

Consumer Protection Codes Division

Central Bank

PO Box 9138

6-8 College Green

Dublin 2

10th April 2013

Re : Review of the Code of Conduct on Mortgage Arrears (CCMA) - Consultation Paper 63

Dear Sir / Madam,

Certus, as the leading bank services outsourcing business in Ireland, welcomes the opportunity to engage with the Central Bank of Ireland (CBI) regarding the review of the CCMA. As a mortgage services provider to banks representing in excess of 50% of the national mortgage portfolio, we have a detailed understanding of the impact of the CCMA for lenders' arrears management capability. We endorse the underlying spirit of the CCMA that borrowers should be treated in a fair and consistent manner by lenders and Certus are committed to excellence in arrears management.

In general, we support the guiding principles contained within the Consultation Paper and wish to caution against the use of further detailed prescriptive provisions which may have unintended consequences for the effectiveness of the Code and how lenders manage and support customers in financial difficulty. In this regard, we note that there have been unintended consequences as a result of some existing CCMA provisions on both the effectiveness of lenders' arrears management processes and how the Courts deal with CCMA cases before them. The current contact limits, for example, have inhibited lenders from engaging with borrowers which may have delayed the resolution of some borrowers' cases, and have diverted significant resources to ensure operational compliance with the CCMA.

We set out a summary of our main points in this letter and also attach a more detailed submission on the proposed changes in an appendix.

Consumer Guide

At the same time as reviewing the CCMA, we recommend the CBI updates its consumer guide – 'Mortgage Arrears – A Consumer Guide to dealing with your Lender' ("Guide") which details the obligations on consumers who are having financial difficulties in repaying their mortgage. In particular, there should be greater emphasis on consumer's obligations to:

- Co-operate and engage with their lender in good faith
- Prioritise repayments towards their mortgage
- Notify the lender of changes in their circumstances
- Give due consideration to lender proposals to address their financial difficulties

This review is also appropriate in the context of updating the Guide for the provisions of the Personal Insolvency Act 2012.

We recommend that lenders are given a six month period to comply with the new provisions of the Code.

We are available to discuss the above or related matters.

Yours Sincerely



Ronan Holahan,

Divisional Director – Retail Credit Risk,

Certus

1.1 - Co-Operation and Engagement

Positive engagement and co-operation between lender and borrower is essential to the resolution of mortgage arrears.

Certus agrees with the proposed definition of not co-operating. However, we are of the view that a borrower should not be subject to any of the protections of MARP once they have been classified as not co-operating.

We believe that the requirement to provide notification to the borrower prior to classifying them as not co-operating is overly prescriptive and unnecessary (Provision 27). We maintain that sufficient information in relation to the implications of not co-operating, and the actions a borrower can take to avoid being treated as not co-operating are already dealt with through existing code letters.

1.2 - Contact Between Borrower and Lender

Certus believes that better outcomes can be achieved by early engagement with customers and that maintaining contact with borrowers throughout the process in a proportionate way represents good arrears management practice. Therefore, the proposal to allow each lender to draw up and implement its own contacts policy is welcomed.

However, we do not believe that lenders should be restricted in their communications with borrowers on residential investment properties / buy-to-lets where the three contact rule will prevail under the Consumer Protection Code 2012 (CPC).

We recommend that the CBI adopt a harmonised approach to the consumer codes and that this amendment is applied to both the CPC and the CCMA.

Provision 65 requires a lender to maintain recordings of all telephone calls made to or from a borrower in relation to their arrears or pre-arrears. However, we suggest that calls to and from field agents / mobile phones should be excluded from this provision and that an update to the customer's collections notes or lending file would satisfy as a record of customer contact.

1.3 - Link Between the CCMA and the Personal Insolvency Act 2012

Certus believes that the introduction of publications from the Insolvency Service of Ireland at an early stage in the arrears management process is inappropriate and may give an inappropriate weighting to insolvency as a resolution mechanism for borrowers in financial difficulty. We believe that too much supplementary information may distract from the key messages contained in arrears letters.

As an alternative, Certus believes that detailed information relating to the insolvency options available to borrowers should be introduced at the Resolutions and Appeals stage of the Mortgage Arrears Resolution Process. This should avoid confusion and over-communication with borrowers and should be provided by way of a link to the ISI web-site as opposed to providing published material.

In addition, where a borrower's mortgage is deemed to be unsustainable (Pg 9 & 10 of the Consultation Paper) Certus believes that the 12-month moratorium should not apply. In line with the proposal for dealing with a borrower who declines an arrangement offer, we suggest that a 30-day notice period is sufficient to allow a borrower to assess their options.

Drafting Feedback / Clarifications

1. Scope – Confirmation is sought that financial institutions will not be required to apply any new protections retrospectively.
2. Definitions of Primary Residence - Certus recommends a consistent approach in the definitions prescribed by the legislation and codes regulated by the CBI and, in particular, would welcome a review of the definition of Primary Residence (as per CCMA) and Principal Private Residence (as per the PIA) in order to provide clarity and consistency.
3. Provision 17: Clarification is sought on the number of times a borrower can apply for an Alternative Repayment Arrangement under the MARP process. If unrestricted, we are assuming that once the MARP period has been applied and has expired that a borrower cannot re-enter the MARP process.
4. Provision 27: where a borrower (as described under the CP63) is :
 - outside of the MARP process, and
 - repossession proceedings have been instituted by a financial institution, and
 - the borrower makes an alternative repayment proposal after the institution of repossession proceedings,

we are assuming that the Borrower is no longer afforded the MARP protections and the legal proceedings continue.

5. Provision 22-28: Under the Personal Insolvency Act 2012, a financial institution is required to stop certain activities with a borrower while the Personal Insolvency Arrangement, Debt Settlement Arrangement or Protective Certificate is in force (varying from 70 days to 6 years depending on the application). Clarification is sought on what correspondence (if any) may be issued to a borrower during this period and if none, what is the effect on CCMA during a Personal Insolvency Arrangement.
6. Provision 26-28: Under the Personal Insolvency Act 2012:
 - when a Personal Insolvency Arrangement is terminated for failure to comply with the terms of the Personal Insolvency Arrangement, or
 - if a Court refuses to issue a protective certificate, or
 - refuses to approve a Personal Insolvency Arrangement, or
 - when a Personal Insolvency Arrangement is successfully completed and the borrower is not discharged from the debt

we are assuming that a borrower does not re-enter the MARP process.

7. Provision 29: It is submitted that the Standard Financial Statement should provide for a declaration by the borrower(s) relating to the Family Home Protection Act 1976 (as amended) and Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010.