Submission on Consultation Paper CP 63 – Code of Conduct on Mortgage Arrears

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I posted the drafts of these recommendations on askaboutmoney.com and have incorporated some improvements suggested by other contributors to the website. As the discussion on askaboutmoney.com may continue after the closing date, it may be advisable for the Central Bank to monitor the discussion.

The MARP should not be a requirement where the lender and borrower can agree a short-term solution and where there are no arrears

The Mortgage Arrears Resolution Process (MARP) is a complex and time-consuming process for both the borrower and the lender. It is also intrusive on the borrower's personal financial circumstances. This may be appropriate where a long-term solution is being discussed. But it should be dispensed with for simple and agreed rescheduling.

Before the MARP was introduced, borrowers often reached agreement with their lenders to reschedule their mortgage in a relatively simple and quick process. A borrower who anticipated a problem, would phone the lender and ask for a 3 month moratorium, an interest-only period of 6 months, or maybe to extend the term of the mortgage. The lender would often agree to this over the phone. The revised agreement would be sent to the borrower for signature and that would be that.

However, under the current Code, any such revision requires the full formal MARP. This is very time consuming and is often unnecessary.

I suggest the following amendments

"A borrower has the right to enter the full MARP at any time.

Where the borrower is not in arrears, the borrower and lender may agree to any of the following arrangements without entering the MARP

- An extension of the mortgage term
- A period of reduced payments up to one year
- A full payment moratorium of up to 6 months

Where a lender agrees to capitalise the arrears, they do not need to include the case in the MARP. The lender should only agree to capitalise the arrears where they are satisfied that the borrower is unlikely to enter arrears again"

Tracker Mortgages

I agree with the principle that where a lender offers a substantial debt write-off that they should be allowed to increase the margin on the mortgage where that margin is low. If this is not allowed, lenders will have no incentive to write down mortgages with low-yielding trackers and therefore the current ban may not be in the best interests of borrowers.

However, I am concerned that a vague statement such as

A lender is allowed to move a borrower in arrears off a tracker rate, where the lender has offered an alternative arrangement which is advantageous to the borrower in the long term

will leave a vulnerable or ill informed borrower open to exploitation by the lender. What the lender considers to be "advantageous to the borrower in the long term" may not actually be advantageous. Borrowers will be tempted to sign up to deals to escape the immediate pressure. Although they will be advised to take independent financial advice, many will not seek such advice.

Lenders should not be allowed to move or to offer borrowers a move to SVR mortgages, where the final rate can be decided at will by the lender.

I suggest that the terms under which a borrower can be offered a deal should be very specific and suggest the following wording.

“Lenders are not permitted to move borrower from a tracker rate to a Standard Variable Rate under any circumstances.

Where a lender agrees to write down some capital on the mortgage, they may make it a condition of such an offer than the margin be increased, provided that the revised monthly repayment of capital and interest will be lower than the contractually agreed repayment.

There should be no obligation on the borrower to accept such an offer.

The borrower should be advised to seek independent financial advice on the offer.”

The universal 12 month moratorium on repossessions is no longer necessary and may be counterproductive.

There was some sense to this moratorium in the period before the Mortgage Arrears Code was introduced. But it is no longer required.

It is of no benefit to co-operating borrowers who are in the MARP - the lender won't be repossessing those homes anyway.

Some people will use the 12 month moratorium to string out the bank and not face up to their responsibilities. These borrowers may well benefit from being forced to face up to their responsibilities through legal action. It is a sad reality that some borrowers bury their head in the sand until they are summoned to appear in court. The earlier this happens, the better for all concerned.

At the end of the day, the judge will decide whether repossession is justified or not.

The current wording should be replaced by something simple such as

"Where a borrower is engaged with the MARP , the lender should not issue legal proceedings for repossession against the borrower.

Where a borrower is not co-operating with MARP, the lender should advise the borrower of this in writing and that unless the borrower co-operates within 30 days, the lender reserves the right to institute immediate legal proceedings for repossession."

A definition of what is meant by an unsustainable mortgage must be provided

The Central Bank must issue either a definition or guidance notes on what is meant by an "unsustainable mortgage".

Such guidance notes would be very useful for

- lenders
- borrowers
- judges hearing an application for repossession

In their document on Mortgage Arrears Target, the Central Bank gives the following vague description

"sustainable solution which is likely to enable the customer to meet the original or, as appropriate, the amended terms of the mortgage over the full remaining life of the mortgage, including **repayment of the original** or an agreed revised **principal sum** where offered."

It should not be a requirement of a sustainable mortgage that the original principal be paid off in full over the full remaining life of the mortgage.
This definition favours the lenders and will allow them to classify many perfectly sustainable mortgages as unsustainable.

This definition would seem to classify split mortgages as "unsustainable" as they do not provide for repayment of the original principal sum at any time.

It could well be argued that any arrangement where the principal has not increased by the end of the agreed term is sustainable.

It will be very difficult to reach an agreed definition of what is meant by an "unsustainable mortgage". However, the fact that it is difficulty should not be a reason for not attempting such a definition.

Lenders should not be required to notify the borrower of the risk of repossession so early in the process

"26. Where three mortgage repayments have not been made in full as per the original mortgage contract and remain outstanding and an alternative repayment arrangement has not been put in place, the lender must notify the ***borrower***, in writing, of the following:
a) the potential for legal proceedings for ***repossession*** of the property, together with an estimate of the costs to the ***borrower*** of such proceedings;
b) the importance of taking independent advice from his/her local Money Advice and Budgeting Service (MABS) or an appropriate alternative; and
c) that irrespective of how the property is repossessed and disposed of, the ***borrower*** will remain liable for the outstanding debt, including any accrued interest, charges, legal, selling and other related costs, if this is the case."

Invariably, borrowers panic when they get this letter. As few homes are repossessed in Ireland, there should be no need to frighten people so early in the process.

A balance needs to be struck between causing unnecessary panic, yet making sure that the borrower understands the seriousness of the situation.

"While you are engaging with us in the Mortgage Arrears Process we will not institute legal proceedings for repossession of your home.

If you are not engaging in the MARP , we reserve the right to institute legal proceedings to repossess your home. If we classify you as non-cooperating, we will give you 30 days notice which will give you an opportunity to rectify the situation.

In rare cases, where we cannot devise a restructuring plan to put your mortgage on a sustainable level, we will enter into discussions with you to arrange a voluntary sale of your home. Where this happens, we will give you at least 90 days notice to sell the property"

Where joint mortgage holders have split up, and only one borrower is cooperating, that borrower should be facilitated.

This is a particularly difficult issue to resolve. It causes huge distress and, in many cases, a borrower who refuses to cooperate, faces little or no sanction.

As the mortgage is joint and several, the lender will argue, correctly, that their options are limited. They must pursue both borrowers and cannot pursue the non-cooperating borrower selectively.

At the very least, the definition of "not co-operating" needs to be revised to accommodate this situation.

It would be very difficult to incorporate prescriptive measures in the CCMA. However, some points of principle should be made.

“ Where one party to a joint mortgage continues to cooperate while the other party refuses to cooperate, the lender should, as far as possible, try to facilitate the cooperating borrower.

This may include:

Accepting repayments at a level equivalent to the rental income on the house.

Ensuring that the non-cooperating borrower is not classified as engaging with the MARP, so that they cannot avail of the Personal Insolvency Act.

Agreeing to classify the cooperating borrower as engaging in the MARP, so that they can avail of the options under the PIA.”

The scope of the Code should be extended to include accidental landlords

While the CCMA should not apply to professional property investors, it should be extended to apply to the following cases
· People who traded up and retained their former home
· Couples who previously owned homes separately

There are many cases where borrowers retained their former home. In some cases, they were encouraged to do so by the lender. In some cases, they tried to sell their home, but were unable to do so.

I suggest that the scope of the Mortgage Arrears Code be amended.

The current scope and definition reads:

"This Code applies to the mortgage loan of a borrower which is secured by their primary residence.
Primary Residence: means a property which is:
(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."

I suggest that this be amended as follows
"This Code applies to the mortgage loan of a borrower which is secured by

- their primary residence or
- by their former primary residence where the outstanding mortgage on the former primary residence is less than €300,000 and where it was their home within the last 5 years.

  Primary Residence: means a property which is:
  (i) the residential property which the borrower occupies or occupied as his/her primary residence in this State within the last 5 years"