

Tracker Mortgage  
Examination

# **Appeals Panels – Terms of Reference**

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# Background

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Arising from the Tracker Mortgage Examination, Bank of Ireland ('the Bank') has identified failures in respect of certain tracker mortgage accounts. Customers who have been impacted as a result of those failures are being provided with a letter setting out an Offer of Redress and Compensation ('the Offer') from the Bank.

The Bank has established an Independent Appeals Process to enable customers to challenge any element of the Offer received from the Bank. **Customer will have 12 months from the date of receipt of the Offer in which to lodge an Appeal.**

This paper outlines how the Appeals Panels will operate, including an explanation of what can be appealed and what decisions are available to the Appeals Panels.

# The Appeals Panels

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Two Panels, A and B, have been established to hear Appeals from customers who have received an Offer of Redress and Compensation from the Bank.

**Panel A** will consist of appropriately qualified professionals, all of whom are independent of the Bank, and will look at Appeals from customers who have:

- ▶ Lost ownership of their mortgaged properties through repossession, voluntary surrender, voluntary sale or assisted voluntary sale
- ▶ Had legal proceedings issued against them because of mortgage arrears.

**Panel B** will consist of appropriately qualified independent professionals, and will deal with Appeals from all other impacted customers.

Panel B may refer Appeals to Panel A by way of majority decision or at the discretion of the Chair, where the complexity of the case requires its escalation or where the justice of the case otherwise requires it.

Changes to the composition of the Appeals Panels will not be made without prior notification to the Central Bank, which has the right to veto the appointment of any proposed members. Substitutions to the Panel will only be made where a conflict of interest arises or where it is considered necessary to improve the efficiency of the Appeals process. Changes will be considered by the Bank on the recommendation of the Independent Secretariat and/or the Appeals Panels Chairperson.

# Appeals Panels members

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<b>Name</b>	<b>Role</b>	<b>Qualifications / experience</b>
Imelda Reynolds	Chair	Partner, Beauchamps Solicitors.
James McCourt	Chair	Partner, O'Mara Geraghty McCourt Solicitors
PJ Fitzpatrick	Consumer Voice	Partner, Preasta Ltd and Non-Executive Director of Tusla
Eamonn Siggins	Finance Expert	Chief Executive, Institute of Certified Public Accountants in Ireland
Denis Cagney	Consumer Voice	Commission for Energy Regulation. Lecturer on energy legal and consumer protection issues
Pat Costello	Finance Expert	Chief Executive Officer, Chartered Accounts Ireland (Retired)

Customers will be advised in advance as to whether their Appeal will be assessed by Panel A or Panel B as appropriate. They will also be advised of the Panel members potentially scheduled to address their Appeal.

A representative from the Independent Secretariat will attend at each meeting of the Appeals Panels to support its fair and efficient operation and to take minutes.

If requested to do so by the Panel, the Bank will provide Subject Matter Experts ('SMEs'), who have the required mortgage expertise, to assist the Panel with questions of a technical nature concerning the internal processes or policies in the Bank. The SME will provide factual assistance only and will not offer their opinion on the merits or otherwise of the Appeal. Any information provided by the SME to the Panel will also be provided to the customer.

# Appeals Panels – operating principles

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The Appeals Panels members are, and are required to be, impartial, and follow the principles set out in this document. Their key objective is to determine, in the context of your specific circumstances, whether the Bank's Offer of Redress and Compensation was adequate. The principles include the following:

- ▶ A duty to allow all parties to put their case to the Appeals Panels.
- ▶ Sympathetic and positive handling of cases.
- ▶ The Appeals Panels will assess each Appeal by reference to the legal principles that a court would apply if it were considering your Appeal, including:
  - ▶ **Standard of Proof.** The Standard of Proof that will be applied will be on the balance of probabilities. As an example, the Panels will accept something as true if the evidence shows that it's more likely to be true than untrue. In a conflict of evidence the Panels will lean towards the evidence that's more likely to be true.
  - ▶ **Evidence of loss.** Where you are claiming Financial Losses, this could include receipts for additional costs you may have incurred as a result of the failure on your account. In the case of Non-Financial Losses, this could include a detailed explanation of your circumstances where this may have given rise to inconvenience, harm, personal suffering or hardship.
  - ▶ **The principle of remoteness.** The Panels will award additional compensation for your loss where they are satisfied that the loss should reasonably have been foreseen.
  - ▶ **Causation.** The Panels must be satisfied that your loss was effectively caused by the Bank's failure and where they deem that the compensation already offered by the Bank is not adequate in the context of that loss.

- ▶ All parties to an Appeal will be entitled to representation.
- ▶ The operation and administration of the Panels, including the Independent Secretariat, will follow and be bound by the Procedural Rules and the Terms of Reference.
- ▶ While there is no upper limit on the level of compensation which can be awarded, any additional payments by the Panels may vary, depending on what category the relevant issue falls under and on the specific circumstances of the mortgage account. The Appeals Panels must refer to the Steering Committee Group for decision on any payments greater than the amounts set out in the table on page 13.
- ▶ Based on your Appeal, the Panels may form the view that the compensation payment should exceed the amounts it can award (see table on page 13). In an instance like this, and on the recommendation of the Appeals Panels, a case may be presented to the Steering Committee Group for decision.
- ▶ Panels will make a decision on your Appeal, preferably by consensus, but otherwise by majority.
- ▶ **Grounds on which you can appeal** (this can take place at any time in the 12-month period from the date on which your redress and compensation pack was received):
  - ▶ The period during which the Bank considers your account to have been affected. This includes any period from the time you may have switched your mortgage to a different lender on a like-for-like basis (same balance/same property), where getting a tracker was a key reason for your switch.
  - ▶ The category of your loan, for example whether it's a private dwelling or a buy-to-let property.
  - ▶ Your status, for example whether you've lost ownership of your property as a result of the issues identified.
  - ▶ The revised interest rate applied to the mortgage account that was affected.

- ▶ The level of balance adjustment, refund, compensation or independent advice payment offered.
- ▶ The level of redress offered to you, including the offer to reinstate a tracker mortgage, where you switched to another lender on a like-for-like basis, and where the Bank's failure to provide or offer to provide a tracker rate was a key reason for your decision to switch.
- ▶ Any additional aspect of the Redress and Compensation Offer made to you where you have lost ownership of your mortgaged property, including:
  - ▶ Debt write-off
  - ▶ Any offer of a new mortgage
- ▶ Compensation to reflect any lost opportunity for capital appreciation.

## Bank – operating principles

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- ▶ You can make a complaint to the Financial Services Ombudsman (FSO) or issue proceedings against the Bank. These options are available to you whether you decide to appeal or not, and are equally available to you following any Appeals Panel decision. In this regard the Bank will not invoke any time limit defence, that may otherwise apply, for a period of 12 months from the later of the Offer of Redress and Compensation or the date of an Appeal Panel decision.
- ▶ The Bank will comply with the decisions of the Appeals Panels quickly and efficiently. This includes making additional redress and compensation payments or when applying interest rate changes to your affected account(s), and payment by the Bank to you in respect of costs incurred in bringing your Appeal, as directed by the Panels.
- ▶ Where you are successful in your Appeal or any part of it, and depending on you agreeing to be bound by the decision of the Appeals Panel, we will reimburse reasonable vouched expenses incurred by you in bringing your Appeal, in a timely manner, as measured from the point the Appeals Panel notifies you and us of that decision.
- ▶ Where the Panel does not uphold your Appeal, in full or in part, you will not be liable for Bank of Ireland's costs.
- ▶ If we believe that your vouched expenses are not reasonable, the issue of costs will be referred back to the Appeals Panel that dealt with your Appeal. At that point they can obtain the opinion of a legal costs accountant, at no expense to you, to help them determine the reasonableness of the expenses.
- ▶ Where an Appeals Panels retains the services of a legal cost accountant to assist in its determination of the reasonableness of vouched costs, the Bank will bear this expense.

# Process and protocol – meetings of the Appeals Panels

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- ▶ All members of the Panel must be present before an Appeal is heard. This must include the Chairperson, Financial Expert and Consumer Voice representative.
- ▶ Members of the Appeals Panels will attend in person.
- ▶ Appeals Panel B may refer an Appeal to Appeals Panel A where, for example, Panel B believes that it would be more appropriately dealt with by Panel A, based for example on the Appeal's complexity, nature and context. Any such referral having due regard to the extent of impact and compensation claimed.
- ▶ Each Appeals Panel will meet regularly, as frequently as they need to.
- ▶ The Independent Secretariat will acknowledge each Appeal in writing within five business days of receipt.
- ▶ Where a Panel requires more information than you have included in your Appeal, or where it needs more information from the Bank, the Independent Secretariat will communicate in writing with you or the Bank directly. Absent the additional information, the Panel will determine whether it is in a position to proceed.
- ▶ The Panel will make its decision within 40 days of getting your completed Appeals form, or of getting any additional information requested of you or the Bank, whichever is the later.
- ▶ Within 10 business days of the Appeals Panel's decision, the Independent Secretariat will send a copy of the decision to you. It will set out the reasons for the decision and state any actions it may need the Bank and/or you to take.

# Assessing your Appeal

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When deciding on any Appeal made by you regarding the Bank's redress and compensation offer, the Appeals Panels will take the following into account.

- ▶ Your Offer of Redress and Compensation
- ▶ The terms and conditions of your mortgage account
- ▶ The history of your mortgage (including payments, product switches or payment holidays etc.)
- ▶ Any expert opinions or other advice provided to the Panel by either party
- ▶ All applicable legislation and regulatory codes
- ▶ Any other relevant information.

# Decisions available to the Appeals Panels

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- ▶ The Appeals Panels will have the power to:
  - ▶ Approve or reject all or part of your Appeal
  - ▶ Determine that where you lost ownership, you would have been able to afford the mortgage if an alternative repayment arrangement had been entered into.
- ▶ Panels shall decide whether oral hearings are necessary. The governance for such decisions and the details for the associated process are set out in the Appeals Procedural Rules.
- ▶ Panels can direct the Bank to:
  - ▶ Revise an interest rate
  - ▶ Process a refund
  - ▶ Provide additional compensation
  - ▶ Re-categorise a loan.
- ▶ Panels can furthermore direct the Bank to carry out assessment for eligibility for a new mortgage and, where eligibility cannot be established, make further payment to compensate for detriment rising where an impacted customer
  - ▶ **switched lender**, or
  - ▶ suffered **loss of ownership**as a direct result of the Bank's failure.

- ▶ Panels cannot make a finding that's less favourable to you than any offer made by the Bank.
- ▶ Additional compensation payments awarded by the Panels will reflect any direct or indirect loss you suffered and will be commensurate with the extent of detriment to you.
- ▶ Any awards made by the Panels will be based on your specific circumstances as set out in your Appeal, including information provided:
  - ▶ In your Appeal Form
  - ▶ Through additional supporting documentation
  - ▶ By a subject matter expert
  - ▶ As part of an oral hearing.
- ▶ Compensation must be reasonable, based on the fact that your case is unique and needs to be considered on its own merits. It will reflect the detriment for you as a result of the relevant issue.
- ▶ There is no upper limit on the level of additional compensation which can be awarded, but the Appeals Panels must refer to the Steering Committee Group for decision on any payments greater than the amounts set out below.

Categories 1 – 5 apply where the Bank failed to honour its obligation to customers who had a contractual right to a tracker or a contractual right to be offered a tracker, and category 6 applies to any customer whose tracker rate was incorrect.

<b>Customer category</b>	<b>Principal private residence</b>	<b>Buy-to-let property</b>
1. Never in arrears	€ 5,000	€ 5,000
2. Currently/previously in arrears	€ 5,000	€ 5,000
3. Currently/previously in a restructuring arrangement	€ 10,000	€ 10,000
4. Currently/previously subject to legal proceedings	€ 20,000	€ 20,000
5. Loss of ownership		
a. Direct cause	€100,000	€ 75,000
b. No direct cause	€ 20,000	€ 20,000
6. Margin issue	€ 5,000	€ 5,000

- ▶ The Appeals Panels may decide on the reasonableness of any vouched costs you may have incurred in bringing your Appeal, using a legal cost accountant if necessary. Where a legal cost accountant is retained, the Bank will bear this cost.
- ▶ If your Appeal is upheld or partially upheld, the Panels will have the authority to decide whether all or some of these costs should be reimbursed.

# Independent Secretariat

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The Appeals Panels are supported administratively by an Independent Secretariat, which provides governance and quality assurance services for the Appeals process and in customer communications. The Procedural Rules and the Terms of Reference will set out the framework for how the Secretariat and Panels interact. The Secretariat will provide support in the following ways.

- ▶ Setting up and operating an Appeals tracking system.
- ▶ Ensuring that Appeals received are directed to the appropriate panel.
- ▶ Preparing and circulating Appeal case details to members of the relevant panel in advance of each meeting.
- ▶ Recording decisions and reasons for decisions.
- ▶ Communicating with all parties to ensure all relevant information is available.
- ▶ Issuing status updates on time to customers.
- ▶ Maintaining an archive of decision precedents as a tool to assist the Appeals Panels.
- ▶ Recording relevant data and providing feedback through regular reporting.
- ▶ Monitoring work practices to ensure fair and efficient operation of the process.
- ▶ Escalating issues or highlighting opportunities for improved efficiency to the Chairperson of the Appeals Panels.

# Governance of the scheme(s)





