as a result of KBC's failings; and
7. The operational and system weaknesses that led to failures to protect customers.

Aggravating factors

1. The failure to take adequate remedial steps after the breaches were identified, including a failure to adequately identify whether customers were impacted and attempting to exclude potentially impacted customers from the protections of the TME;

2. KBC provided incorrect information to the Regulator with the result that sustained harm was suffered by certain customers. If KBC had provided correct information that customers had in fact lost their trackers, harm could have been stopped in 2009 and customers remediated then rather than 8 years later when KBC's failure was discovered;
3. KBC's failure to meet the Central Bank's expectations of adequate cooperation in the context of the investigation by failing to adequately respond to a number of statutory requests for information in a comprehensive and timely manner, necessitating significant challenge and intervention by the Central Bank, which wasted investigatory resources and caused delay in the Central Bank's ability to progress the investigation;
4. The Previous Record of the Regulated Entity: KBC has been subject to one prior Enforcement Action; and
5. The need for a credible deterrent in respect of these serious regulatory failings on KBC and other regulated entities.

This enforcement action against the Firm is now concluded. This marks the completion of the second in a series of ongoing investigations which were commenced, and will therefore conclude, at different times.

Notes to Editors

1. The Central Bank imposed a fine of €18,314,000 on KBC, which represents the maximum applicable penalty of €26,162,857 with a settlement discount of 30%. This fine is at the highest end of its sanctioning powers. 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](#).

In October 2016, the Central Bank fined KBC €1,400,000 and reprimanded it for breaches of the Code of Practice on Lending to Related Parties 2010 and the Code of Practice on Lending to Related Parties 2013. Details of the Enforcement Action can be found [here](#).

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 is the Central Bank's 139th settlement since 2006 under its Administrative Sanctions Procedure, bringing total fines imposed by the Central Bank to over €123m, which total includes the fine imposed against Springboard Mortgages in 2016 and Permanent TSB plc in 2019 in respect of breaches of its obligations to tracker mortgage customers. This settlement also marks the 32nd outcome in respect of Consumer Protection Code breaches.
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. 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 or to download [here](#).