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Feedback to CP63 – Review of the Code of Conduct on Mortgage Arrears



Introduction

The Code of Conduct on Mortgage Arrears ('CCMA') provides a strong consumer protection framework for borrowers facing or in mortgage arrears and has helped ensure that financially distressed borrowers are being treated in a fair and transparent way.

Since the CCMA was first published in 2009, the problem of mortgage arrears has grown significantly. Not only has the overall number of arrears cases grown but also the number of long-term arrears cases for which no long term sustainable solution has been put in place.

The Central Bank conducted a review of the CCMA as part of our wider response to the mortgage arrears problem which has included the setting of targets for the main lenders for long-term sustainable solutions to be delivered. The main objectives of the review were to:

- strengthen the protections where necessary;
- ensure that the CCMA is facilitating the appropriate resolution of each borrower's arrears situation; and
- ensure transparency and a fair process for borrowers.

The review has now been completed following a public consultation process with in excess of 200 submissions received. The Central Bank would like to thank everyone who took the time to make a submission to inform the process. The revised CCMA also reflects the findings of consumer research and inspections of lenders' compliance by the Central Bank with certain aspects of the CCMA.

Having concluded the review, the Central Bank is now publishing a revised CCMA which comes into effect from mid-night on 1 July 2013. It must be complied with by all regulated lending institutions that have borrowers who are, or may be, experiencing difficulties in meeting their mortgage repayments. We recognise that compliance with the revised CCMA will, in some instances, require lenders to amend and/or introduce systems and procedures, and implement

staff training. We will be cognisant of this for the first six months, provided that, lenders are actively progressing their transition to the new requirements.

The Central Bank is committed to the on-going monitoring of lenders' compliance with the CCMA to ensure that borrowers are treated fairly and transparently, and are engaged by their lender in a meaningful way to achieve resolution of their mortgage arrears situation. We will expect to see lenders' senior management taking implementation of the letter and spirit of the CCMA seriously, including robust discussion and challenge at board level with regard to any policy and procedural changes required as a result of the revisions published today.

Review of Code of Conduct on Mortgage Arrears

The Central Bank first published the CCMA in February 2009, setting out rules for lenders when dealing with borrowers facing or in mortgage payment difficulties. In line with its commitment to continue to review the CCMA in the context of the changing mortgage arrears situation, the Central Bank published a revised CCMA on 1 January 2011. It took into account the recommendations of the Government Expert Group on Mortgage Arrears and also strengthened protections for borrowers in mortgage repayment difficulty through the introduction of the Mortgage Arrears Resolution Process (MARP).

In late 2012, the Central Bank began the process of a further review of the CCMA protections in place for borrowers with a view to strengthening them, where necessary, while ensuring that the framework continues to facilitate and promote the effective and timely resolution, by lenders, of each borrower's arrears situation.

The completion of this review fulfils a recommendation of the Government's Expert Group that the MARP and Appeals Process set out in the CCMA be formally reviewed within 18 months of operation. The review is also timely given the enactment of the Personal Insolvency Act 2012

which sets out options to address the circumstances of insolvent debtors. Lastly, it fulfils a commitment to the External Partners¹ to complete a review of the CCMA by end-June 2013.

The revised CCMA has been finalised following a public consultation process alongside engagement with key industry and consumer stakeholders. It reflects analysis of mortgage arrears information, outcomes of consumer-based research and the results of themed inspections undertaken by the Central Bank of lenders' compliance with certain aspects of the current CCMA.

The CCMA provides an integrated and cohesive package of consumer protection measures for borrowers facing or in mortgage arrears. It reflects the current mortgage arrears situation and seeks to deliver on our established principles to:

- ensure appropriate resolution of each borrower's arrears situation;
- ensure that lenders deal with borrowers in a fair and transparent manner;
- support and facilitate meaningful engagement between lenders and borrowers; and
- ensure borrower awareness of the benefits of co-operating with their lender, and the consequences of not co-operating.

The purpose of this document is to outline how significant comments received as part of the consultation process have been dealt with in the revised CCMA, which is effective from 1 July 2013.

Please note that this document is for information purposes only. It does not amend or alter the revised CCMA and does not form part of the revised CCMA. This document does not constitute legal advice and should not be used a substitute for such advice. The Central Bank does not represent to any person that this document provides legal advice. It is the responsibility of all regulated entities to ensure their compliance with the revised CCMA.

¹ EU Commission, ECB and IMF

Nothing in this document should be taken to imply any assurance that the Central Bank will defer the use of its enforcement powers where a suspected breach of the revised CCMA comes to its attention.

The Central Bank's position on the main issues highlighted in CP 63 and considered as part of the review are set out under the following headings:

1. Contact between the lender and borrower
2. Co-operation and engagement
3. The 12 month moratorium
4. Tracker mortgages
5. Link between the CCMA and the Personal Insolvency Act
6. Use of the Standard Financial Statement (SFS)
7. Reviews of alternative repayment arrangements (ARAs)
8. Treatment of appeals and complaints
9. Additional information requirements

1. Contact between the lender and borrower

1.1. Proposals outlined in CP63

Under the 2011 CCMA, the lender is required to make an initial communication with a borrower in arrears to establish why the arrears have occurred. Once that initial contact is made, a lender is allowed no more than three unsolicited communications per month with a borrower in arrears. It is important to note that the limit of three applies only to successful unsolicited contact, which would include a written communication (e.g. a text, or a letter), a phone conversation or a voicemail. A lender may have needed to make a number of attempts in order to achieve a successful communication, but these attempts were required to be proportionate and not excessive and were not subject to the limit of three.

The issue of three contacts per month has been the subject of much debate prior to and during the consultation process. Consumer bodies have expressed concern about any changes to this limit as they believe it helps prevent harassment of borrowers. On the other hand, lenders have asserted that this limit has prevented them from engaging with borrowers, both at the early stages of arrears and on an ongoing basis, and have argued that this engagement is necessary for cases to be resolved. The Consumer Protection Directorate of the Central Bank conducted inspections prior to the consultation, including listening in on calls with borrowers, and found no evidence of harassment on the part of lenders at that time.

CP 63 proposed and sought views on the following:

- retaining the requirement for all contact and communications from the lender, or any third party acting on its behalf, to be proportionate and not excessive;
- removing the limit of three successful unsolicited contacts per calendar month, and requiring lenders to draw up and implement a contacts policy;
- allowing a lender to undertake an unsolicited personal visit with a borrower in arrears, where all other attempts at contact have failed and immediately prior to classifying that borrower as not co-operating;

- where engagement has taken place, requiring lenders to allow the borrower sufficient breathing space before attempting any further contact with that borrower; and
- requiring lenders to maintain recordings of all telephone calls made to or from a borrower in relation to his/her arrears or pre-arrears.

1.2. Submissions

While the majority of the lenders agreed with the proposal to remove the limit of three successful unsolicited contacts per calendar month and to implement a contacts policy, a number of other submissions strongly objected to the proposal on the basis that the proposed requirement is subjective and at the discretion of lenders, and would lead to significantly increased levels of contact and stress for borrowers. There was also concern that lenders would have disparate contacts policies, reducing transparency for borrowers.

The introduction of guidelines as to what constitutes “proportionate and not excessive” contact was also called for and it was evident from the submissions received from consumers and consumer bodies that the term ‘sufficient breathing space’ was too vague and ambiguous and consideration must be given to amending the term.

While lenders welcomed the proposal to allow an unsolicited personal visit as a last resort, they also expressed the view that unsolicited personal visits should be permitted at any stage in the MARP after all other reasonable attempts at contact had failed. The introduction of clear guidelines on the circumstances for unsolicited visits was requested by a consumer representative body.

The majority of lenders stated that the requirement to record telephone calls would restrict their ability to communicate with borrowers where relationship managers/field agents use mobile phones, or where support is provided through the branch network, as it would not be possible to record these calls.

1.3 Response

An effective and productive relationship between lenders and borrowers will be dependent on a number of critical factors, including early engagement, a positive and constructive ongoing dialogue and a level of contact which is appropriate and avoids harassment, while supporting the resolution process.

We have carefully examined the limit on successful unsolicited contacts, of three per month, with regard to facilitating effective relationships between lenders and borrowers. For borrowers who are co-operating, the limit is less relevant as there is ongoing two way engagement and, in most cases, future contact is agreed with the borrower. For those not co-operating, it is difficult to see how a resolution can be reached in the absence of any engagement. Given that a lender is required to make every reasonable effort to agree an arrangement, and the fact that the limit may prevent lenders from establishing and maintaining the contact necessary to resolve a case, the revised CCMA instead puts greater emphasis on a more qualitative approach to contacts.

The limit of three contacts per month will be replaced by a requirement for lenders to draw up a contacts policy that will apply to all communications with borrowers in arrears or pre-arrears, and must be approved by the lender's board of directors.

In order to mitigate against the risk of harassment resulting from the removal of the limit on contacts, provision 22 of the revised CCMA will require lenders to ensure that:

- a) communications with borrowers are proportionate and not excessive, taking into account the circumstances of the borrower, including that unnecessarily frequent communications are not made;
- b) communications are not aggressive, intimidating or harassing;
- c) borrowers are given sufficient time to complete an action they committed to, before follow up communication is attempted; and
- d) steps are taken to agree future communication with borrowers.

Parts a) and c) in particular, have been expanded in light of the submissions received. Part a) now clarifies that the proportionality of communications should be dependent on the circumstances of the borrower. Part c) makes clearer our intention in relation to what was referred to as 'breathing space' in CP63 and ensures that where a borrower commits to perform an action, he or she must be given sufficient time to complete the action before the lender attempts any follow up. It also instructs lenders, in deciding on when to follow up, to have regard to whether the borrower may need assistance from a third party in carrying out the action.

In order to ease concerns in relation to differing contact policies, lenders will be required to include a summary of their contacts policy in their MARP booklet (provision 14). This will improve transparency for borrowers in relation to how they can expect to be contacted by their lender.

While we are particularly cognisant of the potential impact and stress caused by unexpected or unwanted visits to a borrower's home, the Central Bank recognises that an unsolicited visit can be helpful in some cases and can be in a borrower's best interests. Consequently, lenders will be permitted, under the revised CCMA, to attempt an unsolicited personal visit with a borrower, but only immediately prior to classifying the borrower as not co-operating (provision 26). Lenders will also be required to give advance written notice of their intention to make such an unsolicited personal visit (provision 26).

Guidelines on the circumstances for unsolicited visits were suggested by a consumer body. However, it was felt that provision 26 clearly set out the circumstances where such a visit could occur. Given that the intention of such visits is to try to encourage a borrower to re-engage in the process, we decided against prescribing the engagement that could take place. However, the revised CCMA does specify that a lender must not compel a borrower to complete an SFS during an unsolicited personal visit.

In order to strengthen protection for borrowers, lenders will be required to record all telephone calls to and from their Arrears Support Unit in relation to arrears (provision 64). This

requirement will facilitate compliance monitoring and will be useful to lenders for training purposes. While the Central Bank will be cognisant of the systems changes required to operationalise this requirement, we believe that it is possible to record these calls without restricting a lender's ability to communicate with borrowers.

2. Co-operation and engagement

2.1 Proposals outlined in CP63

The 2011 CCMA sets out a definition of not co-operating which allows a lender to classify a borrower as not co-operating when they fail to provide information to the lender or if, over a three month period, they fail to meet agreed repayments and have not made any contact with the lender or responded to communications.

CP63 proposed an amended definition of not co-operating which clarified that a borrower who does not engage with the lender with a view to reaching an alternative repayment arrangement or other solution to the arrears situation, or who does not return information within a timeline specified by the lender, can be considered to be not co-operating.

In recognition of the serious impact of being classified as not co-operating, a number of new safeguards were also proposed, to ensure that borrowers are given advance warning before being classified as not co-operating and outlining what steps they can take to avoid being classified as such.

CP63 also put forward the view that a borrower who has been classified as not co-operating should be given one further opportunity to re-engage with the lender, given the serious implications of that classification.

2.2 Submissions

Lenders did not object to the amendment to the definition which would allow them to classify a borrower as not co-operating where he or she does not return information within a set timeframe, but considered that the definition should allow for situations where a borrower will not, for example, make suggested lifestyle changes, accept an offer of an alternative repayment arrangement or prioritise secured debt over unsecured debts.

Consumer bodies, in particular, highlighted their experience of lenders failing to engage with borrowers, for example, delays in responding to correspondence or meeting requests from borrowers, and cross purpose contact from different sections of lenders. They also expressed concern that timelines imposed for return of information would be at the discretion of the lender and could unfairly impact on borrowers, particularly those that are vulnerable and may need assistance in gathering information. One consumer representative body called for the introduction of guidelines as to what would constitute “fair and reasonable” timelines.

A number of submissions suggested that the proposed amendment to part c) of the definition (which clarifies that a borrower must make contact with a view to reaching an alternative repayment arrangement) was overly vague and ambiguous and would require a subjective assessment on the part of the lender.

Lenders were strongly opposed to the suggestion that a non-co-operating borrower would be given one further opportunity to re-enter the MARP. It was felt that this undermined the message that co-operation is essential and could encourage borrowers to delay addressing their arrears.

2.3. Response

We do not believe that it is in a borrower’s or a lender’s interests to be in a situation where a constructive working relationship has not been established. The result of no engagement or co-operation is that a borrower cannot influence the outcome of the process, may be subject to penalty charges and, subsequently, legal proceedings for repossession may commence

immediately. In addition, the borrower's eligibility for options under the Personal Insolvency Act may be impacted. For a lender, its options for resolving the arrears will be limited and the costly legal process is a likely outcome.

In response to the wide ranging views on this issue, the definition of not co-operating has been amended to provide clarity to both borrowers and lenders. The definition will allow lenders to classify a borrower as not co-operating where he or she does not return information within a reasonable timeline, specified by the lender. In response to concerns that timelines imposed for the return of information would be at the discretion of lenders and could, therefore, unfairly impact on borrowers, particularly those that are vulnerable, we have stipulated that lenders must have regard to the type of information requested from the borrower and whether the borrower may need additional time to obtain the information, for example, from a third party (provision 34).

Part c) of the definition of not co-operating has been amended to address concerns that the proposed wording was ambiguous and would require a subjective assessment on the part of the lender. It now clarifies that there must be meaningful engagement by the borrower, which allows the lender to complete an assessment of the case. The definition has not been extended to include situations where an offer of an alternative repayment arrangement is declined by the borrower. This distinction between co-operation with the lender in order for the lender to assess the borrower's situation and the subsequent acceptance or decline of the lender's offer by the borrower is particularly important, so that the revised CCMA does not unduly restrict a borrower's eligibility for a Personal Insolvency Arrangement.

In order to protect borrowers who are genuinely trying to engage, the revised CCMA will require that borrowers must be given 20 business days' notice by lenders in advance of being treated as not co-operating. The lender must outline specifically what the borrower must do to avoid such a classification as well as outlining the impacts of being classified as not co-operating, including that legal action may commence immediately (provision 28). In addition the borrower must be notified if they have subsequently been deemed as not co-operating by the lender i.e. at the end

of the 20-day period outlined above. This notification must also outline other options that may be available to the borrower, such as voluntary surrender or voluntary sale. In the interests of transparency, a lender will also be required to notify the borrower of the right to appeal the decision to the lender's Appeals Board in the final notification letter (provision 29).

3. The 12 month moratorium

3.1. Proposals outlined in CP63

The 2011 CCMA requires lenders to wait at least twelve months from the date a borrower is classified as a MARP case (i.e. where arrears remain outstanding 31 days after they first arose), before commencing legal action for repossession. The 12 month period applies only to co-operating borrowers, and does not include any time period during which the borrower is complying with the terms of an alternative repayment arrangement, is considering making an appeal, or while an appeal is being processed by the lender's Appeals Board or the FSO. The moratorium ceases to apply where a borrower declines an alternative repayment arrangement offered by the lender.

CP 63 proposed that a lender should be required to give a 30-day notice period, before commencing legal action, to a borrower who has declined an arrangement. This would allow the borrower a period of time to consider his or her options, particularly whether to consult a Personal Insolvency Practitioner. The paper also sought views on whether the 12-month moratorium should continue to apply where a lender has deemed a mortgage to be unsustainable (bearing in mind that the time remaining will vary, depending on the length of time a lender has taken to assess a borrower's case), or whether the 30-day notice period outlined above, was a sufficient alternative period of time for a borrower to consider his or her options in this circumstance.

3.2 Submissions

Confusion in relation to the operation of the 12 month moratorium was evident both prior to and in the submissions to the public consultation, with some submissions mistakenly believing that the moratorium applied to borrowers who declined arrangements.

A number of lenders supported the proposal to introduce a 30 day period, before legal action can commence, for a borrower who declines an arrangement to consider his or her options. However, consumer representative bodies considered that the proposed 30-day period was too short a period of time for a borrower to consider his or her options in this instance.

With regard to borrowers whose mortgages were been deemed to be unsustainable, lenders also supported the proposal to replace the 12-month moratorium with a 30-day notice period before commencing legal action in such cases, based on the view that delaying the resolution of the case is not in the interests of the borrower. However, consumer representative bodies strongly advocated that the 12 month moratorium should continue to apply as the proposed 30-day period would not allow sufficient time for a borrower whose mortgage is unsustainable, to fully consider their options or make alternative living arrangements in such circumstances.

3.3 Response

Based on the submissions received and having had further engagement with the Insolvency Service of Ireland in relation to the eligibility criteria for personal insolvency arrangements under the Personal Insolvency Act², the revised CCMA sets out an alternative approach in respect of commencement of legal action. This approach clarifies the position for borrowers and lenders, while ensuring that co-operating borrowers are given sufficient time, before legal action

² Section 91 (1) (g) - that the debtor has made a declaration in writing declaring that he or she has co-operated for a period of at least 6 months with his or her creditors who are secured creditors as respects the debtor's principal private residence in accordance with any process relating to mortgage arrears operated by the secured creditors concerned which has been approved or required by the Central Bank of Ireland and which process relates to the secured debt concerned and that notwithstanding such co-operation the debtor has not been able to agree an alternative repayment arrangement with the secured creditor concerned, or that the secured creditor has confirmed to the debtor in writing the unwillingness of that secured creditor to enter into an alternative repayment arrangement.

can commence, to allow them to consider other options that may be available to them, including options under the Personal Insolvency Act.

The existing 12-month moratorium, which applies only to a co-operating borrower whose mortgage is deemed to be unsustainable by his or her lender, has been replaced. Under the revised CCMA, a lender will instead be required to wait at least eight months from the date the arrears arose, before legal action can commence against a co-operating borrower.

Separately, regardless of how long it takes the lender to assess a case, and provided that the borrower is co-operating, the lender must give three months' notice to the borrower before they can commence legal proceedings where:

- the lender does not offer an alternative repayment arrangement; or
- the borrower does not accept an alternative repayment arrangement offered by the lender.

This will give co-operating borrowers time to consider other options that may be available to them, such as voluntary surrender, voluntary sale or a Personal Insolvency Arrangement.

The combined effect of these two protections (an eight month protection period and a requirement for three months' notice) is that, for a co-operating borrower, legal proceedings may not commence until three months from the date the letter (setting out one of the above positions) is issued or eight months from the date the arrears arose, whichever date is later.

Under the 2011 CCMA, a lender may commence legal action immediately upon classifying a borrower as not co-operating, and the revised CCMA is consistent with this (but with the additional protection of a 20 business day warning before a person can be classified as not co-operating).

Provision 29 sets out that where a borrower has been classified as not co-operating, the lender must notify the borrower that he or she is now outside the MARP and that legal action may

commence immediately. This notification letter must also provide information on other options that may be available to the borrower (at the lender's discretion) for example voluntary surrender, mortgage-to-rent and trading down, as well as the borrower's right to consult a Personal Insolvency Practitioner, notwithstanding the fact that the classification as not co-operating may impact on the borrower's eligibility for a Personal Insolvency Arrangement. The lender must also notify the borrower of his or her right to appeal the decision to the lender's Appeals Board.

4. Tracker mortgages

4.1. Proposals outlined in CP63

The 2011 CCMA (Provision 35) states that a lender "must not require the borrower to change from an existing tracker mortgage to another mortgage type, as part of any alternative repayment arrangement offered to the borrower." In the context of resolution of individual arrears cases, this is a key protection for borrowers.

CP63 sought views on whether this requirement should be relaxed where a lender has offered an alternative arrangement which is advantageous to the borrower in the long term, e.g., a debt write-off.

4.2. Submissions

Coverage of this issue on national radio generated a high volume of submissions from individuals. However, it seems that a number of the submissions misunderstood the proposal and were under the impression that the proposal would extend more broadly to all tracker mortgages, as opposed to being a measure restricted to borrowers in mortgage arrears.

While submissions from lenders indicated agreement with the proposal, submissions from other parties largely expressed the view that, in the absence of a third party that would objectively assess whether a borrower was sufficiently compensated for giving up their tracker

rate, a lender should not require a borrower to do so as part of any alternative repayment arrangement.

4.3. Response

The proposal has prompted significant reaction, understandably, from borrowers concerned about its potential impact, particularly on borrowers already struggling to meet repayments.

We have carefully considered whether there are any circumstances which would merit a lender offering a borrower an arrangement which resulted in the borrower changing from their existing tracker rate and have concluded that there may be exceptional cases where this could arise and may prevent the borrower from losing their home.

In recognition of the concerns raised, the revised CCMA has been amended to allow a lender to offer a borrower an alternative repayment arrangement which requires the borrower to change from an existing tracker mortgage to another rate, only as a last resort, where:

- all other options, which would retain the tracker rate, have been considered to be unsustainable;
- the arrangement offered is affordable for the borrower; and
- the arrangement is a long-term sustainable option which is consistent with Central Bank policy on sustainability.

With regard to what constitutes a sustainable solution, the Mortgage Arrears Resolution Targets (MART), which form part of the Central Bank's strategy on mortgage arrears, sets out a definition of sustainable arrangements. The range of solutions set out in the MART reflects those in the CCMA, which requires lenders to consider all available options for each particular case. Under the revised CCMA, a lender will be required to document its considerations of options including why each option considered was or was not considered to be appropriate and sustainable for the borrower.

In addition, lenders will be required to outline in the offer letter, the reasons why the alternative arrangement offered is considered to be appropriate and sustainable, as well as the advantages and any disadvantages or potential disadvantages of any arrangement offered, with regard to the individual circumstances of the borrower.

We note the concerns in relation to the availability of independent advice for borrowers. While the provision of independent legal and/or financial advice to borrowers in or facing mortgage arrears is outside the remit of the Central Bank, the CCMA requires lenders to inform borrowers of the importance of seeking such advice throughout the MARP.

5. Link between the CCMA and the Personal Insolvency Act

5.1. Proposals outlined in CP63

As part of the consultation process, the Central Bank considered the interaction between the CCMA and the new process introduced under the Personal Insolvency Act.

CP 63 set out a number of proposed information requirements intended to ensure that the process for borrowers who have been through the MARP and are considering their options under the Personal Insolvency Act is as smooth as possible. The proposals included:

- A requirement for a lender to include a link to the website operated by the Insolvency Service of Ireland on the dedicated section of its website, for borrowers in, or concerned about, financial difficulties
- Requirements for relevant publications from the Insolvency Service of Ireland to be provided:
 - along with the letter that must be issued to borrowers, where arrears have arisen on a mortgage account and remain outstanding 31 days later;
 - where a lender declines to offer an arrangement to a borrower; and
 - where a borrower declines an arrangement offered by a lender.

5.2. Submissions

The submissions received on this topic broadly disagreed with the proposed information requirements, indicating that the information in relation to the Insolvency Service of Ireland was required to be provided to borrowers too early in the process, especially in the context of personal insolvency options being a last resort for insolvent borrowers who have been through the MARP process and have not been able to agree an arrangement with their lender. Lenders also felt that the requirement to provide hard copies of publications produced by the Insolvency Service of Ireland was too onerous and was not their role.

5.3. Response

We have reconsidered the most appropriate points in time and format for information on personal insolvency to be provided to borrowers, and the revised CCMA requires that:

- A lender will notify the borrower, in writing, of his or her right to consult with a Personal Insolvency Practitioner, where the lender is not offering an arrangement, or where a borrower declines an arrangement offered by the lender (provisions 47 and 49). In addition, lenders will be required to provide the website address of the Insolvency Service of Ireland in this letter.
- A lender will outline in both its MARP booklet and the letter which must be issued to borrowers who are 31 days in arrears, the potential implications of not co-operating on eligibility for a Personal Insolvency Arrangement in line with Section 91(1) (g) of the Personal Insolvency Act (provisions 14 and 23). The letter issued to borrowers who are 31 days in arrears must also provide the website address of the Insolvency Service of Ireland.

6. Use of the Standard Financial Statement (SFS)

6.1. Proposals outlined in CP63

The Standard Financial Statement (SFS) is a key element of the MARP, which has been designed to facilitate the gathering of the comprehensive information needed by lenders to enable them

to fully consider borrowers' situations and to ensure that the alternative repayment arrangements that are offered to borrowers are affordable and sustainable. The SFS requires the gathering of information on a borrower's monthly income and expenditure, their current monthly debt payments as well as details of any property or non-property assets held by the borrower. The information gathered within the SFS is consistent with the Prescribed Financial Statement, which is required to be completed by applicants seeking arrangements under the Personal Insolvency Act.

During the pre-consultation stage, a number of lenders expressed the view that completion of the SFS was not required in certain situations for example, where there is a temporary shortfall in income. Consequently, we sought further information on these situations in CP63.

6.2. Submissions

The majority of lenders confirmed their agreement that the SFS was not required in certain circumstances, including:

- temporary situations where a borrower requires financial support, for example, a short term illness, or maternity leave;
- capitalisation of an arrears balance, where the scheduled monthly repayment has been met for a period of time; or
- where an SFS has been received within the previous 12 months and a further forbearance arrangement is being sought.

Consumer bodies, while accepting that the SFS should be simplified where possible, indicated the view that the SFS should be used in all cases, but that it is particularly important that a full SFS has been considered before any medium or long-term arrangement is offered.

6.3. Response

Having considered the submissions, our view remains that the CCMA should retain the requirement for completion of the SFS in all arrears cases. Therefore, this requirement remains unchanged in the revised CCMA.

However, we do believe that further discussions may be warranted on this topic, and it is our intention to engage with the Money Advice and Budgeting Service (MABS) and the Irish Banking Federation, who were both involved in the development and agreement of the current SFS, to further explore this issue, following the publication of the revised CCMA.

In recognition of the time it may take to complete and assess the SFS and the potential deterioration in a borrower's arrears situation while this process is being carried out, the revised CCMA will allow a lender to agree a temporary arrangement with a borrower, for a limited period, sufficient to allow time for the lender to receive and complete a full review of the SFS (provision 38).

In order to ensure that borrowers are given the help they need to complete the SFS, the revised CCMA will require lenders to offer to provide this assistance to borrowers (provision 31 (b)). In addition, in recognition of concerns raised by consumer bodies in relation to potential delays on the part of lenders, the revised CCMA also requires lenders to provide the SFS to borrowers at the earliest opportunity and to pass the completed SFS to its ASU immediately on receipt, and to provide a copy to the borrower (provision 32).

7. Reviews of Alternative Repayment Arrangements (ARAs)

7.1. Proposals outlined in CP63

The 2011 CCMA requires lenders to review Alternative Repayment Arrangements (ARAs) every six months. These reviews are aimed at determining whether an ARA continues to be appropriate over time and given changing borrower circumstances.

However, the 2011 CCMA was developed at a time when only shorter-term ARAs were being offered by lenders which, in turn, required reviews on a more frequent basis. Due to the fact that longer-term arrangements, such as split mortgages, are now available from certain lenders, CP 63 sought views on proposed definitions for short, medium and long term arrangements, with corresponding review periods of 12 months, 3 years and 5 years respectively.

7.2. Submissions

The majority of lenders believed that the frequency of reviews should be at the discretion of the lender and objected to the proposed review periods on the basis that they might limit more frequent reviews, where they considered them to be necessary.

One consumer representative body was in favour of the proposed review period set out in the consultation paper but also suggested that an initial review should be carried out after 12 months for all categories of arrangements. Another consumer body suggested that reviews introduce an element of uncertainty for borrowers in relation to their arrangement.

A number of other submissions from individual consumers suggested that the provision should also include the option of reviewing the arrangement prior to the specified timeframe, if either party feels it is necessary.

7.3. Response

We believe that it is crucial that ARAs are reviewed at appropriate intervals to ensure that they continue to be appropriate. Consequently, under the revised CCMA, lenders will be required to review ARAs periodically, at intervals that are appropriate to the type and duration of the arrangement (provision 43). This replaces the 2011 CCMA requirement for biannual reviews of ARAs, which we do not consider to be appropriate for longer-term ARAs.

In order to address concerns in relation to a lack of clarity for borrowers in relation to their arrangement and the potential outcome of a review, provision 42 now requires lenders to outline the timeframes for reviews when they offer borrowers an ARA. They will also be required to outline, in the offer letter, the potential outcomes of reviews where circumstances improve, dis-improve, or remain the same.

With a view to strengthening protections, in addition to the requirement for a lender to immediately review a borrower's case, including the SFS, where a borrower ceases to adhere to the terms of an ARA (provision 48), lenders will also be required to review a borrower's case:

- when an existing alternative arrangement comes to an end (provision 43); or
- when the borrower requests a review (provision 44).

8. Treatment of appeals and complaints

8.1. Proposals outlined in CP63

The requirement for lenders to set up an internal Appeals Board was introduced in the 2011 CCMA to ensure that an effective framework exists for considering and determining borrowers' appeals in relation to:

- a) a decision of the lender's Arrears Support Unit (ASU);
- b) the lender's treatment of the borrower's case under the MARP process; and
- c) the lender's compliance with the requirements of the CCMA.

CP 63 proposed that appeals in relation to b) and c) above could be handled by a lender's complaints department, in accordance with the complaints provisions set out in the Consumer Protection Code 2012 (CPC), as they are more akin to complaints than appeals. The intention of this proposal was to allow the Appeals Board to concentrate solely on those appeals relating to the outcome of the MARP process, i.e., the decision of the lender's ASU.

In addition, CP63 proposed that a lender's complaints department should be required to report all decisions on complaints relating to b) and c), above, to the Appeals Board on a regular basis, in order to maintain a consistent approach to the handling of appeals and complaints relating to arrears cases, and to ensure that the Appeals Board is regularly updated on all issues arising in relation to arrears cases.

8.2. Submissions

The submissions on this issue mainly focused on concerns about the Appeals Boards rather than the specific proposal. A number of submissions to CP 63 highlighted concerns in relation to the independence of the appeals process, which it was felt is not transparent enough. They expressed the view that borrowers should have a right of appeal to an independent third party on the decision of the lender's ASU. Others suggested that a distinct body should be established for the purpose of adjudicating on the decisions of a lender's ASU, similar to the Credit Review Office.

8.3. Response

The suggestions in relation to an independent third party which would consider appeals are noted. While it is true to say that the Appeals Board is not independent from the lender, the Central Bank does not have the power to require lenders to delegate commercial decisions in relation to debt restructuring to independent parties.

A complaint may of course be made to the Financial Services Ombudsman (FSO), including in respect of an appeal. The FSO will consider whether the lender complied with the CCMA in reaching the decision and may direct a lender to re-assess the borrower's case. In addition, where a case moves to repossession proceedings, the Courts may also scrutinise the decision making process of the lender. Consequently, we are not proposing any amendment to the CCMA in this regard.

Notwithstanding the above, the Appeals Board does play an important role in the process, as it allows a second review of individual cases. In order to streamline the appeals process so as to make it more efficient for both lenders and borrowers, the revised CCMA will require complaints relating to the lender's treatment of the borrower's case under the MARP process and the lender's compliance with the requirements of the CCMA to be dealt with in accordance with the complaints provisions set out in the Consumer Protection Code 2012 (CPC). This will ensure that a lender's Appeals Board can solely focus on appeals relating to a decision of the lender's ASU.

The revised CCMA specifies, in provision 49, that a “decision of a lender’s ASU” includes the following scenarios:

- a) where an alternative repayment arrangement is offered by a lender and the borrower is not willing to enter into the alternative repayment arrangement;
- b) where a lender declines to offer an alternative repayment arrangement to a borrower; and
- c) where a lender classifies a borrower as not co-operating.

In order to ensure that the process works effectively, lenders are required to undertake an appropriate analysis of the patterns of appeals from borrowers on a regular basis, including investigating whether appeals indicate an isolated issue or a more widespread issue and to escalate this analysis to the lender’s ASU, compliance/risk function and senior management (provision 53). In addition, Provision 52 requires a lender to maintain an up-to-date log of all appeals received from borrowers and specifies what that log must contain.

9. Additional information requirements

9.1. Proposals outlined in CP63

In order to increase transparency for borrowers, a number of new information requirements were proposed in CP 63 in relation to options such as voluntary surrender, trading down, mortgage-to-rent and voluntary sale. The paper also proposed that lenders would be required to provide information in relation to government initiatives in their MARP booklet and on their website, and included a requirement for lenders to inform borrowers of the frequency of reviews of alternative repayment arrangements, including the “potential outcome of the reviews”.

9.2. Submissions

Consumer bodies advocated for full disclosure of the alternative repayment arrangements offered by lenders in a format that is readily understood by borrowers. The importance for

borrowers of seeking independent financial advice prior to agreeing to an alternative repayment arrangement was also stressed in many submissions from consumer groups.

A number of lenders felt that the provision of information by lenders in relation to government initiatives would be onerous and that a reference to the appropriate information sources would be more appropriate.

9.3. Response

A key focus of the CCMA review was the need for lenders to ensure that borrowers are fully informed throughout the Mortgage Arrears Resolution Process. A significant number of additional information requirements are included in the revised CCMA, in order to increase transparency for borrowers.

Provision 14 requires a lender to provide the following information, in addition to the information currently required, in its MARP booklet:

- A link to www.keepingyourhome.ie. This website provides links to the Money Advice and Budgeting Service (MABS), Citizens Information Board, Mortgage Arrears Information Helpline, Mortgage Arrears Information and Services Protocol and provides information on personal insolvency options, including a link to the Insolvency Service of Ireland's website.
- An explanation of other options offered by the lender, other than alternative repayment arrangements, such as voluntary surrender, voluntary sale, mortgage-to-rent and trade down. This information must be accompanied by a statement that the availability of these options is subject to an individual assessment of the borrower's case.
- An explanation of all the alternative repayment arrangements offered by that lender, how these arrangements work, the key features of the arrangements and an outline of the lender's criteria for assessing requests for alternative repayment arrangements.

- An explanation of the meaning of not co-operating and the implications, for a borrower, of not co-operating.
- Summary information on the lender's potential use of confidentiality agreements.
- A summary of the lender's policy regarding communications with borrowers.
- A reminder that borrowers who have purchased payment protection insurance in relation to the mortgage account may wish to make a claim on that policy.
- How information will be shared with the Irish Credit Bureau or any other credit reference agency or credit register, where permitted by contract or required by law.
- Information regarding borrower's right to make an appeal or a complaint in accordance with the CCMA.
- A statement outlining the implications, for a borrower, of legal proceedings.

As per the current CCMA, a lender must provide an explanation of its MARP, information about the potential availability of relevant State supports such as mortgage interest relief or Mortgage Interest Supplement, relevant contact points and a statement that the borrower may wish to seek assistance from MABS and contact details for MABS.

Where a lender offers an arrangement which is declined by the borrower or where the lender does not offer an arrangement, it must inform the borrower, on paper or another durable medium, of the reasons why and of the following:

- Other options available to borrower, such as voluntary surrender, trading down, mortgage to rent and the implications of each option for the borrower, including an estimate of costs and charges associated with such options or a list of the charges where the costs are not known.
- A borrower's right to appeal the decision to lender's Appeals Board.
 - That the borrower is now outside the MARP and the protections of the MARP no longer apply.
 - That legal proceedings may commence three months from the date the letter is issued or eight months from the date the arrears arose, whichever date is later.

- That the borrower should notify the lender if circumstances improve.
- The borrower’s right to consult with a Personal Insolvency Practitioner.
- A link to the website of the Insolvency Service of Ireland.
- That a copy of most recent SFS is available on request.
- The importance of seeking independent legal and/or financial advice.

Where an alternative repayment arrangement is offered by a lender (Provision 42), the additional information that a lender must provide to a borrower at this point includes:

- The frequency with which the alternative repayment arrangement will be reviewed, the reasons for the reviews and an outline of the potential outcome of on-going reviews (aimed at determining whether an arrangement continues to be appropriate over time).
- Details of any residual mortgage debt remaining at the end of an alternative repayment arrangement and owed by the borrower.
- The timeframe within which the borrower must accept or decline the offer.

The intention of these additional information requirements is to increase transparency for borrowers and to ensure that they are fully informed throughout the process.

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