

Response to Consultation Paper CP 46 – Review of Code of Conduct on Mortgage

FLAC

3 September 2010

About FLAC

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Introduction

FLAC has consistently campaigned over the past decade for reform of debt enforcement laws in Ireland, particularly from a consumer perspective. FLAC argues that the State has a duty to put in place effective and balanced mechanisms for attempting to resolve the problems of those who are over-indebted, often through circumstances beyond their control.

1. Observations on specific views sought in the consultation

1. 1 - Communications with borrowers in arrears

- ***Level of unsolicited communications and form of such communications***

Point 19 of the draft Code permits a lender to make three unsolicited communications to a borrower per month in respect of their arrears situation. Is there a need for this level of communication? Instalments are paid on a monthly basis and a borrower's financial circumstances would not generally change that quickly. Surely one such communication per month is enough to confirm that the financial situation is unchanged or otherwise?

It is notable that there is no attempt to define what amounts to a communication for the purposes of the Code, although there is a reference made in point 19 to '*three unsolicited communications by whatever means*'. Do such communications therefore include visits to the borrower's family home? If so, then allowing three such communications is clearly excessive in our view. The Regulator might also be mindful of the potential interchange of these measures and Section 46 of the Consumer Credit Act 1995, a provision now incidentally well out of date given that it does not specifically include contact by email or mobile phone.

- ***Conduct during such communications***

It should also be pointed out here that the level of communications with a borrower is only one aspect of this particular problem. The tone of the communication is also important. Our anecdotal evidence is that in some cases undue pressure is being put on borrowers to come to arrangements that may be unsustainable as a result of what might be described as bullying or hectoring behaviour. Whilst we appreciate that there may be a fine line in some cases between trying to ensure that a borrower pays what he or she can afford and harassment, there is no excuse for subjecting a borrower who is generally in arrears through circumstances outside his or her control to hostile and intimidating treatment. We would therefore propose that the Code should include a specific paragraph cautioning the lender on the conduct of the person carrying out any given communication and reminding a borrower of his or her right to make a complaint under the Code in relation to such conduct.

- ***Communications by debt collection agencies***

The right to communicate with a borrower in arrears extends to '*any third party acting on its (i.e. the lender's) behalf*'. This clearly is intended to include debt collection agencies instructed by the lender. In our experience, there is

sometimes a lack of transparency on the lender's and debt collector's part in their dealings with a borrower in arrears and that this can cause confusion and unnecessary added stress, especially for those with indebtedness to a number of sources. A lender is now obliged under the Code at **Point 24** to inform a borrower in writing where a third party has been retained and must explain its role. However, any debt collection firm in turn should be obliged in any communications with a borrower in arrears to remind him/her that it acts on behalf the lender in question. It should be added that ideally, debt collection agencies should be required to apply for and obtain a licence from a regulatory authority to engage in such activities and should be subject to written guidelines in the form of a detailed Code of conduct as a condition for the continuation of that license.

- ***Communications concerning legal proceedings***

Point 22, relating to communications following a third missed payment (full or partial) which remains outstanding, obliges lenders to advise the borrower in writing of the potential for legal proceedings and loss of his or her property, together with an estimate of the costs to the borrower of such proceedings. This repeats, albeit with revised wording, a similar warning in Section Four of the current Code. The current Code follows this by a statement that despite persistent arrears, the lender must wait at least 12 months from the time arrears first arise to commence repossession proceedings. The revised Code does not address the question of the 12 month stay on legal proceedings until **Point 46**.

However, in neither the current or revised Code is there any obligation placed on the lender to bring to the borrower's attention the existence of a stay on legal proceedings for 12 months from the time arrears first arise. We would submit that this is both potentially misleading and counter-productive. As presently worded, a borrower may receive a letter after the third missed payment informing him/her of the potential for legal proceedings, loss of home and liability for costs etc but no assurance that this cannot happen for at least 12 months from the time arrears first occurred.

If the purpose of the stay on legal proceedings is to encourage early engagement to negotiate a revised repayment wherever possible rather than repossession, a statement from the lender to the borrower at this point to the effect that where the borrower co-operates reasonably and honestly with the lender, protection exists from legal proceedings for at least 12 months from the time arrears arise, might serve the dual purposes of reassuring the borrower that repossession is not imminent and encouraging the borrower to engage early and constructively with the lender in the Mortgage Arrears Resolution Process (MARP). There are some borrowers for whom the constant financial stress and pressure of debt to a number of sources may still encourage a 'head in the sand' approach and not everyone is automatically aware of the 12 month stay on repossession proceedings.

This juncture would also afford the perfect opportunity for the lender to state that the 12 months is a stay on legal proceedings only and not a stay on payments and that is vital that the borrower engages with the lender as early as possible to pay what may be affordable in order to prevent the arrears situation deteriorating.

- ***Communications in relation to money advice***

Point 22 at paragraph b) obliges the lender, once three payments (full or partial) have been missed, to bring to the borrower's attention in writing the importance of taking independent advice from the local MABS or appropriate alternative. **Point 26** stresses that when a lender is first contacted by a borrower in arrears or at risk of going into

arrears, the lender must advise the borrower that he or she may wish to seek independent advice to complete a Standard Financial Statement (SFS). However, there is no corresponding obligation at **Point 20** when the lender first contacts the borrower, because a mortgage account has goes into arrears for the first time, to pro-actively suggest that MABS or appropriate alternative may be contacted. In our view, this is an omission and should be rectified. In our experience, time is of the essence in terms of seeking assistance to negotiate on debt problems and this becomes even more pronounced in a situation where waiting times may be a factor for some MABS services. It has been suggested in the past that some borrowers might take umbrage at such an early suggested referral when the missed payment may be a result of an oversight rather than debt problem or incapacity to pay. In the current climate we suggest that this is a risk worth taking.

- ***Communications on outstanding debts and costs***

Point 22 at paragraph (c) repeats Paragraph (d) of Section 6 of the current Code. It provides that the lender must advise the borrower in writing 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.

Whilst we accept that by the use of the words, '*if this is the case*', the Code does not authorise the lender to impose such liability on the borrower, the inclusion of this provision and how it is worded nonetheless suggests that this is presumed. Given the ongoing deliberations of the Expert Group on Mortgage Arrears and Personal Debt and the fact that the Interim Report issued by the group has clearly flagged that the question of liability of the borrower for a mortgage shortfall in a repossession case involving negative equity will be examined, we would question whether this passage is now appropriate for inclusion in the revised Code.

On a technical point, if this clause is to remain in whatever revised form, a lender should be specifically obliged to detail individually any '*related costs*' or charges such as for example, property maintenance costs.

- ***Communications in relation to the Code itself***

This may be an oversight but there does not appear to be any obligation on a lender in the course of its communications with a borrower to bring the terms of the Code itself to that borrower's attention. At both **Point 20** and at **Point 22** where a lender makes written contact and provides information on arrears to a borrower, it should similarly be obliged to enclose a copy of the Code together with a copy of its MARP.

Similarly, there should be copies of the revised Code available on request and also prominently displayed in lender's branches in order to further promote the objective of attempting to resolve arrears problems at the earliest opportunity.

1.2 - The definition of arrears

The definition proposed in the revised Code – '*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*' – seems appropriate.

The figures currently compiled by the Regulator only include accounts that have been in arrears for three months or more and we have made the assumption that arrears includes both fully or partially missed payments. Although this would appear to conform to the industry standard of what constitutes arrears, we believe that this is no longer an appropriate standard in the midst of a deep recession with unprecedented levels of consumer indebtedness. Just as the current figures differentiate between those accounts in arrears of six months or over from those in arrears of three to six months, a separate entry could be created for those in arrears of one to three months.

Evidently, a number of borrowers who may be one or two full or partial instalments in arrears will not have a debt problem and may have failed to pay due to inadvertence or temporary cash flow problems, for example, and will 'self cure'. Nonetheless, failure to pay one instalment may flag the commencement of an arrears problem for many others who may recently have suffered an income shock. Why wait until a third missed payment to classify these cases as arrears?

We have consistently articulated our belief that the sooner a debt problem is addressed and the borrower gets the appropriate assistance, the more likely it is that an accommodation may be reached. As it stands, the revised Code at **Point 20** obliges the lender when an account goes into arrears to inform the borrower in writing of the status of the account by providing a specific list of information. The lender is also obliged to enclose an information booklet setting out its Mortgage Arrears Resolution Process (MARP) for the borrower's information. If the definition of arrears was to be amended to, for example, the missing of a second payment, time might be lost in terms of beginning an attempt to resolve the arrears problem. We believe that this would not be consistent with the tenor of the revised Code in terms of encouraging the anticipation of arrears problems through the pre-arrears provisions at **Points 14, 15 and 16** and early engagement between lender and borrower generally.

1.3 - The definition of primary residence

We note that the current application of the Code is designed to be to *'the mortgage loan of a borrower which is secured by residential property which is or will be, occupied by the borrower as his/her primary residence in the State'*. (page 2)

In turn, the preface to the Consultation paper flags some instances where it may be far from straightforward whether the mortgaged property is or is not a *'primary residence'* of the borrower and therefore the question as to whether the revised Code should or should not apply is problematic. These include:

1. Borrower moving out of property to generate income to help meet repayments by for instance moving back in with parents, into rented accommodation or into an investment property he or she owns
2. Borrower letting the property on a short term rental while on a temporary foreign assignment, tenant defaults and the PRTB dispute resolution process is ongoing when arrears occur
3. A couple with a joint mortgage separate and one borrower moves into an investment property or holiday home they also own which is mortgaged

These are interesting examples that illustrate the difficulty of tying down a definition in what may be a very fluid situation. Some comments on each of these instances follow:

1. Generally, under the terms of a mortgage deed, the borrower must seek the consent of the mortgagee (i.e. lender) to rent the dwelling. If the lender consents because of an arrears situation, it would be difficult for that lender to argue that it was no longer the borrower's primary residence. Moving into an investment property in such a scenario only makes sense where the first property has a higher rental value. Similarly, moving into rented accommodation only makes sense where the rent paid is less than the rent that would be obtained for the first property. In summary, if the proposed move is clearly to resolve an arrears situation, the first property remains the primary residence. However, we would suggest that a person can only have one primary residence. Even therefore if arrears arose on the mortgage on the investment property, it would hard to see that the terms of the Code should apply to it
2. To us, this is clearly still the primary residence of the borrower. The original rental has occurred to help pay the mortgage while on temporary assignment, not as an investment.
3. Once the couple separate (provided it is a genuine rather than a cosmetic separation) and one party moves into a further mortgaged property on a permanent basis, that becomes that person's primary residence and the first property is the primary residence of the person remaining. A subsequent judicial separation or divorce may of course alter this situation down the line.

We don't immediately see the need for the words '*or will be*' in the definition outlined above. At the point at which this Code will apply, arrears will exist on the mortgage in question. At that point the mortgage dwelling either is or is not the primary residence of the borrower. There should not be room for the borrower to argue that this is not my primary residence right now but it will be in the future. Apart from that, this definition might be supplemented by a provision that a borrower may only have one primary residence in the State for the purposes of this Code. It might also be useful to for the borrower to make a declaration that this is his or her primary residence. However, as the above examples indicate, there are bound to be grey areas where there may be disagreement between borrower and lender as to the Code's application and it may be necessary for a third party to adjudicate on the question of primary residence (see the next section on the question of appeals)

1.4 - Appeals

Point 42 obliges each lender to have in place what is effectively an internal review process whereby one or more senior personnel must consider any appeals by borrowers against decisions made by the relevant Arrears Support Unit. **Point 43** provides that borrowers must be allowed a reasonable time to submit this appeal and at a minimum 20 days from being informed of the ASU's decision.

Point 44 in turn provides that where the borrower makes a complaint '*in relation to the MARP process*', the complaint must be handled in accordance with the complaints handling provisions of the Consumer Protection Code, including potential referral to the Ombudsman.

We are unclear what is encompassed by the words '*in relation to the MARP process*' here. Is this intended to allow the borrower a further possible appeal to the Ombudsman on the substance of the ASU's decision or is it a more limited form of appeal on the process utilised by the lender rather than the outcome of the process?

We would submit that it is intended to be the former and this would be consistent with the relevant recommendation in the Interim Report of the Expert Group on Mortgage Arrears and Personal Debt. In this context, we draw your attention to the summary recommendation in the interim report at page 10, heading 34 that *'The complaints handling procedures of the Consumer Protection Code should apply to the CCMA including the decisions of the ASU relating to the application of the lender's MARP'*. The use of the word 'decision' clearly includes issues of substance as well as process.

If it is intended to be the latter, we submit that this is inadequate. In particular, we believe it is deficient from a procedural fairness perspective. There are, for example, likely to be some instances where the ASU and any subsequent review may both conclude that loan modification is not appropriate and that a mortgage is unsustainable and the borrower wishes to contest that decision. The ASU's decision will in this kind of instance mean that the repossession of a person's family home is likely to be imminent. This is surely an issue that should be the subject of a proper appeal to an independent third party, with that third party having the right to adjudicate, for example, that forbearance should continue where appropriate for a stated period.

In summary, we submit that the borrower must have the right to appeal the decision of the ASU in the MARP to the Ombudsman and not just to make a complaint to the Ombudsman about guidelines or failure to adhere to process. The Ombudsman must in turn have the power to make a binding decision subject to a right of appeal to the courts and such decisions should have retrospective effect to the date of the original decision of the ASU.

Finally, we would question whether delegating responsibility to the Financial Services Ombudsman's office to deal with complaints under the Code is the best way to proceed, given that the Ombudsman already has a wide jurisdiction to deal with complaints concerning the conduct of regulated financial service providers. If the Ombudsman is to be given this function, extra resources must be provided to his office to ensure that such complaints are heard in a timely manner, especially given the urgency of a mortgage arrears situation.

There may be an understandable reluctance in the current economic climate to add to public expenditure by the creation of further bodies with legal or quasi-legal functions. However, in view of what are likely to be wholesale impending changes in the debt enforcement infrastructure in Ireland, particularly resulting from the forthcoming final recommendations of the Law Reform Commission, we would submit that a Debt Enforcement or Debt Rescheduling Office should be established as soon as possible to adjudicate on the range of possible disputes that may arise. Such an office could alternatively be mandated to deal with appeals arising from the revised Code.

2. Observations on other aspects of the Code

2.1 – Scope and definitions

Issues of retrospectivity

The final sentence of the Introduction section purports to make the Code effective from a specific date as yet unknown. This raises difficult questions related to mortgages that are currently in arrears.

Point 46 of the revised Code precludes the bringing of legal proceedings for 12 months from the time arrears first arise where the borrower continues to co-operate reasonably and honestly with the lender and **Point 45** will preclude legal action entirely where the terms of an agreed repayment arrangement are being adhered to.

What however is the situation of someone who is currently in arrears when the Code eventually comes into operation and for whom the 12 months clock is ticking? Do they only have a limited amount of time now to agree an alternative repayment arrangement before being subject to potential legal action? What corresponding onus is on the lender to negotiate in good faith alternative repayment arrangements before the 12 month stay elapses? We submit that the revised Code should be retrospective to any mortgage where the lender is currently accepting payments of less than the full monthly instalment and that these should be considered to be agreed alternative repayment arrangements for the purposes of **Point 45**. In addition, anti-avoidance measures should be built into the Code to ensure that no lender may 'move the goal posts' in terms of unreasonably demanding increased payments before the revised Code comes into operation

What of the person who is already 12 months in arrears when the revised Code comes into operation but whose lender has not taken legal action against him or her. Will he or she be beyond the protection of the Code in terms of the prevention of repossession proceedings being brought, in particular where he or she has been co-operating reasonably and honestly with the lender? We submit that as a transitional arrangement, people in this position should be entitled to avail of a twelve month period which is free of the threat of legal proceedings to avail of the strengthened negotiation process of the MARP and the new solutions offered by the Code.

Application of the Code to debts purchased

Under the heading – *'To whom this Code applies'* – it should also be added that the Code equally applies to any entity that purchases a mortgage debt from a lender. This addition would be in line with Section 40 of the Consumer Credit Act 1995 which provides that 'where a creditor's or owner's rights are assigned to a third person, the consumer shall be entitled to plead against that third person any defence which was available to him against the original creditor including set-off'.

2.2 - Step Two – Financial Information

We understand that the Money Advice and Budgeting Service (MABS) have already made detailed comments in relation to the use of a **Standard Financial Statement (SFS)** for the purpose of the revised Code. FLAC has a long standing relationship with MABS and continues to provide technical legal assistance and training to MABS money advisors who are on the frontline dealing directly with clients who have financial difficulties. We would therefore like to emphasise how important it is that MABS have the central role in determining the content of the SFS in conjunction with the credit industry.

The adoption of a standard statement is a vital opportunity to put in place a SFS that may be used in all negotiations and decision making processes concerning repayment or partial repayment of debt and it is therefore of the utmost importance that it is got right and is agreed. Putting a standard in place would also afford a good opportunity to ensure

that 'for profit' debt management companies use the same formats and the use of the SFS could be made a condition for obtaining a licence in of any licensing system that will be put in place for debt management companies in the future.

2.2 - Steps Three and Four – Assessment and Resolution

Can't pay/Won't pay distinction

Point 29 provides that *'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'*. This approach is reasonable but only if the lender has the concrete evidence to back up how and why it has made the distinction. However, the general nature of this statement, with no criteria set out to establish how this distinction might be made nor a specific indication of the consequences for the borrower adjudicated to be a so called 'won't pay', is not in our view the right way to start off a chapter on assessment of repayment capacity.

Timelines

It is worth noting that there are no timelines in either the assessment or resolution sections. Although it would seem logical that a lender would want to put in place an alternative repayment measure as soon as possible, there is also a danger that without timelines, the borrower's position might be prejudiced by delay. In the absence of specific timelines, the Code should oblige the lender (and the borrower) to act quickly.

Payments during the assessment process

We would also be concerned that during the assessment and resolution process, undue pressure is not put on the borrower to make payments that he or she believes are unaffordable, particularly where arrears have not yet occurred but are imminent or have only recently occurred. Many mortgages obviously involve payments being automatically debited from a specific mortgage account into which wages or salary are credited by transfer. If the lender continues to debit the full amount, the borrower and his or her dependants may find it difficult to meet utility bills and/or provide for essentials such as food and clothing. The Code should therefore oblige lenders to revise payments where appropriate pending the outcome of the assessment process

Exploring all options

We submit that the introduction to **Point 33** is contradictory. The first sentence states that the lender must explore all viable options with the borrower. The second sentence then states that at a minimum, one or more alternative repayment measures options must be examined. Restrictively interpreted, this only obliges a lender to examine one such alternative repayment measures. In our view, this point should oblige lenders to explore all such measures and should require them to demonstrate in writing that they have done so and the rationale for their conclusion.

Access to advice

The final sentence of **Point 33** provides that the borrower must be advised to take appropriate independent legal and/or financial advice, presumably prior to agreeing any alternative repayment measure. Although it is of course wise for the borrower to seek such independent advice, it is still not clear where he or she is going to receive it as a matter of priority without having to pay for it. There are sometimes significant delays in accessing state funded services that may be available on a limited contribution or free basis, such as legal advice from the Legal Aid Board or money advice from MABS. The Code should oblige a lender to ensure that a borrower is given sufficient time to access advice in order to consider a proposed alternative repayment arrangement.

Credit record

At **Point 36 (c)**, the lender is required to inform the borrower of the implications of the alternative repayment arrangement that is being proposed for that borrower's credit record. Perhaps it would be useful to reword this clause. It appears to us that the lender can only inform the borrower of how the alternative arrangement will be recorded on, for example, the Irish Credit Bureau (ICB). It cannot predict what the exact implications will be in terms of future access to credit - the issue of most concern to consumers in relation to credit recording - as it cannot know how other lenders and classes of lenders will apply this information to future applications for credit.

2.4 - Repossessions

In relation to disposal of the property, the Code might make additional reference in **Point 49** to the obligation of the lender (or mortgagee) under S.103 of the Land and Conveyancing Law Reform Act 2009, when exercising a power of sale to '*ensure as far as is reasonably practicable that the mortgaged property is sold at the best price reasonably obtainable*' and to the obligation within 28 days after completion of the sale to serve a notice in the prescribed form on the borrower (or mortgagor) containing information relating to the sale.

3. Some matters not addressed in the Code

3.1 - Application of the Code to local authorities who have made housing loans

The existing Code appears to only apply on a voluntary basis to local authorities when making housing loans, by virtue of guidelines issued by the Department of the Environment. In our view it would be preferable if any revised Code applied universally to all mortgage lenders, rather than to rely upon voluntary compliance. However, it is clear that the Financial Regulator does not regulate local authorities generally and so it may be argued that any revised Code cannot apply compulsorily to them. Nonetheless, SI 129/1996 amended the definition of mortgage lender under Section 2 of the Consumer Credit Act 1995, inter alia, to include a local authority within the meaning of the Local Government Act 1941. The definition was further broadened by virtue of Part 12 of the Central Bank and Financial Services Authority Act 2004 to mean 'any person who carries on a business that consists of or includes making housing loans'.

The existing CCMA is issued under S.117 of the Central Bank Act 1989 that reads as follows:

117.—(1) The Bank may, after consultation with the Minister, from time to time draw up, amend or revoke, in relation to any class or classes of license holders **or other persons supervised by the Bank** under this **or any other enactment**, one or more than one Code of practice concerning dealings with any class or classes of persons and every such Code shall be observed by the license holders, or other persons so supervised, to whom they relate.

It is reasonably clear that the Central Bank and Financial Services Authority of Ireland (or any successor) has the power to both supervise and enforce the CCA 1995. See for example, the wide functions and powers designated to the Bank under Part 1B of the Central Bank and Financial Services Authority Act 2003, including the conducting of investigations and the investigation of complaints together with the power under Section 14 of the CCA (as amended) for the Bank to prosecute summarily a range of offences, including those prescribed under Part IX of the Act concerning housing loans made by mortgage lenders.

We would therefore submit that for the purposes of any Code of Practice issued under S.117 of the Central Bank Act 1989, any mortgage lender making a housing loan (including a local authority) is another person supervised by the Bank under another enactment, in this case the consumer credit legislation. The Bank has already drawn up a Code under this section to govern the procedures applied by mortgage lenders concerning the arrears of borrowers. We see no reason therefore why this and any revised Code should not apply on the same basis to local authorities. Indeed, it might be argued that having issued such a Code, there is now a statutory obligation to so extend it.

3.2 – The implementation of complementary recommendations in the Interim Report of the Expert Group on mortgage arrears and personal debt

A number of recommendations are made in the Interim Report of the Expert Group on mortgage arrears and personal debt that are important additions to strengthening the CCMA but are not addressed in the revised draft. Presumably, this is because they are considered to be outside the direct control of the Financial Regulator in terms of ensuring their implementation or they require legislative amendment. Nonetheless, implementation of these recommendations is a vital element in ensuring enhanced consumer protection and negotiation space for borrowers in distress. We would submit that the Regulator should monitor and report progress on these matters as part of its response to submissions on the consultation.

These measures include the following:

- **Interim recommendation 1 – that lenders must not apply penalty interest or arrears charges to borrowers who are taking part in a Mortgage Arrears Resolution Process**

It is understood that implementation of this recommendation will involve a review and possible amendment of S.149 of the Consumer Credit Act (CCA). What progress has been made to date with this review? Given that it has been

suggested by the Regulator that mortgage lenders should voluntarily comply with this recommendation in advance of any legislative obligation, is compliance being monitored in the interim?

- **Interim recommendation 2 – that the revised Code should be admissible in legal proceedings**

It is understood that implementation of this recommendation may fall within the remit of the Department of Finance. What progress has been made to advance this recommendation within the Department? This recommendation is particularly important to buttress the provisions in **Points 45 – 49** of the Code concerning restrictions on the right to bring repossession proceedings in the courts.

- **Interim recommendation 4 - that the revised Code should apply to credit unions**

It is understood that legal advice suggests that the Regulator cannot impose the terms of the CCMA on credit unions. It should be pointed out that the Interim Report of the Group only proposed to extend the Code to credit unions when making housing loans within the meaning of the Consumer Credit Act 1995 (as amended), for example where title deeds of residential property were deposited for a substantial personal loan. Although the CCA does not broadly apply to credit unions at present, it is worth pointing out that credit unions are generally regulated by the Financial Regulator and the new consumer credit directive recently transposed by SI 281/2010 will apply in its generality to them from December 11th, 2011.

In addition, please see the comments above in relation to the potential compulsory application of the Code to local authorities that might equally be advanced to justify its application to credit unions.

4. Further measures required to complete the Mortgage Arrears Resolution process

The adoption of a revised and strengthened Code of Conduct on Mortgage Arrears incorporating the obligation to adhere to a Mortgage Arrears Resolution Process with common standards and rules is a welcome step. It is to be hoped that such a Code when implemented will help to minimise the number of repossessions of family homes in Ireland.

However, we would submit that it is also essential to put in place measures to strengthen and complement the MARP process currently outlined in the Code. In particular, we note that the Interim Report of the Expert Group on mortgage arrears and personal debt stated that the group would be *'conducting further work on advanced forbearance measures including loan modification and will be examining approaches to manage shortfalls in the case of unsustainable mortgages.'*

Loan modification

It is clear that the potential success of the MARP process in avoiding repossessions as it is currently outlined is dependent upon the success of one or a combination of the alternative repayment measures outlined at Point 33 of the revised Code. However, not all borrowers in mortgage arrears will be able to afford rescheduled payments of this nature at the moment. Thus, it is submitted that more advanced forms of forbearance involving a more profound modification of the terms of the loan are required in order to avoid an increase in repossessions.

Mortgage shortfalls

The MARP process clearly envisages that some mortgages may be declared unsustainable by the relevant ASU and there may be some households who themselves believe their mortgage to be unsustainable as it stands. Many of these households are likely to be in negative equity, so that in addition to losing the family home, there may well be a shortfall debt arising from the difference between what is owed in capital and the value of the property when sold.

It is essential in our view that a debt settlement/adjustment scheme is put in place to deal with such shortfalls. We note that the Law Reform Commission has proposed the introduction of non-judicial debt settlement legislation in its Consultation Paper of September 2009 and this recommendation is likely to be confirmed in its final report. We believe that any mortgage shortfall is an unsecured debt like any other personal debt once the property has gone back to the lender. The introduction of debt settlement legislation would enable a debtor who has no prospect in the medium to long term of repaying his other personal debts to pay to the best of his or her ability over a specified period in order to earn a fresh start, i.e. the write-off of residual unsecured debt, including the mortgage shortfall.

Social Housing

Borrowers whose mortgages have been declared unsustainable under the MARP or who have voluntarily surrendered their property because their mortgage is unsustainable will face repossession. How will they then be accommodated? It is again essential that such a household's housing needs are assessed as a matter of urgency where there is no alternative available to the people involved. Access to rent supplement and timely social housing options including the potential of a mortgage to rent scheme will be critical. The fact that a borrower has ended up in a position where he or she has had to surrender his or her property, or where a person will not meet the six month requirement of living in private rented accommodation, should not exclude this person from accessing rent supplement or social housing. Given the changes to the rent supplement scheme and the increased restrictions placed on this payment, a more flexible approach needs to be taken which meets the needs of people who find themselves in this very difficult situation.

3 September 2010

Code of Conduct on Mortgage Arrears: The Public Response

FLAC

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About FLAC

FLAC is a human rights organisation which exists to promote equal access to justice for all.

FLAC Policy

Towards achieving its stated aims, FLAC produces policy papers on relevant issues to ensure that government, decision-makers and other NGOs are aware of developments that may affect the lives of people in Ireland. These developments may be legislative, government policy-related or purely practice-oriented. FLAC may make recommendations to a variety of bodies drawing on its legal expertise and bringing in a social inclusion perspective.

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Introduction

In response to the Financial Regulator's appeal to the public for its views and opinions on the proposed revisions to the Code of Conduct on Mortgage Arrears, FLAC (the Free Legal Advice Centres) decided to launch a campaign to maximise public participation in the process.

This arose on foot of FLAC's many years of campaigning for debt law reform in Ireland and the organisation's strong belief that through public participation, the views of homeowners on the issue of mortgage arrears could be imparted to the Regulator to assist in the creation of a useful, effective and practical Code of Conduct.

The Process

This process entailed a media campaign to highlight the consultation element of the Regulator's proposals and aimed to inform and encourage the public to take the opportunity to have an input into an area of financial public policy which is affecting many thousands of people across the country.

A questionnaire was created, drawing on the four topics upon which the Regulator was seeking views as well as a list of questions on which FLAC was keen to gauge public opinion. The questionnaire was publicised via FLAC's website and in selected FLAC advice clinics, held in Citizens' Information Centres. FLAC also encouraged members of the public to make their own individual submissions, if preferred, directly to the Regulator.

The campaign was launched on Wednesday, 18 August 2010. The short time frame permitted for consultation somewhat curtailed the campaign. This was noted by one respondent who commented: **"I would not expect that you will get a huge number of responses as I only just heard of this opportunity to express my views – it should have been widely advertised to give every interested party a chance to respond."**

With the assistance of FLAC volunteers, four centres in Dublin were selected and members of the public asked to participate. Although the contact details of all respondents were sought, participants were assured that all responses would be taken in confidence and any personal details would be omitted or made anonymous for the purposes of the submission.

FLAC is pleased with the response rate given the various constraints, not least the short time frame. Thirty-five complete responses were received, although not all respondents addressed each question. These have been collated, analysed and are compiled in report form, mirroring the structure of the questionnaire. The first four categories are the opinions and views on which the Regulator sought consultation. The five latter categories represent the issues which FLAC felt are most relevant in terms of the Mortgage Code of Conduct and hence sought the opinions of the public.

1. Communication

The majority of respondents (22) felt that communication should be limited to once or twice per month.

Receiving three communications, as suggested by the Regulator, was described as **'excessive'** and **'amounting to harassment'** by a number of respondents. However, five respondents felt that this level was **'satisfactory'**.

According to one respondent: **"Borrowers should contact lender once a month to ensure they are aware of default and outline implications and possible remedies to address any default. When an arrear arises the lender should contact persons in writing, these should then be followed up by a meeting if response does not deal with the matter to both parties' satisfaction"**

Another maintained that: **"Once the lender has made initial contact, one monthly phone call or email is sufficient as the person's circumstances will not improve suddenly."**

2. Arrears

"After the second consecutive missed payment" is when over a third of respondents (13) felt a person should be considered in arrears.

Another nine respondents felt a borrower should be considered in arrears after three months of missed payments. However, a sizeable number (8) felt that the definition of arrears should apply after one month's missed payment or even from the day of the missed payment.

One respondent felt that: **"A borrower should be considered 'in arrears' when three consecutive payments or direct debits have been missed. This allows for people being on holidays who are not aware that a direct debit has been missed. Circumstances change and this allows time for consumers to sort out payments before arrears kick in."**

"Arrears should be considered if a mortgage payment is missed on two successive occasions, one payment should not be deemed arrears. The borrower should be given the second month to address the outstanding payment if this cannot be fulfilled then an arrears issue is recorded. An arrear should only be recorded whereby the full mortgage is not met."

Another respondent felt that arrears should only be referred to **"after the second missed payment [as this] would rule out extraordinary cases where one month is missed but it would identify problems before they get too big"**.

3. Primary Residence

Responses to how the term 'Primary Residence' should be defined varied greatly. But the strongest contention from the majority of respondents (18) was that the Code should not apply to holiday homes, investment properties or homes abroad.

In the cases of multiple properties, a number of respondents suggested that the mortgage holder be required to state clearly which is his or her permanent residence or family home.

There was a lot of support for the protection of the family home by the Code. Also a number of respondents insisted that those mortgage holders who were forced to move out of their properties and sub-let them to cover mortgage repayments should be protected by the Code.

A small minority of respondents (4) felt that the Code should apply to all properties a borrower owns.

The issue of relationship difficulties and the subsequent effects these have on mortgages on jointly-owned property was raised by several respondents who all felt that protection under the Code should extend to the primary residence of both former partners (if now living separately).

4. An Independent Appeals Body

The majority of respondents (22) believed that an independent appeals body, external to the lenders, would **"make sense"** and be **"in the interests of fairness"**.

Many respondents felt the banks and financial institutions were biased, with one commenting **"the banks cannot be trusted to self-regulate ... [as is] proven by recent events"**.

"If someone is finding it difficult to repay to the agreements of the original borrowing and circumstances have changed then the lender should come to a new repayment agreement. If the lender is over demanding on the borrower income then there should be a specific appeals body aside from the financial ombudsman," commented one respondent.

Another respondent felt that the MARP process could be amended to **"revisit the terms/payment plan at the request of either party to see how it is working with the possibility of changes being made to facilitate continuation of payments."**

"Everyone should have an option to appeal to an external, independent body who would be appointed to deal solely with such cases – an entity similar to the Private Residential Tenancies Board perhaps?"

A small number of respondents felt that the Financial Service Ombudsman was sufficient and feared the creation of **"another quango"**.

5. Appeals Process – Power of Ombudsman to Supersede Lenders' Decisions.

Two-thirds of respondents (23) believed that the Financial Services Ombudsman should have the power to supersede a lender's decision.

This was also reflected with the almost unanimous support (26 out of the 31 respondents who answered) for an external appeals process to review complaints and appeals.

Other respondents spoke of the need for **'independent arbitration'** which would assess the arrears and the borrower's circumstances.

One respondent felt that: **"The Ombudsman should have the right to review all lending agreements and where it is clearly demonstrated that it is not in the borrower's interest to maintain a loan, they should have the power to intervene and put in place appropriate lending arrangements which meet the financial position of the borrower."**

"Capital borrowed must be repaid but lenders must be more realistic on repayment requirements they are seeking which stretch borrowers [and] are not sustainable".

Again, some respondents expressed unfamiliarity with the appeals process and the Ombudsman – which was described by one respondent as a **'quango which is too difficult for people to deal with'**.

6. Sufficient Supports - What Kind of Support?

From the thirty respondents who answered this question, the main opinions broadly fell into two categories – those who did not believe that there was enough support or advice available (17) and those who were not aware of current supports or were unsure of where to go (5).

A number of respondents felt that the services and supports which are available are not advertised enough.

"It would be beneficial to have support as banks can be intimidating if you don't have support," explained one respondent.

Another respondent voiced concern that: **"Many borrowers are not aware of the legal implications their mortgage agreements place on them and the fact that banks will apply this agreement to the letter of the law ... Borrowers need clear guidance on repayment options available to them, legal implications on charges but with the approach of what is best for the borrower central to all discussion."**

One respondent commented that it would be in everyone's interest to have proper supports and tools available to the borrower: **"In addition to the borrower and the lender coming to a new agreement it would be in the lender's interest to help apply a financial support and money management tool to the borrower. A tool to help forecast inflows and outflows, manage the household budget and cost saving initiatives in the home. The better the borrower can manage all aspects of spending, the better they can manage and repay all debts."**

One respondent noted that there is a gap in the provision of other forms of assistance aside from legal and financial planning: **"It is all very well providing money and/or legal advice but what they (the borrower) probably also need is some kind of therapeutic counselling/advice service to help them step back, assess their situation and get a bit of mental breathing space and see a way out of it".**

However, a small number of respondents felt the supports that are currently available are sufficient. One respondent commented that **"a mortgage is a private contract entered into freely and knowingly so I don't believe there should necessarily be supports for people facing arrears. It would lead to uncertainty over all debt repayment."**

7. Availability of Legal Advice

The majority of respondents (20) were unaware or unsure of the type of legal advice, if any, available to borrowers in arrears or in danger of entering arrears. However, four believed that there is sufficient advice available.

MABS, FLAC and the Citizens' Information Centres were all actively named by a number of respondents.

A number of respondents were aware of the service provided by FLAC – one commented that FLAC and MABS, along with other support bodies, need greater funding to meet the increased demands.

The website – www.itsyourmoney.com – was criticised by one respondent for being uninformative and too basic.

One respondent believed that **"legal advice is readily available on all matters to anyone"**.

8. An Overall Debt Settlement Process

Nearly two-thirds of respondents (21) agreed that there needs to be an overall debt settlement process and a more holistic approach taken.

These respondents felt that **"all outstanding debts need to be included in the process"** and that **"there should be a more comprehensive process for debt settlement"**.

One respondent felt that an overall debt settlement process would **"help people who find themselves in arrears,"** but stressed that **"repossession [be] the very last option and everything possible [be] done to prevent people from losing their homes."**

Another respondent feared the Code did not adequately address the issue of those with multiple mortgages and other debt: **"The Code as it stands does not take into account the reality that a significant number of borrowers have multiple mortgages, which is going to become a real issue. The Code should be applied to both principal and investment mortgages or some other form of debt settlement process should be implemented. The Code on its own is not going to ease the problem of growing personal debt."**

One respondent felt that reform of the Bankruptcy legislation was needed urgently. The same respondent also felt that: **"We need Individual Voluntary Arrangements in place to allow people to agree schemes with creditors and take the pressure away from the debtor."**

However, views on multiple mortgages and other debt varied. Two respondents accepted that the Code doesn't take into account other forms of debt but stressed that the emphasis needs to be squarely on mortgage debt first.

Another respondent argued that **"multiple mortgages must be treated in a different context,"** while another observed that **"a borrower has responsibility to the debts they freely take on"** and that **"negative equity cannot be forgiven on a blanket basis"**.

9. MARP Process – Clarity?

Over a third of respondents (14) felt that the Mortgage Arrears Resolution Process will add clarity to the situation. However, it must be noted that number of respondents (6) felt that further clarity is needed or had difficulty understanding what MARP will mean in practice.

One in particular felt that: **"the issue of arrears needs to be defined in lay man's terms and the consequences explained."**

One respondent described MARP as **"a step in the right direction"** while another commented that with MARP they: **"are proposing that the lenders will be required to communicate clearly with borrowers as the problem of arrears arises and also the lenders will designate staff members to deal with arrears."**

However, one respondent warned that the **"Code needs to be interpreted and implemented across all lenders. Without universal interpretation, confusion will ensue"**.

Additional Comments

While FLAC focused the questions on a number of specific areas, a sizeable number of respondents took the opportunity to make more general comments in the area of finance and debt. This may indicate that the public would warmly welcome the opportunity to give their views and opinions on various public policy matters more frequently. The comments received are listed below:

- **"I think the Government should reconsider the issue of Stamp Duty for people who bought at the height of the market. First-time buyers are free from Stamp Duty provided they do not sell or rent for 5 years. Now, many of them find it difficult to meet their mortgage repayments; but they cannot sell or even temporarily move somewhere cheaper and rent since to do so means being hit with Stamp Duty."**
- **"MARP has been a good step forward but most people are not aware of it. We nearly need Advocacy Officers in each bank to negotiate on behalf of the borrower because the borrower:**
 - A. **Feels under pressure as they have probably been called in by the bank;**
 - B. **The meetings happen in the bank and this can be intimidating to those not confident in these situations;**
 - C. **Borrowers do not have facts and figures readily available;**
 - D. **Those that can put their points across well get a better deal;**
 - E. **Any dealings I have had with banks lately are intimidating if the borrower does not stand up to them."**
- **"I can see that the proposals are intended to regularise the behaviour of lenders but they do little to help people who find themselves in serious financial trouble having heeded the encouragement of government to 'get on the property ladder'. Indeed the government would have liked for every adult in the country to buy a house and take out a mortgage."**
- **"Why are we bailing out banks and guaranteeing bondholders while at the same time effectively stopping the circulation of money in the economy?"**
- **"Why not have people's principal residence (family home) independently valued in today's market and release them from the negative equity."**
- **"Instead of guaranteeing bond holders (international gamblers) why not guarantee a percentage and use the money instead to relieve negative equity. Give this negative equity to the bond holders instead. This would free up money for spending and boost the economy and generate some jobs. It would allow people the opportunity to sell if they wanted and so start a move in**

the property market. There is nothing happening at the moment and people only expect things to get worse. How will mortgages be paid then?"

- **"If a customer has been late/missed a mortgage payment within the preceding 12 month period, then a straight forward document should be forwarded to clients outlining their rights and responsibilities as a debtor. It should spell out the options available to them."**
- **"The new protocol must be extended to investment properties in some shape or form as well. I understand the complexities; however lenders, who focus strictly on principal residences and do not take a flexible approach on investment properties, are both short-sighted and illogical."**
- **"Breach of contract other than the existence of arrears should be extended to cover the non-payment of life cover insurance if the maintenance of life cover is defined as a term of the mortgage contract as people are likely to stop paying their life cover before their mortgage payment."**
- **"All borrowers in mortgage arrears currently, and those who go into arrears between now and the introduction of the Code should be covered by the new Code."**
- **"The wording under section 46 (d) "Where it is clear that the borrower is deliberately not engaging with the lender or where other circumstances reasonably justify" needs to be modified. It is not defined clearly and could be open to wide interpretation by a bank in seeking repossession."**

Appendix 1: Sample of Questionnaire Distributed

The Financial Regulator is seeking consumer feedback in four specific areas: communication from lenders; defining arrears; defining primary residence; and appeals.

Regulator's questions:

1. How often should lenders be allowed to contact borrowers who are in arrears?
2. At what point should a borrower be considered to be 'in arrears'?
3. How should we define the 'primary residence' or 'family home' to which the Code will apply
4. Should there be an independent appeals body, external to the lenders?

FLAC's questions:

1. Are you satisfied with an internal appeals process for complaints to lenders? For example, do you feel that the Financial Services Ombudsman should have power to supersede a lender's decision where it deems it appropriate?
2. Do you feel there are sufficient supports for people facing mortgage arrears, for example in terms of financial and/or legal advice? What kind of support would you like to see available?
3. Do you know what legal advice is available to the public? Are you satisfied with the level of legal advice available to people who have to make serious decisions on their mortgage?
4. What do you think of FLAC's view that there needs to be an overall debt settlement process? Does the Code take into account adequately a borrower who has multiple mortgages/other loans?
5. FLAC has previously criticised the old Code for its lack of clarity on how lenders deal with borrowers as regards mortgage arrears - do you consider that the MARP has added some clarity on this issue?

Appendix 2: Questionnaire Response Rate

| Regulator's Questions: | Response Rate (out of 35) |
|--|---------------------------|
| 1. How often should lenders be permitted to contact borrowers who are in arrears? | 31 (88.57%) |
| 2. At what point should a borrower be considered to be 'in arrears'? | 32 (91.43%) |
| 3. How should we define the 'primary residence' or 'family home' to which the Code will apply? | 32 (91.43%) |
| 4. Should there be an independent appeals body, external to the lenders? | 32 (91.43%) |
| FLAC's Questions: | |
| 1. Are you satisfied with an internal appeals process for complaints to lenders? For example, do you feel that the Financial Services Ombudsman should have power to overturn a lender's decision where it deems it appropriate? | 31 (88.57%) |
| 2. Do you feel there are sufficient supports for people facing mortgage arrears, for example in terms of financial and/or legal advice? What kind of support would you like to see available? | 30 (85.71%) |
| 3. Do you know what legal advice is available to the public? Are you satisfied with the level of legal advice available to people who have to make serious decisions on their mortgage? | 30 (85.71%) |
| 4. What do you think of FLAC's view that there needs to be an overall debt settlement process? Does the Code take into account adequately a borrower who has multiple mortgages/other loans? | 29 (82.86%) |
| 5. FLAC has previously criticised the old Code for its lack of clarity on how lenders deal with borrowers as regards mortgage arrears - do you consider that the MARP has added some clarity on this issue? | 28 (80%) |

Appendix 3: Press Release on the Code of Conduct Mortgage Arrears Campaign

FLAC Press Release, Wednesday 18 August 2010

Public given rare opportunity to shape mortgage arrears policy

The Financial Regulator is currently revising its Code of Conduct on Mortgage Arrears. As part of a consultation, it is offering the public a rare chance to contribute its views on how financial institutions should handle mortgage arrears in future.

FLAC welcomes this chance to hear the voice of borrowers who are most directly affected by the mortgage arrears crisis. "The Regulator has asked for input from interested parties - there is no-one more interested than the members of Irish society in how mortgage arrears problems are handled," said Noeline Blackwell, FLAC Director General.

To facilitate people in giving these vital opinions, FLAC is inviting the public to use its website to answer the questions posed by the Regulator's consultation paper. In addition, FLAC has developed some other questions which it feels will augment the consultation process, such as whether there is adequate support for homeowners in trouble or whether the Code should be legally enforceable.

FLAC will then collate all responses received by 1 September and present them to the Financial Regulator by the closing date of 3 September.

"FLAC hears every day through its telephone information line and advice centres of the distress and despair felt by people in difficulty with mortgage arrears as well as other forms of debt. FLAC is seeking a holistic approach to debt which will take into account the totality of a person's debt situation," said Ms Blackwell.

FLAC urges the public – whether affected by mortgage arrears or not – to read the Financial Regulator's proposals and comment on them. "It is vitally important that the Regulator be made aware of how the issue of mortgage arrears is affecting homeowners across the country. By making submissions, the public can, through FLAC or individually, inform the Regulator, in the hope that it will result in a more useful, effective and practical Code of Conduct," concluded Ms Blackwell.

Editors' notes:

1. FLAC (Free Legal Advice Centres) is an independent human rights organisation which works to promote equal access to justice for all.
2. Financial Regulator's consultation paper is entitled "Review of Code of Conduct on Mortgage Arrears, Consultation Paper CP45" and was published on Friday 13 August 2010.
<http://www.financialregulator.ie/press-area/press-releases/Pages/ProposedNewRequirementstoProtectPeopleinMortgageArrears.aspx>
3. The proposals outline a structured process for lenders and borrowers to follow when dealing with mortgage arrears. Under the revised code, lenders will be required to communicate clearly with borrowers as soon as arrears arise and explore all viable options. They must also set up a Mortgage Arrears Resolution Process (MARP) and designate at least one staff member in every branch to deal with arrears. For the first time, lenders will also have to listen to and address the concerns of customers who anticipate entering into arrears. The new Code will require lenders to set up an appeals process for borrowers who are unhappy with the lender's decision. If the proposals are adopted, lenders will have to defer court proceedings for 12 months from the time of first arrears or from the time a new payment arrangement broke down.
4. You can read more about FLAC's work on debt law reform at:
<http://www.flac.ie/campaigns/current/credit-and-debt-campaign/>
5. FLAC recommended a complete overhaul of debt enforcement procedures in Ireland and the introduction of debt settlement legislation in a major report in 2003. That was followed in July 2009 by a second in-depth report which explored the debtor's perspective on the enforcement process. The organisation called for a greater range of remedies to assist those who are over-indebted.

Appendix 4: Text on FLAC Website appealing for Public's views/opinions

Tell us what you think about Mortgage Arrears!

On Friday 13 August, the Financial Regulator announced new proposals to update the existing Code of Conduct on Mortgage Arrears and has called for feedback from interested parties by 3 September. The Regulator's proposals outline a structured process for lenders and borrowers to follow when dealing with mortgage arrears. They follow on from the interim recommendations of the government-appointed Expert Group on Mortgage Arrears in early July.

It should be noted that any revised Code will not be implemented until November 2010 at the earliest. This gives a very rare opportunity for the public - those most directly affected by mortgage arrears - to give concrete feedback on the recommendations.

What would the revised Code look like?

Under the new code, lenders will be required to communicate clearly with borrowers as soon as arrears arise and explore all viable options. They must also set up a Mortgage Arrears Resolution Process (MARP) and designate at least one staff member in every branch to deal with arrears. Lender websites must have clear, relevant information for borrowers who are in arrears. For the first time, lenders will also have to listen to and address the concerns of customers who anticipate entering into arrears. The new Code will require lenders to set up an appeals process for borrowers who are unhappy with the lender's decision. If the proposals are adopted, lenders will have to defer court proceedings for 12 months from the time of first arrears or from the time a new payment arrangement broke down.

Giving your feedback...

The Financial Regulator is seeking consumer feedback in four specific areas: communication from lenders; defining arrears; defining primary residence; and appeals.

FLAC will be making a submission around the revised Code. However, we are also offering to collect your thoughts on the new Code as well as any suggestions you would like to make on this topic. Thus we have set down the questions posed by the Regulator in its consultation and added a number of our own questions which we feel will add to the debate.

To take part, please read the [consultation document on the Financial Regulator's website](#) and then send us your answers to the questions below by 1 September. We will collate all the submissions given,

present them to the Regulator before its deadline of 3 September and publish them on our website. We will need your name, email address and a phone number so that we can contact you if necessary. Also, feel free to not answer all the questions we put!

Please do send your response to the Regulator directly if you would prefer! It is very important that the Regulator hear the voice of the borrower on this matter.

Regulator's questions:

1. How often should lenders be permitted to contact borrowers who are in arrears?
2. At what point should a borrower be considered to be 'in arrears'?
3. How should we define the 'primary residence' or 'family home' to which the Code will apply?
4. Should there be an independent appeals body, external to the lenders?

FLAC's questions:

5. Are you satisfied with an internal appeals process for complaints to lenders? For example, do you feel that the Financial Services Ombudsman should have power to overturn a lender's decision where it deems it appropriate?
6. Do you feel there are sufficient supports for people facing mortgage arrears, for example in terms of financial and/or legal advice? What kind of support would you like to see available?
7. Do you know what legal advice is available to the public? Are you satisfied with the level of legal advice available to people who have to make serious decisions on their mortgage?
8. What do you think of FLAC's view that there needs to be an overall debt settlement process? Does the Code take into account adequately a borrower who has multiple mortgages/other loans?
9. FLAC has previously criticised the old Code for its lack of clarity on how lenders deal with borrowers as regards mortgage arrears - do you consider that the MARP has added some clarity on this issue?

Take Action

Send your responses to us at

campaigns@flac.ie

We will present the combined responses to the Financial Regulator on 3 September and will also post them on our website.