Review of the Standard Financial Statement & Code of Conduct on Mortgage Arrears

Submission to the Central Bank of Ireland

Social Justice Ireland, April 2020

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Introduction

Social Justice Ireland is an independent think tank and justice advocacy organisation that advances the lives of people and communities through providing independent social analysis and effective policy development to create a sustainable future for every member of society and for societies as a whole. We welcome the opportunity to respond to the Central Bank of Ireland Consultation Paper 139 on the Review of the Standard Financial Statement.

Social Justice Ireland is available to expand or elaborate on any area within this submission.

Submission

Protection of Borrowers

The first Code of Conduct on Mortgage Arrears (CCMA) was introduced in February 2009 in respect of consumers with a principal private residence in the State. The CCMA aimed to provide lenders with a framework with which to address mortgage debt difficulties. The framework provided was relatively light in detail and commenced from the date the arrears were first incurred. In February 2010 an amendment was introduced which imposed on lenders a moratorium on legal action for 12 months from the date the arrears were first incurred.

Following the recommendations of the Cooney Group, a further CCMA was issued in December 2010, which took effect from 01 January 2011. This CCMA was far more prescriptive in its approach to lenders' treatment of a borrower's case, as it implemented the Cooney recommendations almost in entirely. The protection afforded by the new CCMA meant that borrowers and their agents had a clear process for dealing with mortgage arrears, including pre-arrears cases (i.e. where the borrower was not yet in arrears but had experienced a change in circumstances that would result in an arrears situation arising imminently), with an internal appeals mechanism to the lender's Appeals Board and externally to the Financial Services Ombudsman (FSO).

The most recent CCMA was introduced in 2013, not in response to the needs of borrowers, but in response to Troika recommendations following the Ninth Review which saw an increase in the communications provisions for lenders, a reduction in the protection of tracker mortgages, a narrowing of the definition of "not co-operating" and a reduction in the moratorium on legal action to 8 months from the date the arrears first arose or 2 months from the date the borrower was deemed by the lender to be "not co-operating".

The mortgage arrears landscape has changed since 2013 with the entry of other regulated entities into the market, the implementation of the Personal Insolvency Act 2012 (as amended), the introduction of the Abhaile Scheme and other factors. It is beyond time that the CCMA was reviewed and amended, making it fit for purpose in the current landscape.

The Standard Financial Statement

As each mortgage in arrears is recognised as being unique with consideration given to individual factors, the Standard Financial Statement (SFS) is a vital tool, allowing for data capture and assessment. It is only with <u>accurate</u> data capture that realistic, sustainable alternative repayment arrangements can be decided and agreed upon.

Addressing the overview of the proposed enhancements to the SFS as set out in the consultation paper, *Social Justice Ireland* makes the following observations.

Important information for completing your SFS.

Moving this section from the back to the front of the SFS is a positive one and will assist borrowers in understanding the importance of the document and the various supports available. The amended flow also is more coherent. It would be of further benefit if the Consumer Guide to Completing a Standard Financial Statement[1], developed by MABS for the Central Bank in 2011, was incorporated into the guidance to provide a step by step, Plain English, guide to what a borrower needs to do.

My details.

Removing questions relating to the mortgage account and focusing on the borrowers' details is a positive change. Proposed amendments to include the capture of all dependants of the borrower, broader than children, with the addition of specific questions relating to third level education, financial contribution, and medical or care needs is also positive, however the treatment of these categories by lenders should be aligned to the insolvency processes where these payments are seen as "special circumstances" to ensure equality of treatment across debt support functions.

My Mortgage

Consolidating all the information relating to the mortgage in one section is a positive step and will support the borrower to provide a more accurate picture. We would, however, have some concerns that should a borrower not be aware of their interest rate (particularly where this is variable), that this would not be used by lenders to delay processing their assessment of the SFS and provide supports to the borrower.

My Monthly Expenditure

This section of the SFS is vitally important and will be difficult to complete due to the volume and complexity of the information required. The reduction in the number of fields from 37 to 15 is to be welcomed with the caveat that the more granular aspects of this exercise will still need to be completed as part of a budgeting and money management education exercise by the borrower (with the support of a third party agency, if required). We further welcome the retention of 'Savings' within this section.

We welcome the approach of the Central Bank in refusing to co-opt the Reasonable Living Expenses (RLEs) in their entirety, as many low income borrowers would have incomes far below the recommended RLE for their household, however aligning the categories with those in use by the Insolvency Service of Ireland is to be welcomed in respect of borrowers who may require debt management and insolvency supports.

My Monthly Debt Repayments

While moves to simplify this section are welcome, debts such as catalogue debts are still part of the Irish personal debt landscape. Catalogue debts, in particular, can be a form of intergenerational lending for some low income households and should continue to be captured.

Other Amendments

We welcome many of the proposed amendments across the SFS, however we are concerned that the merging of vehicles with "other assets" may have the opposite effect to that which is intended, that it gives the impression that the borrower has other assets that may be disposed of when, in reality, they have a car that is necessary for them to work and so on. This section could be better aligned with

[1] Guide to Completing a Standard Financial Statement (centralbank.ie)

the PFS for insolvency cases, where the vehicle is separated out in acknowledgement that it may be a necessary “asset”.

Further comments on the SFS

In order for the SFS to be universally used by all borrowers, it must be developed in simple language and reflective of their position. Acknowledging that a majority of mortgage borrowers will have multiple Central Bank regulated debts, there will also be a cohort who will have utility bills, catalogue debts and debts with local providers who must have space to set out their financial position as clearly as possible.

Supports for borrowers in completing the SFS

It is very important that the statutory obligation currently in place is highlighted to borrowers and that the mortgage providers ensure that the borrower is provided with compassionate, coherent, understandable advice from mortgage provider staff.

The success of any revision to the SFS or the Code of Conduct on Mortgage Arrears will depend on its interpretation and implementation by regulated entities. In 2013, MABS National Development Limited published research on the experience of almost 6,000 of its clients in engaging with the Code of Conduct on Mortgage Arrears[2]. At that time, of those who reported problems engaging with their lender, delays in processing documentation, multiple requests for documentation and the imposition of pre-conditions, were the main causes reported by money advice staff.

In respect of the SFS particularly, the following section is of note:

> Where a client lacks the necessary information and requires additional support from MABS to obtain it, the MABS adviser will write to the client’s creditors to request details of the client’s debts, which can substantially add to the length of the process. MABS supported 39% (n=2,210) of the clients represented in the Mortgage Survey to complete the MARP SFS, with 43% taking 1 to 2 hours, and a further 36% taking between 30 minutes and 1 hour. The length of time taken by skilled Money Advisers, experienced in analysing and completing budgets and financial statements on behalf of clients, in completing the MARP SFS demonstrates the complexity of the process involved. Lenders must fully engage with their customers to ensure that the document is completed accurately before they can make any decisions in respect of the most appropriate forbearance proposal.
>
> As there is no timeframe specified in the Code for the completion of the Assessment stage, timelines may vary from case to case and lender to lender, however the 12 month moratorium on legal action for possession contained in the Code continues to run during this time. In this context it is worth noting that almost 50% (n=448) of the respondents to this question were waiting in excess of two months for their case to be assessed (Fig.4.5). Of those waiting in excess of two months, 84% (n=376) were in arrears for more than three months...
>
> Bennett, 2013, p.33-34

A maximum assessment time should be included in the CCMA to ensure that regulated entities are obliged to engage meaningfully with their borrowers on the SFS.

[2] Bennett C. (2013): MABS Clients and Mortgage Arrears, A profile of MABS clients in mortgage difficulty and factors associated therewith. MABS National Development Limited: Dublin.

The SFS for Debt Management Firms

The streamlining of the SFS for Debt Management Firms is to be welcomed. It can be frustrating for borrowers in arrears situations to have to complete multiple financial statements. *Social Justice Ireland* would welcome a broader review of financial statements across the debt collection process – including those used by voluntary and statutory agencies, regulated entities, debt management firms, the Courts Service and the Insolvency Service of Ireland to ensure alignment, in as far as possible.

Feedback outside the scope of this Review

In addition to the consultation questions, the paper sought views on ancillary topics, set out below. *Social Justice Ireland* has the following observations:

Whether there are certain situations where an SFS may not be required

An SFS may not be required if the change in financial circumstances is very short lived and a short term forbearance could be set up. Similarly, where a borrower is on a long-term welfare payment (such as invalidity pension), an update to confirm no change in circumstances should suffice.

In the event of a recent separation, divorce or bereavement, due to the stressful nature of these events, a short term forbearance could be allowed without the need for this extensive exercise.

The merits and demerits of a potential short-form SFS21 for specific situations

There is merit in a short form SFS in the above instances if paperwork is absolutely necessary in order to process a payment break or other forbearance measure. Measures introduced in light of Covid-19 demonstrate, however, that short-term forbearance can be accommodated without an additional form.

Social Justice Ireland would be concerned that a short-form SFS would only stand as an interim measure and the time between completing the short-form SFS and the full SFS would be such as to make the exercise unnecessary.

A mortgage is usually the largest financial decision a borrower will make, and their largest monthly outgoing. The process of ensuring that this is sustainable and affordable must be robust, and supported by documentation, if the forbearance measures are to remain in place.

The period of time an SFS could be valid for, or the frequency at which it is requested

The SFS should remain valid for a period of at least 12 months. If the borrower experiences a change in circumstances, there is already provision in the CCMA for them to inform the regulated entity of this change and have their account(s) reviewed accordingly.

Whether there are certain situations where the MARP as a whole may not need to be applied

The Mortgage Arrears Resolution Process (MARP) is in place to ensure that all borrowers in mortgage arrears are treated fairly by the regulated entity and receive the full protection of the CCMA. There should be no circumstance in which a borrower would not be provided with those protections once they enter MARP.

How a regulated entity can be more transparent about the ARAs available in its suite of options

Ideally, all mortgage holders should provide all of the alternative repayment arrangements (ARA) as set out in section 39 of the CCMA. Borrowers can be at a serious disadvantage simply by having their mortgage with a regulated entity that does offer the full suite of options. This could ultimately be the difference between remaining in the home or repossession.

Transparency is key in these circumstances. All regulated entities should be required to list the options available on their website and in their MARP documentation, furthermore they should be required to provide detailed explanations of why an option was chosen for the borrower and why the other options available were deemed unsuitable.

The treatment of separated borrowers

The treatment of the SFS submitted by separated borrowers is set out in the introduction of the CCMA. Generally, if a borrower has a difficulty in this regard, referring to the CCMA will suffice and the regulated entity will apply the MARP process to the case.

We acknowledge the difficulty of reaching an arrangement on foot of one income where the mortgage affordability was originally calculated on the basis of two incomes. This can result in a mortgage being deemed unsustainable by the remaining borrower. In these circumstances, warehousing of the unsustainable proportion of the mortgage would be a reasonable option.

In addition, the definition of a non-cooperating borrower causes much confusion. Borrowers who are in contact with regulated entities, and who are making payments, may fail to understand why they are deemed "non-cooperating" when they are engaging as best they can. We suggest that the definition should be changed to ensure that borrowers who are engaging and who are paying what they can afford are excluded from the definition of non-cooperating. In addition to potential loss of the property, the definition, pursuant to provision 11, allows for additional charges and surcharges to be imposed in this instance and for legal proceedings to commence as set out in provision23.

General Observations and Recommendations

In addition to the above, *Social Justice Ireland* supports the recommendations made in the MABS report (Bennett, 2013) as follows:

Long-term Solutions

Some alternative repayment arrangements, such as debt warehousing / split mortgages, will not provide relief to many low-income borrowers in mortgage difficulty as it is unlikely that these borrowers would be in a position to repay the "warehoused" portion when the time came. Accordingly, broader long-term solutions, taking account of the full debt portfolio of the household, and mechanisms which address the capital balances (e.g. write-down of the "unsustainable" portion) on mortgages would be of greater benefit to borrowers whose total over-indebtedness (both mortgage and non-mortgage debt) is continuously increasing with every application of interest and charges.

Mortgage Arrears Resolution Process – Time Limits

While the MARP provides a standardised process for mortgage lenders to engage with their borrowers to address payment difficulties, the delays in assessing cases and in determining appeals reduce the effectiveness of the process overall, with the uncertainty of outcome increasing the borrower's anxiety (and, in some cases, negatively impacting their ability to maximise their income). The imposition of agreed, reasonable, timelines throughout the process by the Central Bank, who may impose sanction for lack of adherence to these timelines, would greatly enhance its efficiency and success.

Non-Mortgage Debt – the Personal Insolvency Legislation and Voluntary Arrangements

Many mortgage borrowers have additional non-mortgage debt (Bennett, 2013). As these borrowers have insufficient income with which to make any payments to non-mortgage debts, it is questionable whether proposals to enter into an insolvency arrangement will succeed at a creditors' meeting, potentially resulting in either an increase in bankruptcy applications or an increase in voluntary arrangements.

In light of the above, we recommend that the BPFI / MABS Operational Protocol be placed on a regulatory footing to provide a stronger framework for lenders to engage with their borrowers in respect of their non-mortgage debts as part, together with a strengthened Code of Conduct on Mortgage Arrears, of a holistic package of responses to personal over-indebtedness.

Income Retention

The lack of a minimum retained income standard among creditors, to secure a reasonable standard of living for the household, places additional pressure on borrowers endeavouring to make arrangements in respect of multiple debts. This can result in some, particularly the most vulnerable, succumbing to "those who shout loudest" and agreeing unsustainable arrangements, default on which exacerbates an already difficult situation. We therefore recommend the introduction of a minimum retained income threshold to ensure that ARAs are poverty-proofed.

Debt and Mental Health

The Mental Health Commission's 2011 Report, *The Human Cost, An overview of the evidence on economic adversity and mental health and recommendations for action,* referenced actions taken in the UK to address debt-related mental health issues (e.g. the Good Practice Mental Health Guidelines produced by the Money Advice Liaison Group; the Debt and Mental Health Evidence Form, approved by the UK Information Commissioner's Office) and made a series of recommendations. Given that many households are on reduced incomes and we are likely to see a doubling of the pre-pandemic unemployment rate in the coming years, it is time to implement these recommendations.

Money Management Education

Solid Money Management Education is a combination of attitude, knowledge and skill, and when consistently applied, it can maximise the level of control an individual has in life as well as having the potential to greatly reduce the incidence of problem debt. A national strategy on Money Management Education, which allows development of attitude, knowledge and skill within all learner groups, is required.

Social Justice Ireland is an independent think-tank and justice advocacy organisation of individuals and groups throughout Ireland who are committed to working to build a just society where human rights are respected, human dignity is protected, human development is facilitated and the environment is respected and protected.

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