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## **Consultation Paper 63 - Code of Conduct on Mortgage Arrears**

Dear Sir/Madam,

We welcome the opportunity to provide comments on the proposed revisions to the Code of Conduct on Mortgage Arrears (CCMA). AIB Bank is committed to contributing to the resolution of the current mortgage arrears issue ; having an appropriate framework in place for dealing with customers in financial difficulty is key to all stakeholders, particularly to our customers.

We set out below the key aspects of the Code and its operation which have arisen in our review of the Consultation Paper (CP 63) and also some elements of the Code which are not raised in the paper. Appendix 1 to this letter addresses the high level questions set out in CP 63 and Appendix 2 provides detailed comments on the individual provisions of the Code.

### **Whole of Customer Treatment**

As part of our approach to assisting customers in financial difficulties, AIB wishes to ensure that the management of customers' mortgage arrears forms part of a holistic solution which is in the best interests of the customer, while ensuring that mortgage arrears are managed in accordance with CCMA. Where a customer has multiple borrowings with the same lender, it is often the case that there will be interdependencies between the various loans. We are, therefore, recommending the flexibility to deal with the entirety of customers' borrowings on a holistic basis, in the appropriate credit management unit, which may be outside the management of the centralised Arrears Support Unit (ASU). This would facilitate a consistent approach to the management of the borrower's entire portfolio by his or her relationship manager, taking into account the potential complexities of the customer's situation. The bank will ensure that full CCMA protection and requirements are met in relation to the management of mortgage arrears.

### **Definition of Primary Residence**

AIB strongly supports the principle underpinning the CCMA that customers should, wherever possible, be able to remain in their family home. The definition of a "primary residence" in the CCMA, however, is not entirely consistent with this objective.

We propose, therefore, that the definition of a primary residence be limited to loans sanctioned for the purchase of a principal private residence and secured by the principal private residence where the customer is residing in this property. Any change in classification of a property (e.g. buy to let) to a principal private residence must be agreed with the bank / lender in advance.

#### **Use of Standard Financial Statement (SFS)**

The CP highlights the fact that the full range of information required by the SFS may not be necessary in all situations. We agree with this proposal. Furthermore, we do not believe that completion of the SFS should be mandatory in all situations, particularly where the customer is experiencing temporary financial difficulties with a duration of a year or less, for example, a short term break in employment, a property sale pending where contracts are in place, temporary injury/illness etc. Removing the mandatory requirement for the completion of a SFS in these types of situations would assist customers in reaching agreement more quickly with their lenders on an appropriate path forward and would assist lenders in implementing solutions for customers in a more streamlined and efficient way.

In certain circumstances the information contained within the SFS may be valuable in the resolution of difficulties with other customer loans with the lender. However, the customer information contained within the SFS is limited to resolving the home mortgage (private dwelling house loan) only. We suggest, therefore, that the SFS form be updated to include a consent box requesting the customer's authority to use the SFS information for resolving other debt with the lender.

#### **Removal of customers from Mortgage Arrears Resolution Process (MARP)**

CCMA does not address situations where the lender's financial assessment of the customer demonstrates that the customer has satisfactory repayment capacity to facilitate payment of mortgage repayments both now and in the future. In such cases, the Code should confirm that the lender will advise the customer of a decision not to offer them an alternative repayment arrangement and also advise them of their right to appeal this decision if they are not in agreement with it. If the customer does not appeal or where the appeal is not upheld, the customer should be formally removed from the MARP.

AIB will always seek to engage with customers in arrears to understand how financial difficulties have arisen and to try to reach a sustainable solution. Unfortunately, however, there are cases where, despite the best efforts of the lender, customers are not willing to engage and will be deemed not co-operating in line with the provisions of CCMA. In these cases, we do not believe that the CCMA should continue to apply to the customer's mortgage arrears.

The Code should detail the exit mechanisms for performing loans out of the MARP process. For example, where the lender has agreed a long term resolution with the borrower, they would exit MARP and only re-enter in the event of further arrears or where the customer declares him/her self to be concerned about their ability to pay their mortgage in the near term (i.e. "pre arrears" cases).

#### **Frequency of Reviews**

We welcome the Central Bank's decision to review the requirement for six-monthly reviews. However, rather than classifying loan accounts into different categories, we believe that accounts should be reviewed in accordance with the lender's policy on loan reviews as notified to the Central Bank. Review arrangements are also notified to customers in the loan documentation. Customers are of course also free to request a review at any time.





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We agree with the provisions of the Code that a review would be required where the customer ceases to adhere to the terms of the alternative repayment arrangement or prior to the expiration of an arrangement (as set out in provision 47).

### **Tracker Rate Mortgages**

We do not disagree with the Central Bank's proposal to permit the lender to transfer a customer in arrears off a tracker rate as part of the agreement of a long term sustainable solution for the customer.

### **Timetable for Implementation**

Many of the proposed changes to CCMA will require detailed process and operational change as well as IT development. While we appreciate that the Central Bank will be anxious to implement many of the changes as soon as possible – as will AIB bank, we recommend that a realistic timeframe for implementation be developed with industry to ensure effective implementation of the new provisions.

Finally, we would like to thank you for the opportunity to provide feedback on the proposed changes in the CCMA, and to reiterate AIB Group's commitment to working with our customers and to resolving the issue of mortgage arrears. We would welcome the opportunity to meet with you to discuss the Bank's submission.

Yours faithfully,

Fidelma Clarke

Head of Governance and Assurance

## **Appendix 1: High Level Issues**

### **1. Co-operation and Engagement**

We agree with the following proposals in relation to customers who are not co-operating:

- The borrower may be considered to be not co-operating where he or she fails to provide information relevant to the assessment of the borrower's case sought by the lender, within a reasonable timeframe, as specified by the lender.
- The borrower can be considered to be not co-operating where, over a three month period, they have made contact with the lender but have repeatedly failed to do so with a view to reaching an alternative repayment arrangement or other solution in relation to the arrears.
- Where a lender proposes to classify a borrower as not co-operating, it must give the borrower advance notice, in writing, explaining the implications and how they can avoid being classified as not co-operating (provision 27).
- Where a lender has previously advised a borrower that it intends to classify him or her as not co-operating, and that borrower has not subsequently engaged with the lender, it is proposed that the lender must notify the borrower, in writing, that he or she has been classified as not co-operating and inform the borrower of the intended actions (provision 28).

We do not agree with the proposal to give the borrower another opportunity to re-engage after all of the above requirements have been complied with and the borrower has been classified as not co-operating. We believe that such a step would be retrograde, confusing and even ultimately prolong the achievement of a resolution in some cases. The borrower will already have been provided with advance notice that they are to be deemed not co-operating unless they engage with the bank (i.e. action is taken by the borrower in accordance with CCMA). In addition, and as set out in the covering letter, we do not believe that a borrower who has been classified as not co-operating in accordance with the provisions of CCMA should continue to remain within the MARP. Any decision to reclassify the borrower as "co-operating" should be at the discretion of the lender.

### **2. Contact between the Lender and the Borrower**

We agree with the proposals in relation to contact between the lender and the borrower and, in particular, that all such communication should be proportionate and not excessive. We believe that it is essential that engagement takes place as early as possible in the arrears process in order to maximise the possibility of the situation being contained.

The changes made to CCMA also need to be reflected in revisions to the appropriate provisions in the Consumer Protection Code.





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### **3. Link between the CCMA and the Personal Insolvency Act**

We agree with the proposal that the lender provides a link to the website operated by the Insolvency Service. However, we do not agree with the proposal that the lender must provide the borrower with relevant publications from the Insolvency Service. This could result in the borrower directing queries on the insolvency options to the lender rather than to the Insolvency Service.

In addition, there is a risk that a customer in early arrears could be directed towards an insolvency option route when a sustainable resolution strategy could have been agreed with their lender. Also we believe that it is intended that PIA would be considered after, and not before, engaging through the MARP process.

We do not agree with the proposal in provisions 44 and 45 to provide the borrower with a copy of their completed SFS unless specifically requested by that borrower, in which case we would be happy to provide the customer with a copy.

We agree with the proposal to provide a 30-day notice period to the borrower before commencing legal action in a situation where the borrower has declined an alternative repayment arrangement.

We also agree that a 30-day notice period is sufficient where the lender has deemed a borrower's mortgage to be unsustainable and declines to offer an alternative repayment arrangement. In this situation, the 12 month moratorium should not continue to apply. We note that a decision to pursue legal action is not one that is taken lightly by lenders. This decision will have been reached only after extensive efforts have been taken to engage with the borrower and to find a sustainable solution to their arrears problem. We do not believe that, in these situations, there is any benefit to the borrower of protracting the process if the mortgage is unsustainable.

### **4. Use of the Standard Financial Statement**

In addition to our proposal as set out in the covering letter that an SFS should not be required in all cases, where applicable, AIB is very happy to offer to assist borrowers in completing the SFS and we propose that such assistance could take the form of web based guidance tools as well as offering personal assistance.

### **5. Reviews of Alternative Repayment Arrangements**

Our proposal in relation to the frequency Reviews is set out in the covering letter.

## **6. Treatment of Appeals and Complaints**

We agree with the proposed amendment in relation to appeals and complaints whereby complaints regarding the lender's treatment of a borrower under MARP, or compliance with CCMA, should be dealt with in accordance with the lender's complaints handling processes. However, we would suggest that the use of the phrase "complaints department" be substituted with the following "normal complaint handling procedures of the Institution". This would take into account the differing structures for complaints handling across lenders.

We believe that membership of the Mortgage Appeals Board should comprise three of the lender's senior personnel who have not been involved in the customer's case previously or appropriate independent, external professionals or a mixture of both.

## **7. Information on Other Options**

We agree with the requirement for lenders to provide information to borrowers on different options but please note our detailed comments in Appendix 2.

We would also make the observation that the provision of such detailed information results in long, complex letters that can often leave borrowers feeling intimidated and, consequently, less likely to engage with the lender.

## **8. Tracker Mortgages**

Our views in relation to the proposals regarding tracker rate changes are set out in the covering letter.



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## Appendix 2: Comments on specific provisions of the Code

**Mortgage to rent:** The definition refers to two products; mortgage to rent and mortgage to lease. We suggest that two separate definitions be provided for “mortgage to rent” and “mortgage to lease”.

**Not co-operating:** The protections provided by CCMA should only be provided to customers who are genuinely co-operating with the lender and where meaningful engagement is taking place with a view to reaching resolution. We propose, therefore, that the definition of not co-operating should also include the following situations:

- where the customer fails to act/engage on agreed milestones to resolve the borrower’s mortgage arrears e.g. fails to put a property on the market for sale, fails to restructure non PDH debt etc.
- where the customer fails to make agreed expenditure changes/reductions
- where the customer fails to adequately prioritise mortgage debt over other debt so that a customer remains in the family home.

Please note that the above list is not exhaustive and we would seek flexibility to categorise customers as not co-operating when they are not meaningfully engaging with the lender. We also suggest that the word ‘only’ be removed from the first line of the definition of “not co-operating”.

**Primary Residence:** Please see our comments in the covering letter on this definition.

**Standard Financial Statement:** In line with our comments in the covering letter, we suggest that the word “must” be replaced with “may use as appropriate”.

**Unsolicited Communication:** We propose that SMS text messaging and voicemail be excluded from the definition of an unsolicited communication as these messages/voicemails are simply used to prompt the borrower to get in contact with the lender.

**Provision 6:** We find this provision confusing. Is the lender permitted to issue letters required under the Code to the third party as well as to the borrower, in situations where the borrower has appointed a third party to liaise with the lender? It is unclear why the borrower needs to advise the third party of the contents of each communication if the lender is already communicating with the third party.



**Provision 12:** We do not believe that the MARP booklet is the appropriate mechanism for providing details of any Government initiative to assist borrowers in financial difficulty. As a substitute, we propose that lenders can provide links to any such initiatives from the lender's website as required by Provision 13.

**Provision 13(f):** Rather than provide details of any Government initiatives, we suggest that lenders should provide a link to relevant Government websites.

**Provision 18:** It is unclear how a borrower in pre-arrears could be classified as not co-operating under provisions 27/28. Was this intended?

**Provision 22:** We do not agree that it is the lender's role to provide the borrower with the Insolvency Service publications. In our view, it should be sufficient for the lender to provide a link to the Insolvency Service website. Otherwise there is a danger that the borrower will direct queries on the insolvency options to the lender rather than to the Insolvency Service. In addition, there is a risk that a customer in early arrears could be directed towards an insolvency option route when a sustainable resolution strategy could have been agreed with their lender. We believe that it is intended that PIA would be considered after, and not before, engaging through the MARP process.

It should be possible for lenders to make the MARP booklet available from the dedicated arrears section of their website rather than sending it out to all borrowers in arrears.

**Provision 25:** A personal visit should not be restricted to situations where "all other attempts at contact" have failed. For some borrowers, it may be beneficial for the lender to carry out a personal visit earlier in the arrears lifecycle rather than leaving it until the customer is at the point of being classified as not co-operating. Failure to contact the borrower through other means should be sufficient to merit a personal visit. Such visits will be notified in advance to the borrower as set out in provision 25(b).

**Provision 28:** This rule does not stipulate that the notification should be in writing. This should be clarified.

**Provision 29:** Please refer to comments on SFS in the covering letter.

**Provision 31:** It is unclear why the lender is required to provide the borrower with a copy of the SFS when the borrower has provided the SFS to the lender. The SFS should only be provided where specifically requested by the borrower.

**Provision 34:** We have made the point in the covering letter that the CCMA should allow for mortgage arrears to be dealt with outside the ASU where the borrower has multiple accounts in arrears with the same lender. We propose, therefore, that a completed SFS should be capable of being assessed by other credit management areas in a lender.





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**Provision 37:** As set out in the covering letter, we propose that the SFS should not always be required where a temporary forbearance measure is being put in place for a borrower who will be able to exit to sustainability on expiration of the forbearance period.

**Provision 38:** The option of “write-off” should be removed as a forbearance option as its inclusion may lead borrowers to believe that such an option could be offered by the lender at the outset of the process. In addition, the word ‘rate’ is missing from (b).

**Provisions 40/41:** See comments in covering letter.

**Provision 42:** The request to include details regarding the potential outcome of reviews where the customer’s circumstances improve, disimprove or remain the same (as required by (e)) may cause unnecessary stress / concern to customers and should not be included here. While the lender may be in a position to outline its strategy where a customer’s situation improves or does not change, it is difficult to outline what that strategy would be, should their circumstances disimprove, without a full assessment of the customer’s circumstances.

**Provision 43:** Please see our comments in Appendix 1.

**Provision 44:** This provision does not cater for situations where the lender has assessed the borrower as having the repayment capacity to service the mortgage and the lender is, therefore, unwilling to offer the borrower an alternative repayment arrangement. Please see our comments in the covering letter.

**Provisions 44/45:** In relation to 44(c)(i) and 45(d)(i), we would caution that lenders will only be in a position to provide high level, descriptive information on ‘associated costs or charges’.

**Provision 45:** As the borrower has already been provided with details of the alternative repayment arrangement offered, (a) should be removed.

**Provision 46:** As stated previously, the SFS should only be provided where requested by the borrower. Also, it should be sufficient for lenders to provide a link to the Insolvency Service website rather than sending out copies of publications.

**Provisions 47/48:** In a situation where the alternative repayment arrangement is coming to an end, the sequence of these provisions is confusing. We suggest that

provision 47 should deal solely with reviews where the borrower ceases to adhere to the terms of an alternative repayment arrangement. Provision 48 can then deal with situations where the alternative repayment arrangement is coming to an end.

**Provisions 49/50:** Provision 50 appears unnecessary as it is already covered by provision 49.

**Provision 49:** Please see our comments on the Appeals Board in Appendix 1(6) above.

**Provision 51:** This provision should be clarified to state that membership of the Mortgage Appeals Board should be comprised of three of the lender's senior personnel who have not been involved in the borrower's case previously or appropriate independent, external professionals or a mixture of both.

**Provision 52(c):** The requirement to provide the customer with the name of one or more individuals is unnecessary as any staff member within the credit management area can answer a question with regard to an appeal

**Provision 65:** This proposal would require the introduction of a new technology solution to record both mobile and land line calls across our entire branch network. We suggest that this provision is replaced with a requirement to document and record all conversations with borrowers in arrears.

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