

[The Central Bank received the following submission from 53 individuals. The submission originated on the Facebook page of the Anti-Eviction Taskforce]

Proposed changes

To

Code of conduct on mortgage arrears

Introduction

We cannot talk about the mortgage debt crisis without looking at the overall picture, the circumstances that surround the mortgage crisis are important to put the 'Code of conduct into mortgage arrears' into context, this recession which the people of Ireland is paying for, thereby reducing their own income to the extent that they are unable to pay their own mortgage, bills or daily living expenses.

The collapse of the Irish banking system was principally caused by a failure of regulation and the reckless lending practices of the Irish and European banking system.

There was also no direct regulation of credit limits, for example through restrictions on LTV ratios. This meant that Irish households were able to accumulate liabilities more easily than consumers in countries where there was stricter regulation. A contributing cause of the crisis was that bank governance and risk management were weak – in some cases disastrously so. It appears that internal procedures were overridden, sometimes systematically. These supervisory problems must be seen in conjunction with the absence of forceful warnings from the central bank.

The cost of the bailout, 69.7 billion plus bondholder payments of over 144 billion, plus accruing interest is being borne by the people of Ireland. The collapse of the property market and cost of the banking bailout has meant many people's income means they cannot afford to service loans which they were previously able to afford.

It was known in political and financial circles from 2005 that a crash was impending, the public was not informed.

Promises were made and broken also by the government in their programme for government:

Introducing a two-year moratorium on repossessions of modest family homes where a family makes an honest effort to pay their mortgage.

Fast-tracking personal bankruptcy reform needed to bring us into line with best international standards, such as introducing a flexible discharge period for 'honest bankrupts', defined as one that has materially complied with the Tax, NAMA and Companies Acts among others.

Converting the Money Advice and Budgeting Service into a strengthened Personal Debt Management Agency with strong legal powers. The agency will support families who make an honest effort to deal with their debts, including non-mortgage debt, providing protection from their creditors where appropriate, so that they have time to sort out their affairs. In order to do so, the Personal Debt Management Agency will have quasi-judicial status.

In Making greater use of Mortgage Interest Supplement to support families who cannot meet their mortgage payments, which is a better and cheaper option than paying rent supplement after a family loses their home.

The above introduction is made to underline the fact that there is very little confidence in the banks or government initiatives. We believe 'Moral Hazard' in the theory of economics where a party insulated from risk behaves differently from how it would behave were it fully exposed to the same risk, applies to the financial system that continues to benefit at the expense of the people of Ireland

To allow all to be dealt with by the bank instead of independent bodies would seem ludicrous.

The money given to banks for distressed mortgages remains unaccounted for, we believe it would be immoral to use this money to write down losses rather than help people and prevent further cost to the country for rehoming by using that money to write down mortgages.

The government to date has failed completely in its duty to its citizens by not regulating the banking system adequately, not advising of the subprime issue and its inherent dangers, not capping the banking sectors ability to sell on its debt beyond a secure level, putting the interests of the banks, financial institutions and profits before those of Irish Citizens, young and old.

Article 45 IV: That in what pertains to the control of credit the constant and predominant aim shall be the welfare of the people as a whole.

The citizens of Ireland are not seeking debt forgiveness but are seeking realistic ways forward that enable them to survive even in such basic issues as , feeding and clothing their children, keeping a roof over their families heads not excluding balancing the common good with the fulfilling their responsibilities towards the original lenders.

Non co-operation and Implications

Recommendations

The definition of what is fair and reasonable is left at the discretion of the banks, this we would recommend should be defined by an Independent body.

We feel that highlighting to the borrower that he or she will be considered to be not co-operating if he or she does not return the requested information within the specified timeframe, is threatening with the resulting penalty too severe.

All communications and appeals etc being within the control of the bank, we feel is not in the best interest of the mortgage holder, and Independent body would mean people would have more confidence in the process.

Full payment, implications for those who have been paying what they can afford, would act as a deceptive. We recommend that as long as people are paying what they can afford they should continue to be counted as co-operating and be thus protected by MARP.

We would condemn any interference in the eligibility for Insolvency. This would not only be detrimental to the person but also the domestic economy as a whole which remains strangled through lack of disposable income. We recommend that all should be able to avail of Insolvency.

We disagree with all aspects being within the control of the banks. If a person refuses offer, considered non co-operative, there only option being to appeal to the bank against the bank's decision. At all stages we believe an Independent body would be fairer and transparency upheld whereby the interests of the borrower would be more likely to be upheld.

We recommend no imposition of charges. The domestic economy and person is already strangled with debt, heaping more debt upon the person is adding insult to injury in this banking led recession and will not be beneficial to the person or common good of the country.

Moratorium should remain in place for all residential mortgages while a deal suitable to both mortgage holder and bank is negotiated.

Bank Obligations

Recommendation:

We recommend that the banks are obliged to offer suitable remedy. Within the Code of practice, the only obligation seems to be the provision of information, this is of course is important, however, there is nothing to oblige the banks to co-operate, to offer suitable remedy, or to take the common good of the people or economy into consideration.

Communication

Recommendations:

We recommend that the maximum contact should remain the same; maximum 3 unsolicited contacts. This should be sufficient in any sort of agreement, the stress upon people presently and from experience any further stress being heaped on people will lead to further increases in suicide, marriage break up etc.

We recommend that there is an Independent body or system through the Financial Ombudsman for people unhappy with the bank's policy of communication. Presently it is not obvious where people

may complain or take actions if they are dissatisfied, unless it is through the bank itself. We do not believe that this is fair or transparent.

Provision of Information

Recommendations:

We agree and would recommend that all communications about arrears and pre-arrears are provided to the borrower in a timely manner. All information must be clear and consumer friendly manner. All communication must be conducted with utmost privacy.

We are unsure as to how useful providing information on MIS will be in light of the new code as, people may not avail of MIS unless they have a restructuring plan in place for 12 months before they can apply. The new code is implemented will make it much harder for a person to be counted as co-operating. We recommend that the government expand upon MIS as recommended by review group, and as promised in the governments programme for government.

Providing information about MABS is also laudable, however as it was not expanded as recommended, their waiting lists are long and their services stretched. We recommend MABS is expanded and supported to offer more services to the person in their independent role.

Provision of information on any other Government initiatives to assist borrowers in financial difficulty. To date we have seen little of value in the way of government initiative and would recommend that the banks and government give way to an Independent body to negotiate and provide initiatives which would actual benefit the person and the good of the country.

We recommend that an Independent body or the Financial Ombudsman should oversee and ensure compliance with the recommendations on provision of information. We do believe it is fair or transparent that banks are policing themselves.

Insolvency

Recommendations:

We recommend that Insolvency should be available to all who wish to avail of it. The details of the Insolvency guidelines are a matter to be presented at a different stage, these guidelines should also take into account the good of the person and common good of the country.

Standard Financial Statement

Recommendations:

We recommend that SFS should be done in conjunction with an independent body/mediator, to ensure the mortgage holders best interests.

Tracker Mortgages

Recommendations:

We recommend that no undue pressure should be put upon a mortgage holder in relation to their tracker mortgages. We recommend this provision which was included at the recommendation of the Government's Expert Group on Mortgage Arrears and is intended to ensure that the MARP process and forbearance measures are not used to transfer borrowers to less favourable terms, thereby putting them at a financial disadvantage and making their arrears situation worse, remains in place.

Treatment of appeals and complaints

Recommendations:

We recommend an Independent body as we do not believe as stated that an internal Appeals board will ensure that appeals by borrowers are considered fairly, independently, consistently and in a transparent way by the lender's Appeals Board. Whereby at least 3 of the 4 are from within the bank, this cannot on any level be considered independent. This in no way engenders confidence that decisions will be fair or transparent, those cynical would say that the board would be indeed consistent in that it would favour the bank rather than the distressed mortgage holder.

Appeals

Recommendations:

We would completely disagree with any internal appeals procedure. An organisation is not going to find against itself or rule in favour of an agreement that may benefit the borrower more than the lender, the ASU is not going to put the common good of the country before its own financial institution. We recommend an Independent body in relation to appeals.

Repossession

Recommendations:

We recommend that interest rates are not charged on the remaining balance of money owed as this does not benefit the person or the common good of the country. This again adds insult to injury in this banking led crisis, whereby a person not only loses their home and owes a massive debt but is also paying an arbitrary charge of interest on a home they no longer reside in.

We recommend that the banks are 'obliged' to offer remedy and to consider the good of the person and common good of the country. Repossession is not in the interest of the person or the country, there is no trust whereby the bank is not obliged to work with the borrower to offer remedy, and

whereby this remedy is not negotiated by an Independent group who would be balanced in their judgements.

We recommend that the 10 billion given to the banks is used for distressed mortgages and not losses. This money to date that has been given by the people of Ireland remains unaccounted for despite a ministerial question to the government. This needs to be given back to the people in the form of an independent mortgage group, whereby this money could be used to ensure the good of the person and common good of the country. Repossession does not benefit this country and will ensure this recession caused by the financial institutions is ongoing for another generation. The country needs to be freed from debt for the domestic economy to improve and to end this imposed recession.

We recommend a cessation of evictions as to repossess a property instead of using that money for write downs means an increase in the social housing crisis and further stress to the tax payer. It is in the people's interest and the countries for this money to be used to free people from debt.

Records and Compliance

Recommendations:

We recommend an Independent body or the Financial Ombudsman is given the task of supervision. Having read the report on the banking crisis, there is no trust or faith that the financial institutions will adequately or fairly supervise these processes.

Further Recommendations:

Independent Body

An independent group is formed which would be made up of a panel of people from the voluntary sector directly involved with debt solution, who offer a holistic service, to offer advice on debt and act as intermediaries between lender and borrower.

An Independent body is set up with balanced representation from independent groups such as MABS, Insolvency Practitioners, Mortgage Holders groups and the financial institutions to oversee negotiations and the fairness and transparency involved in all due processes.

Appeals Unit should also be an Independent body made of balanced representation from Financial Ombudsman, FLAC, Bank, MABS, Mediators and concerned mortgage holder groups.

The setting up of an independent housing association to negotiate the buying of homes from the banks (including negotiating write down on some homes in negative equity), the acquisition and allocation of houses owned by NAMA, implementation of relocation, errant to buy and shared ownership schemes.

This we feel would be fair, independent, transparent and consistent.

Independent Advice

Independent advice and Mediation should be available to all distressed mortgage holders, cost should not preclude anyone from such advice.

We do not believe that it is fair, independent, consistent or transparent for the banks to be 'policing' themselves, or for people to be appealing to a bank about its own decision.

Standard Financial Statement: should be done with the independent group in co-operation with the lender and borrower. This statement should also advise on how to manage debt and be an ongoing support.

This independent group should receive support and additional resources to tackle the increased workload but should remain an independent body.

Those in debt should receive free independent legal and financial advice.

The system of debt resettlement and credit rating needs to be reviewed and made equitable.

Finance

The 10 billion given to the banks by the people of Ireland should be returned. The money to be utilised for the good of the people and common good of the country. The Independent groups should be allowed to use this money to negotiate the best deals for the mortgage holder. The aim being to keep people in their homes, reducing debt to free up the domestic economy, thus working for the good of the person and common good of the country.

Conclusion

As stated in the introduction it is clear that people of Ireland have been living and continue to do so with the moral hazards of the financial institutions. The Banks which caused this crisis were aware that the 'capital bonanza' would have such an effect. This was compounded by lack of regulation or restrictions, weak governance and weak risk management, internal procedures being overridden, governance and supervisory problems. With this in mind is it credible, fair or independent for all powers to lay with the very organisations that caused this crisis in the first place.

For the process to be fair, independent, consistent and transparent as mentioned in the code of practice, an Independent body would be a more obvious choice. An Independent body would balance the requirements of the bank, the distressed mortgage holder and the common good of the country. It is a stretch to the imagination that any internal appeals body would be independent as they have vested interests, vested interests would preclude any independence of such a body.

In the interests of the common good of the country and its people it is in the countries best interest for mortgage debt to be dealt with in such a way as to free up people's finances to regenerate the domestic economy, the only way for this to happen is for the 10 billion given to the banks by the people to be used for realistic solutions that result in people remaining in their homes and having

the resources to directly participate within the domestic economy once more. Repossession will only mean more cost to the taxpayer and further degradation of the economy.

We are taking this opportunity to give voice to the concern of distressed mortgage holders who believe the situation as it stands is unfair, not independent, lacking in transparency and most definitely not Independent. We object completely to the changes in the Code of Protection which will mean it will be very difficult for anyone to be considered co-operating and to any ensuing repossessions as a result of these changes.

On behalf of all distressed mortgage holders.