



Philip Brennan
Group General Manager

AIB Group
Regulatory & Operational Risk

Bankcentre
Ballsbridge
Dublin 4

Consumer Protection Codes Department
Financial Regulator
PO Box 9138
6 – 8 College Green
Dublin 2

Telephone +353 1 660 0311
Direct +353 1 641 3245
Facsimile +353 1 641 2794
Mobile +353 87 243 5900
E-mail philip.m.brennan@aib.ie
www.aibgroup.com

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Consultation Paper CP 46: Review of Code of Conduct on Mortgage Arrears

Dear Sir/Madam,

Allied Irish Banks, p.l.c. (AIB) welcomes the opportunity to provide comments on the Central Bank and Financial Services Authority of Ireland Consultation Paper 46, Code of Conduct on Mortgage Arrears (CP46)

AIB supports the recommendations of the Mortgage Arrears and Personal Debt Expert Group and consequent need to make amendments to the Code of Conduct on Mortgage Arrears (CCMA). We understand the financial pressure some of our customers are experiencing given the current uncertain economic environment and are working with them to support them through this difficult period. Our approach is to treat customers with respect and to work with them towards achieving a personalised, realistic and sustainable solution where these customers find themselves in an arrears situation.

While we broadly support the principles and objectives underpinning the CCMA, we do have some concerns in relation to certain provisions. For example, we are particularly concerned about the intention to introduce a category of “pre-arrears” and “at risk” customers. Our concerns relate to the difficulties involved in banks identifying these customers as well as the adverse impact on those customers who might be inaccurately classified as being “pre-arrears”. For these reasons, and as set out in our attached response, we propose that the provisions of the Code be applied to the following categories of customers only:

- All mortgage customers in actual arrears
- All mortgage customers in pre-arrears who advise us that they are in danger of financial difficulty or are concerned about going into arrears and who, as part of this process of engagement, have completed a financial assessment with their lender formally documenting their status in this regard.

A number of the proposals will require detailed and extensive internal process and operational changes in addition to significant IT development. We would request that realistic timelines are given for implementation of such changes

Please find attached our comments on the specific issues you have raised, in addition to our comments on the other provisions of the Code.

Yours sincerely

Philip Brennan
Group General Manager

AIB Group Comments on CP 46

Comments On Specific Issues

“Pre-Arrears” and “At Risk” Customers

A number of the proposed Code’s provisions include references to the identification and management of “at risk” customers and “pre-arrears”. We have serious reservations about including such a category within the CCMA for the following reasons:

- An assessment of whether a customer is at risk of going into arrears would require a full and detailed knowledge of their financial and personal circumstances at a particular point in time. Given the dynamic nature of such circumstances, lenders will not always be aware of or have access to the level of information required to make an informed and objective assessment across their customer base.
- Communications of the nature outlined in paragraph 16 could cause significant and unnecessary stress, worry and upset for many customers, particularly in the event of an inaccurate assessment.
- There may be data protection issues arising as a result of this proposal. These issues need to be fully considered.

For these reasons, we propose that the provisions of the Code be applied to the following categories of customers only:

- All mortgage customers in actual arrears
- All customers in pre-arrears who advise us that they are in danger of financial difficulty or are concerned about going into arrears and who, as part of this process of engagement, have completed a financial assessment with their lender formally documenting their status in this regard.

We suggest that there are other means of conveying to customers the supports that are available to them should they find themselves in an ‘at risk’ situation in relation to their mortgage commitments. Such means would include publication of information through the branch network and internet channel (as set out in Provision 13). Encouraging this type of activity across the industry would be an effective means of educating customers as to the assistance available to them.

Level of Communication – Unsolicited Communication

We recognise that some unsolicited communications can be a source of stress for customers in financial difficulty. We believe that all cases are different and many customers welcome the opportunity to discuss their situation with their lender.

In relation to the frequency of communication, we propose that one communication per week, where direct contact with the customer has been achieved, would be appropriate.

We feel that a key requirement in arrears situations is to actually make contact with the customer (as opposed to, for example, leaving a message on an answering

machine). In this regard, we suggest that ‘unsolicited communication’ should exclude:

“Missed calls and messages i.e. where no customer contact has been achieved or calls where the customer answered the phone and undertook to call back but where no discussion actually took place.”

Arrears

We propose the following definition of arrears for the purposes of the Code:

‘A mortgage arrears problem arises from the date the borrower fails to make a full mortgage repayment’.

Primary Residence

AIB propose the following definition to describe the property to be protected under CCMA:

Principal Primary Residence: A residential property which is or will be occupied by the borrower as his/her main private residence, which has been solely nominated and agreed in advance with their lender as such.

We would support a contention that any applicable examples should be in line with this ‘Principal Primary Residence’ definition.

In response to the specific questions under this section, we believe that an overall approach to the scenarios outlined in the context of the above definition could be summarised as follows:

Regardless of whether;

- the borrower is currently living in the property, or has an occupying tenant.
- the borrower is temporarily residing outside the country
- the mortgage was originally taken out as an investment or commercial facility

if the property is the borrower’s solely nominated Principal Primary Residence and this has been agreed in advance with the lender, the provisions of CCMA should apply.

Appeals

We agree with your provision requiring lenders to establish an appeals process and that an independent review is undertaken by one or more senior personnel who have not been involved in the case previously.

The establishment of an internal arrears appeal process, as outlined, would formalise existing practices and further ensure fair assessment of the lender's decision. We believe this would be sufficient in addressing any appeals that may arise without the need for an external appeals mechanism.

Complaints about arrears resolution are handled in accordance with the Complaints Handling provisions of the Consumer Protection Code and can continue to be referred to the Financial Services Ombudsman if required by the borrower.

Comments on Code Provisions

CCMA Provisions 1 – 6

We agree in principle to the provisions subject to the points made above regarding ‘Pre-Arrears’ and ‘At Risk’ situations.

A number of the proposals will require detailed and extensive internal process and operational changes in addition to significant IT development. We would request that realistic timelines are given for implementation of such changes

CCMA Provision 7

Subject to customer documentation and information requests being of a standard format e.g. Mortgage Interest Supplement or Tax Relief at Source forms, requesting standard reasonably available data, we support the processing of such requests within 10 working days. Consequently, we would request that Provision 7 is amended to reflect its application to requests of a standard nature

CCMA Provision 10:

Given that this provision will require IT system changes to enable implementation, we seek a reasonable lead-in time for implementation.

CCMA Provisions 15 & 16:

We repeat here the practical difficulties outlined above relating to the identification of those customers “at risk of going into arrears” and those “anticipated to suffer financial stress”. We believe that Provisions 12 and 13 provide sufficient information to those customers concerned about getting into an arrears situation.

CCMA Provision 19

Refer to our comments under Level of Communication above

CCMA Provisions 20, 21 & 22

Compliance with these provisions will require significant IT systems development. We would, therefore, request a realistic timeline to be agreed on its implementation

CCMA Provision 25

We understand that it is the intention of the Financial Regulator to develop a standard form for application across the industry. See also our comment above regarding ‘at risk’ customers.

CCMA Provision 25, 26, 27 & 28

We agree in principle to these provisions, but consider it important that the standard documentation be used by all lenders and by persons providing independent advice, for example, MABS.

In relation to provision 28, a consent notice to facilitate the undertaking of ICB checks to verify full disclosure in the SFS, in addition to any supporting documentation provided by the customer, would bring consistency and rigour to the

assessment process. Consideration should be given to the inclusion of such a consent notice.

CCMA Provision 33

We suggest that this provision should make clear that those alternative repayment measures to be made available to customers are those products that the institution has currently available.

Clarification is also required with regard to Provision 33 (e). The changing of a mortgage type may not be feasible in all cases, for example where a breakage cost would be incurred as a result of breaking a fixed term. In other scenarios changing of the mortgage type would constitute a material alteration to the original contractual terms and this may not be viable. In addition, we are unclear as to the exact meaning of the reference to '*mortgage and related assurance payments*' within that provision.

CCMA Provision 36

We agree in principle with this provision. However in order to achieve consistency of communication to customers across the industry we believe it is imperative that further clarity is given on the specific financial details to be provided under this provision. This could be achieved through dialogue at industry level with the Financial Regulator with sufficient time afforded for implementation thereafter.

CCMA Provision 37

We believe that where an arrangement is performing satisfactorily for both borrower and lender, an annual formal review would be more appropriate. This may also be welcomed by the borrower as providing a reasonable timeframe of stability. If the arrangement is not performing as intended, then as a matter of course a review would be initiated. In addition the borrower can request a review at any time during the arrangement.

CCMA Provision 46

It should be made clear that the requirement for the borrower to "co-operate reasonably and honestly with the lender" also applies to a borrower who may be tempted to enter into consecutive repayment arrangements with the intention of prolonging the period before which the lender can commence enforcement of any legal action.