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The future of redress? A consideration of the Tracker Mortgage Examination

The Central Bank of Ireland first announced details of its 'Tracker Mortgage Examination' in October 2015. The Examination is still on-going but by the end of February this year approximately €78 million had been paid in redress and compensation to impacted parties. Muireann Reedy concludes that, while it remains to be seen whether the guidelines put in place for redress under the Examination will act as a template for future redress programmes under the 2013 Act, what is clear is that the final bill for lenders involved in the Examination will be very significant by the time redress and compensation is paid, Appeals Panels are established and the costs of a potential enforcement investigation are factored in.

Scope of the Examination

The Central Bank of Ireland (CB) wrote to 15 lenders in December 2015 setting out the framework for an industry-wide examination of tracker mortgage related issues which had been announced in October 2015.

The Examination applies to all lenders that offered tracker interest rate mortgages to their customers and spans the period from when they commenced offering these mortgages until 31 December 2015.

Under the Examination lenders have been required to conduct a complete review of their mortgage loan book to assess compliance with both contractual and regulatory requirements relating to tracker mortgages. Where those requirements have not been met, lenders are required to apply the correct interest rates to customers' accounts and also to make redress and compensation payments in accordance with guidelines issued by the CB.

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Redress

Although the CB does not have the power to compel redress in respect of failures prior to August 2013 - such powers were only introduced in the Central Bank (Supervision and Enforcement) Act 2013 (the '2013 Act') - it issued relevant lenders with a series of documents which set out



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its expectation as to how the Examination and any resulting redress and compensation programmes would be run, as well as setting out certain parameters for the establishment of Appeals Panels and the processes which these panels are expected to follow.

In its latest update on the Examination (March 2017) the CB acknowledged that a 'significant portion' of the lenders' failures occurred prior to the introduction of its statutory customer redress powers. However, it also stated: 'the Central Bank has been clear in its expectation that lenders must comply with the spirit of the Principles for Redress in their dealings with all customers regardless of whether or not they sustained impacts prior to the introduction of the powers.'

According to the CB, approximately €78 million had been paid in redress and compensation by the end of February 2017 to about 2,600 customers as part of the Examination. However, the Examination has not finished yet. By the end of February the

lenders had identified that approximately 9,900 accounts had come within the remit of the Examination and it seems likely, therefore, that several more million euros in redress and compensation may be paid before it concludes. The framework and parameters set out by the CB in relation to the Examination may provide some guidance as to the terms and processes it will expect to be implemented in respect of any future redress programmes under the 2013 Act.

Points of interest

Under the framework, lenders must provide monthly updates to the CB on the progress of certain phases of the Examination. They are also expected to appoint an external independent party to carry out assurance work on all aspects of the Examination conducted by the particular lender.

In terms of redress, lenders are required to submit their redress and compensation programmes to the CB for approval prior to implementation.

Redress and compensation payments are to be made to affected customers on an up-front basis and an additional payment is to be provided at the point of offer to enable them to take professional advice on the lenders' offers.

Compensation is to be paid to affected customers for detriment caused by the relevant issue, including harm, loss as a result of not having funds available when they should have been, personal suffering and hardship.

The CB also issued relevant lenders with guidelines on the establishment of an appeals process to deal with appeals from customers who are dissatisfied with any elements of the redress and compensation offers they receive (the 'Appeals Guidelines') and has stated that it 'expects' lenders to

establish appeals processes in line with these guidelines.

The Appeals Guidelines provide that lenders should establish two different Appeals Panels to deal with cases of varying gravity. The most serious cases are to be heard by panels comprised of personnel entirely independent of the lender and in all other cases the Appeals Panels must be composed of an independent majority. Lenders are expected to establish an independent secretariat, to provide administrative support to the Appeals Panels to facilitate the efficient management of appeals. The CB has stated that if any aspect of an appeal is upheld by an Appeals Panel, it expects the customer to be reimbursed for any reasonable costs incurred by them in bringing an appeal, including any costs relating to the retention of professional advisers or experts. If an appeal is unsuccessful, the CB expects that the customer will not be made liable for the lender's costs. The Appeals Panels cannot reduce the original offer which has been made to the customer.

Enforcement

The CB has publically stated that two tracker mortgage investigations are ongoing. It has also stated that it is possible that other enforcement investigations may be commenced into other lenders and persons concerned in their management where there is evidence of non-compliance with regulatory requirements.

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The CB has shown previously that it will not hesitate to impose a large fine, even if extensive redress has already been made by a lender. In November 2016 it fined Springboard Mortgages Ltd. €4.5 million for its failure to apply the correct interest rates to 222

customer mortgage accounts over a seven year period. The fine was in addition to a redress scheme which the CB required it to put in place under which amounts of approximately €5.8 million in redress and compensation had been paid to customers.

Conclusion

The Examination shows that the CB will adopt a hands-on approach to overseeing redress and compensation programmes, even where some of the failures pre-dated its statutory redress powers. It remains to be seen whether the guidelines put in place for redress under the Examination will act as a template for other large future redress programmes under the 2013 Act. But it is clear that the final bill for lenders involved in the Examination will be very significant by the time redress and compensation is paid, Appeals Panels are established and the costs of a potential enforcement investigation are factored in.

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