



IRISH CONGRESS OF TRADE UNIONS

Response to

The Central Bank and the Financial Regulator's public consultation
on the proposed new requirements on the statutory Code of Conduct
on Mortgage Arrears

1. INTRODUCTION

- a.** The Irish Congress Trade Unions welcomes the opportunity to respond to the proposed amendments to the Code of Conduct on Mortgage Arrears. Congress is the representative voice for workers in Ireland and with over 830,000 members we represent the largest civil society group on the island.

2. FINANCIAL DISTRESS IS INCREASING

- a.** Congress' overall analysis is that there is a serious under estimation of the size and nature of the mortgage debt problems being experienced

by working families in Ireland. There is an inaccurate impression that the banks are handling the problem. The reality is that the situation is worsening and this is clearly shown by the month on month increase in the number of households in arrears. There are now over 36,000 households that are three months behind with payments. Last year almost one home a day was repossessed, applications for judgment mortgages in the Circuit Court increased by 53% in 2009 compared to 2008 (2,396 applications in 2009, compared to 1,571 in 2008); and in the High Court increased by 65% in 2009 compared to 2008 (1,058 applications in 2009, compared to 643 in 2008). With 455,923 people now unemployed and with interest rate increases forecast for next year the debt and mortgage problem is only going to deepen.

3. CODE MUST OFFER A SOLUTION FOR NEGATIVE EQUITY AND THOSE SERIOUSLY OVER INDEBTED

- a. The Code of Conduct on Mortgage Arrears does not address many of the debt problems faced by working families. Importantly it does not deal with circumstances where families cannot afford mortgage repayments due to total loss of employment and savings and other assets having been exhausted. It completely ignores the consequences of negative equity where the amount owed by families may exceed the value of their homes by as much as 50%.

- b. Families with negative equity have the double worry of homelessness and that they will still owe the outstanding mortgage. They do not know how much they will end up owing the bank if their home is repossessed or if they voluntarily surrender their home. There is no way of knowing how the value of their repossessed house will be determined, if the value of their home is at the time of repossession or is the actual price at the time of sale? Do they have to meet the legal and other costs and charges of the sale? Is the bank under an

obligation to maintain the property in a good condition until its sale?
Can the bank take any price or are they required to get the best price?
How are interest and other charges treated on the outstanding amount?

- c. Paragraphs 39 and 40 of the Code require lenders to inform borrowers of the 'implications' of possible scenarios. However this is insufficient. It would be preferable to bring as much transparency and certainty to the treatment of repossessed homes and homes that are voluntarily surrendered and the associated outstanding mortgage.

4. JUSTICE OF THE SITUATION REQUIRES SOME FORM OF DEBT FORGIVENESS

- a. While it may be difficult to establish 'reckless lending' in strictly legal terms there can be no doubt that mortgages were provided without due care and in a manner that can ordinarily be described as reckless. Any objective assessment will conclude that the banks behaved recklessly by encouraging customers to take out 100% loans. There was insufficient attention to potential risks such as loss of home or being liable for the outstanding mortgage debt even when their home is repossessed. Worse still, there was no mention that the homeless borrower would remain liable for any penalty charges and interest that accrues on the outstanding borrowings, for the legal costs of any proceedings, and the for costs involved in selling the property.
- b. Therefore it is imperative that some form of home protection, loan modification and debt forgiveness is worked out for these families who are the casualties of the debt crisis. There is a particularly strong basis for providing for debt forgiveness for families who have lost their family home but are left owing a sizeable mortgage. The amount for debt forgiveness can be set at certain levels: for example, a minimum of €50,000 and maximum €200,000. Not to provide some aspect of loan modification or debt forgiveness is unfair as for many

thousands of working families, their inability to make their mortgage payments is a direct consequence of government's deliberate policy to drive down wages and pour money into the banks.

- c. One area that government could address is the cost of insurance on mortgages, there are circumstances where families have adjusted their loan repayments downwards but the cost of their mortgage insurance has increased correspondingly. This is an area that the government could quickly step in to address.

5. FAMILIES WITH NEGATIVE EQUITY ARE CHARGED MORE FOR THEIR LOANS

- a. Families who are trapped in negative equity are being squeezed by their lenders who know that people cannot switch to another bank. Non-tracker mortgage holders are now captive customers who have no chance of switching or shopping around and are paying an average of €150 more a month for their mortgage. This means that households who are in negative equity are paying the highest interest rates on the market, as highlighted in editorial columns of the Irish Independent on 3rd September.
- b. Para 34 of the Code provides that the lender cannot require the borrower to change from an existing tracker mortgage to another mortgage type. This is welcome but more is needed otherwise there is danger that banks will increase interest rates on those unfortunate enough to have variable loans. There is a strong argument for the Code to introduce a cap on the amount by which variable mortgage interest rates can be increased in any one year and a limit on how much above the ECB rate they can be raised.
- c. While recognising that the Code is not a complete response it is an important part of the response and as such is very much welcomed by

Congress. Congress has a number of recommendations to make in relation to the Code.

6. INDEPENDENT OFFICE FOR DEBT RESOLUTION NEEDED

- a. The principle *nemo debet esse iudex in propria causa*, that no one should be judge in their own cause is an essential requirement of fair proceedings and natural justice. Essentially it requires that no person can judge a case in which they have an interest. The rule must be applied to ensure against the appearance of a possible bias, even if there is actually none.
- b. Banks cannot be exempt from this principle. The principles of natural justice must be built into the operation of the Code generally and to its appeal process in particular. This can be achieved by the establishment of an independent non-judicial office of Debt Resolution proposed by Congress.
- c. Congress is also concerned about the imbalance of power between the lender and borrower with borrowers in danger of the bank deciding their fate for them. It is particularly needed to deal with circumstances where the mortgage problem has not been resolved to the borrowers' satisfaction and in the context of hearing other appeals.
- d. It is essential to deal with mortgages and their arrears in the context of the totality of a families debt and it is unrealistic to expect banks to make fair decisions on the scheduling of repayments in respect of other lenders;

- e. The office could be paid for by a levy on the banks but it must be independent of them.

7. COMPLIANCE WITH THE CODE NEEDS TO BE GIVEN LEGAL UNDERPINNING

- a. This is necessary to give certainty to the process and the resulting agreements concluded. The Agreements concluded under the Code must be admissible in legal proceedings (para 45) and banks must be legally required to comply with the Code. At the moment circumstances are such that banks are practicing forbearance, however as recent experience demonstrates circumstances can dramatically change and with them bank behaviour.

8. THE CODE MUST PROTECT A MINIMUM ADEQUATE STANDARD OF LIVING

- a. By their very nature, debts are multiple, they compound rapidly over time. People who are indebted often agree to arrangements that are not sustainable and in these situations they do not keep to the arrangement. The result is often that the money problems get worse and their creditors become less willing to negotiate new repayment terms.
- b. Step 2 (paras 25-28) establishes the use of the Standard Financial Statement and this is a very welcome feature. There is a value in the Code protecting a 'minimum adequate' family income that will ensure a realistic living standard that affords dignity to the debtor and their family. The amount to be protected will vary with each individual and family according to their circumstances but a useful bench mark for the amount is the Minimum Essential Budget as outlined in the Vincentian Partnership for Social Justice publication, Minimum Essential Budgets for Households.

9. PROTECTION FROM DEBT RELATED HARASSMENT AT WORK

- a. The Code (Para 19) restricts the use of unsolicited communications and this is welcome. However Congress remains concerned about the practices of some debt collection agencies that don't need to threaten violence or use obscene language to be threatening. In particular contacting the debtor on their mobile phone while they at work; or leaving phone messages with only the name of the employee of the debt collection agency and requesting a return call. It must be made clear this type of practice is not allowed under the Code. Contacting people at work about their debts, even on their mobile phone or by e-mail can seriously threaten and undermine a person's position at work, particularly as some employers have obscure clauses in their contracts requiring employees to be of 'good standing' with creditors and others have outdated attitudes and believe that indebtedness is a sign of undesirability in an employee.
- b. A matter of great concern has been the failure to regulate the debt collection services. Unfortunately financial organisations are paying too little attention to the standards of the debt collecting agencies they are employing, and seem only interested in receiving the money owed to their organisation, even though they have responsibilities and regulations to comply with under the Consumer Protection Act 2007, the Data Protection Act, the Consumer Protection Code and the non Fatal Offences against the Person Act.

10. TREATMENT OF SECOND HOMES IN CONTEXT OF BREAK UP

- a. The definition of the primary residence should be in accordance with the definition under the capital gains tax system. In relation to the issue of whether in the circumstances of a family break up the Code

can apply to holiday homes, it will be necessary to look at the reality of the circumstances but at a minimum, a legal declaration of the fact of the breakup must be required.

11. Finally, Congress is requesting that employees involved in redundancy discussions or others who anticipate a change in their circumstances, will be permitted to initiate the procedures under Code. It makes no sense for these families to have to wait until they have incurred late payment penalties before that can address their situation.

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Irish Congress Trade Unions

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