APPENDIX 3

Banc Ceannais na hÉireann
Central Bank of Ireland
Eurosystem

PRINCIPLES FOR LENDERS WHEN TRACKER MORTGAGE RELATED ISSUES IDENTIFIED FOR REDRESS (PRINCIPLES FOR REDRESS)

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Introduction

The Consumer Protection Code requires regulated entities to act in the best interests of customers. The Central Bank of Ireland ("**Central Bank**") has developed the following principles and supplemental guidance setting out its expectations when a tracker mortgage related issue requiring redress and compensation ("**relevant issue**") is identified by a lender and how the lender is to engage with customers who are impacted by a relevant issue ("**impacted customer**"). The principles cover a number of areas including redress and compensation, stopping further detriment to potentially impacted customers, the establishment of an independent appeals process for impacted customers, the provision of independent advice for impacted customers and communication to impacted customers. Where a relevant issue is identified, a specific redress and compensation scheme framework is to be developed and submitted to the Central Bank for review prior to implementation. Redress is designed to result in impacted customers being returned to the positions that they would have been in had the relevant issue not arisen and compensation to be appropriate and reasonable and take account of the specific circumstances of each customer. These redress and compensation principles are to be read in conjunction with the cover letter and Framework for Conducting the Tracker Mortgage Examination issued on 22 December 2015.

Principles for lenders when relevant issues are identified for redress

When a relevant issue is identified, lenders to adhere to the following principles:

1. Stopping further harm to impacted customers

1.1. The Central Bank has already set out its expectation of lenders in respect of stopping the harm for potential issues as part of its communication of 23 June 2015 and subsequent follow-up communications.

1.2. The lender is to ensure that any harm potentially being caused to impacted customers is stopped at the earliest possible time after a potential issue is identified.

1.3. In addition, the lender is to cease charging the incorrect rates of interest to potentially impacted cohorts of customer accounts, to apply correct rates of interest to those accounts after each cohort is identified and to inform the Central Bank in advance of doing so.

See supplemental guidance attached at Appendix A.

2. Redress and compensation to impacted customers

2.1. Redress will result in impacted customers being returned to the position that they would have been in had the relevant issue not arisen.

2.2. Compensation is to be reasonable and must reflect the detriment involved arising from and/or associated with being on an incorrect rate (such compensation to reflect the specific circumstances of each impacted customer).

2.3. Impacted customers are to revert to the appropriate Tracker Interest Rate or to be offered the option to revert to an appropriate Tracker Interest Rate where relevant.

2.4. Redress and compensation is to be fair, clear, provided in a timely manner, and easily accessible.

2.5. The process leading to redress and compensation is not to impose unreasonable demands or burdens on impacted customers.

2.6. The lender is to allocate appropriate resources and put in place appropriate governance structures to support the development, communication and implementation of the redress scheme.

2.7. The Board of the lender is responsible for overseeing the conduct of the redress scheme and to satisfy itself that all aspects of the development, communication and implementation of the redress scheme comply with the principles and guidance contained in this document.

See supplemental guidance attached at Appendix B

3. Independent advice

3.1. The lender is to provide impacted customers with an additional payment to allow them to take independent legal or other professional advice regarding the redress and compensation offers made to them.

3.2. This additional payment is to be commensurate with the complexity of the advice required by the impacted customer depending on the individual circumstances of the impacted customer's case.

4. Independent appeals process and preservation of rights

4.1. An independent appeals process is to be established in order to adjudicate on complaints made by impacted customers regarding all elements of the redress and compensation offers made to them by the lender (including complaints regarding the Tracker Interest Rate to be applied to their accounts going forward and the rate for re-running accounts).

4.2. Appeals are to be heard by appeals panels formed in accordance with Appendix B, Section 2 of this document.

4.3. This appeals process is to be established without delay and, in any case, in advance of any redress and compensation offers being made to impacted customers.

4.4. The lender is not to raise any time limit defences to complaints made by impacted customers to the Courts or to the Financial Services Ombudsman ("**FSO**") within a specified period of time after a redress and compensation offer is made to an impacted customer or after the conclusion of an appeal to the appeals panel.

See supplemental guidance attached at Appendix B

5. Communications to customers

5.1. The lender is to make a public statement regarding the outcome of any review that it conducts in respect of a relevant issue, including the steps that it is taking to correct the relevant issue. This information must be available on the lender's website. This public statement is to be shared and agreed with the Central Bank prior to release. This public statement is to be issued in advance of writing to potentially impacted customers.

5.2. The onus is on the lender to identify potentially impacted customers and to communicate with them in a clear and timely manner, setting out the context and next steps in writing.

5.3. All communication with impacted customers is to be specific to the circumstances of each customer and to be in plain English to ensure that such communication is clearly understood by impacted customers.

5.4. Potentially impacted customers are to be contacted by letter and this letter should, at a minimum, include –

a) an explanation of the relevant issue,
b) the impact of the relevant issue on their account,
c) the steps that the lender is taking to address the relevant issue,
d) contact details, and
e) Any action that the impacted customer needs to take.

5.5. The lender is to clearly set out the amended rate and how this amended rate is determined by reference to the mortgage contract with the impacted customer.

5.6. The lender is to have adequate systems in place to follow up with impacted customers in circumstances where such customers are untraceable, do not respond to correspondence issued to them by the lender or where correspondence is returned.

5.7. Customers who have lost possession of their properties (on a voluntary basis or otherwise) are to be contacted by senior members of the lender's management team to explain the relevant issue in advance of the written correspondence issuing. Dedicated customer liaison staff are to be assigned to deal with such impacted customers and to seek to arrange a face-to-face meeting with such customers in order to explain the relevant issue and to support them through the process where appropriate.

5.8. The lender is to ensure that it has adequate capacity to address queries from its customers after it makes the public statement and sends the correspondence to impacted customers referred to above. The lender's staff to be adequately trained and, at a minimum, informed of the relevant issue and the steps being taken by the lender to address it in order that they can adequately deal with such queries.

5.9. The lender is to consider all channels to communicate with customers and be able to demonstrate appropriate and timely communications.

Appendix A – Supplementary Guidance on stopping further harm to impacted customers

The lender is to take appropriate steps to ensure that any harm potentially being caused to impacted customers is stopped at the earliest possible time after a potential relevant issue is identified, as follows:

1. The lender is to cease charging the 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 and to inform the Central Bank in advance of doing so[1].

2. The lender is to implement controls and/or measures to ensure that potentially impacted customers do not lose possession of their properties during the period from when the potential relevant issue is identified until the lender satisfies itself that potentially impacted accounts are not in fact impacted by the issue or redress and compensation occurs. Such controls and measures may include, but are not limited to, pausing legal activity and repossessions of properties and informing customers that wish to undertake assisted voluntary surrenders of their properties, of the possibility that they may be included in a redress scheme in the future.

3. Where the lender is satisfied that a potentially impacted account is not impacted by the potential relevant issue or any other relevant issue, it may cease to apply the said controls and measures to the account. The lender is to put appropriate systems in place regarding decisions to cease to apply such controls and measures. As part of this process, senior management is to approve any decision to cease to apply the controls and measures to an account in advance of the controls and measures being dis-applied.

4. Before the lender takes any steps against customers that it has not previously identified as being affected by the potential relevant issue that may result in such customers losing possession of their properties (for example by commencing or advancing legal proceedings to take possession of the properties), or before the lender facilitates such customers in the sale of their properties (for example by way of assisted voluntary sale), the lender is to satisfy itself that such customers are not affected by the potential relevant issue or any other relevant issue. The lender to put appropriate systems in place regarding the process by which it satisfies itself in this regard. As part of the process, senior management to be satisfied that such customers are not affected by the potential relevant issue or any other relevant issue.

[1] Where the correct interest rate is not known nor is not easily identifiable, the lender is expected to apply a favourable interim interest rate to impacted customers' accounts. This rate should apply until such time as the correct rate can be determined or until such time as impacted customers provide written authorisations to change their interest rates in circumstances where such authorisations are contractually required.

Appendix B - Supplementary Guidance for Redress and Compensation for Tracker Mortgage-related issues

1. Redress and Compensation

1.1 Redress

1.1.1 "**Adjusted Amount**" refers to the difference between the monthly amounts that customers were charged in respect of their impacted accounts and the monthly amounts that they should have been charged had the relevant issue identified not occurred.

1.1.2 Loan balances are to be adjusted (the principal balances on impacted customer accounts to be adjusted to the correct level as if the issue giving rise to redress had not occurred and appropriate Tracker Interest Rates had been applied to the accounts from the appropriate time).

1.1.3 Impacted customers are to have the option of receiving direct payments in respect of Adjusted Amounts as opposed to Adjusted Amounts being set off against the balance of their mortgage accounts (see below for when the account is in arrears). These repayments to take into account the time value of money.

1.1.4 The adjustment of loan balances and the Adjusted Amounts to be calculated from the time that the relevant issue occurred. This may be, for example, from the time that the impacted customer should have been able to avail of a Tracker Interest Rate, was erroneously moved from a Tracker Interest Rate or did not have material information brought to their attention by the lender, with the result that the customer made an uninformed decision that led to them losing an entitlement to a Tracker Interest Rate.

1.1.5 Adjusted Amounts due to impacted customers can be offset against arrears owing on the relevant mortgage account, provided the lender is satisfied that it is appropriate to apply set-off in the circumstances.

1.1.6 In circumstances where the interest rate that the impacted customer switched to was lower than the appropriate Tracker Interest Rate for any period from the time that the relevant issue occurred, the lower of the two rates to be applied to the customer's account for the purpose of re-running that customer's account for those periods.

1.1.7 Any charges and/or fees imposed on impacted accounts as a result of the relevant issue, including but not limited to charges for arrears on accounts and charges arising from legal processes to be refunded to impacted customers.

1.2 Compensation:

1.2.1 Impacted customers are to receive compensation payments for detriment, including but not limited to inconvenience, harm, loss as a result of not having funds available to them when they should, personal suffering and hardship, caused by the relevant issue.

1.2.2 The amount of compensation payable is to be reasonable and fair and take the specific circumstances of each impacted customer into account, for example, whether the impacted customer lost ownership of his/her house whether by voluntary surrender or repossession (and within this cohort whether the mortgaged property was a PDH or BTL), stress suffered by impacted customers.

1.2.3 Compensation payments are to be made to impacted customers irrespective of the status of their accounts. For example, the lender is to make compensation payments to impacted customers in arrears and to former customers that were impacted by relevant issues prior to closing their accounts.

1.3 *General Redress:*

1.3.1 All redress and compensation payments to impacted customers and any interest rate change going forward are to be made on an up-front basis to ensure that the financial circumstances of customers do not affect their decisions to accept the redress and compensation offers made to them or to appeal (see details of the appeals process below).

1.3.2 The lender is to have measures in place (either by electronic or manual means) to provide detailed calculations to impacted customers if requested.

1.3.3 All reasonable costs incurred by impacted customers as a result of the relevant issue including, but not limited to, costs related to legal actions taken by the lender in respect of repossessions or arrears, are to be discharged by the lender.

1.3.4 Any tax liability that impacted customers may incur as a result of the relevant issue or in respect of any redress, compensation or other payment made to impacted customers by the lender, as a result of the relevant issue, are to be discharged by the lender. The lender is to liaise directly with Revenue in this regard.

1.3.5 The credit rating of impacted customers is to be corrected as soon as possible by the lender. Copies of an updated credit rating are to be provided free of charge to impacted customers.

1.4 Offer of a New Mortgage

1.4.1 In circumstances where a customer has lost ownership of their mortgaged property and are likely not to have done so, or to have qualified for an alternative repayment arrangement, but for the relevant issue, the lender is to consider if it is appropriate to offer the customer a mortgage along with any associated compensation or benefits subject to suitability and or other requirements in place. If it is considered appropriate then such an offer is to be made.

1.4.2 Having regard to the sensitivity and complexity of such circumstances (e.g. writing off shortfall amounts owed by customers, the uplift in property prices, the Central Bank's housing loan requirements[1]), the lender is to engage closely with the Central Bank on the development of such proposals.

2. Appeals and Complaints

2.1 Composition/Skills/Members

2.1.1 Appeals panel(s) established to address complaints from customers who have been impacted in a more serious manner (such as customers that have had legal proceedings initiated against them in respect of arrears or have lost ownership of their mortgaged property) are to be comprised entirely of third party members.

2.1.2 Appeals panels established to address complaints from customers who have been impacted in a less serious manner (than those referred to in 2.1.1 above) to be comprised of an independent majority (including an independent chairperson).

2.1.3 The chairperson of each panel is to be a qualified barrister or solicitor.

2.1.4 The members of the appeals panels to be appropriately qualified professionals, to include a "consumer voice" representative.

2.1.5 The Central Bank is to have a right of veto in respect of the members to be appointed to the panels.

2.1.6 Appeals panels are to progress appeals expeditiously.

[1] Central Bank (Supervision and Enforcement) Act 2013 (Section 48) (Housing Loan Requirements) Regulations 2015 (S.I. No. 47 of 2015).

2.2 *Operation of panels*

2.2.1 The appeals panels established to adjudicate on appeals are to be empowered to direct that additional redress and compensation to be provided to an impacted customer based on his/her individual circumstances and to vary the tracker rate to be applied to impacted customer accounts, where warranted.

2.2.2 Lenders are to comply with the decisions of the appeals panels.

2.2.3 For the avoidance of doubt, lenders not to object to impacted customers complaining directly to the Courts or the FSO.

2.2.4 The appeals process is to be managed and administered by an independent secretariat and must be separate to the complaints process in place.

2.2.5 The lender not to delay making redress and compensation payments or when applying any interest rate changes to impacted customers' accounts on the basis that such customers have made appeals to the appeals panels or complaints to the Courts or to the FSO.

2.2.6 The appeals panels cannot make a less favourable finding than any offer made to impacted customers pursuant to the redress and compensation scheme by the lender.

2.2.7 Lenders are to reimburse impacted customers for their reasonable costs incurred in bringing appeals in the event that they are successful in their appeals and they agree to be bound by the appeals panels' findings.