



Via email to code@centralbank.ie

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RE: Code of Conduct on Mortgage Arrears ("CCMA" or the "Code")

Dear Sir/Madam,

We are writing in response to Consultation Paper CP63, Review of the Code of Conduct on Mortgage Arrears.

We have responded below in relation to the main issues and appended in Appendix 1 detailed commentary in relation to the proposed drafting amendments.

Our response is based on what we believe to be important principles in respect of potential revisions to the Code:

- they should not impede but rather support our mutual objective of offering sustainable solutions to borrowers at a pace at least consistent with the CBI public targets
- very clear differentiation is brought to bear between co-operating and non-cooperating borrowers with the Code providing relevant support and rights to the former but not to the latter to encourage the right behaviours and ensure fairness prevails
- there is no confusion with the legal and practical requirements of the Personal Insolvency Act which is designed for very specific circumstances
- provisions of the Code are practically implementable

In this context the Code does not adequately address existing key impediments to the effective resolution of the mortgage arrears challenge. In particular:

- The ability of non-cooperating customers who remain under the protection of MARP to frustrate and delay an effective and timely resolution process
- The lack of explicit obligations for borrowers to demonstrate cooperation throughout the process

We are very concerned that the implementation of the Code as redrafted will require significant additional IT system, documentation and process changes and associated staff training. This will require the redirection of resources, including but not limited to MARS programme/Collections/Compliance/Legal/IT, from the priority objective of dealing with and supporting borrowers in arrears with a view to reaching sustainable solutions. We are unconvinced that it is necessary, prudent or beneficial to either borrower or lender to introduce these significant amendments to the CCMA at this critical juncture.

These matters are set out in more detail hereunder.

(i) COOPERATION AND ENGAGEMENT

Revised definition of Borrower Non-Cooperation

The revised CCMA has partially addressed the issue of failure by the borrower to meaningfully engage and allowed for the setting of deadlines for return of information. However the definition has not evolved materially. It does not address the issue of borrowers who do not take the actions necessary to address their arrears situation. In particular, failure by a borrower to make reasonable lifestyle adjustments and/or prioritise mortgage debt should constitute evidence of non-cooperation.

The revised definition of non-cooperating is now limited to a number of specified instances, by inclusion of “..can only be considered..”. This may be counter-productive and unintentionally exclude some borrowers.

It is vital that borrowers take responsibility for prioritising their mortgage in an arrears situation. Not to do so within reasonable limits is a form of non-cooperation and should be cited as such.

The CCMA should be explicit in calling out non-cooperative borrower behaviours/actions and there should be meaningful consequences for borrowers who do not cooperate. This can be achieved through the material amendment of the definition to for example include the following:

- the borrower has taken out additional borrowings without the agreement of their mortgage lender while in the MARP process
- the borrower has failed to take the action necessary to enable the prioritisation of their family home mortgage payments over unsecured consumer credit payments
- the borrower is not prepared to make reasonable lifestyle adjustments.
- the borrower declines an affordable alternative repayment arrangement
- borrowers who seek to use the CCMA to postpone and frustrate the resolution of their mortgage arrears

We note the proposed amendment to the CCMA in order to make it clear that borrowers who are deemed not cooperating retain many rights under the CCMA including the full right of appeal. We do not believe that this is appropriate or consistent with the objective of conveying to the borrower the importance of cooperation and the application of meaningful consequences should they fail to cooperate. Such borrowers should be removed from the MARP and the rights of the CCMA, recognising there are many checks and balances enshrined in the CCMA prior to reaching this point. This would be a more meaningful consequence of non cooperation.

"One further opportunity to engage and be considered as cooperating again"

In advance of having been deemed non-cooperating the lender will have made multiple contact attempts and provided detailed information to the borrower, as required under the CCMA, as regards the meaning of not cooperating and the implications of not cooperating. For example proposed changes to the MARP booklet will outline how and why a person can be deemed non-cooperating, so customers will already be fully informed. In advance of being deemed not co-operating the borrower will have received advance notice from their lenders.

Designating a customer as non-cooperating comes at the end of a long process of communication and/ or attempted communication by the lender regarding the arrears situation. It is inconceivable that a customer will have arrived at this point unaware of the importance of cooperating fully with the lender. The requirement to apply a further undefined period during which non-cooperative borrowers are given the opportunity to cooperate is inappropriate. It will not be required by borrowers who chose to cooperate and appears to be inequitable to this population. It will only provide a further opportunity for non cooperating borrowers to delay and frustrate the resolution process through the use of strategic engagement/ disengagement.

The customer who is due to be deemed non-cooperating will in reality have received multiple chances to cooperate and the introduction of a further "last chance" at this late stage undermines the seriousness and impact of this step. The operation of provisions 56 and 60, previously 46 and 50, are also relevant in this context.

It is essential that the CCMA differentiates between borrowers who can't pay versus those who won't pay, supports and protects those who cooperate and applies meaningful consequences to those who do not.

(ii) CONTACT BETWEEN THE LENDER AND THE BORROWER

Amendments to rules regarding unsolicited contacts:

The lifting of the restriction to 3 unsolicited contacts per month is welcome. However in relation to (20) and (21) we view the requirement for Board approval of the unsolicited contacts policy as disproportionate. This is an operational guideline which should be subject to normal management oversight and governance. We would recommend that the unsolicited contact restrictions in the Consumer Protection Code be aligned with CCMA in order that consistent policy and practice can be applied as appropriate to the borrowers' case.

(iii) LINK BETWEEN CCMA AND THE PERSONAL INSOLVENCY ACT

The Land and Conveyancing Law Reform Bill 2013 was published on the 28th of March and contains provisions permitting the adjournment of possession proceedings in Court to consider whether the borrower could avail of one of the options under the Personal Insolvency Act. It clearly envisages that the personal insolvency options would be explored at the end of the MARP process and we suggest that the interaction between CCMA and the Personal Insolvency Act be viewed accordingly.

Requirements to make borrowers aware of their potential rights and options under Personal Insolvency legislation

The introduction of the personal insolvency regime to the borrower on their entry to MARP is inappropriate and potentially confusing. It is essential that the borrower has confidence, through their engagement with their lender, that their case will be handled sympathetically and positively under MARP. The borrowers introduction to the Insolvency Service at this early stage may cause them unnecessary distress and anxiety. Borrowers, including those in pre-arrears, receive a considerable amount of information on their entry to and throughout the MARP. To add the Insolvency Service to this process may cause a degree of information overload and confusion. The majority of borrowers who cooperate with the MARP will be returned to solvency through an alternative repayment arrangement without the necessity for recourse to the Insolvency Service.

The CCMA refers to the Personal Insolvency Act (PIA) in a number of places however the CCMA appears to incorrectly make the assumption that all customers who participate in MARP are insolvent. In order to avail of one of the debt resolution options under the PIA the borrower must be insolvent and the CCMA should clarify this. It should also be borne in mind that the MARP also applies to borrowers in pre-arrears.

The impact of the proposed changes and the embedding of reference to the Personal Insolvency throughout the MARP, particularly the requirement to disseminate documentation, is to put the lender in the situation where they are required to educate and advise the borrower in relation to the personal insolvency regime. This is the role of the Personal Insolvency Practitioner and the Insolvency Service rather than the lender under the PIA. The lender cannot affirm version control on documents produced by a 3rd party and will not be in a position to deal with the inevitable borrower queries in relation to same.

The Bank supports borrowers and provides a wide range of information, including in relation to the Mortgage Advice Protocol. Borrowers who wish to do so can access a subsidised independent advisory service in relation to a long term forbearance or resolution offered.

Whether the 12-month moratorium should continue to apply to unsustainable cases

Where a mortgage is unsustainable the 12 month moratorium merely serves to delay an inevitable outcome. It is in the best interest of the borrower to engage immediately to determine and implement an appropriate resolution.

The cessation of the 12 month moratorium is of critical importance to the operation of the Code, it should refer to Provision 58 and the specific circumstances in which it can be lifted and should also cross reference other provisions in the Code.

Requirement to provide the borrower with a copy of the completed Standard Financial Statement at several points in the MARP

We propose that the customer be provided with a copy of the completed SFS document at the point where it is first completed and submitted to the Bank. This would meet this requirement in a more efficient manner. In instances where the SFS is submitted directly to the Arrears Support Unit by the borrower the borrower will have retained a copy and it appears unnecessary to require the lender to return a further copy to them unless they request the lender to do so.

(iv) USE OF THE STANDARD FINANCIAL STATEMENT (SFS)

We are supportive of the proposal that a short form SFS might be appropriate, in certain limited situations, at the discretion of the lender.

(v) REVIEWS OF ALTERNATIVE REPAYMENT ARRANGEMENTS

Proposal to categorise arrangements as short, medium and long-term and specify the frequency of review for each category & requirement for a lender to formally review a borrower's case where an alternative repayment arrangement is coming to an end.

Our borrowers need certainty and the requirement to conduct ongoing reviews at prescribed intervals is unnecessary. Such intervals should be determined by the lender in line with its credit policy, or as warranted by a change in circumstances.

A formal review including new SFS is unnecessary in respect of arrangements coming to an end unless the borrowers indicate that they are still in financial difficulty and can not return to their original contracted repayments. As part of its outreach programme the Bank provides advance notice to borrowers prior to the end of these arrangements and invites them to contact the Bank if there has been deterioration in the financial situation or they anticipate difficulty.

To insist on such review, where it is unnecessary, consumes resources which would be more effectively used dealing with customers in genuine financial difficulty.

We consider short, medium and long term arrangements to be appropriately defined as 36 months, 60 months and 7 years respectively. The requirement for review should be as defined by the lender and in situations in the interim where arrears arise or other circumstances warrant it. Short term arrangements may be put in place for <12 months in which case a 12 month review cycle is inappropriate.

(vii) INFORMATION ON OTHER OPTIONS

Where we are not willing to offer, or a customer is not willing to enter into, a revised repayment arrangement, requirement for the lender to outline the costs and charges associated with voluntary surrender, trading down, mortgage to rent and voluntary sale options.

There is no evidence to suggest that any lack of transparency exists in respect of these options and the Bank has not received any feedback from borrowers in this regard. We believe this new requirement seeks to address a non-existent problem. Customers are advised to seek both independent legal & financial advice and it is more appropriate for them to discuss these options and receive advice from their independent advisers rather than from the Bank. The need for information in relation to these options will be covered by the Mortgage Advice Protocol/ MIAS.

A number of the information requirements present considerable challenges in terms of interpretation and our ability to comply. Many of the charges relating to these options are not known to the lender and can not be quantified at this point. Any indications which could be given would be so generic as to be of no value or indeed misleading to the borrower and therefore contrary to the spirit of the CCMA and CPC. The variety of potential outcomes would make it impossible to operationalise the generation of a tailored document for each borrower.

OTHER ISSUES:

Provision 65: A lender must maintain recordings of all telephone calls made to or from a borrower in relation to his/her arrears or pre-arrears.

In addition to our contact centres the Bank supports, advises and engages with borrowers through a nationwide branch network with mortgage advisers in every branch and a fleet of mobile account managers. Call recording is not practical or possible across this model. It is therefore impractical and not in the interests of the borrower to require compliance with this requirement while maintaining our existing operating model which is built around the borrower and ensures they are supported throughout the MARP. The requirements in respect of record keeping are already well spelt out in the Code. This provision should therefore be deleted

Provision 56

The reference to "every reasonable effort" lacks sufficient clarity.

The application of the phrase "every reasonable effort" was examined by Mr Justice Hogan in the High Court case of ILP v Duff (31st of January 2013) in the context of compliance with Provision 6 and Provision 47 of a previous version of the Code which was applicable to the circumstances in the case of ILP v Duff.

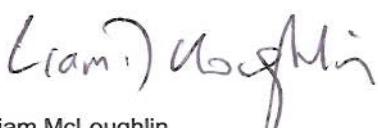
The phrase "every reasonable effort" was given a very broad interpretation and resulted in the Court deciding that the lender had not complied with the provisions of the Code. We suggest that given the scope for the variation of interpretations to phrases such as "every reasonable effort" their use should be avoided as lenders require clarity regarding the scope of the obligations placed on them by the Code

DRAFTING AMENDMENTS

Commentary in relation to proposed drafting amendments is attached at Appendix 1.

To conclude, our comments are set out against the principles articulated in the introduction of our response with the intention of addressing the mortgage arrears issue in as fair and effective a manner as possible. We would be very happy to discuss in more detail with you once you have had an opportunity to consider our response.

Yours faithfully



Liam McLoughlin
Chief Executive – Retail Ireland

APPENDIX 1: REVIEW OF THE CODE OF CONDUCT ON MORTGAGE ARREARS: PROPOSED DRAFTING AMENDMENTS

Definition / Provision Number	Code Text	Comment (subject to the issues raised above)
Application of the Code	(ii) In the case of joint borrowers , who notify the lender in writing that they have separated or divorced, the lender should treat each borrower as a single borrower under this Code (except to the extent that an action requires the agreement of both borrowers as a matter of law, for example an alternative repayment arrangement which requires an amendment to a mortgage contract entered into by joint borrowers).	The requirement to obtain the signature of both borrowers to an Alternative Repayment Arrangement ("ARA") is unworkable in some cases of divorce or separation. In these situations one borrower has to deal with the lender to agree an ARA and it is impossible to obtain the signature of the other borrower which s/he refuses to engage. It is essential that CCMA does not act to penalise an estranged / deserted joint borrower who seeks to normalise their financial situation Requirement (ii) "to treat each borrower as a single borrower" is reasonable for steps 1 & 2 of MARP (Communication & Financial Information). For steps 3 & 4 (Assessment and Resolution) in particular it is inappropriate and unnecessary. For example borrowers 1 & 2 each assessed singly and on this basis debt is unsustainable for each of them. However, in combination each could contribute sufficient to put a sustainable solution in place. Further, there can only be a singular resolution – as liability is joint and several it is not appropriate to say e.g. borrower 1 pays €X and borrower 2 €Y.
Long Term Arrangements	Alternative repayment arrangements with a term greater than five years.	The scope of the CCMA should be clarified in relation to loans issued to borrowers for commercial purposes; where the loan is cross secured with the borrower's primary residence. Given the commercial nature of these borrowings, arrears and financial difficulties should be managed in line with the provisions of the Code of Conduct for Business Lending to Small and Medium Enterprises. As the Code of Conduct for Business Lending to Small and Medium Enterprises requires any enforcement proceedings over the primary residence to be carried out in accordance with the enforcement provisions of the CCMA, we do not feel that there is any borrower detriment to adopting this approach.
Medium Term Arrangement	Alternative repayment arrangements with a term greater than three years and no greater than five years.	This definition should be aligned with the MIAS definition of a long term arrangement i.e. 3 years
		As above align with MIAS

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Mortgage to Rent	Where the borrower voluntarily allows the lender to take possession of the primary residence, and the borrower becomes a tenant in that primary residence and this includes the situation where the lender sells or leases the primary residence to a third party and the borrower is a tenant of that third party.	<p>Definition not strictly correct. In Mortgage to Rent, the lender will normally not take the property into possession, the property will be voluntarily surrendered by the borrower to the bank who in turn sells the property to a third party who then rent the property to the borrower. Mortgage to leave is an entirely different resolution.</p> <p>Suggested definition -</p> <p>Mortgage to Rent: Where a borrower voluntarily surrenders their primary residence to the bank who sells it to a third party and the borrower becomes a tenant of the third party in that primary residence.</p>
Personal Insolvency Practitioner/ Arrangement	Personal Insolvency Practitioner: a person authorised, under Part 5 of the Personal Insolvency Act 2012, to act as a personal insolvency practitioner.	The definitions in the Personal Insolvency Act ("PIA") should be reproduced in the Code exactly as they appear in the PIA
Primary Residence	<p>Personal Insolvency Arrangement: means (a) an arrangement entered into by a debtor, or (b) an arrangement for which a proposal is made, under Chapter 4 of Part 3 of the Personal Insolvency Act 2012;</p> <p>means a property which is:</p> <ul style="list-style-type: none"> (i) the residential property which the borrower occupies as his/her primary residence in this State, or (ii) a residential property in this State which is the only residential property owned by the borrower. 	<p>We suggest that this definition should be updated to reflect the following:</p> <ul style="list-style-type: none"> (a) the Codes have now been in operation for over three years; (b) mortgages over former primary residences which have now been let for the purpose of deriving rental income have either been rendered unsustainable or unsustainable and should not be afforded the same protection as a primary residence occupied by a borrower; (c) confirmation that it applies only to primary residences which are habitable dwellings which have been occupied within a specific time period. This is to avoid any potential application of the Code to partially constructed dwellings based on statutory definitions of "primary residence" in legislation. <p>Part (ii) of the definition should now be deleted as those properties which are not the primary residence of the borrowers should not be covered in the scope of CCMA.</p>
Repossession	Means any situation where a lender takes possession of a property either by way of voluntary agreement with the borrower , through abandonment of the property by the borrower without notifying the lender, or by Court Order.	<p>It is not appropriate for the Code to define the process by which a lender takes possession of a property and the definition should be "Means any situation where a lender takes possession of a property".</p>
SFS	the document which a lender must use to obtain financial information from a borrower in order to complete an assessment of that borrower's case, notified by the Central Bank of Ireland to lenders. This document may be subject to change from time to time, where notified by the Central Bank.	May need to reward definition if more than one version of SFS is to apply.

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Short Term	Alternative repayment arrangements with a duration of up to three years.	Refer above re definition of medium term/long term
Split Mortgage	Where a lender agrees to split a borrower's unaffordable mortgage loan into an affordable mortgage loan, which the borrower continues to repay, and a remaining balance, which is set aside or "warehoused" to a later date.	As lenders offer different types of split mortgages this definition is inaccurate and misleading to borrowers. For example it does not allow for circumstances where a borrower has affordability for capital and interest on an element of their mortgage and interest only on the remainder, with the interest-only portion of the capital being cleared from a defined future source. Also, the term 'set aside or "warehoused"' seems imprecise.
		Suggested revision: "Where a lender agrees to split a borrower's mortgage loan". Definition should be expanded to state that lender will sell the property on the borrower's behalf in order to repay part, or all, of the mortgage loan. The onus should be on the borrower to take responsibility for bringing relevant communications to the attention of the third party, the onus should not be on the lender to remind them to do so in every written communication.
Voluntary Surrender	The voluntary surrender, by the borrower, to the lender, of the primary residence.	
6	At the borrower's request and with the borrower's written consent, the lender must liaise with a third party nominated by the borrower to act on his/her behalf in relation to his/her arrears situation. Notwithstanding this requirement, a lender must issue written communications required under this Code directly to the borrower and advise the borrower to bring the contents of each such communication to the attention of any third party acting on his/her behalf.	
8	A lender must pro-actively encourage borrowers to engage with it about financial difficulties which may prevent the borrower from meeting his/her mortgage repayments. This must include a communication by the lender to all borrowers on at least an annual basis to encourage early contact with the lender if a borrower is in arrears or is concerned that he/she is in danger of going into arrears.	Suggest inclusion of "for example by way of annual statement"

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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 provision 10 above and must include:</p> <ul style="list-style-type: none"> a) an explanation of its MARP; b) an explanation of the alternative repayment arrangements available to borrowers, how these arrangements work and an outline in general terms, of the lender's criteria for assessing requests for alternative repayment arrangements; c) a statement that the availability of alternative repayment arrangements (as provided for in provision 38) are subject to an individual assessment of each case and meeting the lender's criteria. d) an explanation of options , other than alternative repayment arrangements, such as voluntary surrender, voluntary sale, mortgage to rent and trading down and a statement that the availability of these options are subject to an individual assessment of each case and meeting the lender's (or a third party's) criteria; e) an explanation of the meaning of not co-operating under the MARP and the implications, for the borrower, of not co-operating including: <ul style="list-style-type: none"> (i) the imposition of charges and/or surcharge interest on arrears arising on a mortgage account, (ii) that a lender may commence legal action for repossession of the property without the 12 month period referred to in provision 58 applying, (iii) a warning that it may impact on a borrower's eligibility for a Personal Insolvency Arrangement; f) information about the potential availability of relevant State supports such as mortgage interest relief or Mortgage Interest Supplement; g) a reminder that borrowers who have purchased payment protection insurance in relation to the mortgage account which subsequently went into arrears may wish to make a claim on that policy; h) how data relating to the borrower's arrears will be shared with the Irish Credit Bureau or any other credit reference agency or credit register; i) relevant contact points (i.e., the dedicated arrears contact points not the general customer service contact points); j) a statement that the borrower may wish to seek assistance from MABS and contact details for the MABS National Helpline and links to relevant website (s) operated by MABS; and k) details of any other Government initiatives to assist borrowers in financial difficulty. 	<p>We are surprised that no explicit borrower obligations are outlined including the requirement to respond to lender communications on a timely basis. The inclusion of such borrower obligations is imperative to the effective operation of the MARP process.</p> <p>12(e)(ii) should refer to Section 57</p> <p>12(f), (12)(k) and 13(f) require the provision of information in relation to "any relevant state support" and "any government initiative". This is too onerous an obligation and could result in the provision of misleading or incomplete information. It should be the responsibility of Government to ensure information is centralised and lenders can direct borrowers to the appropriate website.</p> <p>12(g) should remind borrowers that they should enquire as to whether they are eligible to claim on the policy</p>

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13	A lender must have a dedicated section on its website for borrowers in, or concerned about, financial difficulties which must include: <ul style="list-style-type: none"> a) the information booklet required under provision 12; b) information on the level of charges that may be imposed on borrowers that do not co-operate with the lender; c) a link to any website operated by the MABS that contains information about mortgage arrears; d) the standard financial statement; and e) a copy of the lenders guide to completing a standard financial statement or a link to the Central Bank of Ireland's Consumer Guide to Completing a Standard Financial Statement. f) details of any other Government initiatives to assist borrowers in financial difficulty. g) a link to any website operated by the Insolvency Service of Ireland which provides information to borrowers. The information on the website must be easily accessible from a prominent link on the lender's home page.	The lender can not be held responsible for the provision of information from government agencies. <p>13(c) refers to "any website operated by MABS", this reference is too wide and should be limited to the lender directing a borrower to the main website for MABS.</p>
17	A lender must ensure that the MARP framework is applied to the following cases: <ul style="list-style-type: none"> a) a mortgage account where arrears have arisen on the account; b) a pre-arrears case; c) where an alternative repayment arrangement put in place breaks down; and d) where the term of an alternative repayment arrangement put in place expires. 	This is inconsistent with provision 57 which refers to applying MARP framework from day 31. <p>Extends MARP framework to all cases past due. This unnecessarily brings into scope one off/technical arrears cases where borrower is not in financial difficulty thereby creating unnecessary consumer distress. These cases thereafter remain in MARP framework due to absence of exit mechanism.</p>
20	A lender must ensure that: <ul style="list-style-type: none"> a) the level of unsolicited communications from the lender, or any third party acting on its behalf, is proportionate and not excessive; b) unsolicited communications with borrowers are not aggressive or intimidating; c) borrowers are given sufficient breathing space following each unsolicited communication before further unsolicited communication is attempted; and d) future contact is agreed in advance with the borrower, where possible. 	In relation to (d) the MARP framework should not continue to apply where an ARA expires and the borrower is no longer in arrears. <p>The introduction of additional undefined obligations for example in relation to "breathing space" is unnecessary and subjective. The CCMA requires lenders to treat all cases sympathetically and positively with the objective at all times of assisting the borrower to meet their obligations. It is in the interest of the borrower to address financial difficulties speedily and effectively. Such requirements create an opportunity for non-cooperating borrowers to frustrate the MARP process.</p>
21	A lender must produce and implement a policy regarding unsolicited communications with borrowers, which must be approved by the board of directors and must ensure that the requirements at provision 20 are met.	The lender should be required to ensure the level of unsolicited communications is "in accordance with their unsolicited communications policy per paragraph (21)". Parts (b) and (c) should therefore be deleted. <p>The requirement for Board approval of the policy is excessive and we suggest amendments to "must be approved by the firms senior management"</p>

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22	<p>When arrears arise on a borrower's mortgage loan account and remain outstanding 31 days from the date the arrears arose, a lender must:</p> <p>a) inform each borrower and any guarantor on the mortgage, unless the mortgage loan contract explicitly prohibits such information to be given to the guarantor, of the status of the account in writing, within 3 business days. The letter must include the following information:</p> <ul style="list-style-type: none"> i) the date the mortgage fell into arrears; ii) the number and total amount of repayments (including partial repayments) missed; iii) the amount of the arrears to date; iv) confirmation that the lender is treating the borrower's situation as a MARP case; v) relevant contact points (i.e., the dedicated arrears contact points not the general customer service contact points); vi) an explanation of the meaning of not co-operating under the MARP and the implications, for the borrower, of not co-operating including:- the imposition of charges and/or surcharge interest on arrears arising on a mortgage account and details of such charges; - that a lender may commence legal action for repossession of the property without the 12 month period referred to in provision 58 applying; - a warning of the impact it may have on any application for a Personal Insolvency Arrangement; vii) how data relating to the borrower's arrears will be shared with the Irish Credit Bureau, or any other credit reference agency or credit register, and the impact on the borrower's credit rating; <p>b) provide the borrower with the information booklet required under provision 12; and</p> <p>c) provide the borrower with the relevant publications, produced by the Insolvency Service of Ireland, on the processes under the Personal Insolvency Act 2012.</p>	<p>Reference body letter.</p> <p>22(a)(vi) should refer to provision 57</p>

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25	<p>Unsolicited personal visits</p> <p>a) A lender may only make an unsolicited personal visit to a borrower's primary residence in the following circumstances:</p> <ul style="list-style-type: none"> i) when all other attempts at contact in relation to the borrower's arrears have failed; and ii) immediately prior to classifying a borrower as not co-operating. <p>b) Where a lender wishes to make an unsolicited personal visit, in accordance with provision 25(a) above, the lender must give the borrower at least five business days' notice, in writing and must provide the specified timeframe within which it intends to make the visit. The specified timeframe must be no longer than 15 business days from the date of notification (including the five business days' notice).</p> <p>c) The lender must ensure that the notice issued in accordance with provision 25 b) above:</p> <ul style="list-style-type: none"> i) is conciliatory and positive in tone; ii) outlines the importance of engagement between the borrower and the lender, setting out the protections no longer available where a borrower fails to co-operate with the lender to address the arrears situation; iii) explains that the intention of the visit is to discuss the borrower's arrears situation and the next steps for dealing with the arrears. iv) outlines the contact details for the lender's Arrears Support Unit; v) offers the borrower the facility to meet in a local branch instead of in the borrower's home; vi) informs the borrower that he or she may have a third party present, if he or she wishes. <p>d) When carrying out an unsolicited personal visit, a lender must offer to explain the standard financial statement to the borrower and offer to assist the borrower to complete the standard financial statement. However, the lender must not compel the borrower to complete the standard financial statement during the visit.</p> <p>e) A lender may agree a further personal visit with the borrower in compliance with provision 3.38 of the Consumer Protection Code 2012.</p>	<p>We welcome the inclusion of earlier guidance in relation to unsolicited personal visits in the CCMA.</p> <p>It is essential that such visits be permitted at any stage in the process where all other contact attempts have failed. The inclusion of "and" at the end of part (i) should be amended to "or".</p> <p>25(a)(i) we suggest the amendment to "reasonable" attempts "<i>in accordance with the Contacts Policy required under Provision 21</i>"</p> <p>25(c)(i) is unnecessary in the context where the borrower has not been engaging with the lender and is inconsistent with the messaging under (c) (ii) and (iii). In any case we suggest the reference to conciliatory should be amended to constructive</p>
27	<p>Prior to classifying a borrower as not co-operating, a lender must:</p> <p>a) inform the borrower, in writing, at least 10 business days in advance of the date that he or she would be classified as not co-operating;</p> <p>b) outline to the borrower the implications of not co-operating, including:</p> <ul style="list-style-type: none"> i) the application of charges and/or/surcharge interest on arrears on a mortgage account, ii) that a lender may commence legal action for repossession of the property without the 12 month period, referred to in provision 59, applying, and iii) a warning of the impact it may have on the borrower's eligibility for a Personal Insolvency Arrangement; <p>c) outline what a borrower can do to avoid being classified as not co-operating;</p> <p>d) include a statement that the borrower may wish to seek appropriate legal and/or financial advice, for example from MABS.</p>	<p>As noted above it is not the role of a lender to advise on or advocate for Personal Insolvency.</p> <p>The impact of a) iii) may be to suggest to borrowers that a PI Arrangement is an option to all borrowers who cooperate.</p> <p>(b)(ii) should refer to provision 57</p>

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Definition / Provision Number	Code Text	Comment (subject to the issues raised above)
28	Where a lender has classified a borrower as not co-operating, following a period whereby the borrower has been given the opportunity to co-operate (in line with provision 27 (c)), the lender must notify the borrower that he or she is being classified as not co-operating and inform the borrower of the lender's intended actions.	<p>It is sufficient that the borrower is notified in advance that they will be classified as not co-operating per (27) a further period to demonstrate compliance is unnecessary for cooperating borrowers and provides a further opportunity for non cooperating borrowers to frustrate and delay the resolution process.</p> <p>This provision should therefore reference the specific ten day period envisaged in provision 27(c).</p>
31	The lender must pass the completed standard financial statement to its ASU immediately on receipt and provide a copy of the statement to the borrower.	<p>The term immediately lacks clarity and should be amended to reference "the lenders established service response time".</p> <p>We deem the SFS to be completed on receipt of all necessary supporting documents have also been provided.</p>
37	Prior to completing the full assessment of the borrower's standard financial statement, a lender may put a temporary arrangement in place where a delay in putting such an arrangement in place will further exacerbate a borrower's arrears or pre-arrears situation. Such a temporary arrangement should not last for more than three months. Any subsequent arrangement should be based on a full assessment of the standard financial statement.	<p>It is suggested that the proposed wording of this provision, (37), be altered slightly, to ensure that borrowers who have been in the MARP are not penalised and that a temporary arrangement could be facilitated again if appropriate due to unforeseen or out of course circumstances for example a period of maternity leave, a period of illness, the requirement to meet an unexpected and material financial outlay.</p> <p>We suggest an amended wording: "Any subsequent arrangement to address these arrears/threatened arrears should be based on a full assessment of the standard financial statement."</p>

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Definition / Provision Number	Code Text	Comment (subject to the issues raised above)
38	<p>A lender must explore all of the options for alternative repayment arrangements offered by that lender. Such alternative repayment arrangements may include:</p> <ul style="list-style-type: none"> a) an interest-only arrangement for a specified period; b) permanently reducing the interest; c) temporarily reducing the interest for a specified period; d) an arrangement to pay interest and part of the normal capital element for a specified period; e) deferring payment of all or part of the instalment repayment for a period; f) extending the term of the mortgage; g) changing the type of the mortgage, except in the case of tracker mortgages; h) capitalising the arrears and interest i) equity participation; j) warehousing part of the mortgage (including through a split mortgage); k) debt write off; and l) any voluntary scheme to which the lender has signed up e.g. Deferred Interest Scheme. 	<p>The lender should explore those options that are appropriate rather than "all of the options".</p> <p>Reference our comment at definitions above in relation to split mortgage.</p> <p>(g) should reference changing the "product type of the mortgage ARA.</p> <p>It is inaccurate to classify a reduction in interest or a debt write-off as an ARA.</p>
39	<p>A lender must document its considerations of each option examined under provision 38 above and also the reasons why the option(s) offered to the borrower is/are appropriate and sustainable for his/her individual circumstances.</p>	<p>This places an onerous administrative burden on the lender requiring them to outline their consideration of each option rather than the option(s) that is (are) suitable.</p>

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Definition / Provision Number	Code Text	Comment (subject to the issues raised above)
42	<p>Where an alternative repayment arrangement is offered by a lender, the lender must provide the borrower with a clear explanation, in writing, of how the alternative repayment arrangement works, including:</p> <ul style="list-style-type: none"> a) the reasons why the alternative repayment arrangement (s) offered is considered to be appropriate and sustainable for the borrower as documented by the lender in compliance with provision 39; b) the new mortgage repayment amount; c) the term of the alternative repayment arrangement; d) the implications arising from the alternative repayment arrangement for the existing mortgage including the impact on:i) the mortgage term,ii) the balance outstanding on the mortgage loan account, andiii) the existing arrears on the account, if any; e) the frequency with which the alternative repayment arrangement will be reviewed in line with provision 43, the reason(s) for the reviews and the potential outcome of the reviews, where:i) circumstances improve,ii) circumstances disimprove, andiii) circumstances remain the same; f) any residual mortgage debt remaining at the end of an alternative repayment arrangement and owed by the borrower; g) details of how interest, will be applied to the mortgage loan account as a result of the alternative repayment arrangement; h) how the alternative repayment arrangement will be reported by the lender to the Irish Credit Bureau or any other credit reference agency or credit register and the impact of this on the borrower's credit rating; i) information regarding the borrower's right to appeal the lender's decision, including the procedure and timeframe for submitting an appeal, and j) advising the borrower to take appropriate independent legal and/or financial advice. 	<p>The Bank already assesses cases in the MARP using objective credit criteria, the borrowers circumstances and repayment capacity as outlined in their SFS. We do not believe that the proposed changes to provisions 39 and 42 introducing the requirement to prove sustainability should be included. To insert the proposed wording could have the inadvertent effect of holding the lender responsible should an alternative repayment arrangement agreed with a customer subsequently prove unsustainable, as a result of circumstances or events which could not have reasonably been predicted by the Bank.</p> <p>Part f) which will require major IT system development and may not be relevant or important in the case of short to medium term arrangements in particular.</p> <p>Re (e) the lender can not determine what the outcome of a future review may be and to infer otherwise has a high potential to derive unintentional consequences.</p> <p>Regarding part e), this will necessitate a great increase in the amount of information being given to customers which is not necessary at this point. We are concerned that the effect on the borrower would be information overload and that important and timely information in relation to the ARA would be lost. In addition it is not possible to specify meaningfully what the outcome of theoretical future scenarios may be.</p> <p>42 (a) repeats the requirements under Provision 39</p> <p>42(e) the potential outcome of reviews cannot be determined at this stage</p> <p>42(f) should be amended as follows "a description of how any residual mortgage debt remaining at the end of an alternative repayment arrangement and owed by the borrower is to be repaid";</p>

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Definition / Provision Number	Code Text	Comment (subject to the issues raised above)
44	<p>If a lender is not willing to offer a borrower an alternative repayment arrangement, for example, where it is concluded that the mortgage is unsustainable and an alternative repayment arrangement is unlikely to be appropriate, the reasons must be given in writing to the borrower. In these circumstances, the lender must inform the borrower of:</p> <ul style="list-style-type: none"> a) the borrower's right to consult with a Personal Insolvency Practitioner; b) the various arrangements available under the Personal Insolvency Act 2012; c) other options open to the borrower, including voluntary surrender, trading down, mortgage to rent or voluntary sale and the implications of each option for the borrower; and his/her mortgage loan account including: <ul style="list-style-type: none"> i) associated costs or charges, ii) the requirement to repay outstanding arrears, if this is the case, iii) the impact on the borrower's credit rating, and iv) the importance of seeking independent advice in relation to these options; d) the borrower's right to make an appeal to the lender's Appeals Board in relation to any of the following: <ul style="list-style-type: none"> i) the decision of the ASU; ii) the lender's treatment of the borrower's case under the MARP process; or iii) the lender's compliance with the requirements of this Code, including the procedure for making an appeal and the relevant time allowed to the borrower to consider submitting an appeal. 	<p>It is not the role of the Bank to advise borrowers in relation to the arrangements available under the Personal Insolvency Act this information should be provided through the PIP. In this context deletion of (b) proposed.</p> <p>See comments in cover letter with regard to the requirement to inform customers of cost or charges associated with certain options. This is viewed as excessive and impractical. Our letters already include the implications of these arrangements which is seen as sufficient to discharge the Bank's responsibilities in this regard. The lender cannot be expected to know the costs, and as above this is potentially bombarding the customer with too much information at one time.</p> <p>Re point d (ii) and (iii) this is inconsistent with proposed treatment of appeals and complaints and should be deleted from Code, See also provision 49.</p> <p>Re final sentence and phrase "the relevant time allowed to the borrower to consider submitting an appeal" – this is vague – suggested amendment "the relevant time allowed to the borrower to submit an appeal".</p> <p>44(c) – Mortgage to Rent is only available to borrowers if they satisfy the criteria for the Mortgage to Rent Scheme as prescribed by government.</p> <p>44(d) – the reference to twenty business days should be inserted instead of a reference to "the relevant time".</p> <p>Where the lender declines to offer an ARA due to the mortgage being considered affordable under existing terms such borrowers should be dealt with in the context of non cooperation.</p>

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45	If a borrower is not willing to enter into an alternative repayment arrangement offered by the lender, the lender must inform the borrower in writing of the following: a) details of the alternative repayment arrangement offered; b) the borrower's right to consult with a Personal Insolvency Practitioner; c) the various arrangements available under the Personal Insolvency Act 2012; d) other options open to the borrower, including voluntary surrender, trading down, mortgage to rent or voluntary sale, and the implications of these for the borrower and the borrower's mortgage loan account, including: i) associated costs or charges, ii) the requirement to repay outstanding arrears, iii) the impact on the borrower's credit rating, and iv) the importance of seeking independent advice in relation to these options; e) the borrower's right to make an appeal to the lender's Appeals Board in relation to any of the following: i) the decision of the ASU; ii) the lender's treatment of the borrower's case under the MARP process; or iii) the lender's compliance with the requirements of this Code, including the procedure for making an appeal and the relevant time allowed to the borrower to consider submitting an appeal; and f) should the borrower decide not to make such an appeal or should he/she make an appeal that is not upheld by the lender's Appeals Board, that the twelve month moratorium on taking legal action, no longer applies to the borrower's case.	Delete (c) re various arrangements available under PIA for reasons stated in (44) above – also reference other comments at (44) above. 45(a) the borrower will have already have received the details of the ARA offered, no need to provide it again. 45(e) It should be specified that this appeal should be in writing.
46	In the circumstances outlined in provisions 44 and 45, a lender must also provide the borrower with: a) a copy of the most recent standard financial statement; and b) relevant publications, produced by the Insolvency Service of Ireland, on the processes under the Personal Insolvency Act 2012.	This is an unnecessary requirement as the borrower will already have been provided with a copy of the completed SFS in accordance with (31) above. This is the second occasion at which the provision of Insolvency Service publications is required. Reference earlier comments at (22) above in relation to the provision of these publications.
47	A lender's ASU must formally review the borrower's case, including the standard financial statement, immediately, in the following circumstances: a) Where a borrower ceases to adhere to the terms of an alternative repayment arrangement; and b) Where an alternative repayment arrangement has come to an end.	The amendment to require the formal review including SFS in cases where an alternative repayment arrangement has come to an end is considered unnecessary absent the indication by the borrower that they anticipate difficulty rolling off this arrangement. Suggest (b) is deleted. "Immediately" lacks clarity and should reference the ASU's established operating response times.
48	Where an alternative repayment arrangement is coming to an end, the lender's ASU must: a) notify the borrower, in writing, that the alternative repayment arrangement is coming to an end, at least 30 days business days in advance of the arrangement ending; and b) request the borrower to update the standard financial statement, where the borrower is unable to revert to full mortgage repayments at the end of the alternative repayment arrangement.	This clause conflicts with (47) and we suggest the amendment of (47)-as indicated above to restore consistency. Part (b) should more accurately refer to "agreed" mortgage repayments

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49	A lender must establish an Appeals Board to consider and determine any appeals submitted by borrowers and to independently review any of the following: a) the decision of the lender's ASU, b) the lender's treatment of the borrower's case under the MARP process, or c) the lender's compliance with the requirements of this Code.	We concur with the Central Bank view that (b) and (c) constitute complaints rather than appeals and that they should be dealt with as such. The removal of (b) and (c) from the appeals process allows these cases to be dealt with through the more appropriate complaints handling procedures. This amendment requires amendment to related provisions, e.g. provision 49, of the CCMA.
50	The Appeals Board must determine any appeals with borrowers	The Appeals Board will have no specific function or role in relation to these complaints and we see no merit in reporting complaints to the Board. We suggest that there should instead be regular reporting to senior management in relation to complaints.
51	The Appeals Board must be comprised of three of the lender's senior personnel, who have not been involved in the borrower's case previously. At least one member of the Appeals Board must be independent of the lender's management team and must not be involved in lending matters, for example, an independent member of the lender's Audit Committee or an external professional such as a solicitor, barrister, accountant or other experienced professional.	For clarity the Board should be required to independently review "in the context of any such appeal". This is a repetition of Provision 40 – suggest it is deleted.
52	A lender must have in place a written procedure for the proper handling of appeals. At a minimum, this procedure must provide that: a) The Appeals Board will only consider written appeals; b) The lender must acknowledge each appeal in writing within five business days of the appeal being received; c) The lender must provide the borrower with the name of one or more individuals appointed by the lender to be the borrower's point of contact in relation to the appeal, until the Appeals Board adjudicate on the appeal; d) The lender must provide the borrower with a regular written update on the progress of the appeal, at intervals of not greater than 20 business days; e) The lender must consider and adjudicate on an appeal within 40 business days of having received the appeal. The lender must notify the borrower in writing, within five business days of the completion of the consideration of an appeal, of the decision of the Appeals Board and explain the reasons for the decision and the terms of any offer being made. The lender must also inform the borrower of his/her right to refer the matter to the Financial Services Ombudsman and must provide the borrower with the contact details of that Ombudsman.	Suggest amend for clarity to "who have not been previously involved in the borrower's case under MARP." The Code should place a reasonable limit on the timeframe within which a decision of the Appeals Board can be referred to the FSO. Currently this is open-ended which is unreasonable. Suggest max 25 business days from the date of notification of Appeals Board decision.

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57	<p>Where a borrower co-operates with the lender, the lender must wait at least twelve months from day 31 (i.e. where arrears have arisen and remain outstanding 31 days later), before applying to the courts to commence legal action for repossession of a borrower's primary residence.</p> <p>The twelve-month period commences on day 31 but does not include:</p> <ul style="list-style-type: none"> - any time period during which the borrower is complying with the terms of any alternative repayment arrangement agreed with the lender; - any time period during which an appeal by the borrower is being processed by the lender's Appeals Board; - any time period during which the borrower can consider whether or not they wish to make an appeal on the decision of the ASU; and - any time period during which a complaint against the lender, regarding any aspect of this Code, is being processed by the Financial Services Ombudsman. 	<p>Inconsistent with amendment to (17) which should be amended to revert to existing requirement to apply MARP framework from day 31 thereby restoring consistency.</p> <p>Where the Borrower has fully cooperated and the lenders assessment of that the mortgage is unsustainable and all appeals have been decided within the 12 month period the lender should not be required to continue to observe the moratorium.</p> <p>In the absence of prescribed timelines for the FSO to deal with these complaints case can remain in this holding pattern for a considerable period of time while the borrower's situation remains unresolved.</p>
58	<p>Where a borrower is in mortgage arrears, a lender may commence legal action for repossession of the property without the 12 month period applying, only in the following circumstances:</p> <ul style="list-style-type: none"> a) where the borrower does not co-operate with the lender; b) in the case of a fraud perpetrated on the lender by the borrower; or c) in the case of breach of contract by the borrower other than the existence of arrears. d) where the borrower has declined an arrangement offered by the lender and the matter has appealed the decision of the lender, but his/her appeal has not been upheld and the matter has not been referred to the Financial Services Ombudsman or the Financial Services Ombudsman has not upheld any appeal, or ii) the borrower has declined to make an appeal. 	<p>Suggest slight wording amendment for clarity::</p> <p>Where a borrower is in mortgage arrears, a lender may commence legal action for repossession of the property without the 12 month period applying, only in <u>any</u> of the following circumstances:</p> <ul style="list-style-type: none"> a) where the borrower does not cooperate with the lender; b) in the case of a fraud perpetrated on the lender by the borrower; c) in the case of breach of contract by the borrower other than the existence of arrears. d) where the borrower has declined an arrangement offered by the lender and <u>either</u> i) the borrower has appealed the decision of the lender, but his/her appeal has not been upheld and the matter has not been referred to the Financial Services Ombudsman or the Financial Services Ombudsman has not upheld any appeal, or ii) the borrower has declined to make an appeal