DETAILS OF ANY CUSTOMER COMPLAINTS	There are no Complaints recorded on the Bank's systems.

SECTION 4: PAYMENT DETAILS

TOTAL COMPENSATION PAID	**(1)**	€1000.00
PAYMENT TOWARD COST OF PROFESSIONAL ADVICE	**(2)**	€ 615.00
TOTAL PAYMENT		€1,615.00

Notes regarding the payments:

(1) Payment to compensate for the Bank's service failure in not providing the option to choose a Tracker rate at the Bank's prevailing rate from October 2008 to December 2013.

(2) Additional payment towards the cost of obtaining professional advice in reviewing the compensation letter should the customer choose to do so.

Note: As the customer did not have the option to choose a Tracker rate at the end of their Fixed rate period, the Bank is now providing the customer the option to choose our Tracker rate at the current prevailing rate within 12 months of the date of the Compensation letter. That is, the prevailing ECB rate (currently 0%) plus the prevailing margin as set by AIB [currently 3.32% for a PDH].

SECTION 5: SUMMARY OF APPEAL

Claiming financial losses based on a claim that they should have been offered a Tracker of ECB + 1.25% when their Fixed interest rate period ended in December 2010.

Key Points in Appeal:

- The Customers state that they took out a Fixed rate mortgage in November/December 2007.
- The Fixed interest rate period ended on 30/12/2010 and the Customers were not offered the option of a prevailing Tracker interest rate, which the Customers say they were contractually entitled to according to clause 3.2(c) of the terms and conditions of the mortgage loan. If clause 3.2 had clearly said that customers would only have the option of a Tracker interest rate upon the expiry of their Fixed interest period if such a rate was being offered to new customers at that time, then they would not have chosen a Fixed interest rate at the time.
- The Customers state that the Bank did have a prevailing Tracker rate which was ECB + 1.25% being the rate offered to customers whose Fixed interest rate period ended before the Tracker interest rate was withdrawn. The Customers say that the Tracker interest rate of ECB +1.25% prevailed until the Bank changed it.
- As existing customers, the Customers believe they were entitled to the Tracker interest rate which was offered when they became mortgage customers and it is not relevant that Tracker interest rates were not available to new customers on the date that the Customers' Fixed interest rate period ended.
- The Customers reject the Bank's assertion that the prevailing Tracker interest rate, if it had had one in December 2010, would have averaged 7.9%.
- The Customers state that the Bank cannot retrospectively substitute a Tracker interest rate of 7.9% for the then prevailing rate, which the Customers say is ECB + 1.25%.
- The Compensation letter offers the option to switch to the 'current prevailing Tracker rate'. The Customers state that the Bank should not be allowed to offer the 'current prevailing Tracker rate' in 2018 in place of the 'then prevailing Tracker rate' since December 2010. The go-forward Tracker interest rate which was offered to the Customers in their Compensation letter was 0.17% higher than the Standard Variable Rate.
- The Customers are requesting that the account be recast at ECB + 1.25% to the end of the mortgage and compensation of 15% of the overcharge be paid.

(Please refer to the completed Appeals Form for full details of the Customers' appeal)

SECTION 7: BANK RESPONSE TO THE APPEAL

- On 03/11/2007, the Customers were offered a mortgage with a 3-year Fixed interest rate of 5.1%. This was reflected in their Letter of Offer and accepted by the Customers on 16/11/2007. When the Customers applied for the mortgage, Tracker interest rates were available to customers in addition to a range of other interest rate options which were available at that point in time. It was open to the Customers to choose any of the options available at the time of drawdown. It was not open to the Customers to choose an interest rate which was available to other customers at a different time. The full range of interest rate options was also publicly advertised at the time of drawdown.

- Under the General Terms and Conditions document enclosed with the Letter of Offer (referred to as "06-09 T&Cs", attached), those customers who drew down their mortgage loan on a Fixed rate were entitled at the end of that Fixed rate period, under clause 3.2, to be given the option of the *'then prevailing'* Fixed interest rate, the *'then prevailing'* Variable interest rate and the *'then prevailing'* Tracker interest rate appropriate to their loan.

  In October 2008, the Bank stopped offering the Tracker interest rate product to new customers and existing customers who were not already on a Tracker interest rate. The reason for this was that, due to market conditions at the time, the rate would have been so high that no reasonable customer would have selected the Tracker interest rate. At that time, it had become clear that the ECB Rate was no longer in any way linked with cost of funds, and naturally, for commercial reasons, any Tracker interest rate offered then would have comprised a significantly higher margin than had been the case previously.

  The 06-09 T&Cs do not expressly state that the Bank is required to offer a Tracker interest rate at a particular rate or margin (or indeed any Tracker interest rate) on the expiry of the Fixed interest rate period. The Bank did not have a prevailing Tracker interest rate to offer to the Customer at the time that their Fixed interest rate period ended, therefore there was no breach of contract in not offering a Tracker interest rate to them.

  The Customers claim that subclause 3.2(c) provides for a contractual entitlement to be offered a Tracker interest rate. Subclause 3.2(c) refers to the customer 'choosing' (rather than being entitled to be offered) from a selection of the interest rate types at the *'then prevailing'* rates which the Bank offered to them. Specifically, it refers to the customer choosing to *'convert'* to a Tracker interest rate. This wording clearly refers to the point in time at which the *'conversion'* occurs, rather than for example to the interest rate 'reverting' to any previous Tracker interest rate (although, as noted below, and critically, the Customers' mortgage loan was never on a Tracker interest rate at any previous point in time).

- The Customers have stated that because no Tracker interest margin was offered, the 1.25% margin, which was the last Tracker margin available before the Tracker product was withdrawn, continued to prevail. However, after the Bank withdrew the Tracker product in October 2008, the margin of 1.25% referred to by the Customers was not available to new customers or to existing customers whose Fixed interest rate periods were ending and who had no entitlement to revert to a specific Tracker interest rate, i.e. it was no longer prevailing within the meaning of the word in the manner in which the Bank operated its mortgage lending business as set out above.

  The 06-09 T&Cs do not entitle customers to choose a rate that was historically available to them or to any other customer. They entitle customers to choose from a selection of interest rates which are being offered by the Bank at that point in time (i.e. at the end of the Fixed interest rate period). It is clear that this is the meaning of the wording '***then prevailing***' (emphasis added). This is also clear from the use of the words *'then prevailing'* elsewhere in the contract. The use of the two same words in the same context must be construed in the same way. Clause 3.6.4 provides that: "*the Customer may at any time convert a Tracker interest rate Mortgage Loan to a Fixed interest rate Mortgage Loan or a variable interest rate Mortgage Loan at the Bank's* ***then prevailing*** *rates appropriate to the Mortgage Loan...*". The only possible meaning of *'then prevailing'* in this clause, in the context of a 'conversion' of one rate to another rate at a point in time, is the rate that is 'prevailing' at the time of the 'conversion', and not any rate which the Bank may have previously offered other customers at an earlier point in time.

  The Customers have stated that the Bank did not change the Tracker margin after withdrawing the Tracker product in October 2008. The Bank withdrew the Tracker product. To amend the Tracker margin in those circumstances would not have been possible, as there was no Tracker available.

- The Customers argue that because they were existing customers, the fact that there was no prevailing Tracker interest rate was not relevant to them. Existing customers are only offered interest rates which are prevailing at the time that they change their interest rates. The fact that they are existing customers does not allow them to choose from a back book of previously available interest rates.

  There continued to be customers of the Bank who had mortgage accounts with Tracker margins ranging between 0.45% and 1.5%, but that is not relevant to the question of what the prevailing rate was at any given time for the purposes of new customers or for customers being offered a new interest rate. Indeed, the fact that there are customers of the Bank who have different margins as part of their Tracker interest rates demonstrates that the Bank is entitled to change the margin applicable to the Tracker interest rate which it chooses to make available at any given time. The prevailing interest rates offered to new customers and customers coming off a Fixed interest rate period do not reflect the interest rates being paid by other customers of the Bank; they are calculated at the time of loan offer or at the end of the relevant Fixed interest rate period.

  With regard to the level of Tracker margin offered by the Bank at any particular point in time, the Bank does not guarantee any specific interest rate and this is clear from clause 3.1 of the 06-09 T&Cs. Interest rates go up and down, and the interest rates which are available to any customer vary from day to day. The interest rate that is available to a customer at a point in time, is the then prevailing rate for that customer. This is evident from the manner in which banks and financial institutions conduct their lending business as a matter of course.

  On 25/11/2010, as the Customers' Fixed interest rate period was coming to an end, they were given a sample of the rate options on offer by the Bank. The options provided did not include a Tracker interest rate because the Tracker interest rate product was not on offer at that time. The Customers did not seek a Tracker interest rate, nor did they indicate that they had an expectation that they would be offered a Tracker interest rate.

- The Customers question the average Tracker rate of 7.9% as set out in their Compensation letter. The Bank used an international standard mortgage pricing model and the best available objective information to estimate what the prevailing margin and rate would reasonably have been at the time, had the Bank maintained the rate.
  In calculating the Tracker mortgage margin the Bank considered components such as:
  1) Funding costs;
  2) Credit risk costs;
  3) Capital costs; and
  4) Operating costs

  The Bank believed that it was important that its work to calculate what the Tracker interest rate at prevailing rates was independently verified by a third party. The Bank appointed an international firm of financial market experts who considered the Bank's approach and calculations. The financial markets experts concluded that the Bank's approach was considered to be reasonable and appropriate. The calculations and the independent review were then shared with the Central Bank of Ireland. Based on the best available information, we estimate that, during the period October 2008 to December 2013 when the Tracker product was no longer being offered, the Tracker interest rates then prevailing for PDH's would have averaged c.7.9%.

- See the Bank's comments above regarding "prevailing". In addition, the Questions and Answers document provided to the Customers with their Compensation Letter shows that in 2010 the Tracker at the then prevailing rate would have been approx. 7%, while the variable rate at that time was c3.25% and the 3-year Fixed rate that the Customers chose and were on from 30/12/2010 until 23/12/2013 was 3.89%. Based on best available information (as referenced above), we estimate that, during the period October 2008 to December 2013 when the Tracker product was no longer being offered, the Tracker interest rates then prevailing for PDHs would have averaged circa 7.9%, whereas, the PDH variable interest rate averaged 3.3%. Therefore, there was no financial detriment to the Customers in not having the choice of a Tracker interest rate at what would have been the then prevailing rate.

- While there was no financial detriment to the Customers as evidenced above, we recognise that the option of a Tracker rate should have been made available to the Customers in accordance with the 06-09 T&Cs. We have apologised for our service failure, made a compensation payment and given the Customers the option to choose our Tracker interest rate at the current prevailing rate, at any time within 12 months of the date of the Compensation letter.

- The compensation payment offered to the Customers in this case is for our service failure in not having a Tracker interest rate available as an option from October 2008 to December 2013. The compensation payment in this case is not intended to compensate the Customers for any perceived losses because in the assessment of the Bank, no losses have been incurred by the Customers on foot of the service failure. If a Tracker interest rate had been available in December 2010, when the Customers ended their Fixed rate period, or during the period October 2008 to December 2013, it would have been more expensive than the Variable interest rate that was available during that time. The Fixed and Variable interest rates which were available to the Customers in December 2010 were not the same as those which were offered at the time when the Customers drew down their loan. In the same way, the Tracker interest rate which would have been offered in December 2010, had there been one, would not have been the rate which was available at the time when the Customers drew down their loan and on best available evidence, would have been at a level which would not have been chosen by the Customers in any event.

The Customers in this appeal are seeking to have their account recast with the Tracker interest rate of ECB + 1.25% and for compensation to be awarded in the amount of 15% of the amount allegedly overcharged. The purpose of the Tracker Redress Programme is to put impacted customers' accounts back in the position they would have been had the failures not occurred and to provide fair and reasonable compensation on the basis of their individual contracts with AIB. The failure in this case was a service failure in not having a Tracker interest rate at the then prevailing rate as an option from October 2008. As a result of this service failure, the Customers did not have the option to choose a Tracker interest rate when their Fixed interest rate period ended.

The service failure was not in relation to any specific rate of interest that the Customers were entitled to be offered at any point of time. It is the Bank's position that had it offered a Tracker interest rate at the time, it would have been prohibitively expensive, and certainly significantly more expensive than any Variable or Fixed interest rates the Bank offered during the relevant period. The Bank calculated what would have been the Bank's Tracker interest rate during the relevant period by using an internationally recognised system which takes into account various factors including cost of funds, credit risk costs, capital costs and operating costs which are evaluated at the time that the interest rate is offered to the customer. The Customers have therefore not suffered any detriment as the Tracker rate would have been higher than the then prevailing Variable or Fixed interest rates, which were offered to them at that point in time.

Submission Date:	**29/03/2019**

ATTACHMENTS

01. Mortgage Application, 26.10.2007
02. Letter of Offer, 03.11.2007
03. 06-09 Terms & Conditions
04. Letter of Offer Signed, 16.11.2007
05. Breakage Cost Letter, 08.01.2009
06. Breakage Cost Letter, 18.03.2009
07. Fixed Rate Expiry Letter, 12.11.2013
08. Letter re Breakage Costs, 08.09.2015
09. Letter re LTV Rates, 19.02.2019
10. Compensation Letters
11. Q&A Document
12. Statements