



START MORTGAGES LIMITED, TRIMLESTON HOUSE, BEECH HILL OFFICE CAMPUS, CLONSKEAGH, DUBLIN 4.
T: 01 209 6300 F: 01 209 6363 E: CUSTOMERSERVICE@START.IE W: WWW.START.IE DX: 152 DUBLIN

Consumer Protection Codes Department
Financial Regulator
PO Box No 9138
College Green
Dublin 2

2nd September 2010

Re: Consultation Paper CP46 – Review of Code of Conduct on Mortgage Arrears

Dear Sir/Madam

We welcome the opportunity to put forward our views on the consultation that you are undertaking in relation to the Review of the Code of Conduct on Mortgage Arrears, and attach our comments on specific aspects of the Consultation Paper for your consideration.

We would be delighted to meet with you in the event that clarification is required in relation to any aspect of our submission.

Yours faithfully

David Ingram
Chief Executive Officer

Views on specific issues

Level of Communication:

We would contend in the first instance that lenders are already generally prohibited from excessive contact under certain of the general principles of the Consumer Protection Code (e.g. General Principle 9 of the Code provides that a regulated entity must ensure that it does not exert undue pressure or influence on a customer). In addition, paragraph 18 of the revised Code of Conduct on Mortgage Arrears ("revised Code") requires that the level of contact be "proportionate and not excessive". It would seem, therefore, that it is not necessary to impose a specific limit on the number of communications in a defined period.

In the event that the Financial Regulator is intent on placing a specific numerical limit then:

1. We are concerned that any contact with a customer in arrears could be construed to be a contact in respect of their arrears situation, even where the motivation is quite different. As such, therefore, the prohibition could serve to frustrate a lender's ability to contact an arrears customers about other matters where it is also in the customer's interest for the contact to occur. We would propose, therefore, that any limit should apply to "unsolicited communications where the purpose of the communication is to seek payment or to establish why payment hasn't been made".
2. A limit of 3 unsolicited communications is insufficient. While acceptance of the amendment proposed in 1 above will serve to remedy this in part, a limit of 3 unsolicited communications will still be insufficient in the event that a customer elects to make several payments during the course of a month (an increasing phenomenon where customers may be drawing a weekly wage) as this can necessitate more frequent calls in the event that there is an issue with the payment. Accordingly we would propose a limit of "five unsolicited communications per calendar month where the purpose of the communication is to seek payment or to establish why payment hasn't been made".

Arrears:

For the purposes of the Code we would propose that an account be viewed as being in arrears:

1. When a payment which is due in a given month has not been received by the last day of that month; and
2. The amount overdue equals or exceeds one monthly payment due under the mortgage (i.e. the account is considered to be 1 month or more in arrears).

The reasons for this are as follows:

1. Allowing the customer the entire month to make a payment is consistent with how the monthly payments are calculated by Start Mortgages at the outset of the mortgage (i.e. the instalments are calculated on the assumption that the

customer is due to pay at the month-end even if they elect to pay earlier in the month).

2. A customer is not considered to be in default of payment by Start until a payment hasn't been received by month-end, irrespective of the payment date chosen by the customer. In addition, interest does not accrue on the overdue month until after the month end.
3. The proposal is consistent with arrears reporting to the Irish Credit Bureau (i.e. an account with less than 1 payment overdue is reported as up-to-date by the Irish Credit Bureau).
4. An account can often have less than 1 payment overdue for technical reasons. If such an account were considered to be in arrears for the purposes of the revised Code the lender will be obliged to implement actions (e.g. take the case through the MARP process) that are illogical or disproportionate.

We would be happy that the same definition be used for the revised Code and the Quarterly Report on Residential Mortgage Arrears, but disagree that this necessarily has to be the case. For the purpose of the Quarterly Report we consider an account to be in arrears:

1. When a payment which is due in a given month has not been received by the last day on that month (this is exactly as proposed above); and
2. The amount overdue exceeds €0 (this differs from the definition proposed above).

We would be equally happy to continue with this definition for reporting purposes.

Primary Residence:

We have considered the scenarios presented in the consultation paper and considered many possible approaches. In each case anomalous outcomes in particular circumstances caused us to return to the fundamental fact that, at the time of origination/underwriting, the customer will have confirmed the status of the property – i.e. primary residence or investment property – and the loan application will have been assessed accordingly. We are of the view that this should be used to determine what properties are protected by the Code, unless the lender and borrower subsequently agree (in writing) to change the designation of a property.

Appeals:

In view of the internal appeals process provided for by the revised Code and taking into account the fact that the customer will always have the right to refer complaints to the Financial Services Ombudsman, it is our view that there is no need for an external appeals mechanism.

General Comments

Chapter 1 – Scope and Definitions:

1. Definition of Arrears: On the basis of our comments above, we would suggest that this definition be changed as follows: “A mortgage arrears situation arises as soon as the amount overdue by the borrower is equal to or exceeds one full mortgage repayment”
2. Standard Financial Statement: As the SFS is to be standard across the industry and we will have no input into its composition, we would ask that an authorisation, allowing the lender to run an ICB check, be added. This will enable the lender to corroborate the information provided by the borrower as provided for under paragraph 28 of the revised Code.

Chapter 2 – Provisions:

1. Paragraph 12 requires a lender to make available an information booklet. It seems to us that this could be considered to be an “Information Document” under the Consumer Credit Act 1995 (the “Act”). If that is the case then there will be a requirement to include, in the booklet, information such as that set out in appendix 1 hereto, even though this information will be of no value to the customer and could be considered to run counter to paragraph 8 of the revised Code. We ask that it be made clear that this will not be an Information Document for the purposes of the Act.
2. Paragraph 12(b) requires the MARP information booklet to include a statement that the borrower will not be required to change from an existing tracker mortgage to another mortgage type. This statement should only be required in the event that the particular lender has provided tracker mortgages (Start Mortgages has not provided tracker mortgages and the inclusion of this statement in its MARP booklet will serve to confuse).
3. Our comments above in relation to Level of Communication carry through to paragraph 19.
4. The clarification on Chapter 4, provision 11 of the Consumer Protection Code circulated earlier this year made it clear that, in addition to informing an arrears customer of their arrears status once arrears arise, there was a requirement to ensure that “the customer is kept fully informed of this information” on an ongoing basis. For consistency, this requirement (e.g. through the provision of monthly arrears statements) should be formalised in paragraph 21. As drafted, this paragraph only makes it clear that where such updates are provided specific updated information must be included.
5. In paragraph 22 it seems excessive to be required to send a notice advising a customer that their home may be repossessed etc where three partial payments have been missed when, in reality, their account may have inconsequential arrears. The message being conveyed would appear appropriate to a situation

where the equivalent of three full payments have been missed (i.e. the account is 3 months in arrears).

6. We would propose that paragraph 26(b) be amended to read as follows:
“provide the borrower with an SFS to complete, or engage with the borrower to enable the SFS (including oral declarations) to be completed over the phone”. We have found that it can sometimes be easier to get a completed/accurate SFS by completing it over the phone with the customer.
7. In paragraph 33(f), we don't understand what is meant by the reference to capitalising “interest”. We think that this should read “Capitalising the arrears where there is sufficient capacity.....”
8. Paragraph 45 is a matter of concern as it could be used by a customer to delay significantly a lender's ability to commence legal action even in circumstances where the mortgage is unsustainable or the customer is not acting in good faith. We would suggest 2 amendments:
 - The protection of paragraph 45 should be subject to the borrower continuing to co-operate reasonably and honestly with the lender (as is the case for paragraph 46); and
 - At the moment it can take several months for the Financial Services Ombudsman (“FSO”) complaints process to complete, and it is likely that this timeframe will come under further pressure in the event that the lodging of a complaint by a customer serves to limit the lenders right to commence legal action. Accordingly, sub paragraph (c) should only refer to the internal appeals process and should not prevent the lender from commencing legal action where the customer takes a complaint to the FSO.
9. Certain of the provisions of Paragraph 46 are also of grave concern
 - Paragraph 46(b) should be qualified so that its protection applies only where the customer is continuing to co-operate reasonably and honestly with the lender.
 - We think that 46(b) should not apply to a situation where a complaint has been made to the FSO for the same reasons as outlined above.
 - While the Code requires a lender to make every effort to agree an alternative arrangement with a borrower, the provisions of 46(a)(ii):
 - a) Will act as a disincentive to a lender to enter into alternative arrangements. A rational lender will not give the borrower “the benefit of the doubt”, will only agree formal payment arrangements that are guaranteed to succeed and, if a payment arrangement is broken, will not be minded to agree to a subsequent formal arrangement ; and
 - b) Mean that a further 12 months forbearance has to be given by the lender even where the revised repayment arrangement

- which has been agreed by the borrower and lender is never adhered to by the borrower; and
- c) When taken together with rest of the Code could mean that forbearance will have to be exercised for a considerable period.

Accordingly, we would propose the following revised wording for paragraph 46(a):

“where the borrower continues to co-operate reasonably and honestly with the lender, before applying to the courts to commence enforcement of any legal action on repossession of a borrower’s primary residence the lender must wait:

- (i) at least 12 months from the time when arrears first arose; or
- (ii) in the event that an alternative repayment arrangement has been agreed in writing with a borrower, at least 18 months from the time when arrears first arose provided that the borrower has made at least one payment due under the revised payment arrangement”

CONSUMER CREDIT ACT 1995

WARNING

YOUR HOME IS AT RISK IF YOU DO NOT KEEP UP PAYMENTS ON A MORTGAGE OR ANY OTHER LOAN SECURED ON IT. THE PAYMENT RATES ON THIS HOUSING LOAN MAY BE ADJUSTED BY THE LENDER FROM TIME TO TIME.

EARLY REPAYMENT

In the case of a fixed rate loan, in the event of early repayment of the Loan in whole or in part for any reason, or conversion to a variable interest rate, or other fixed rate within the initial fixed rate period or any further or subsequent fixed rate period, the Borrower may be liable to pay a sum to be calculated in accordance with the following formula;

$$(\text{MORTGAGE BALANCE}) \times (\text{BREAK FUNDING COST}) \times (\text{UNEXPIRED FIXED RATE TERM IN DAYS} / 360)$$

where:

- **Mortgage Balance** is either the balance repaid or the balance of the mortgage loan at the date of conversion to another interest rate.
- **Break Funding Cost** is calculated by reference to the difference in the following annualized interest rates. (A) original fixed interest rate (fixed at start of original fixed interest rate period) and (B) the fixed interest rate applicable either when the balance is repaid or the loan is converted i.e. (A)-(B).
- **Unexpired Fixed Rate Term** is the period remaining in days to the end of the original fixed interest rate period from the date the balance is repaid or the loan is converted.

No early redemption fee will apply where the original fixed interest rate is lower than the fixed interest rate applicable at the time the loan is either repaid or converted.

ADVANCE FEES

An Arrangement Fee of 0.50% of the initial advance applies subject to a cap of €1,800.

A Further Advance Fee of 0.50% of the further advance applies subject to a cap of €500.

ARREARS CHARGES

Compound interest is charged on arrears of payments at the same rate applying to the loan advanced. In addition an interest surcharge on arrears at a rate of 1% per month applies, however, this is currently waived.

A charge of €10 may be charged for a reminder letter (Currently waived).