

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

3<sup>rd</sup> September 2010

Re: Code of Conduct on Mortgage Arrears (CCMA)

Dear Sir/Madam

KBC Bank Ireland plc (KBCI) is supportive of the proposed introduction of a revised CCMA. We welcome the opportunity to respond to the Consultation Paper and set out below comments in relation to certain specific items for your consideration.

## **1. Consultation Paper (CP46)**

### **Level of Communication**

As set out in Clause 18, KBCI fully endorses the proposal that all communication should be proportionate and not excessive.

The proposal to apply a numeric limit (Clause 19) for unsolicited communication is unrealistic and extreme. It will result in the lender being unable to engage meaningfully with the borrower, (e.g. under the proposal, three unanswered telephone calls will prohibit the lender making any further efforts whatsoever in that month to engage with the borrower), thereby preventing the lender from addressing the arrears situation.

It will also hinder the lender in its efforts to comply with Clauses 17 and 23.

It is critical for arrears resolution that a lender should not be prohibited from making necessary and meaningful contact with the borrower. Hence the determination of the level of contact should be left to the discretion of the lender acting responsibly and proportionally to the specific circumstances (in accordance with Clause 18).

### **Definition of Arrears**

For the purposes of the CCMA, KBCI do not believe that an arrears situation should be necessarily triggered where only a partial mortgage repayment is missed. A borrower may make a partial mortgage repayment and the amount that remains unpaid would not necessarily warrant the full application of the CCMA. Where, however, a borrowers cumulative arrears exceed one full month's repayments, the provisions of the CCMA should apply. On that basis, the reference to partial repayment should not be included in the definition of arrears.

### **Primary Residence**

KBCI would define the primary residence of the borrower(s) as the property in which the borrower(s) ordinarily reside.

### **Appeals**

We do not believe there is any necessity for an external appeals process as the borrower shall have the benefit of and access to:-

- an internal appeals process under the lender's Mortgage Arrears Resolution Process (MARP);
- the already established Internal Complaints Handling Procedures which must comply with the provisions of the Consumer Protection Code; and in addition,
- where the borrower is not satisfied with the outcome, they may refer their complaint to the Financial Services Ombudsman.

Both the MARP and the Internal Complaints Handling Procedures are subject to review by the Financial Regulator.

## **2. Draft CCMA**

In relation to the draft CCMA we have submitted our feedback to the Irish Banking Federation (IBF). In addition we set out directly herein our views on what we believe are critical clauses.

### **Clause 10**

KBCI agrees with the proposal to advise borrowers in advance of any interest rate increases. However in relation to the additional obligation to advise the borrower to contact the lender if he anticipates difficulties in meeting the higher repayments, KBCI believe:-

- the obligation could be misinterpreted by borrowers who may understand, based on the proposed wording, that they do not have to pay the increased payment; and
- there is a serious risk of moral hazard.

To mitigate against this, the already extensive coverage through media, banks' websites and periodic mailings, ensures borrowers are already being encouraged to contact their lenders should they anticipate difficulties meeting their mortgage repayments.

### **Clause 12 (a)**

Unlike for new business, KBCI does not believe it is feasible to be definitive in the application of criteria for the assessment of requests to alter repayment arrangements for this type of borrower. Each application is assessed on a case by case basis as required by the CCMA and many factors (including extenuating circumstances) have to be taken into account. Narrow criteria being made available could lead to borrower confusion over decisions taken by the lender.

Further, disclosure could lead to certain borrowers providing information, which may not necessarily be accurate, in order to satisfy the criteria.

### **Clauses 12(b), 34 and 35**

KBCI is fully committed to honouring the terms and conditions of tracker rate mortgages where the borrower also honours the agreed terms and conditions.

Where the borrower requests an amendment to the terms and conditions of the mortgage, the lender must also be allowed to reserve its right to amend the terms and conditions, including the interest rate basis, applying to that facility.

Recognising the attractiveness of tracker rate loans to borrowers, the Clauses as currently drafted could lead to a situation where some borrowers may either claim to be facing financial distress or deliberately default on their repayment obligations in order to continuously maintain the tracker rate currently applying to the facility - notwithstanding substantial changes to the previous contractual arrangement.

### **Clauses 15 and 16**

We believe the mailing obligation outlined in Clause 16 should be extended to all borrowers. For lenders to identify on a pro-active basis 'at risk' or 'pre-arrears' borrowers would be difficult and subjective and could

- inadvertently exclude 'at risk' borrowers;
- cause offence to certain borrowers who do not consider themselves to be at risk; and
- create a moral hazard in that borrowers may take the opportunity to unnecessarily attempt to renegotiate the loan.

### **Clause 20 a) vii)**

KBCI believes that it is inappropriate to discuss repossession when the account first goes into arrears. This may cause undue and unnecessary distress and alarm to borrowers at an extremely early stage.

### **Clauses 25 and 26**

KBCI supports the use of a Standard Financial Statement (SFS) to gather financial information on a borrower. However it is neither appropriate nor necessary to use an SFS in all instances to assess a borrower's ability to address an arrears situation, particularly where the difficulty is likely to be of only a temporary nature.

The use of the SFS should not be mandatory in all cases but rather for longer term arrangements and serious arrears.

### **Clause 37**

The requirement to review a borrowers case on a six monthly basis is excessive where the borrower's arrears situation has been satisfactorily addressed. Cases that remain in arrears will be continuously monitored under the lender's normal arrears process and as required under the CCMA.

KBCI would consider that the obligations placed on lenders under the IBF Statement of Intent adequately addresses the review requirement under Clause 37 and would support the inclusion of these requirements in the CCMA in place of the proposed requirement.

**Clause 39**

Voluntary surrender should not be offered as an option by the lender as it could serve to encourage some borrowers to act irresponsibly and thus create a moral hazard. Voluntary surrender should be deleted from the Clause. The reference to 'Voluntary Sale' and 'Trading Down' are adequate to inform a borrower of the options.

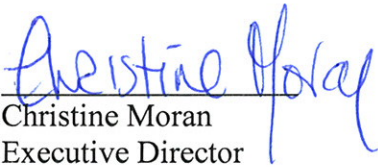
**Clause 45 c) and 46 b)**

These sub-clauses should be amended to include a provision that any appeal or complaint process must be subjected to a time limit of six months.

**Clause 46 a) ii)** This clause should be deleted. A borrower may be deliberately attempting to frustrate the actions of a lender by entering into arrangements which they have no intention of maintaining, while purporting to be acting in good faith.

Please do not hesitate to contact us should you require any clarification on the points raised above.

Yours sincerely

  
Christine Moran  
Executive Director