



## **Response to the Consultation Paper on the Code of Conduct on Mortgage Arrears:**

### **Introduction:**

Respond! Housing Association welcomes the opportunity to make a submission to the Financial Regulator on the review of the Statutory Code of Conduct on Mortgage Arrears. Respond! is Ireland's leading provider of social housing with more than 5000 homes nationwide. We seek to create a positive future for people by alleviating poverty and creating vibrant, socially integrated communities. We do this through providing access to education, childcare, community development programmes, housing and other supports.

Respond! is making this submission because we are concerned at the ever increasing number of homeowners in arrears. With increasing Local Authority housing waiting lists and decreasing social housing stock, this is an area of grave concern for Respond!. We are anxious that any increase in repossession levels in Ireland will lead to increased homelessness. A new trend has emerged in the past 12 to 18 months whereby Respond! is receiving calls from distressed homeowners in fear of losing their home because they have been made unemployed, are falling further into mortgage arrears and due to negative equity, see no way out or light at the end of the tunnel. This problem is obviously heightened in recent months due to rising standard variable interest rates. Homeowners are ringing Respond! for many reasons, including seeking information on their rights and entitlements to social housing if they voluntarily surrender their home or "hand back their keys" and the actual likelihood of being allocated a social house at some stage in the future. Unfortunately, with an estimated 80,000 on housing waiting lists, lack of Government funding for social housing and a delay in the introduction of the Social Housing Leasing Initiative, the information we provide them with is not always positive and encouraging.

It is within this environment that we submit the following suggestions. We have attempted to address the key issues raised in the Consultation paper under the suggested headings.

## **1. Level of Communication**

Respond! believes that at all time the communication between lenders and borrowers should be respectful, consistent and appropriate. It has been reported on many occasions that not only is the treatment of borrowers in difficulty vastly different across organisations, but also different within organisations and even within particular branches. In the United Kingdom this is often referred to as the “lender lottery” and it is critical that lenders provide adequate and appropriate training and support to staff dealing with borrowers. This is a stressful and difficult time for borrowers and lenders should bear this in mind at all time.

Respond! believes lenders should take all reasonable steps to rationally discuss with a borrower the following:

- (i) cause of the arrears
- (ii) the borrower’s entire personal financial circumstances (including other personal debt etc)
- (iii) any state assistance available to the the borrower (for example Mortgage Interest Supplement)
- (iv) a repayment plan to repay arrears.

Lenders must not put any unreasonable pressure on borrowers through excessive contact through telephone calls, correspondance or unsolicited personal contact and must not be contact at an unreasonable hour. Respond! agrees that the level of contact permitted by the lender to the borrower should be limited and agree that three unsolicited communications each month calendar month should not be exceeded. Unfortunately in the past there has been a tendency by lenders towards a “one size fits all” approach as lenders are too strongly focussed on recovering arrears by following a strict process. This does not take into account the borrower’s personal financial circumstances.

### **1.1 Communication amongst sub-prime lenders**

It has been quite apparent in the media in the past number of months that many of the sub-prime or specialist lenders have been more aggressive when dealing with borrowers in difficulty. Respond! is extremely concerned about the apparent lack of flexibility, understanding and forbearance in the sub-prime market. While the Code of Conduct on Mortgage Arrears applies to all regulated mortgage lenders (except credit unions), this has not always been apparent or obvious. Respond! believes strict monitoring of the communication patterns of sub-prime or specialist lenders is critical and any breaches of the code should be dealt with accordingly.

### **1.2 Record of Communications**

Respond! believes that all lenders should be able to demonstrate that reasonable steps have been taken to ensure that all information has been communicated in appropriate ways that the borrower can understand and comprehend. Lenders must keep adequate records (telephone recordings, paper and electronic records) of all dealings with borrowers in difficulty for at least 3 years after the arrears has been cleared or the mortgage discharged.

### 1.3 Type of information to be communicated

As well as telephone and electronic contact with borrowers, lenders should also provide (at least quarterly), statements of payments due, the level of arrears, charges arising from such arrears (which must be reasonable, justifiable and not excessive) and the remaining amount to be paid under the mortgage in a comprehensible format.

## 2. Arrears

### 2.1 Definition of Arrears

According to the Code of Conduct “a mortgage arrears situation arises as soon as the borrower fails to make a full mortgage repayment, or only makes a partial mortgage payment, by the due date.” Similarly, The Irish Credit Bureau will place the letter M (“Missed” payment) next to a person’s loan details once a full payment has been missed. It seems therefore apparent that once one full mortgage payment is not paid, the borrower is deemed to be in arrears and his/her credit rating will immediately be affected.

However, when reporting the statistics on residential mortgage arrears, only those in arrears of more than 90 days are included. While the recent release of quarterly statistics by the Central Bank and the Financial Regulator is incredibly useful, it could be argued the statistics underestimate the number of borrowers in difficulty and fails to give a true indication of the problem.

Similarly, there are marked differences between lenders in relation to how they define arrears. As was stated in the Consultation Paper, lenders in Ireland, as well as the Central Bank and the Financial Regulator apply different practices when considering what classifies as arrears. In the UK, the Council for Mortgage Lenders (CML) measure arrears on mortgage loans with arrears of more than 2.5% of the outstanding mortgage balance and the Financial Services Authority (FSA) measure arrears on mortgage loans with arrears of at least 1.5% of the outstanding mortgage balance. Similar to Ireland, UK lenders report the number of households more than a certain number of months in arrears but it also varies across the various lending institutions. Therefore, it seems apparent that there is no industry wide definition of arrears and this further adds to the confusion and distress experienced by borrowers in difficulty. It also means we have little real insight into the extent of the problem.

### 2.2 Coding of Arrears

Respond! is proposing the use of a traffic light system for those in difficulty. It would operate as follows:

**Green Code – Borrower fails to make a full mortgage payment, or only makes a partial mortgage payment by the due date**

**Orange Code – Borrower fails to make two mortgage payments, or only makes a partial mortgage payment by the second due date**

**Red Code – Borrower fails to make three mortgage payments, or only makes a partial mortgage payment by the third due date**

The Central Bank and Financial Regulator would report the statistics for each category, green, orange and red. Respond! believes it is important that the Central Bank and Financial Regulator continue to report the number of homeowners in arrears of more than 180 days. The organisation also believes it is important that the number of borrowers in arrears of more than 360 days should also be reported as these are the most vulnerable borrowers and at risk of losing their home.

Respond! believes all lenders should use this traffic light system. While all borrowers at risk of arrears should be proactive and communicate any possible difficulties with their lender, this may not happen in all cases. However, Respond! believes there is a moral responsibility on lenders to engage with borrowers as early as possible to hopefully offset the build-up of arrears. Respond! believes it is in the interests of both lenders and borrowers to address a possible arrears problem as speedily and effectively as possible. Effective, early communication between lenders and borrowers is essential.

Once a borrower is deemed to be in the “green code” category, the lender should communicate with the borrower and set about establishing a realistic repayment plan. If an “orange code” appears the situation is not resolving itself and becoming more serious. Obviously if a “red code” appears, a more serious arrears problem is present.

Respond! believes that many people may be experiencing difficulty presenting with their mortgage repayments often through circumstances outside of their control including unemployment, reduction in income, illness, separation or divorce. We believe it is unfair that the future credit rating of the borrower will be affected and that one missed mortgage payment by the due date should not negatively impact on future borrowing. Therefore, we believe that only when a borrower is deemed to be the “red code” category should his/her credit rating be affected.

Respond! also proposes the widening of reporting statistics to include various levels of arrears reporting. More in-depth, detailed information is required to know the scope of the problem.

### **2.3 Arrears Charges**

Respond! does not believe that penalty interest should be charged to borrowers in arrears. In the presentation by EBS Building Society to the Joint Committee on Social and Family Affairs in December 2009, it was highlighted as a proposal that the removal of penalty interest in mortgage arrears for homeowners should be considered. Respond! supports this proposal, especially in cases where borrowers have negotiated with and reached agreement with lenders in relation to mortgage repayments and any outstanding arrears. Any additional charges in relation to administration should be minimal and reflect the actual cost of the extra administration. Any arrears charges must be a fair reflection of the cost of additional administration and must not be a method for the lender to increase profits or offset costs from other areas.

### 3. Primary residence

In the United Kingdom, the Financial Services Authority does not regulate the buy-to-let mortgage market and so its Code of Conduct does not apply to second charge lending or buy-to-let mortgages. When the British Government introduced regulation it distinguished between owner-occupiers who faced losing their homes and buy-to-let landlords whose properties are investments and who do not face losing their homes. Respond! supports this position but the personal circumstances of the borrower must be considered, highlighted by the two case studies below:

#### Case Study 1:

Mary (not her real name), purchased an apartment for €300,000 in 2005 in Dunboyne, Co Meath as it was considered a commuter town for Dublin. For more than 3 years she lived in the one bed apartment on her own and commuted daily to work. Unfortunately she was made redundant in 2008 and was forced to return to live with her parents in Co Galway as she could not sustain the cost of living in Dunboyne on the social welfare assistance she received. She has failed to rent the apartment and so is in arrears on her mortgage. The value of the apartment currently stands at €160,000 and so the option of selling the apartment to repay the mortgage is not viable. She is desperately seeking employment in Dublin as she hopes to return to work in the capital in the very near future. Whilst Mary can no longer afford to live in the apartment, she still considers it “home” and it is only due to unfortunate financial circumstances that it is not her principal primary residence.

#### Case Study 2:

John and Susan are a married couple with two children. They purchased their 4-bed house in a Cork City housing estate in 2004 for €350,000 (the current value of the property is €200,000). In 2007 John was made unemployed and so the family is now living on social welfare assistance. Struggling to repay the mortgage, the family decided to rent a smaller 2-bed apartment in 2008 in order to lease their home as they could not afford the monthly repayments. While the rent received does not cover the mortgage, it is greater than the rent the family are paying for their 2-bed apartment. The family are desperate to try and retain ownership of their home and John is proactively seeking new employment. The family believe that if John can return to the workforce, they will be able to repay the mortgage in full each month and long to return to their home.

Whilst Respond! has sympathy for those who purchased a second or third property for their financial future, the primary concern of the Code of Conduct should be for the family home. However, as the above examples illustrate, each case must be assessed on an individual basis and the personal circumstances of the borrower must be taken into account.

## 4. Appeals

Respond! agrees that lenders must establish an appeals process to independently review the decision by the Arrears Support Unit. However, it is critical that if borrowers are not satisfied with this process, they are informed of the right to refer the matter to the Financial Services Ombudsman. To make a complaint to the Financial Services Ombudsman, the following steps must first be taken:

- (i) A complaint must first be made to the person whom the borrower normally deals with on behalf of the lender
- (ii) If the borrower is not satisfied with the response from the lender, a complaint must then be made in writing to the Senior Management of the lender
- (iii) If the borrower is still unsatisfied, a complaint can then be made to the Financial Services Ombudsman Bureau

As you can see from the steps above, there is a long delay from the initial complaint and the matter finally being dealt with by the Financial Services Ombudsman. While this may be acceptable for other complaints in relation to banks, building societies, credit unions etc, it is simply not appropriate when an individual's or family's home is at risk. More swift and immediate action is required and Respond! recommends that borrowers in difficulty can make a complaint directly to the Financial Services Ombudsman without having to endure all of the steps above. The matter should be dealt with in a reasonable amount of time and without delay. If the matter is still not resolved to the satisfaction of the borrower, a further independent appeals process should be established. Respond! believes borrowers should be allowed to appeal any breach of the Code of Conduct to the Financial Regulator. Respond! believes there currently exists a perceived lack of transparency within the Financial Sector and recommends that any lenders found to be in breach of the Code should be named. A "naming and shaming" policy would also act as a disincentive to lenders to behave irresponsibly with borrowers. It is vital that the needs of borrowers are placed before lenders. Serious sanctions for breach of the code and the mistreatment of borrowers must be set by both the Financial Services Ombudsman and the Financial Regulator.

### Conclusion:

Finally, Respond! welcomes this consultation process and the opportunity to contribute to the revised Code of Conduct on Mortgage Arrears. It is rare that organisations and the public are given an occasion to voice opinions and concerns and Respond! feels this can only serve to strengthen and enhance the Code.

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