

## **Opinions on CP 46, Reviewing the Code of Conduct on Mortgage Arrears**

### **Arrears Definition:**

We would be of the opinion that a mortgage is no longer functioning in its regular capacity once the full capital and interest is not being paid (assuming it was initiated on a capital and interest basis). Where a mortgage is adjusted, for instance going from an amortizing loan to interest only, that should be represented in the mortgage arrears figures but not qualify as an arrear, this would be valuable in obtaining a view of bank efforts with borrowers toward avoiding arrears as well as that of the general trajectory of borrowers in difficulty.

However, there are various reasons that a direct debit may bounce, be it account activity with other debits or certain lodgements not occurring in a timely manner so the first missed payment is inappropriate. For that reason our opinion is that the best definition – one that can also easily translate into better figures for the mortgage arrears quarterly report – is to take it that anything short of a full payment upon the original loan contract/offer terms one month after the due date would give the best clarity.

This occurs once they go past the end of 30 days from the date that they were supposed to make a payment on without making a full payment. It may cause some minor inflation in the overall mortgage arrears figures, but as long as they are accounted for and explained it will not matter, further, it will give greater clarity to the market by being able to observe the rate of attrition of borrowers who move from 'full payment missed' to '90 days arrears', it will offer a view of the flow of arrears in the residential mortgage market.

### **Primary home definition:**

Our opinion is that it is only operationally feasible to take the address of habitation as evidence of being the 'home', while borrowers may move out to address their arrears, or move into an investment property, it is clear that the previous address is not 'home' in the functional sense of the word, rather it may be the case from a TRS perspective or an emotional one. Failure to have a tight definition will make it exceptionally difficult to help people in arrears.

Furthermore, imagine a situation where a person lets out their home and moves into rental accommodation and then their tenant stops paying and the owner is also not paying, the owner cannot easily evict the tenant and equally the lender cannot pursue the property as it is considered a family home, it would result in a stalemate.

Or perhaps more cynically, if the tenant is paying rent but the owner doesn't pass on that payment to the lender? The bank are now in a situation where they have an investment property style set up but with CCMA style protection for an owner who is not resident.

Residence should therefore be prerequisite, equally, residence should offer definition, so if a family move into an investment property, that should be classified as the family home, and during any arrears process only one property should ever be 'the family home', this may also mean that couples would not be able to split and have two homes given such status, while relationship breakdown is regrettable and unfortunate, there is little point in increasing the number of properties upon which two members of a couple facing relationship breakdown are unable to make repayments upon under the guise of doing them a service. Rather they are best served under schemes such as rent allowance or

other social protection measures.

On the same basis commercial property should not be classified as a primary home, if a person owned a business in a commercial property they may decide that it is best to save their business by making it their primary residence and letting their house go. The incentives in this situation are difficult to deal with, the exceptions would be primary homes that were bought via a commercial mortgage, such as a person who knocked down a single property to build two and they live in one – that would still qualify as a primary home for the sake of the CCMA, as would an apartment which is the primary home if it was above the occupants shop but was purchased on a general commercial basis.

## **Appeals**

One oversight in the Irish mortgage market (and ultimately the MARP) is that debt mediation is an unregulated service, this is a regulatory oversight and failure that must be addressed, while organisations like MABS do great work, for some people they may want a different or more personalised service which is currently being offered by anybody who feels fit to declare themselves as a debt mediator. Any appeals mechanism that excludes debt mediators is flawed, equally any system which includes un-regulated mediators in the process is flawed, for that reason our opinion is that the FSO is the most appropriate appellate arena, but that in getting there other mediators such as MABS and private mediators have a role, however, that role cannot be allowed to exist in an unregulated fashion.

Sincerely,

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