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Ms Deirdre Norris
Consumer Protection Codes Department
Financial Regulator
PO Box 9138
College Green
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10 September 2010

Re: CP46 Review of Code of Conduct on Mortgage Arrears

Dear Ms Norris

I refer to the Central Bank and Financial Services Authority of Ireland's Consultation Paper 46 reviewing the Code of Conduct on Mortgage Arrears.

I welcome the opportunity to respond to the proposals outlined, and am please to attach Ulster Bank's submission on the issues and draft requirements outlined in the Paper.

Ulster Bank is serious in its endeavours to help customers in financial difficulties or concerned about possible difficulties in meeting their present and future repayments. We believe it is in everyone's best interests for a statutory code to be in place which helps customers and lenders achieve the best solution in times of difficulty. In this regard, we have raised a number of concerns and queries in relation to the draft requirements, and where possible we have provided possible alternative approaches which we believe may meet your regulatory objectives and be more practical from an implementation perspective, or highlighted areas where we feel further discussion or consideration may be required. In areas where we feel further clarity is needed, we believe further limited consultation may be beneficial.

In addition, we ask for consideration in respect of the necessary timescale to implement changes on publication of the final rules. It is to the benefit of all stakeholders for the relevant changes to be implemented in a correct and considered manner, and consequently the compliance timeline for implementation should allow for sufficient discussion between industry and the regulator around interpretation and clarity of the final rules, and thereafter to make the necessary information technology, documentary, policy, and procedural changes, and roll out of training and awareness to ensure proper implementation of the new rules.

I trust that our submission will be useful to you in considering and progressing your review of the Code of Conduct on Mortgage Arrears.

Ulster Bank would be happy to meet with you to discuss any matter raised in our consultation which you have questions about, or in respect of nay matter of the proposals. If you have any further queries, please do not hesitate to contact Barry Rojack, Upstream Risk Manager, Group Regulatory Risk on 01 6084055 or by e-mail at barry.rojack@ulsterbank.com

Yours sincerely

Maureen Stanley

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Head of Regulatory and Operational Risk

Ulster Bank Group response to Consultation Paper 46 (CP46): Review of Code of Conduct on Mortgage Arrears

1. Introduction

Ulster Bank Group

Ulster Bank was founded in 1836 and became a wholly owned subsidiary of NatWest in 1917. Across the Republic of Ireland and Northern Ireland Ulster Bank employs approximately 6000 people who serve approximately 1.9 million personal and business customers through 297 branches and business banking offices. Throughout the changing market conditions of the past year, Ulster Bank has continued to enjoy the strong support of its parent RBS Group itself supported by the UK government. Ulster Bank remains focused on the needs of its customers and will continue to provide both business and personal customers with the highest standards of service.

Review of the Code of Conduct on Mortgage Arrears (CCMA) Consultation Paper (CP) 46

UBG welcomes the opportunity to discuss the proposed changes outlined in CP46.

In all debt management cases at Ulster Bank involving mortgage arrears we advise our customers to get in contact as soon as possible and not to ignore the problem. We are here to help and have many support channels in place to help the customer in periods of difficulty. These include;

- A booklet entitled Money Matters - Managing Debt is available in branch or in PDF format on the Ulster Bank website – www.ulsterbank.ie
- The Ulster Bank website has a dedicated area called 'Managing Debt' that offers advice and practical ways to help, just log onto www.ulsterbank.ie and follow the prompts that guide you to our personal customers' page.
- A dedicated telephone number (1800 435 763) is available for customers seeking advice and/or to discuss their mortgage problems. The opening hours for these lines have now been extended to 6 days a week, 9am - 8pm Mon-Fri and 9am - 5pm on Saturdays.
- There is a field team in place who are available to meet customers in the privacy of their own home.
- Every Ulster Bank branch has a Moneysense advisor available to provide money advice to customers and non customers alike.
- Every branch manager is fully trained and able to assist customers with their financial concerns particularly mortgage problems which are of main concern to many people.
- Ulster Bank has signed up to the new IBF/MABS (Money Advice & Budgeting Service) Operational Protocol which outlines how IBF members and MABS work together to find a mutually acceptable, affordable and sustainable repayment plan for personal customers who find themselves in financial difficulty

Our response to this CP46 is broken down as follows:

1. Introduction
2. General approach to consultation
3. General issues arising in respect of draft revised CCMA
4. Issues arising from specific draft revised requirements in the Appendix to CP46

If you have any further queries regarding this submission, please contact Barry Rojack, Upstream Risk Manager, Ulster Bank Group Centre, George's Quay, Dublin 2. We would be happy to meet in person to go through any aspects of our submission which you seek further clarity on, or wish to discuss further.

2. General approach to consultation

We note from your two latest consultation papers (CP46 and CP45) that a new approach appears to be emerging whereby the first part of the CP provides a brief summary of some of the changes proposed, a second section which calls out specific additional issues of concern to you, and an appendix including an unmarked reissued draft of the full rulebook being consulted on. This approach is problematic in that it is very difficult to call out precisely what the full range of changes being made is.

We would request that, in line with regulatory best practise worldwide, future CPs dealing with changes to existing rules or codes either call out each and every change being made in the first section (rather than just a small selection), or provide marked up versions of the existing rules as changed by the proposed new text (using strikethrough font on text being removed and underlined, bold italicised font on new wording being introduced, or both). This would ensure that all stakeholders can easily identify the changes being proposed and identify the impact and issues raised by the proposed new rules in a timely and considered way. To demonstrate what might be done for this purpose please find attached at Appendix 1 a marked up comparison document showing where the old Code aligns with the new code, and where different sections have been expanded or otherwise changed.

In the absence of this being present for the CP46 proposals, we would respectfully request a re-issuance of the revised text with clear identification of all changes and a short limited further consultation stage for the benefit of any stakeholders who may not have realised the extent and nuances of changes being made.

3. General issues arising in respect of draft revised CCMA

(a) Scope of CCMA – business customers and mortgages

At the time your Code of Conduct for Business Lending to Small and Medium Enterprises was launched, one of the provisions included in was *“Any enforcement of a personal guarantee over a principal private residence must be in accordance with the Code of Conduct on Mortgage Arrears”*. It is not specified in the SME Lending Code whose principal private residence the guarantee relates to – in circumstances such as sole traders or partnerships, it may be that it relates to the principal private residence of that sole trader or one of the partners, and for companies it presumably relates to the principal private residence of directors, however there is no clarity on this. It also could be a guarantee provided by a

third party (such as a family member of the borrower) in respect of that third party's PDH, and it is not clear whether that situation is supposed to be covered by (parts of) the CCMA by virtue of the provision in the Business Lending Code. It is also unclear what the situation is where, for example, the PDH itself is not the subject of the guarantee, but maybe affected by a different charge (such as a scenario where a judgment mortgage is being sought against a business debt, or where a large land tract is what is the subject of the guarantee, but a PDH has been built on a part of the land after the guarantee was given).

The scope of the SME Business Lending Code is defined as *"all business lending by regulated entities, excluding credit unions, to small and medium enterprises (SMEs)"*, and business lending is defined as *"the provision of credit products to small and medium enterprises operating in this State"* and SMEs are defined as *"enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million"*.

The combination of the CCMA provision, and associated definitions, in the SME Lending Code, and the absence of any clear indication in the CCMA itself (the original or the revised draft) of which parts of the CCMA should apply to SME lending supported by a personal guarantee over a principal private residence, means the scope of the CCMA is entirely unclear.

In addition, the CCMA is unclear on the definition of mortgage. In the definitions section of the original CCMA and the revised CCMA, "mortgage" is not defined ("mortgage" is also undefined in the Consumer Protection Code, which is another anomaly which should be similarly addressed as we propose in this document). Our understanding is that the general application of the CCMA should be to housing loans as defined by the Consumer Credit Act 1995, provided the mortgage is over the borrower's (or one of the borrowers' – see section (b) below) principal private residence in the Republic of Ireland.

Insofar as the regulator wishes certain specific aspects of the CCMA (e.g. the section dealing with repossessions) to apply to any other category of lending (e.g. business lending secured by personal guarantee over connected personal private residences), this should not be addressed in the SME Lending Code and should be addressed clearly and completely in the CCMA.

Our preference would be for the definition section to absolutely clarify in what circumstances arrears (and enforcement of arrears) on non-CCA housing loans are to be considered in the context of the requirements of the CCMA, and for a full schedule of provisions applying to such arrears (or enforcement of arrears) to be listed in the CCMA itself.

Areas such as pre-arrears identification, to-the-letter compliance with the MARP process (including, for example, referral to MABS), advice of interest rate changes, restrictions on unsolicited contact about arrears, other communication requirements, and completion of a Standard Financial Statement (SFS) would not be appropriate for business lending in almost all cases, notwithstanding the fact that in the event of arrears on such lending arising, a PDH may potentially be subject to repossession proceedings.

In addition, there may be merit in distinguishing approaches / application of parts of the CCMA between the position where the PDH is that of the borrower (in the case of a sole trader or partnership, or a Director of a borrowing company) and the position where the

PDH is that a third party guarantor such as a family member or acquaintance of the borrower.

The lack of clarity in this area has made it difficult to assess the impact of the revised provisions of the CCMA to business lending secured by way of a personal guarantee over a principal private residence. Consequently, we believe this area should be addressed at the next stage of consultation on the revised Code and re-circulated to the wider public for consideration.

(b) Approach to customers “at risk of going into arrears” or in “pre-arrears” situations

The draft revised CCMA addresses customers at risk of going into arrears or in pre-arrears situations in a number of specific areas (see Appendix 2 for a full list of provisions referencing customers at risk of moving into arrears or in pre-arrears). The terminology and approach is not consistent across all areas (in some cases this may be intentional).

At a high level, we would prefer if the CCMA applied to arrears cases generally, and that separately a full definition of “pre-arrears” / “at risk” would be provided, together with an exact schedule of which provisions of the CCMA should apply to such latter cases.

From a more detailed perspective, we believe further detailed discussion is required around identifying what different types of “at risk” / “pre-arrears” customers there are, and whether any distinction should be drawn between different types of “at risk” / “pre-arrears” customers for different elements of the revised CCMA.

- (i) customers who have not themselves missed payments or approach us to indicate they are in payment difficulties, but fit a profile of type of customers who have recently moved into arrears

From the information banks obtain in respect of arrears cases, certain common characteristics can be identified in respect of customers who have recently moved into arrears. This cannot be logically extrapolated to say all customers who have those characteristics are likely to go into arrears, but there is some level of possibility that a small number of these customers are more likely to go into arrears than others. As an overall category of customers, these would not appear to be sufficiently at risk to justify all relevant requirements outlined in Appendix 2 applying to such persons, however a question remains as to whether anything at all should be done for such customers.

In general, information will be available in the public domain for all customers in respect of dealing with arrears situation, both from banks (in respect of information in branches, websites etc.) and from the regulator and other consumer education / assistance bodies (such as MABS or the NCA).

It may be that this information is sufficient alone to ensure customers have sufficient information to ensure when they believe an arrears scenario is imminent, they know where to go and what to do.

However, we would not fundamentally disagree with a periodic notification to either all customers, or customers who meet a defined set of characteristics, outlining general points of contact in the bank in respect of all aspects of a customer’s

mortgage relationship (i.e. not focussed on arrears or payment difficulties specifically) – this may be by way of statement message or statement insert, perhaps once a year (to tie in with statement frequency for most mortgages). This appears to roughly be the aim behind sections 15 and 16 of the draft revised CCMA (although the wording is inappropriate as there is no way to know if these customers are actually at risk of going into arrears). However, please note the statement insert or statement message solution is only of use where standard, non-customer specific information is being provided, as these are mass produced and not conducive to customer-by-customer bespoke messages.

The cost associated with sending this letter to all mortgages customers would be prohibitive, so if the requirement to provide contact points was more narrow and annually, this could be workable for more than just customers meeting a defined set of criteria, but otherwise it would need to be a very limited exercise, particularly if it were to be required to happen more regularly than annually.

If a targeted communication were required for these customers (along the lines of draft requirements 15 and 16, but revised in light of our comments above), greater clarity would be required around what the relevant characteristics would be. This may be by way of the regulator issuing industry-wide instructions on appropriate characteristics before such a mail-shot needs to be issued.

On a related matter, insofar as there seems to be some suggestion in CP46 that customers availing of State supports may be at risk, as per the characteristics we internally have identified, while it may be true that customers in arrears may often seek State support, we do not believe it is the case that customers availing of State supports would automatically be viewed as “at risk” / “pre-arrears”. We thought it was worth raising in this point in the event that this could otherwise be deemed to be an automatic indicator that a customer is “at risk”.

We believe that unless firms were trusted to use their best endeavours in determining the relevant characteristics, without fear of enforcement if in hindsight it was not speculative enough, that the definition and characteristics of customers at risk who have not missed any payments to date should be set by the Financial Regulator.

- (ii) customers who have not missed payments (in whole or in part), but have directly approached the bank to indicate they are in imminent danger of payment difficulties

This broad category of customers on its face appears to be clearly “at risk” / “pre-arrears”, however we believe it would not be appropriate to apply all the requirements outlined in Appendix 2 to all such customers. We believe that some form of informal / light touch screening process should be built in (perhaps a light touch SFS, if not a full SFS) to separate these types of customers into one of 4 categories:

- (a) customers who are concerned they may be heading towards mortgage payment difficulties, but on review are not (this may include customers who have difficulty understanding how their funds are spent, but when assisted / explained, are satisfied they can meet their bills as they fall due)

- (b) customers who are concerned that certain events outside their control may lead to their mortgage being unaffordable, but the occurrence of events in question (or their extent or the timing of them) are not certain (this may include fears around a significant rise in rates, or fears around losing income stream such as a job, potential change in tax or social welfare payments), but their payments are within their means as things stand and they have sufficient flexibility to respond positively if the events materialise without needing to rearrange their mortgage (including not needing to avail of a moratorium)
- (c) customers who are having difficulty making their payments or who anticipate imminent difficulty as they know their disposal income has reduced or is due to reduce in the short term or their mortgage payments will go up or have gone up (e.g. salary reduction or upward change in rates such as coming off a low fixed long-term rate), but on review can change other expenditure or circumstances to sufficiently negate the risk of going into arrears and any need to rearrange the mortgage or avail of a moratorium
- (d) customers in similar circumstances to those outlined in (b) and (c) above, except their circumstances are such that it appears that mortgage rearrangement and / or provision of a payment moratorium could be necessary

We do not believe that categories (a), (b) or (c) should be subject to all the provisions of Appendix 2. The critical driver for application of the wider variety of CCMA requirements for “at risk” / “pre-arrears” customers should be the need to rearrange the mortgage or allow a mortgage moratorium. In so far as some of those provisions may be appropriate in some limited scenarios (in particular in respect of category (c)), we would seek full clarity in the revised draft as to precisely which requirements apply and in what circumstances.

- (iii) customers who have missed a payment or part of a repayment for very short-term, benign reasons, but regularised their position within a short period (i.e. before the next payment was due)

Strictly speaking this is only a “pre-arrears” / “at risk” scenario where the customer contacts us in advance of the payment being missed, but operationally is the same whether the customer is about to miss the payment (in whole or in part) and contacts us, or actually misses the payment (in whole or in part).

Under the definition of “arrears”, someone who made a partial payment or missed a payment is automatically considered as having moved into arrears, and the full rigour of the CCMA requirements as supposed to apply from that point. In practice, however, there may be benign reasons for the missed payment, and the situation may be completely resolved quite quickly.

For example, a salary payment error, or an unexpected / incorrect direct debit, or other associated payment errors (such a switched current account where problems or delays have arisen with the movement of the old direct debit or standing order to the new account) shortly before, or on the same day, a mortgage repayment is due to be paid, may result in a payment not proceeding in any given month at the correct time, but being fixed within a short period of time thereafter, and in any event before the next repayment is due.

Similarly, someone between jobs or having started a new job may have a different salary cycle meaning there may be insufficient funds at the time the usual monthly mortgage payment was sought, but there would be sufficient funds moving forwards to ensure this payment was repaid before the next repayment is due.

It does not seem appropriate for all parts of the revised CCMA, whether in respect of pre-arrears, or arrears, to apply to such customers. Some provision should be made in the revised CCMA to take account of such situations such that only limited provisions of the CCMA apply to such customers.

We would foresee, for example, the bank needing to discuss options with a customer who contacted us in advance of the payment being missed (e.g. looking to arrange an alternative repayment date as his salary date is moving) or where the bank or customer identifies the problem after the payment has been missed (e.g. where an account switch hasn't worked properly), and both being expected to contact the other where that happens, but in such benign circumstances we would not foresee a need for a full MARP to be discussed and followed, or a full SFS to be completed, or mortgage re-arrangement / moratorium options to be discussed, provided the customer is in a position to pay the missed payment before the next payment is due, and provided there is no reason to expect payment problems to arise for the next and future repayments.

This class of customer in arrears / at risk of arrears should be defined in the code and either exempted in full from the provisions of the code, or subject to a very limited subset of requirements under the code.

(c) Joint borrowers and the CCMA

Neither the existing nor draft revised CCMA specifically address issues arising in respect of joint borrowers. In today's society, the potential for separated joint mortgage holders to go into an arrears situation is much increased.

This can create problems where, for example, neither borrower alone is capable of shouldering the full debt, or where one borrower is capable and the other is not, the person who can afford it in full is uncooperative and / or no longer uses the property as his or her PDH, whereas the other party who either cannot afford it or can only afford it in part continues to use the property as their PDH.

Problems can also arise where both parties are separated and one party is being uncooperative but the other is willing to cooperate to the best of their ability, but both continue to use the property as their PDH,

Similarly problems may arise where one party in a separated joint-borrower situation wishes to voluntarily surrender or sell, but the other wishes to remain in the PDH and rearrange the mortgage if possible.

Legal principles of joint and several liability may potentially require that the CCMA does not apply in some, if not all, of such cases, however the issue is likely to become a growing one and probably merits further consideration and discussion.

(d) Provision of specific warnings or specified information under draft revised CCMA requirements

Across several requirements in the draft revised CCMA, warnings to a specific effect or specified pieces of information are required. In order to commence planning the information technology changes necessary to deliver on the inclusion of such warnings, it would be useful to know as soon as possible, in respect of each such requirement, whether you intend to use formulaic cross-industry wording (such as that outlined in the recent letter to us regarding customers moving off tracker rates), or where a specific template for the provision of information in a particular format will be required, or whether it will be left to each individual institution to create their own wording. If you intend to use cross-industry wording, it would also be useful to have prior sight of such wording before it is finalised to see if it corresponds with the design and make up of our products.

(e) Determination of “non-co-operative” for non-responding customers

While it is clearly the case under the original and revised CCMA that non-co-operating customers are not covered by the protections of the CCMA, it would be helpful if more clarity was given in respect of when a customer can be deemed “non-co-operative”. In particular, it would be useful for there to be some clarification on the minimum time limit applicable from 1st attempt to contact after which a bank can reasonably deem the customer non-co-operative for failure to respond, or after which the customer continues to be uncontactable.

4. Issues arising from specific draft revised requirements in the Appendix to CP46

(a) Maintenance of a dedicated and centralised Arrears Support Unit

In light of our comments regarding business customers, it is not entirely clear to what extent business lending is supposed to be captured by the current or revised CCMA. If the requirements around the assessment stage and review by the ASU are expected to extend in any way to business lending, it may be necessary to allow for multiple ASUs for different types of lending. In reality, the financial solutions for a personal customer will often be very different to those for a business, and it would be inappropriate for any expectation to arise that only one ASU would oversee all solutions. In addition, in more complicated cases where a combination of both business lending and personal lending is being pursued for arrears from the same person, the nature of such cases may be such that consideration of solutions in line with regular consumers would be inappropriate.

We believe flexibility should be provided to allow different approaches to arrears for different customer circumstances where appropriate, and in particular lenders should be in a position to draw a distinction in approach (in terms of arrears discussions and solutionising) between customers with pure personal arrears, and customers who have a combination of personal and business arrears, or between customers who have personal arrears and customers with business arrears where they involve the enforcement of a personal guarantee over a PDH..

(b) Capturing of management information (MI)

Requirement 5 of the draft revised CCMA has a generic requirement around capturing sufficient MI, but the extent and deliverability of this has been impossible to gauge in the absence of clarity on what information needs to be collected.

At a high level, in light of other comments in this paper, we would like to raise issues with capturing MI in the following respects:

- (1) It is not conducive to good data management for multiple definitions to apply to similar circumstances. We would therefore like to raise the risk of having a definition of PDH which is not commensurate with other circumstances in which it needs to be captured for MI / reporting reasons (including, but not limited to, principle private residence for tax relief at source purposes)
- (2) In cases which may be affected in small part by the CCMA, but do not ultimately result in any change to the customer's mortgage or the provision of a moratorium, MI will typically not be captured in respect of this. For example, the situations where a customer is temporarily in short-term arrears for a benign reason, or where a customer is concerned they may be heading towards financial difficulty but change other non-mortgage related financial obligations to regularise their mortgage position, may be straightforward conversations which often would not be practical to capture.

While addressing many of the issues in our submission should result in more reliable and practical MI, from a general standpoint, we believe the focus of MI being captured as a matter of course under the CCMA should be MI in relation to:

- customers who have gone into arrears (other than benign arrears),
- customers who have rearranged their mortgage or availed of a moratorium through the MARP process (whether already in arrears or having contacted the bank in respect of imminent arrears),
- customers who have voluntarily surrendered through the MARP process, or
- customers who are in arrears and are uncooperative leading to repossession action being taken.

(c) Requirement for frontline staff not dealing with arrears or pre-arrears case to be made aware of the lender's policy for dealing with arrears and pre-arrears situations, and the relevant contact persons and process

Requirement 6 of the draft revised CCMA appears to impose an extended competence requirement on staff which may not be necessary or appropriate. The critical outcome should be that whenever a customer talks to someone working on the frontline who is not part of the arrears / pre-arrears process, they are immediately referred to the correct persons to discuss the matter further. Therefore we believe the requirement should be reworded to purely reflect that outcome. Alternatively, the level of knowledge / awareness required of such staff in respect of the policy of the bank and the full processes involved should be set at an explicitly lower standard than as currently drafted.

(d) Processing requests from borrowers for documentation and information in respect of State supports within 10 working days

Draft requirement 7 appears to extend beyond just customers in arrears or pre-arrears and as such it may be inappropriate for specific inclusion in the CCMA (perhaps it could be better addressed as part of the CPC review?).

In any event, it will not always be apparent to the staff member who receives a request for information or documentation what the underlying reason for the request is. Further, from recent experience in many cases customers ask for information and documentation without presenting or submitting relevant associated documentation from the State agency concerned, which can often lead to the same information having to be sourced twice or being sought through the wrong channel.

In order for a bank to be reasonably expected to be able to respond within 10 working days, the customer should follow the bank's procedures for dealing with requests for information or documentation relating to State supports.

Consequently, we would propose that the nature of this requirement be changed to lenders being required to have processes and procedures in place specifically for dealing with requests for information and documentation in respect of State supports, and should publish the manner and contact points by which customers must seek the relevant information and documentation, in order to receive it within 10 working days.

The requirement should also carry a proviso that customers who fail to comply in full with the bank's published method for request thereby waive the requirement to receive the information within 10 working days.

In addition, in exceptional circumstances (particularly where information is very old and is on paper in remote storage), it may be difficult for firms to source the information in full within 10 working days. In these circumstances, exceptional provision should be given to the bank to take longer than 10 working days where there is a reasonable basis for the extension. In such exceptional circumstances, perhaps the bank could be required to say within 10 working days what the maximum time delay will be, with an overarching maximum time limit of 20 working days from date of receipt of the request?

(e) Requirement for communications to be in plain English and avoiding legal jargon

It is our understanding that the requirement for communications to be in plain English is a general requirement for firms to use their best endeavours, rather than a specific requirement to get communications externally certified as being in plain English. We would seek further clarity in the next draft of the requirements that such certification is not necessary, but may be obtained where a lender so chooses.

We also seek inclusion in this requirement of a specific statement to the effect that this requirement does not apply to correspondence regarding cases which have actually moved to legal action, as in such case the use of legal jargon is, by the nature of proceedings, largely unavoidable.

(f) Notifying customers in advance of interest rate changes

It is not clear whether requirement 10 was intended to apply to all borrowers generally (in which case the CCMA would not appear to be an appropriate place for its insertion, instead the CPC may be a better location), or just to customers who are already in an arrears arrangement. If it is a general requirement the CCMA would not appear to be the appropriate code for it to be placed in.

In either scenario, there may be situations like some tracker mortgages where it is not possible to notify the customer in advance of the rate change as the timing of the change is outside of the control of the bank (e.g. where the rate changes in accordance with ECB changes). In such circumstances any notification would need to be as soon as possible after the change takes effect. We do not believe it was your intention to affect the contractual position between the banks and customers for existing mortgages, however if this was your intention then this point merits further discussion.

Notwithstanding this point, in respect of the secondary proposal to advise customer to contact the bank if they anticipate difficulty in making repayments, it is questionable whether advising all customers whose rates are changing to contact the bank would be a productive exercise given the sheer volume of such letters that are issued on the changing of a rate. A specific call to action may result in an unmanageable number of queries within a limited time period, from customers who may have a concern which ultimately is unfounded. From a customer service perspective, encouraging a high volume of calls from unfounded concerns should be avoided where possible.

Consideration should be given as to whether advice to contact the bank is necessary overall, in light of the increased incidences of general notification to customers in other parts of the revised CCMA of where and how to contact the lender in the event of an imminent or realised arrears situation. If such advice is required, it might be helpful if you proposed standard cross-industry wording in this regard.

Please note consideration should also be given, in the event that you decide to pursue the proposal to advise customers, upon increase of rates, to contact the bank if they anticipate repayment difficulties, as to whether the relevant requirement should relate solely to an increase in interest rates, or alternatively an increase in monthly repayments. A customer's rate may remain static in a given month but changes in tax treatment or other non-rate related issues may result in an increased repayment. Similarly, it is possible that a rate increase could coincide with an increased reduction in repayment level for other reasons (such as tax), resulting in a net decrease in monthly repayment, in which case the warning would be in appropriate.

If the overall requirement is to be kept and reconsidered in the context of increased repayments, consideration should be given (including discussions with the Revenue Commissioners and other agencies) as to how customers may be notified by such agencies other than the bank that repayments are increasing, and that if the customer has concerns around the increased level of repayments they should contact their bank.

(g) Provision of points of contact for arrears and pre-arrears in correspondence in relation to an existing mortgage

As with several other requirements in the draft revised CCMA, requirement 11 appears to extend beyond just customers who are in an arrears or pre-arrears situation. It would appear to extend, for example, to all statements issued in relation to a mortgage, all certificates of interest, all communications in respect of rates changes, potentially all correspondence on products associated with the mortgage such as house insurance and life assurance etc.

If this is what was intended, we contend this is more than is necessary and will result in information overload. We request that the necessity of this requirement be reconsidered in light of other requirements that already require notification to all or certain customers of the MARP process and contact points in respect of financial difficulties, and if any further requirement still applies, it should be exceptionally clear precisely which correspondence the information should be attached to.

In addition, it is not clear why there is a specific reference to a contact point in the branch or Head Office. The relevant points of contact may be elsewhere than in a branch or head office, and the important thing is that when communicating a point of contact to a consumer in any scenario, that point of contact is correct wherever it may be located. It might be helpful if you proposed standard cross-industry wording in this regard,

(h) Provision of information to customers in respect of the lender's criteria for assessing requests for alternative payment measures

Requirements 12(a) and 26(a) of the draft revised CCMA require the lender, inter alia, to inform customers of the criteria for assessing alternative payment measures. The extent of what would be required to meet this requirement is unclear. Almost all customers have different circumstances, and it would not be practical or helpful to outline the myriad of complicated ways in which rules or policies are applied initially at system-level, and thereafter by staff in the ASU across different scenarios.

These requirements would be more workable if the requirement was to outline, in a general way, the different alternative repayment measures, and in an explicitly general way, a rough outline of different circumstances in which each of the measures may be appropriate, and if it makes sense, a general outline of why in some circumstances one particular measure may be preferable to the bank or customer or both than one or more of the others potentially available.

If necessary, we would be happy to talk through the way in which our Flex initiative works, and provide further details to you on the different criteria and analysis applied in determining the appropriate solution for any given customer, so that you can satisfy yourself as to what general indicators may be appropriate in the revised rules.

(i) Restriction on initiation of unsolicited communications to a maximum of 3 in any given calendar month

We note with concern the provision of a very small maximum number of unsolicited communications which are to be permitted under the revised Code in requirement 19. In the absence of a definition, we are taking unsolicited to mean a communication by the bank which is not a direct response to a specific request from the customer for information or contact on the issue concerned in the communication.

It is not clear whether “initiated” means “attempted by the bank (whether successful or unsuccessful in achieving dialogue with the borrower” or alternatively “successfully achieved dialogue with the consumer”. At a high level, our initial attempts to contact (i.e. before we have deemed, or can deem, a customer as “uncooperative”) start with a telephone call from our arrears telephony team, are then followed up (if unsuccessful in establishing dialogue) by a telephone call from the branch, or a personal visit with a letter, which again if unsuccessful results in other attempts at contact. Even if contact was then established, further unsolicited correspondence would not be allowed that month even if the customer was co-operative, or if all matters were not closed off during the initial dialogue.

We would seek greater clarity in the revised version of the CCMA as to the definition of unsolicited, and would seek explicit confirmation that should any limit apply, then it only applies to successful attempts at communications which result in dialogue with the customer.

To give an example; a customer may go into arrears, which in turn could trigger a letter being issued by the bank a few days later requesting the customer to contact us as a matter of urgency to discuss this situation. This letter is delivered but which no response is received within a week. This letter is then followed up by a phone call and e-mail, which are successful in contacting the customer, and the customer agrees to come in to meet us at a particular date and time that week. The customer then fails to show for the meeting, which leads to a follow-up call and / or letter from the bank, to which the customer responds and then fulfils the meeting, during which an arrangement is agreed. Later that month, when the first payment is supposed to be made, it does not go through and the bank initiates contact again still within the same calendar month, first by letter, then by follow up telephone call, and possibly also personal by visit.

Looking at this example, which doesn’t include multiple unsuccessful effort to call, a limit of either 3 attempt or 3 successful contacts within a calendar month would clearly be too low.

It is hoped that this example will provided you with a broader understanding of the nature of this correspondence, and the context in which it is issued, so you can re-evaluate the imposition of an arbitrary short-number limit on communications, rather than just maintaining, as per draft requirement 18, a general requirement to ensure contact and communications are not excessive.

In the event that this requirement is retained in some shape or form, we would also ask that all statutory or regulatory communications be deemed outside the scope of this requirement (i.e. not just communications required under the Code).

We also wish to point out that in providing a very limited level of communications under requirement 19 as currently drafted, this would in all likelihood frustrate attempts to fulfil draft requirement 23, which requires that “Where the borrower has not responded to the lender’s correspondence in relation to the arrears, the lender must continue in its endeavours to make contact with the borrower”.

(j) Requirement to provide arrears-related information in all correspondence with borrowers in respect of their mortgage arrears

We note that no limitation is put in draft requirement 21 in respect of the types of correspondence which would need to be accompanied by the table of information required by draft requirement 20 each time such correspondence issued.

This should be reconsidered in that it could easily lead to an overload of information within a limited period of time. For example, any and all correspondence with customers within a given month, such as standard correspondence such as statement or change of rate, would affect the customers arrears situation.

We understand the reasoning behind the requirement is to ensure a customer is familiar with their arrears position as time moves on. As an alternative, we would therefore suggest that, in addition to the initial provision of information required under Requirement 20 when an account initially moves into arrears, a monthly update should be provided to the customer unless and until an alternative approach is agreed or the arrears are repaid (and a “final arrears position” document with this information should be provided at the time such rearrangement or repayment is agreed).

This would appear to achieve the purpose you are aiming for while reducing the potential for unnecessary volumes of information. It also may reduce the possibility of the key message being lost by multiple provision of the same information within a short period.

(k) Appointment of third parties on behalf of the bank to engage with the customer

We note that no distinction is drawn in draft requirement 24 between a situation where a lender outsources certain contact-related activity but in the name of and under the auspices of the lender concerned (this may be intra-Group such as using employees of another company within the same Group as the lender, but all communications would occur under the brand and legal name of the lender), and other situations where external agencies are employed to specifically contact the customer in their name on behalf of the lender.

We believe such a distinction would be appropriate in the context of this draft requirement, and that prior information to the borrower should not be necessary where the third party

concerned is acting under the auspices and name of the lender itself. Further clarity around the definition of “legal advisers” would also be welcome.

It would be helpful if a distinction was explicitly drawn here between co-operating and non-co-operating customers, and further, we believe a distinction should be drawn between cases which have yet to proceed down the legal route and cases where proceedings have issued and repossession is being sought.

(1) Make up and use of a Standard Financial Statement (SFS) and assessment in cases by an Arrears Support Unit (ASU)

We understand your motivation and aims in trying to have a common standard and process for an SFS across the industry, however we believe it is less efficient, and creates more problems, than setting minimum standards of information which at least must be obtained in carrying out an assessment as to what solution may be practical for a customer who cannot or imminently will not be able to make regular mortgage repayments in line with the terms of their original agreement.

For example, requirements 25, 26(b) and 27 all seem to suggest that the SFS must be a written document which is handed to a customer for completion, and requirements 30, 31 and 32 that in all cases the SFS will be reviewed by an employee in the ASU to decide on an appropriate approach. We do not believe this is necessarily the most efficient and helpful way to achieve timely and auditable decision-making in all cases.

From an Ulster Bank perspective, we utilise an interactive process (known as the “Flex process”) whereby customers are asked the question by the relevant bank employee, and this information is inputted into the expert model which will either in some cases produce the alternative repayment method in line with the rules built into the system (such rules having been designed and agreed by the ASU), or in all other cases refer to the ASU for a decision by a member of staff as to the appropriate solution for the bank and customer.

Practically speaking, by discussing the questions with the customer, and inputting into the expert model, there is better opportunity to explore the details behind questions and answers than there would be by issuing a pro-forma questionnaire for a customer to complete. In addition, by inputting the data directly into the expert model, the time taken to submit and re-key the information (and the inherent risk of data entry flaw in so doing) is reduced, allowing for a faster decision to be made.

In anticipation of legitimate disputes arising between the IBF, the Regulator, MABS and other stakeholders in what would need to be in an industry-standard SFS, we would propose that the quickest and safest way to proceed may be for the revised CCMA to include a minimum data-set necessary to be captured as part of a bank and customer drawing up the financial statement, and then discretion is left to the bank to ask further questions where it feels such information is necessary in order to arrive at the correct solution for the customer and the bank.

We would ask that banks be free to implement the taking of information electronically rather than being tied to a written submission in all cases. Naturally, record-keeping requirements would dictate that the answers provided to the questions could be reproduced for the regulator or customer where necessary, preventing any concerns that may otherwise arise in respect of an audit trail.

In addition, we would also request that provision be made, in appropriate circumstances, to allow for fast-track rules-based computer decisions on some solutions, provided that the rules and decision making process has been agreed by the lender's ASU, and the way that it works can be demonstrated to the regulator on request. In any event more complicated cases would be expected to go for review and decision-making by a member of the ASU where the fast-track process would be inappropriate according to the rules.

(m) Assessment carried out as part of the MARP

We agree at a high level with the obligations of the lender to assess the best solution to an arrears scenario on the items outlined in draft requirement 32, but we would request that explicit reference is made to the fact that the assessment is principally carried out on the basis of information provided by the customer, and that the lender is not responsible in making its assessment for inaccurate or incomplete information provided by the borrower.

(n) Explanation of implication of proposed alternative repayment arrangement or voluntary sale / surrender or trading down

We note that under draft requirement 36(a), lenders are required to provide a "clear explanation in writing of ... the implications for the period of the loan and the amount owing". We believe there would be some merit in further clarity being provided in the requirement as to what your expectations are in this regard, and this may be an area which would benefit from a pro-forma template to be provided in all circumstances.

We similarly believe further clarity, and possible use of pro-forma templates, may be appropriate in respect of requirement 39(a) where a lenders is required to make the borrower aware of the implications of voluntary sale, trading down or voluntary surrender.

(o) Regular review of a mortgage arrangement

We agree that the requirement to formally monitor a customer's situation should only apply to those customers who have actually rearranged their mortgage or availed of a moratorium. However, we do not believe a full formal review, including, it would seem, re-completion of a SFS as outlined in draft requirement 37, would always be necessary.

For example, a customer may avail of a 3 month moratorium shortly before or after losing their job, but get a new job within those 3 months which provides sufficient income to fully service the mortgage again. In such circumstances, 6 months after availing of the moratorium and regularising their position, a full formal review of the customer's financial circumstances would appear to be excessive.

We believe therefore that this requirement should allow a basic screening process where customers who have regularised their position within the 6 months can be contacted to

confirm, at a high level, that their financial situation has settled and is not at risk, and in such circumstances a full formal review and re-completion of an SLS would not be necessary.

Similarly, 6 month may be too short a time scale to review the situation if, for example, a longer moratorium had been availed of. For example, a customer may have availed of a 12 month moratorium having lost his or her job, and after 6 months if they remain unemployed and their situation at a high level has not changed, conducting a full financial review could be excessive.

A possible alternative approach to fixed 6 months full reviews in all cases may be to require contact with the customer 6 weeks in advance of whatever the termination date of their moratorium is, and for customers on rearranged mortgages without a moratorium, then a screening call after 6 months to see whether a full review is necessary or not.

(p) Appeals process

The intention behind allowing customers a clear route for appealing a lender's decision around possible solutions to financial difficulties is well understood. However, the provision of a specific appeals process, on top of a complaints route, with a further possible appeal to Financial Services Ombudsman where there are concerns regarding the process followed or fair treatment of customers, potentially applies one too many layers of recourse in an area in which all parties would prefer a speedy definitive outcome.

Consequently, rather than adding an additional appeals process, it may be more appropriate for customers who are unhappy with the decision to utilise the concerns process that lenders use to meet all customer concerns, including the CPC complaints requirements, with a specific proviso that the review is carried out by sufficiently expertise personnel. We note the draft requirement requires "independent review", and are assuming for this purpose a sufficiently competent person or group of persons in the lender, other than the person who made the original decision, would be acceptable, but would prefer if this was explicitly allowed (perhaps by replacing "to independently review" with something along the lines of "for a sufficiently competent person or group of persons (not including any person who approved the original decision) to review").

We note that draft requirement 43 provides a specified length of time (at least 20 working days) for a customer to challenge the decision made. This is a significant length of time and would be expected to result in a further missed repayment in almost all cases without clear resolution of where the case stands. Given that it is in all parties' interests to resolve the situation one way or another as quickly as possible, and without adding additional arrears unnecessarily, we would suggest the time limit for consideration of lodging a concern / complaint in respect of the decision should be set to "by the time the next repayment is due".

We also suggest, in light of the possibility of an increased number of complaints being made to the Ombudsman after the introduction of the new requirement, the Regulator should

engage in discussions with the Financial Ombudsman with a view to getting any FSO complaints “fast tracked” within the Ombudsman to reach a decision as quickly as possible.

We would also add that any complaints to the Ombudsman should be based solely on whether fair procedure was followed and whether the lender concerned had a reasoned decision for adopting the course of action proposed. We do not believe it would be appropriate for the Ombudsman to step into the shoes of a lender from a credit risk perspective in making decisions regarding what financial solution is appropriate for any given customer.

(q) Application of correct 12 month period after which enforcement of legal action or any legal action on repossession can commence

We acknowledged the Expert Working Group’s assertion in its July 2010 interim report¹ that, in respect of the current maximum 12 month moratorium under the CCMA ;

- *“The Group reviewed the possibility of extending this moratorium, and have concluded that there is no real advantage to extending it beyond 12 months and that there are real disadvantages”,*
- *“As lenders are not initiating legal action against borrowers who are facing up to the issue, such an extension would not benefit those who require assistance”,*
- *“An extension may discourage borrowers from addressing their problems promptly which would be counterproductive in terms of the aims of the CCMA”, and*
- *“For some borrowers, the mortgage may prove unsustainable and the sooner the issue is addressed the better”.*

In light of these statements, with which we agree, we would request that draft requirement 46(a)(ii) and (b) be reconsidered, in that they may lead to an extension of the forbearance beyond 12 months after the initial arrears first arose. In particular, in respect of draft requirement 46(a)(ii), if customer in arrears and utilising a moratorium for several months had rearranged their mortgage and resumed to pay for a short period of time, but then fell again into arrears, as this requirement is currently worded this would appear to “restart the clock” – in a worst case scenario this could be open to abuse and moral hazard – for example, a customer might make only 3 repayments over 36 months, agreeing to a rearranged repayment once a year, and making 1 repayment under that arrangement, and would still be entitled to a further 12 months before proceedings could commence.

This would seem to go against logic and the findings of the Expert Group. We would therefore request that the clock is not restarted after a customer has gone into arrears for the first time.

¹ <http://www.finance.gov.ie/documents/publications/reports/2010/mortgagearrearsjul.pdf>

We would point out that other protections for borrowers in the CCMA, and the naturally drawn-out nature of the legal process, should already give sufficient additional opportunity to borrowers to try and regularise their position where all other reasonable attempts have failed.

(r) Contact with customer following disposal of a repossessed property

As currently worded, draft requirement 49 does not allow for a situation where a borrower is uncontactable, or all reasonable attempts at contacting the borrower have failed. A proviso should be added to deal with this contingency.

(s) Recording of communications

We understand the importance of maintaining proper records with customers in arrears or in pre-arrears who need to rearrange their mortgage or avail of temporary forbearance. However, as currently worded, draft requirement 52 appears to creating a universal communication recording requirement across all communications with mortgage customers whether in arrears / pre-arrears or not. This appears to be an error and we would suggest that the wording be changed to reflect a requirement that communications arising in respect of arrears should be adequately recorded.

(t) Length of record keeping

We note that no specific timeline is outlined in respect of draft requirements 51, 52, 53 and 54. It may merit consideration as to whether specific or minimum timelines should be provided in the revised CCMA. In the absence of agreed timelines, depending on circumstances, the relevant timeline may be dictated by the CPC, legal / credit risk, data protection requirements or other considerations.

(u) Contact with third parties acting on behalf of the borrower

We note that the Law Reform Commission's interim report on Personal Debt² in September 2009 highlights in Chapter 3 and Chapter 4 Part D potential concerns around the activities of certain private commercial debt advisors / debt management companies, and the extent to which they should be regulated. The Mortgage Arrears and Personal Debt Group also refer, in their Interim Report in July 2010³, to the concept of customers dealing with "licensed debt management companies", and welcomed "the indication from the Department of Finance that this matter is under examination and that the introduction of any legislative measures

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http://www.lawreform.ie/fileupload/consultation%20papers/Consultation%20Paper%20on%20Personal%20Debt%20Management%20and%20Debt%20Enforcement_FINAL%20DRAFT.pdf

³ <http://www.finance.gov.ie/documents/publications/reports/2010/mortgagearrearsjul.pdf>

will be considered as part of the examination process". Such concerns have also been raised by others in the media, including representatives of the debt management industry themselves.

Before you introduce a statutory requirement requiring all lenders to deal with whomever a customer has given written authority to act on their behalf, we would ask you to reconsider whether it would be desirable, in the short term (at least until further discussion is finalised as to who should require specific statutory authorisation to provide debt advice services and who should be exempt from such authorisation, and the extent to which the provision of such assistance should be regulated), to draft requirement 38 in a narrower way to limit the types of third parties with whom the lender must liaise with., or alternatively remove this requirement and leave it to the discretion of lenders to agree on a case-by-case basis to such requests until a decision on the necessity and extent of regulation of such advisors is complete.

APPENDIX 1

Outline of matched up provisions between the current CCMA and the draft revised CCMA outlining changes

SCOPE AND DEFINITIONS - CHAPTER 1	
INTRODUCTION	
<i>Proposed Code</i>	<i>Existing Code</i>
<p>This Code sets out a framework within which mortgage lenders (referred to in this document as “lenders”) must operate, with due regard to the fact that each lender adopts a different competitive approach to mortgage lending and each case of mortgage arrears is unique and needs to be treated differently.</p>	<p>1. Scope (a)</p> <p>This Code sets out a framework within which mortgage lenders (referred to in this document as “lenders”) must operate, with due regard to the fact that each lender adopts a different competitive approach to mortgage lending and each case of mortgage arrears is unique and needs to be treated differently.</p>
<p>This Code sets out what the lender must do when <u>dealing with borrowers in mortgage arrears or at risk of going into arrears</u>.</p>	<p>1. Scope (b)</p> <p>This Code sets out what the lender must do when managing mortgage arrears cases.</p>
<p>All genuine cases, <u>where the borrower is dealing honestly and fairly with the lender</u>, must be handled sympathetically and positively by the lender, with the objective at all times of assisting the borrower to meet his/her obligations.</p>	<p>5. Addressing a Mortgage Arrears Problem</p> <p>All genuine cases must be handled sympathetically and positively by the lender, with the objective at all times of assisting the borrower to meet his/her obligations.</p>
<p>Any measures should, in so far as it is feasible and appropriate, be aimed at assisting borrowers to meet their mortgage obligations.</p>	<p><i>n/a</i></p>
<p>The lender may enforce the mortgage in circumstances where application of this Code is not appropriate, such as, but not limited to, in the case of fraud or breach of contract other than the existence of arrears.</p>	<p>1. Scope (b)</p> <p>However, the lender may enforce the mortgage in circumstances where application of this Code is not appropriate, such as, but not limited to, in the case of fraud or breach of contract other than the existence of arrears.</p>

This Code does not relieve the borrower of his/her contractual duties <u>to the lender</u> , except where otherwise agreed by the lender.	1. Scope (c) This Code does not relieve the borrower of his/her contractual duties, except where agreed by the lender.
<u>In order to address a mortgage arrears situation it is important that the borrower and the lender act in good faith at all times.</u>	n/a
It is also important that the borrower promptly advise the lender of any problems or potential problems with <u>mortgage repayments</u> .	Preamble To assist with the rectification of a mortgage arrears problem it is important that the borrower promptly advise the lender of any problems with repayments.
This Code recognises that it is in the interests of both the lender and the borrower to address <u>financial difficulties</u> as speedily and as effectively as circumstances allow.	3. Avoiding a Mortgage Arrears Problem b) This Code recognises that it is in the interests of both the lender and the borrower to address a 'missed payment situation' as speedily and as effectively as circumstances allow.
n/a	Failure to do so could give rise to a more serious arrears problem with negative consequences for both parties: for the lender, amongst other things greater difficulty in normalising the repayment situation; for the borrower, accumulating arrears that will affect his/her credit rating and give rise to the risk of losing his/her home.

LEGISLATIVE BASIS	
<i>Proposed Code</i>	<i>Existing Code</i>
This Code is issued under Section 117 of the Central Bank Act 1989.	2. Legal Background This Code is issued under Section 117 of the Central Bank Act 1989.

<p>The Financial Regulator has the power to administer <u>sanctions for a contravention of this Code, under Part IIIC of the Central Bank Act 1942.</u></p>	<p>n/a</p>
<p>Lenders are reminded that they are required to comply with this Code as a matter of law.</p>	<p>Preamble</p> <p>Lenders are reminded that they are required to comply with this Code as a matter of law.</p>
<p>This Code should be read as one with the Financial Regulator’s Consumer Protection Code. All terms appearing in this Code of Conduct shall have the same meaning as in the Consumer Protection Code.</p>	<p>Preamble</p> <p>This Code should be read as one with the Financial Regulator’s Consumer Protection Code. All terms appearing in this Code shall have the same meaning as in the Consumer Protection Code.</p>

TO WHOM THIS CODE APPLIES	
<i>Proposed Code</i>	<i>Existing Code</i>
<p>This Code applies to the mortgage lending activities of all regulated entities, <u>except credit unions</u>, operating in the State, including:</p> <ul style="list-style-type: none"> - <u>a financial services provider authorised, registered or licensed by the Financial Regulator; and</u> - <u>a financial services provider authorised, registered or licensed in another EU or EEA Member State and which has provided or is providing mortgage lending activities in the State.</u> 	<p>Preamble</p> <p>This Code applies to the mortgage lending activities of all regulated entities operating in the State, including:</p> <ul style="list-style-type: none"> * the lending activities of all regulated entities operating in the State for which they require to be authorised by, or registered with, the Financial Regulator; and * the lending activities of persons with an equivalent authorisation or registration in another EU or EEA Member State when providing services in this State on a branch or cross-border basis; and * the lending activities that are subject to the regulation of the Financial Regulator under the Central Bank Act 1997 or the Consumer Credit Act 1995, for which a separate authorisation is not required.
<p>This Code applies to the <u>mortgage loan of a borrower</u></p>	<p>Preamble</p>

<u>which is secured by the residential property which is or will be, occupied by the borrower as his/her primary residence in this State.</u>	This Code applies only to mortgage lending activities to consumers in respect of their principal private residence in this State.
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DEFINITIONS	
<i>Proposed Code</i>	<i>Existing Code</i>
<u>The following are defined for the purposes of this Code:</u>	n/a
<i>Arrears:</i> <u>A mortgage arrears situation arises as soon as the borrower fails to make a full mortgage repayment, or only makes a partial mortgage repayment, by the due date</u>	3. Avoiding a Mortgage Arrears Problem (a) A mortgage arrears problem arises as soon as the borrower fails to make a mortgage repayment by the due date.
<i>Repossession:</i> <u>means any situation where a lender takes possession of a property either by way of voluntary agreement with the borrower, through abandonment of the property by the borrower without notifying the lender, or by Court Order.</u>	6. Resorting to Repossession Proceedings Repossession of a property may come about by voluntary agreement with the lender, through abandonment of the property by the borrower without notifying the lender, or by Court Order.
<i>Borrower:</i> <u>includes all parties named on the mortgage loan account.</u>	n/a
<i>Standard Financial Statement:</i> <u>a standard format agreed by the Financial Regulator, the Irish Banking Federation and the Money Advice and Budgeting Service (MABS) for the purpose of obtaining financial information from borrowers in arrears or at risk of going into arrears.</u>	n/a

PROVISIONS - CHAPTER 2	
GENERAL	
<i>Proposed Code</i>	<i>Existing Code</i>
<u>1. A lender must ensure that it has in place a Mortgage Arrears Resolution Process (MARP) as a framework for handling arrears and pre-arrears cases. The MARP must incorporate the steps set out in this Code, i.e.,</u>	n/a

<p><u>Step 1, Communication with borrowers</u></p> <p><u>Step 2, Financial information</u></p> <p><u>Step 3, Assessment</u></p> <p><u>Step 4, Resolution</u></p> <p><u>Step 5, Appeals.</u></p>	
<p><u>2. A lender must establish a centralised and dedicated Arrears Support Unit (ASU), which must be adequately staffed, to manage arrears and pre-arrears cases under the MARP. Arrears cases and pre-arrears cases may be managed in two separate ASUs.</u></p>	n/a
<p><u>3. Each branch must have at least one person with specific responsibility for dealing with arrears and pre-arrears cases and for liaising with the lender’s ASU in respect of these cases.</u></p>	n/a
<p>4. A lender must draw up and implement procedures for dealing with borrowers in mortgage arrears or at risk of mortgage arrears.</p> <p>Such procedures must:</p> <p>a) allow for a flexible approach in the handling of arrears and pre-arrears cases;</p> <p>b) be aimed at assisting the borrower as far as possible in his/her particular circumstances;</p>	<p>1. Scope</p> <p>Mortgage lenders must adopt flexible procedures for the handling of arrears cases.</p> <p>Such procedures must be aimed at assisting the borrower as far as possible in his/her particular circumstances.</p>
<p>c) set out the how the lender will implement the five steps of the MARP; and</p> <p>d) set out how the ASU will assess cases referred to it, including the types of alternative repayment measures or any other relief method that may be offered to borrowers by the lender.</p>	n/a
<p><u>5. A lender must have in place management information systems to capture information on the handling of mortgage arrears and pre-arrears cases, including any alternative repayment arrangements agreed with borrowers.</u></p>	n/a
<p><u>6. A lender must provide appropriate training for frontline staff dealing with borrowers experiencing, or at risk of, financial difficulties. All other frontline staff must be made aware of the lender’s policy for dealing with arrears and pre-arrears situations and the relevant contact persons and process.</u></p>	n/a
<p><u>7. A lender must assist borrowers by ensuring that all requests from borrowers for documentation and information required for the purposes of applying for State</u></p>	n/a

supports are processed within ten working days of receipt of the request.	
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PROVISION OF INFORMATION	
<i>Proposed Code</i>	<i>Existing Code</i>
<u>8. A lender must ensure that all communications about arrears and pre-arrears and all information relating to a lender's handling of arrears and pre-arrears cases must be presented to the borrower in a clear and consumer friendly manner. The language used in communications must indicate a willingness to work with the borrower to address the situation and must be in plain English so that it is easily understood. Legal jargon must be avoided, where possible.</u>	n/a
<u>9. A lender must ensure that all meetings with borrowers in relation to mortgage arrears or pre-arrears are conducted with utmost privacy.</u>	n/a
<u>10. A lender must notify all affected borrowers in writing in advance of implementing an increase in the interest rate applied to their mortgage loan account, and must advise the borrower to contact the lender if he/she anticipates difficulties meeting the higher repayments.</u>	n/a
<u>11. In all correspondence in relation to an existing mortgage, a lender must make the appropriate point of contact for dealing with arrears and pre-arrears clear to the borrower – whether that is at a branch or Head Office.</u>	n/a
<u>12. A lender must prepare and make available to borrowers an information booklet providing details of its MARP, which must be drafted in accordance with the requirements set out in paragraph 8 and must include:</u> <u>a) an explanation of its MARP, including the alternative repayment measures available to borrowers and the lender's criteria for assessing requests for alternative repayment measures;</u> <u>b) a statement that the borrower will not be required to change from an existing tracker mortgage to another mortgage type;</u> <u>c) information about the potential availability of State supports such as mortgage interest relief or mortgage interest supplement;</u> <u>d) relevant contact points (i.e., the dedicated arrears contact points not the general customer service contact points); and</u> <u>e) reference to the Citizens Information Board (CIB)/Money Advice and Budgeting Services (MABS) web-site, www.keepingyourhome.ie.</u>	n/a

<p>13. A lender must have a dedicated section on its website for <i>borrowers</i> in or concerned about financial difficulties which must include:</p> <p>a) the information booklet required under provision 12;</p> <p>b) information on the level of charges to be imposed on <i>borrowers</i> that do not co-operate reasonably and honestly with the lender; and</p> <p>c) a link to the CIB/MABS web-site, www.keepingyourhome.ie.</p> <p>The information on the web-site must be easily accessible from a prominent link on the home page.</p>	n/a
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PRE-ARREARS SITUATIONS	
<i>Proposed Code</i>	<i>Existing Code</i>
<p>14. Where a lender is contacted by a <i>borrower</i> who anticipates falling into <i>arrears</i> on his/her mortgage, the lender must discuss its MARP with the <i>borrower</i>, including the alternative repayment measures available, to assist him/her to avoid an <i>arrears</i> situation.</p>	n/a
<p>15. A lender must pro-actively carry out regular assessments of existing mortgage customers, at least every six months, with a view to identifying those suffering or anticipated to suffer financial stress.</p>	n/a
<p>16. A lender must attempt to engage with <i>borrowers</i> whom it considers to be at risk of going into <i>arrears</i>. At a minimum, a lender must ensure that it sends a periodic mailing, at least every six months, to all mortgage holders it believes to be at risk of going into <i>arrears</i>, setting out options for dealing with financial distress and encouraging early action by the <i>borrower(s)</i>.</p>	n/a

MORTGAGE ARREARS RESOLUTION PROCESS	
<i>Proposed Code</i>	<i>Existing Code</i>
Step 1 – Communication with Borrowers	n/a
<p>17. A lender must pro-actively encourage <i>borrowers</i> to engage with their lender about an <i>arrears</i> situation.</p>	n/a
<p>18. A lender must ensure that the level of contact and communications from the lender, or any third party</p>	n/a

<p><u>acting on its behalf, is proportionate and not excessive.</u></p>	
<p><u>19. Each calendar month, a lender, and/or any third party acting on its behalf, may not initiate more than three unsolicited communications, by whatever means, to a borrower in respect of his/her mortgage arrears situation. The three unsolicited communications do not include any communications to the borrower which are required by this Code.</u></p>	<p>n/a</p>
<p>20. When a mortgage account goes into arrears, the lender must:</p> <p>a) inform each borrower in writing of the status of the account as soon as possible, and provide the following information:</p> <p>i) the date the mortgage fell into arrears;</p> <p>ii) the number and total amount of payments (including partial payments) missed;</p> <p>iii) the amount of the arrears to date;</p> <p>iv) details of any fees and charges in relation to the arrears that may be applied if the borrower does not cooperate reasonably and honestly with the lender;</p> <p>v) the importance of the borrower engaging with the lender in order to address the situation and informing the lender of the reason(s) the repayment schedule has not been adhered to;</p> <p>vi) a statement that fees and charges in relation to the arrears will not apply as long as the borrower cooperates reasonably and honestly with the lender; and</p> <p>vii) a general statement about the impact of missed mortgage repayments and repossession on the borrower's credit rating.</p> <p>b) provide the information booklet required under provision 12.</p>	<p>3. Avoiding a Mortgage Arrears Problem</p> <p>As soon as an arrears situation develops, the lender must communicate promptly and clearly with the borrower to establish in the first instance why the repayment schedule has not been adhered to and, secondly, how the situation may be rectified.</p>
<p><u>21. An updated version of the information specified in provision 20(a) must be provided to borrowers in all subsequent correspondence issued in relation to their mortgage arrears.</u></p>	<p>n/a</p>

<p>22. When a third <u>full or partial</u> payment is missed <u>and remains outstanding</u>, the lender must advise the borrower, in writing, of the following:</p> <p>a) the potential for legal proceedings and loss of his/her property, together with an estimate of the costs to the borrower of such proceedings;</p>	<p>4. Handling a Mortgage Arrears Problem</p> <p>c) If a third repayment is missed, the lender may issue a formal demand. With the issue of a formal demand for either the full amount due on foot of the mortgage or for possession of the property, the borrower must have been advised in writing of the following:</p> <p>i. the total amount of arrears;</p> <p>ii. where applicable, any excess interest (expressed as a rate or an amount) that may continue to be charged and the basis on which this will be charged; and/ or any charges that may be payable (the basis for which will have been detailed in the original contract documentation);</p> <p>iii. advice regarding the consequences of failing to respond - namely, the potential for legal proceedings and loss of his/her property - together with an estimate of the costs to the borrower of such proceedings.</p>
<p>b) the importance of taking independent advice from his/her local Money Advice and Budgeting Service (MABS) or an appropriate alternative;</p>	<p>5. Addressing a Mortgage Arrears Problem</p> <p>f) Where circumstances warrant it, the lender must refer the borrower for guidance to his/her local Money Advice and Budgeting Service (MABS) or appropriate alternative.</p>
<p>c) that irrespective of how the property is repossessed and disposed of, the borrower will remain liable for the outstanding debt, including any accrued interest, charges, legal, selling and other related costs, if this is the case.</p>	<p>6. Resorting to Repossession Proceedings</p> <p>d) The lender must inform the borrower that irrespective of how the property is repossessed and disposed of, the borrower will remain liable for the outstanding debt, including any accrued interest, charges, legal, selling and other related costs, if this is the case.</p>
<p>23. Where the borrower has not responded to the <u>lender's correspondence in relation to the arrears</u>, the <u>lender must continue in its endeavours to make contact with the borrower.</u></p>	<p>4. Handling a Mortgage Arrears Problem</p> <p>a) Where action taken under section 3 above is unsuccessful – for whatever reason – and the arrears situation continues, the lender must continue in its endeavours to make contact with the borrower. This can be by way of further correspondence, telephone contact</p>

	or a meeting with the borrower.
<u>24. A lender must inform the borrower, in writing, when it intends to appoint a third party, other than its legal advisers, to engage with the borrower in relation to arrears and must explain the role of the third party.</u>	
Step 2, Financial Information	n/a
<u>25. A lender must use the Standard Financial Statement (SFS) to obtain financial information from a borrower in arrears or at risk of going into arrears.</u>	n/a
<u>26. When a lender is first contacted by a borrower in arrears or at risk of going into arrears, the lender must:</u> a) <u>explain the MARP process to the borrower, including the alternative repayment measures available to borrowers and the lender’s criteria for assessing requests for alternative repayment measures;</u> b) <u>provide the borrower with an SFS to complete;</u> c) <u>provide the borrower with a copy of the MARP information booklet; and</u>	n/a
d) <u>advise the borrower that he/she may wish to seek independent advice to assist with completing the SFS, e.g., from MABS or an appropriate alternative.</u>	n/a
<u>27. The lender must pass the completed SFS to its ASU.</u>	n/a
<u>28. The lender may require the borrower to provide supporting documentation to corroborate the information provided in the SFS.</u>	n/a

Step 3, Assessment	n/a
29. A lender may distinguish between borrowers who are genuinely unable to pay and those who could pay some/all of the arrears but will not.	<p>5. Addressing a Mortgage Arrears Problem</p> <p>Lenders may distinguish between borrowers who are genuinely unable to pay – because of changed circumstances - and those who could pay some/all of the arrears but will not.</p>
30. <u>The SFS must be assessed by the lender’s ASU.</u>	n/a
31. <u>A lender’s ASU</u> must examine each case on its individual merits.	<p>5. Addressing a Mortgage Arrears Problem</p> <p>In addressing a mortgage arrears problem, the following considerations apply:</p> <p>a) As each situation is different, the lender must examine each on its individual merits and the outcome is likely to differ as a result.</p>
<p>32. A lender’s ASU must base its assessment of the borrower’s case on the full circumstances of the borrower including:</p> <p>a) the personal circumstances of the borrower;</p> <p>b) <u>the overall indebtedness of the borrower</u>;</p> <p>c) <u>the information provided in the SFS</u>;</p> <p>d) the borrower’s current repayment capacity; and</p> <p>e) the borrower’s previous payment history.</p>	<p>4. Handling a Mortgage Arrears Problem</p> <p>b) In this regard, all viable options open to the borrower must be examined during which consideration must be given to his/her repayment capacity, previous payment history and any equity remaining in the property.</p> <p>5. Addressing a Mortgage Arrears Problem</p> <p>In addressing a mortgage arrears problem, the following considerations apply:</p> <p>b) The lender must take into consideration the borrower’s overall indebtedness in establishing his/her ability to repay. This should include full details of household income and expenditure, as advised by the borrower.</p>
Step 4, Resolution	n/a
3. The lender must explore all viable options with the borrower .	<p>4. Handling a Mortgage Arrears Problem</p> <p>(b) Once contact has been established, and assuming co-operation from the borrower, a plan for clearing the mortgage arrears can be developed that is consistent with the interests of both the lender and the borrower.</p>

<p><u>At a minimum</u>, one or more of the following alternative repayment measures must be examined:</p>	<p>5. Addressing a Mortgage Arrears Problem (c)</p> <p>The lender must explore with the borrower one or more of the following alternative repayment measures:</p>
<p>a) <u>An interest-only arrangement for a specified period.</u></p>	<p>n/a</p>
<p>33. (b) An arrangement to pay interest and part of the normal capital element for a specified period.</p>	<p>5. Addressing a Mortgage Arrears Problem (c)</p> <ul style="list-style-type: none"> • An arrangement on arrears could be entered into whereby the amount of monthly repayment may be changed, as appropriate, to help address the arrears situation.
<p>33. (c) Deferring payment of all or part of the instalment repayment for a period where, for example, there is a temporary shortfall of income.</p>	<p>5. Addressing a Mortgage Arrears Problem (c)</p> <ul style="list-style-type: none"> • Deferring payment of all or part of the instalment repayment for a period might be appropriate where, for example, there is a temporary shortfall of income.
<p>33. (d) Extending the term of the mortgage, where this could make a significant difference to the monthly repayments.</p>	<p>5. Addressing a Mortgage Arrears Problem (c)</p> <ul style="list-style-type: none"> • Extending the term of the mortgage could be considered in the case of a repayment loan - although this may not make a significant difference to the monthly repayments.
<p>33. (e) Changing the type of the mortgage if this could give rise to a reduction in the level of monthly mortgage outgoings (i.e., mortgage and related assurance payments).</p>	<p>5. Addressing a Mortgage Arrears Problem (c)</p> <ul style="list-style-type: none"> • Changing the type of the mortgage might be appropriate if this could give rise to a reduction in the level of monthly mortgage outgoings (i.e., mortgage and related assurance payments).
<p>33. (f) Capitalising the <i>arrears</i> and interest where there is insufficient capacity over the short term to clear the <i>arrears</i> but where repayment capacity exists to repay the capitalised balance over the remaining term of the mortgage.</p>	<p>5. Addressing a Mortgage Arrears Problem (c)</p> <ul style="list-style-type: none"> • Capitalising the arrears and interest could arise where there is insufficient capacity over the short term to clear the arrears but where repayment capacity exists to repay the capitalised balance over the remaining term of the mortgage. This measure may be considered where a pattern of repayment has been established and where

	sufficient equity exists.
33. The appropriateness of these measures must be determined by the factors of each individual case. The borrower must be advised to take appropriate independent legal <u>and/or financial advice.</u>	5. Addressing a Mortgage Arrears Problem (c) The appropriateness of these measures must be determined by the factors of each individual arrears case. The borrower must be advised to take appropriate independent advice.
34. <u>The lender must not require the borrower to change from an existing tracker mortgage to another mortgage type.</u>	n/a
35. <u>In the case of arrears on a tracker mortgage, where an alternative repayment arrangement includes a fixed interest period, the borrower must be permitted to revert to the original tracker rate at the end of the fixed interest period.</u>	n/a
36. Where an alternative repayment arrangement is proposed, the lender must provide the borrower with a clear explanation, in writing, of the alternative repayment arrangement, including: a) <u>the implications for the period of the loan and the amount owing;</u> b) details of any additional interest or charges that may arise; c) the implications of the alternative repayment arrangement for the borrower's credit record; and d) <u>information regarding the borrower's right to appeal the lender's decision and the procedure for submitting an appeal.</u>	5. Addressing a Mortgage Arrears Problem (d) d) Whichever of the options outlined in 5(c) might be pursued, the lender must provide the borrower with a clear explanation, in writing, of the alternative repayment arrangement that is being agreed, together with details of any additional interest or administration charges that may arise.
37. The lender must monitor the arrangement on an ongoing basis <u>and formally review the borrower's case, including the SFS, at least every six months.</u>	5. Addressing a Mortgage Arrears Problem (e) The lender must continue to monitor the repayment arrangement. To this end, the borrower must be advised of a relevant contact point.

<p>38. At the borrower's request and with the borrower's written consent, the lender <u>must</u> liaise with a third party nominated by the borrower to act on his/her behalf. <u>This does not prevent the lender from contacting the borrower directly to discuss arrears.</u></p>	<p>5. Addressing a Mortgage Arrears Problem (g)</p> <p>At the borrower's request and with the borrower's written consent, the lender will liaise with a third party nominated by the borrower.</p>
<p>39. If a lender is not willing to enter into an alternative repayment arrangement, for example, where it is concluded that the mortgage is unsustainable and an alternative repayment arrangement is unlikely to be appropriate, the reasons must be given in writing to the borrower. In these circumstances, the lender must make the borrower aware of:</p> <p>a) other possible options (such as voluntary surrender, trading down or voluntary sale) and the implications of these for the borrower; and</p> <p>b) the right to appeal the lender's decision and the procedure for submitting an appeal.</p>	<p>5. Addressing a Mortgage Arrears Problem (h)</p> <p>Where appropriate, the borrower must be made aware of other options such as trading down, voluntary sale or alternative refinancing through another lender.</p>
<p>40. If a borrower is not willing to enter into an alternative repayment arrangement, the lender must <u>make the borrower aware</u> of other possible options (such as voluntary surrender, trading down or voluntary sale) and the implications of these for the borrower.</p>	<p>5. Addressing a Mortgage Arrears Problem (h)</p> <p>Where appropriate, the borrower must be made aware of other options such as trading down, voluntary sale or alternative refinancing through another lender.</p>
<p>41. <u>Where a borrower ceases to adhere to the terms of an alternative repayment arrangement, the lender must contact the borrower to ascertain why the payment has been missed. If the borrower's circumstances have changed and it is unlikely that he/she will be able to adhere to the terms of the alternative repayment arrangement on an ongoing basis, the lender's ASU must formally review the borrower's case immediately.</u></p>	<p>n/a</p>
<p>Step 5, Appeals</p>	<p>n/a</p>
<p>42. The lender must establish an appeals process to <u>consider any appeals submitted by borrowers and to independently review the decision of the lender's ASU. The appeal must be considered by one or more senior personnel who have not been involved in the borrower's case previously.</u></p>	<p>n/a</p>
<p>43. The borrower must be allowed a reasonable amount of time to consider submitting an appeal, which must be at least 20 working days from the date he/she was</p>	<p>n/a</p>

informed of the decision of the lender's ASU.	
44. Where a borrower makes a complaint in relation to the MARP process or any of the requirements of this Code, the complaint must be handled by the lender in accordance with the Complaints Handling provisions of the Consumer Protection Code, including informing the borrower of the right to refer the matter to the Financial Services Ombudsman.	n/a

REPOSSESSIONS	
<i>Proposed Code</i>	<i>Existing Code</i>
<p>45. The lender must not <u>apply to the courts to commence enforcement of any legal action on repossession</u> of the property <u>secured by the mortgage</u>:</p> <p>a) until every reasonable effort has been made to agree an alternative arrangement with the borrower or his/her nominated representative, or</p> <p>b) where the terms of an agreed alternative repayment arrangement are being adhered to; or</p> <p>c) where an appeal and/or complaint, including a complaint referred to the Financial Services Ombudsman, is ongoing.</p>	<p>6. Resorting to Repossession Proceedings</p> <p>a) The lender must not seek repossession of the property until every reasonable effort has been made to agree an alternative repayment schedule with the borrower or his/her nominated representative.</p>
<p>46. Where the <u>mortgage arrears</u> situation persists, the lender may reserve the right to enforce the mortgage agreement, <u>subject to the following</u>:</p>	<p>4. Handling a Mortgage Arrears Problem (d)</p> <p>Where the arrears situation persists, the lender may reserve the right to enforce the mortgage agreement.</p>
<p>46 (a) <u>Where the borrower continues to co-operate reasonably and honestly with the lender</u>, the lender must wait at least twelve months before applying to the courts to commence enforcement of any legal action on repossession of a borrower's primary residence. <u>The twelve-month period commences</u>:</p> <p>i) <u>when the arrears first arose, if a revised repayment arrangement has not been agreed, or</u></p> <p>ii) <u>when the borrower ceases to adhere to the terms of a revised repayment arrangement and no further</u></p>	<p>4. Handling a Mortgage Arrears Problem (d)</p> <p>...however, it (the lender) must wait at least six (12) months from the time arrears first arise before applying to the courts to commence enforcement of any legal action on repossession of a borrower's primary residence</p>

<p><u>arrangements are being entered into.</u></p>	
<p>46 (b) Where the borrower is appealing the lender’s <u>decision regarding a revised repayment arrangement or is making a complaint about the process to the lender or the Financial Services Ombudsman, the lender must wait until the appeals and/or complaints process has been exhausted before applying to the courts to commence enforcement of any legal action on repossession of a borrower’s primary residence, even if it takes longer than twelve months from the time the arrears first arose to complete the appeals/complaints process.</u></p>	n/a
<p>46 (c) Where the borrower fails to make a full and honest disclosure of information in the SFS, the lender <u>may seek repossession and is not required to wait twelve months from the time arrears first arise or from the time a revised repayment arrangement breaks down.</u></p>	n/a
<p>46 (d) Where it is clear that the borrower is deliberately not engaging with the lender, or where other circumstances reasonably justify, the lender may seek repossession in the absence of any engagement with the borrower.</p>	<p>6. Resorting to Repossession Proceedings (a)</p> <p>.....where it is clear that the borrower is deliberately not engaging with the lender, or where other circumstances reasonably justify, the lender may seek repossession in the absence of any engagement with the borrower.</p>
<p>47. The lender must notify the borrower <u>in writing immediately before it applies to the courts to commence the enforcement of any legal action on repossession. This notification may be issued by the lender’s legal advisers.</u></p>	<p>4. Handling a Mortgage Arrears Problem</p> <p>e) The lender must notify the borrower when it commences the enforcement of any legal action on repossession.</p>
<p>48. Even where legal action is being taken to obtain an Order for Possession, the lender must endeavour to maintain contact with the borrower or his/her nominated representative. If agreement can be reached, the lender must enter into repayment arrangements and put a hold on proceedings in the event of agreed regular repayments being maintained.</p>	<p>6. Resorting to Repossession Proceedings</p> <p>c) Even where legal action is being taken to obtain an Order for Repossession, the lender must endeavour to maintain contact with the borrower or his/her nominated representative. If agreement can be reached, the lender must enter into repayment arrangements and put a hold on proceedings in the event of agreed regular repayments being maintained.</p>

<p>49. Following the disposal of the property, the lender must notify the <i>borrower</i> in writing (where applicable) of:</p> <p>a) the amount of outstanding debt,</p> <p>b) any costs accruing, and</p> <p>c) the interest rate to be charged on the remaining balance</p>	n/a
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DEMONSTRATING COMPLIANCE	
<p>50. A lender must be able to demonstrate <u>that it is</u> in compliance with this Code.</p>	<p>Preamble</p> <p>Lenders must be able to demonstrate that they are in compliance with this Code.</p>
<p>51. A lender must maintain adequate records of all the steps taken, and all of the considerations and assessments required by this Code, and must produce all such records to the Financial Regulator upon request.</p>	<p>7. Retention and Production of Documents</p> <p>A lender must keep and maintain adequate records of all the steps taken, and all of the considerations and assessments required by this Code, and must produce all such records to the Financial Regulator upon request.</p>
<p><u>52. A lender must maintain records of all communications with <i>borrowers</i>. Such records must be readily accessible and capable of being reproduced in legible form. Contemporaneous notes of meetings and telephone calls will be considered sufficient.</u></p>	n/a
<p><u>53. A lender must maintain records of all appeals.</u></p>	n/a
<p><u>54. A lender must maintain records of all <i>reposessions</i>.</u></p>	n/a

APPENDIX 2

List of provisions specifically referencing customers at risk of moving into arrears / in pre-arrears

- (1) A lender must ensure that it has in place a Mortgage Arrears Resolution Process (MARP) as a framework for handling arrears and pre-arrears cases.
- (2) A lender must establish a centralised and dedicated Arrears Support Unit (ASU), which must be adequately staffed, to manage arrears and pre-arrears cases under the MARP. Arrears cases and pre-arrears cases may be managed in two separate ASUs.
- (3) Each branch must have at least one person with specific responsibility for dealing with arrears and pre-arrears cases and for liaising with the lender's ASU in respect of these cases.
- (4) A lender must draw up and implement procedures for dealing with **borrowers** in mortgage **arrears** or at risk of mortgage **arrears**. Such procedures must:
 - (a) allow for a flexible approach in the handling of **arrears** and pre-arrears cases;
 - (b) be aimed at assisting the **borrower** as far as possible in his/her particular circumstances;
 - (c) set out how the lender will implement the five steps of the MARP; and
 - (d) set out how the ASU will assess cases referred to it, including the types of alternative repayment measures or any other relief method that may be offered to borrowers by the lender.
- (5) A lender must have in place management information systems to capture information on the handling of mortgage arrears and pre-arrears cases, including any alternative repayment arrangements agreed with borrowers.
- (6) A lender must provide appropriate training for frontline staff dealing with borrowers experiencing, or at risk of, financial difficulties. All other frontline staff must be made aware of the lender's policy for dealing with arrears and pre-arrears situations and the relevant contact persons and process.
- (8) A lender must ensure that all communications about arrears and pre-arrears and all information relating to a lender's handling of arrears and pre-arrears cases must be presented to the borrower in a clear and consumer friendly manner.
- (9) A lender must ensure that all meetings with borrowers in relation to mortgage arrears or pre-arrears are conducted with utmost privacy.
- (14) Where a lender is contacted by a borrower who anticipates falling into arrears on his/her mortgage, the lender must discuss its MARP with the borrower, including the alternative repayment measures available, to assist him/her to avoid an arrears situation.
- (15) A lender must pro-actively carry out regular assessments of existing mortgage customers, at least every six months, with a view to identifying those suffering or anticipated to suffer financial stress.
- (16) A lender must attempt to engage with borrowers whom it considers to be at risk of going into arrears. At a minimum, a lender must ensure that it sends a periodic mailing, at least every six months, to all mortgage holders it believes to be at risk of going into arrears,

setting out options for dealing with financial distress and encouraging early action by the borrower(s).

(25) A lender must use the Standard Financial Statement (SFS) to obtain financial information from a borrower in arrears or at risk of going into arrears.

(26) When a lender is first contacted by a borrower in arrears or at risk of going into arrears, the lender must:

- (a) explain the MARP process to the borrower, including the alternative repayment measures available to borrowers and the lender's criteria for assessing requests for alternative repayment measures;
- (b) provide the borrower with an SFS to complete;
- (c) provide the borrower with a copy of the MARP information booklet; and
- (d) advise the borrower that he/she may wish to seek independent advice to assist with completing the SFS, e.g., from MABS or an appropriate alternative.