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

By email

3rd September 2010

Re: Review of Code of Conduct on Mortgage Arrears – Consultation Paper CP 46

Dear Sir/Madam,

The Irish Banking Federation (IBF) and its members welcome the consultation process on the revised Code of Conduct on Mortgage Arrears (CCMA). IBF member banks and building societies are committed to working with customers who are experiencing genuine difficulty with their mortgage repayments. A range of initiatives have been put in place to help make this happen – including the IBF Pledge on Home Repossessions, the IBF/MABS Protocol on Debt Management and the designated website www.helpinghomeowners.ie IBF has also participated in the Government appointed Mortgage Arrears and Personal Debt Expert Group and we support its recommendations.

We will work with our members to ensure that the revised CCMA is successfully implemented. However, it is important that we consider the practical implications of any new requirements arising under the revised CCMA in terms of changes to systems and processes and the necessity for further staff training. The introduction of such requirements will have to take place over a realistic timeframe and we would welcome an opportunity to discuss this further with the Financial Regulator.

In our response as outlined below, we have addressed the specific queries raised in the Consultation Paper together with some other key issues which feature in the draft revised CCMA. We have also attached a document which contains commentary on some of the specific provisions of the draft revised CCMA.

Acceptable levels of communication with borrowers in arrears;

We believe the focus of the provisions relating to communication should be on the nature of the contact with the customer as opposed to the frequency of the contact. We agree all communications with borrowers in arrears should be proportionate and not excessive as reflected in provision 18 of the revised Code. By placing a limit on the number of times a lender may initiate contact with a borrower in a given month (as per provision 19), it will prevent the lender from meeting the needs of particular customers who may require regular contact with their lender. Furthermore, this limitation will prevent lenders from attempting to make contact with borrowers



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with whom they have failed to make contact. In neither case is it in the best interest of the borrower and contradicts provisions 17 and 23.

In the event that the Financial Regulator decides that a prescribed limit is necessary, then we would suggest that any limit should only include those communications where meaningful contact is made with the borrower. The limit should exclude communications which are necessitated by other statutory codes and/or legislation and not just those required under the CCMA. There should also be some mention of the benefits to the customer of responding to and co-operating with the lender. Failure to respond to communications would then be deemed by the lender to be an expression of non co-operation.

Most appropriate definition of arrears for the purposes of CCMA;

We would urge the Financial Regulator to seek to ensure that there is consistency between the definition used in the CCMA and that as used for the purposes of prudential supervision. IBF members have adopted different practices in terms of identifying arrears and this cannot be resolved during the current consultation. It may transpire that a certain definition (with a focus on missed payments) will suffice for the purposes of triggering the operational requirements of the CCMA whereas a different approach will remain for the purposes of compiling the Quarterly Report on Residential Mortgage Arrears and Repossessions (with a focus on the position at a point in time each quarter). Therefore, the definition as included in the revised CCMA would be the appropriate trigger for the operation of the CCMA subject to the reference to "partial mortgage repayment" being deleted. On the one hand, partial repayments may be significant (i.e. >90% of the monthly repayment) and the reference to it in the definition could lead to the unsatisfactory outcome of triggering the Code provisions where the outstanding sum is minimal in nature. On the other hand, there will be circumstances where the lender will treat failure to make a full repayment by the due date as evidence of arrears. Therefore, in light of both scenarios we believe it would be better to leave it to the discretion of the lender as to whether to apply the CCMA to instances where partial repayments are made. Although our proposed definition may be most suitable for the purposes of application of the CCMA, it would ultimately be important to ensure that there is alignment of definitions for the purposes of prudential returns.

At risk of going into arrears/pre-arrears/suffering or anticipated to suffer financial stress;

We have reservations about the requirement to assess customers in order to try and predict their future circumstances. In order to properly assess the customer's position, full information must be available to the lender on the possible threats to the borrower's financial stability. Such information may not be available to the lender unless the borrower is already in arrears or the borrower has contacted the lender to discuss possible financial difficulties. Without access to such information it will not be possible to make an informed and objective assessment across the customer base. Many mortgage customers are multi-banked and will not maintain their working or other accounts (savings, for example) with their mortgage provider, again rendering it difficult to make a truly accurate assessment. In addition, it may not be possible to obtain such information within the confines of current data protection legislation. There is also a concern that pro-active communication to such customers could result in an element of moral hazard and could even be deemed offensive or upsetting by some particularly in the event of an inaccurate assessment. IBF member's resources are currently focussed on actual arrears cases and any diversion of such resources might be counter-productive.

We would propose that the revised CCMA be applied to the following categories of customers only:

- All mortgage customers in actual arrears
- All customers who advise their lender that they are in danger of financial difficulty or are concerned about going into arrears and who complete a financial assessment which can be verified by the lender.

There are other means of conveying to customers the supports that are available to them should they find themselves in an 'at risk' situation in relation to their mortgage commitments. Such means would include publication of information through the branch network, internet channels and direct mailings.

Most appropriate definition of primary residence for the purposes of the CCMA;

As stated in the Consultation Paper, individual circumstances and what constitutes an individual's home may vary so any definition should not be too prescriptive. Likewise, it will not be possible to address all eventualities in the revised Code. In the normal course of events, IBF members would look to the provisions of the Consumer Credit Act, 1995 and the original mortgage documentation in the first instance to ascertain whether the borrower has nominated the property as his/her principal residence and that this has been agreed with the lender. At the point at which the borrower is contacted in relation to arrears, the lender will also typically confirm with the borrower that the property is still the borrower's primary residence. Therefore, we believe the key elements of any proposed definition of primary residence are that the property has been solely nominated as primary residence by the borrower and agreed in advance with the lender. In situations which are outside the norm, IBF members will act reasonably and will apply the CCMA provisions as appropriate as long as the borrower is engaging honestly and fairly with the lender. In such circumstances, the borrower's assertions will need to be verified.

Necessity for an external appeals mechanism;

The revised CCMA will include a requirement to establish an appeals process which will involve an independent review of the ASU's decision by senior personnel within each lending institution. In addition, the borrower will be able to submit a complaint to the lender about the arrears resolution process and such complaint may ultimately be referred to the Financial Services Ombudsman (FSO). Given such safeguards afforded to borrowers we do not believe that an external appeals mechanism is necessary in respect of arrangement decisions by lenders.

We are already concerned about the possible impact of provision 46(b) on the position of both borrowers and lenders during the period within which the FSO may be considering complaints about lender's MARP processes. Adding a further appeals mechanism will only serve to compound the issue. During this period, the lender will not be able to enforce the mortgage agreement but interest may still be accruing. The repayment proposal may have been rejected originally due to unsuitability and by making a complaint to the FSO the customer's position may further deteriorate. We would respectfully suggest that the Financial Regulator should consider the impact of this proposal with the FSO.



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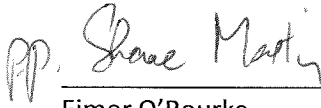
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Standard Financial Statement;

IBF and its members fully support the concept of a Standard Financial Statement (SFS). IBF has been in discussion with MABS in recent weeks in an attempt to develop a mutually acceptable approach to the use of an SFS in practice. It is likely this process will require further consideration so we would suggest that the revised CCMA should not reference the SFS until the outcome of these discussions is known. IBF will keep the Financial Regulator briefed on developments in this regard.

We would appreciate an opportunity to discuss all of the issues raised in our response with the Financial Regulator.

Yours faithfully,



Eimer O'Rourke
Head of Retail Banking
Irish Banking Federation

IBF comments on provisions of draft revised CCMA

Reference in Code	Text of relevant provision of Code	IBF response
Chapter 1 - Scope and Definitions		
Introduction	<p>This Code sets out what the lender must do when dealing with borrowers in mortgage arrears or at risk of going into arrears. All genuine cases, where the borrower is dealing honestly and fairly with the lender, must be handled sympathetically and positively by the lender, with the objective at all times of assisting the borrower to meet his/her obligations.</p>	<p align="center">We would suggest that it is important that the introduction be reworded as follows:</p> <p>“This Code sets out what the lender must do when dealing with borrowers in mortgage arrears or at risk of going into arrears, where the borrower is dealing honestly and fairly with the lender. All genuine cases, must be handled sympathetically and positively by the lender, with the objective at all times of assisting the borrower to meet his/her obligations”</p> <p align="center">The purpose of this rewording is to ensure that only genuine borrowers fall under the protection of the Code.</p>
Definition of arrears		Addressed in cover letter.
Chapter 2 - Provisions		
5	<p>A lender must have in place management information systems to capture information on the handling of mortgage arrears and pre-arrears cases, including any alternative repayment arrangements agreed with borrowers.</p>	<p>Please see comments on "pre-arrears" in cover letter. This provision is also quite general in nature and IBF would appreciate an opportunity to discuss with the Financial Regulator the proposed level of detail to insure institutions are capable of responding to any future reporting requirements and to understand whether any level of commonality across the Industry is required.</p>
7	<p>A lender must assist borrowers by ensuring that all requests from borrowers for documentation and information required for the purposes of applying for State supports are processed within ten working days of receipt of the request.</p>	<p>Currently certain Social Welfare Officers insist on getting original application forms which is not always possible e.g. on-line applications. The successful operation of this provision will require Department of Social Protection to ensure a consistent approach nationwide. The provision should also be conditional on requests being of a standard nature and format e.g. Mortgage Interest Supplement or Tax Relief at Source forms, requesting standard reasonably available data.</p>
10	<p>A lender must notify all affected borrowers in writing in advance of implementing an increase in the interest rate applied to their mortgage loan account, and must advise the borrower to contact the lender if he/she anticipates difficulties meeting the higher repayments.</p>	<p>This requirement is a significant change from current procedure and it will take some time to build and implement the necessary systems. In the second part of this provision, the invitation to the borrower to contact their lender could lead to a significant and unnecessary response;</p> <ul style="list-style-type: none"> • The obligation could be misinterpreted by customers who may understand, based on the proposed wording, that they do not have to pay the increased payment. • There is a serious risk of moral hazard. <p>Lenders will already be communicating with borrowers and including those in arrears under many of the provisions contained under various clauses of the proposed Code.</p>
12	<p>A lender must prepare and make available to borrowers an information booklet providing details of its MARP, which must be drafted in accordance with the requirements set out in paragraph 8 and must include...</p>	<p>12(a) - IBF do not believe that the criteria for assessing requests for alternative repayment measures should be disclosed. Each request is assessed on a case by case basis as required by the Code and extenuating factors can mean exceptions are made in certain cases. Disclosure of criteria could therefore lead to borrower confusion over decisions taken by the lender. In addition there is a moral hazard risk that may arise through the publication of the criteria. Further, disclosure could lead to customers providing the required information, which may not necessarily be accurate, in order to obtain the revised repayment arrangement. IBF members cannot support the requirement contained in 12(b) - please see comments at provision 34 below.</p>

IBF comments on provisions of draft revised CCMA

15	A lender must proactively carry out regular assessments of existing mortgage customers, at least every six months, with a view to identifying those suffering or anticipated to suffer financial stress.	Addressed in cover letter.
16	A lender must attempt to engage with borrowers whom it believes to be at risk of going into arrears. At a minimum, a lender must ensure that it sends a periodic mailing, at least every six months, to all mortgage holders it believes to be at risk of going into arrears, setting out options for dealing with financial distress and encouraging early action by the borrower(s).	Addressed in cover letter.
Chapter 2 - Mortgage Arrears		
19	Each calendar month, a lender, and/or any third party acting on its behalf, may not initiate more than three unsolicited communications, by whatever means, to a borrower in respect of his/her mortgage arrears situation. The three unsolicited communications do not include any notifications to the borrower which are required by this Code.	Addressed in cover letter.
20	20. When a mortgage account goes into arrears, the lender must: a) inform each borrower in writing of the status of the account as soon as possible; and provide the following information:	In light of provisions 20 & 21, Rule 4.11 of the Consumer Protection Code should be disapplied and presumably such disapplication can be formally addressed in the revised CCMA. The IBF also believes that, with regard to 20 a) vii) it is may be inappropriate and unsettling for the borrower to discuss repossession when the account first goes into arrears.
21	An updated version of the information specified in provision 20(a) must be provided to borrowers in all subsequent correspondence issued in relation to their mortgage arrears.	There are significant operational difficulties in providing this data in all correspondence with the customer. If all the information as specified in provision 20 is included in all letters the actual message of the letter may be lost. We would propose a mini-statement including all the points listed in provision 20 be sent to all customers in arrears on a periodic basis. This would ensure that the customer is fully informed of their situation on a regular basis.

IBF comments on provisions of draft revised CCMA

22	When a third full or partial payment is missed and remains outstanding, the lender must advise the borrower, in writing, of the following...	As outlined in our cover letter, we believe the reference to partial payments should be deleted from the revised CCMA as the actions required under provision 22 could be excessive where the borrower is engaging with the lender e.g. a small portion of a monthly payment missed over an extended period of time. Therefore, we would suggest the following wording: “where a third full payment is missed and remains outstanding the lender must advise the borrower...”
23	Where the borrower has not responded to the lender’s correspondence in relation to the arrears, the lender must continue its endeavours to make contact with the borrower.	As per the current draft of provision 19, only three unsolicited communications per month can be made by the lender to a borrower in respect of his/her mortgage arrears. This may limit the lenders ability to continue its endeavours to make contact with the borrower. Therefore, we would suggest the reference to a limit on unsolicited communications should be deleted as outlined in our cover letter.
24	A lender must inform the borrower, in writing, when it intends to appoint a third party, other than its legal advisers, to engage with the borrower in relation to arrears and must explain the role of the third party.	We would welcome clarification of the position in relation to third parties engaged to visit the borrower's property to hand out SFS for completion or provide a brief report on the state of the property particularly where such third party does not discuss arrears with the borrower. Also, the position of valuers engaged to examine the property or provide an updated valuation should be clarified. If it is intended that this provision apply solely to debt collection agents then it should clearly state this in the Code.
25	A lender must use the Standard Financial Statement (SFS) to obtain financial information from a borrower in arrears or at risk of going into arrears.	IBF members support the concept of an SFS. However, the content of the SFS and the circumstances in which it applies are currently under discussion between IBF and MABS and we will revert to the Financial Regulator on this aspect in due course.
26	When a lender is first contacted by a borrower in arrears or at risk of going into arrears, the lender must: b) provide the borrower with an SFS to complete;	Please see comments on provision 25 above.
28	The lender may require the borrower to provide supporting documentation to corroborate the information provided in the SFS.	Please see comments on provision 25 above.
34	The lender must not require the borrower to change from an existing tracker mortgage to another mortgage type.	IBF members cannot support the requirement contained in provision 34. Where repayment arrangements are amended by agreement in writing between the borrower and lender, the lender must reserve the right to amend it’s rate structure. Notwithstanding the foregoing, IBF members agree that all such amendments to the rate structure, and the advantages and disadvantages of same, should be set out clearly for the borrower.

IBF comments on provisions of draft revised CCMA

35	<p>In the case of arrears on a tracker mortgage, where an alternative repayment arrangement includes a fixed interest period, the borrower must be permitted to revert to the original tracker rate at the end of the fixed interest period.</p>	<p>Please see comments on provision 34 above.</p>
37	<p>The lender must monitor the arrangement on an ongoing basis and formally review the borrower's case, including the SFS, at least every six months</p>	<p>A review of the SFS may not be necessary in respect of a performing arrangement particularly as it would impose a burden on the borrower to provide input. If the arrangement is not performing as intended, then as a matter of course a review would be initiated. In addition, the borrower may request a review at any time during the arrangement.</p>
39	<p>If a lender is not willing to enter into a repayment arrangement, the reasons should be given in writing to the borrower. In these circumstances, the lender must make the borrower aware of a) other possible options (such as voluntary surrender, trading down or voluntary sale) and the implications of these for the borrower; and b) the right to appeal the lender's decision and the procedure for submitting an appeal.</p>	<p>We would be very concerned about any requirement to explicitly offer voluntary surrender as an option to borrowers. This could lead to huge moral hazard issues and result in a significant increase in voluntary surrenders. Options such as trading down or voluntary sale should be considered with the borrower in the first instance.</p>
41	<p>Where a borrower ceases to adhere to the terms of an alternative repayment arrangement, the lender must contact the borrower to ascertain why the payment has been missed. If the borrower's circumstances have changed and it is unlikely that he/she will be able to adhere to the terms of the alternative repayment arrangement on an ongoing basis, the lender's ASU must formally review the borrower's case immediately.</p>	<p>We would suggest that an initial review may be conducted outside of the ASU e.g. by branch manager, so more flexibility in this provision would be welcomed.</p>
44	<p>Where a borrower makes a complaint in relation to the MARP process or any of the requirements of this Code, the complaint must be handled by the lender in accordance with the Complaints Handling provisions of the CPC, including informing the borrower of the right to refer the matter to the FSO.</p>	<p>Please see comments in cover letter.</p>

IBF comments on provisions of draft revised CCMA

45	<p>The lender must not apply to the courts to commence enforcement of any legal action on repossession of the property secured by the mortgage: a) until every reasonable effort has been made to agree an alternative with the borrower or his/her nominated representative, or b) where the terms of an agreed alternative repayment arrangement are being adhered to; or c) where an appeal and/or complaint, including a complaint referred to the Financial Services Ombudsman is ongoing.</p>	<p>As outlined in our cover letter regarding 46(b), the Financial Regulator may wish to liaise with the Financial Services Ombudsman (FSO) to assess the impact of provision 45(c). Unless the FSO can deal with such complaints in a reasonable period of timeframe (6 months) the borrowers will fall into further debt/aggravate their difficulties whilst awaiting a decision. We would also suggest that consideration be given to placing a limit on the timeframe within which the borrower may complain to the FSO. The timeframe could be similar to that contained in provision 43.</p>
46	<p>the lender may reserve the right to enforce the mortgage agreement, subject to the following: a) Where the borrower continues to co-operate reasonably and honestly with the lender, the lender must wait at least twelve months before applying to the courts to commence enforcement of any legal action on repossession of a borrower's primary residence. The twelve-month period commences: i) when the arrears first arose, if a revised repayment arrangement has not been agreed, or ii) when the borrower ceases to adhere to the terms of a revised repayment arrangement and no further arrangements are being entered into. (b) Where the borrower is appealing the lender's decision regarding a revised repayment arrangement or is making a complaint about the process to the lender or the Financial Services Ombudsman, the lender must wait until the appeals and/or complaints process has been exhausted before applying to the courts to commence enforcement of any legal action on repossession of a borrower's primary residence, even if it takes longer than twelve months from the time the arrears first</p>	<p>46(a) and 46(a)(ii) appear to conflict i.e. the customer may not be co-operating reasonably if he/she ceases to adhere to the terms of a revised repayment arrangement. If left unchanged, this provision would leave the lender in a situation where it would have to wait 12 months from the date of default of each repayment arrangement before it could apply to the Courts to enforce its security. This is open to significant abuse by customer's, would discourage some customers from dealing with arrears and may lead to lenders being reluctant to enter into repeat arrangements after default. The Expert Group Interim Report recommended that the 12 month moratorium should not be extended. This section also does not cater for unsustainable mortgages. If following a default on a repayment arrangement the lender decides the loan is unsustainable, it would not be in the customer's or the lenders best interest to have to wait a further 12 months before taking enforcement action. This would expose both the customer and the lender to a larger debt. An agreed response time from the FSO would be important in respect of part (d) of this provision particularly given the specified timeframes within which lenders will have to operate under the revised Code. The point at which an arrangement is "entered into" must be clarified i.e. is it issuance of the letter required under provision 36 or is it receipt of at least one months revised repayment?</p>
52	<p>A lender must maintain records of all communications with borrowers. Such records must be readily accessible and capable of being reproduced in legible form. Contemporaneous notes of meetings and telephone calls will be considered sufficient.</p>	<p>The Code should specify the duration for which such records should be maintained.</p>