



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

March
2013

Review of the Code of Conduct on Mortgage Arrears

Consultation Paper CP 63



Foreword

Mortgage repayment difficulties are one of the biggest financial issues currently facing Irish households and the wider Irish economy, not just from the perspective of the distress being experienced by the home owner but also the wider economic implications that arise from not effectively tackling this crisis. It is in everyone's interests - borrower, lender, and society at large - to ensure that appropriate mechanisms are put in place to facilitate the development and timely provision of appropriate and sustainable mortgage resolutions to borrowers facing or experiencing mortgage arrears.

The impact of the mortgage arrears crisis is evidenced by the significant rise in the number of households facing or experiencing mortgage arrears over the last number of years. At the end of December 2012, there were 792,096 private residential mortgage accounts (for principal dwellings) in Ireland, of which 143,851 (18.2%) were in arrears. Some 94,000 (11.9%) of these accounts were in arrears of greater than 90 days.

The restructuring arrangements agreed to date have primarily been of a shorter-term nature, with interest-only and less than interest-only arrangements accounting for 46% of restructures. As at end-December 2012, there were just over 106,000 mortgage accounts in arrears, for which no restructured arrangement had been put place.

The resolution of mortgage arrears remains a key priority for the Central Bank of Ireland (Central Bank) and it is committed to continue playing its part in delivering an effective regulatory and consumer protection framework which is in the best interests of borrowers, lenders, and the wider economy.

Code of Conduct on Mortgage Arrears (CCMA)

The Code of Conduct on Mortgage Arrears (CCMA) is a key part of the Central Bank's mortgage arrears framework. It is designed to provide appropriate and effective consumer protection measures and to ensure that borrowers are treated in a fair and transparent manner.

The Central Bank first published the CCMA in February 2009. It set out rules for lenders when dealing with borrowers in arrears with their mortgage payments.

The current CCMA, which came into effect on 1 January 2011, took account of the recommendations of the Government Expert Group on Mortgage Arrears¹ and further

¹ <http://www.finance.gov.ie/documents/publications/reports/2010/mortgagearrearsjul.pdf>

strengthened protections for borrowers in mortgage repayment difficulty by setting out the mortgage arrears resolution process (MARP). The MARP is a five-step process which requires lenders to:

- 1) communicate with borrowers;
- 2) obtain financial information using a standard financial statement (SFS);
- 3) complete an assessment of the borrowers case;
- 4) consider options to resolve the arrears; and
- 5) consider appeals.

2013 Review of the CCMA

The Central Bank is now reviewing the protections in place for borrowers under the CCMA. The purpose of this review is to strengthen these protections, where necessary, while ensuring that the framework is facilitating and promoting the effective and timely resolution, by lenders, of each borrower's arrears situation.

The review also fulfils the recommendation of the Government's Expert Group on Mortgage Arrears, that the MARP and the Appeals Process, set out in the CCMA, should be formally reviewed within 18 months of commencement. It is also timely, given the recent enactment of the Personal Insolvency Act 2012², which sets out options to address the circumstances of insolvent debtors.

The issues under consideration as part of this review have been informed by, and developed through, a process of pre-consultation engagement with key industry and consumer stakeholders. They also reflect analysis of mortgage arrears information, outcomes of consumer-based research and the results of themed inspections, undertaken by the Central Bank, of lenders' compliance with certain aspects of the current CCMA³.

The proposals set out in this consultation paper are intended to provide an integrated and cohesive package of consumer protection measures for borrowers facing, or in, mortgage arrears, and reflect the following principles:

- To ensure appropriate resolution of each borrower's arrears situation.
- To ensure that lenders deal with borrowers in a fair and transparent manner.
- To support and facilitate meaningful engagement between lenders and borrowers.

² The Central Bank notes that the Personal Insolvency Act 2012 has not yet come into effect.

³ <http://www.centralbank.ie/press-area/press-releases/Pages/Research%20highlights%20positive%20experience%20of%20borrowers%20engaged%20in%20MARP.aspx>

- To ensure borrower awareness of the benefits of co-operating with their lender and the consequences of not co-operating.

The main issues under consideration as part of this review can be summarised as follows:

- i) **Co-operation and engagement** – The CCMA provides important protections for borrowers who engage and co-operate with their lender. It also sets out consequences for those who are not co-operating. The consequences of being treated as such are serious and may also impact on a borrower’s eligibility for options under the Personal Insolvency Act. It is very important, therefore, that the CCMA very clearly sets out the distinction between co-operating and not co-operating borrowers. Consequently, the Central Bank is proposing a number of clarifications to the definition of not co-operating. In recognition of the serious impact of being classified as not co-operating, it is also proposing a number of safeguards, to ensure that borrowers are given advance warning before being classified as not co-operating, as well as the opportunity to avoid being treated as such.
- ii) **Contact between the lender and borrower** - When an arrears situation arises, it is critical that the borrower engages with their lender in a meaningful way so that they can influence how their arrears situation is resolved and benefit from the protections of the CCMA. The Central Bank is proposing amendments to the rules in relation to contact, to ensure that the engagement between the lender and the borrower, which is key to resolving an arrears problem, is facilitated. As well as supporting appropriate contact, these amendments also seek to ensure that borrowers, who may already be stressed due to their difficult financial circumstances, are not subjected to harassment.
- iii) **Link between the CCMA and the Personal Insolvency Act** - The Central Bank is seeking to ensure that borrowers, who have been through the MARP and are considering their options under the Personal Insolvency Act, are given sufficient time to do so and that the process is as smooth as possible. It is therefore proposing to include certain new requirements for lenders, to achieve this aim.
- iv) **Use of the Standard Financial Statement (SFS)** – The SFS has been designed to provide comprehensive information to enable lenders to fully consider borrowers’ situations and to ensure that the alternative repayment arrangements that are offered to borrowers are suitable and sustainable. In recognition of the range of views expressed on the SFS since it was first

published, the Central Bank is considering whether there may be specific situations where full completion of the SFS is not warranted.

- v) **Reviews of alternative repayment arrangements** – The Central Bank is re-examining the requirement for regular reviews of alternative repayment arrangements agreed between the lender and the borrower. These reviews are aimed at determining whether an arrangement continues to be appropriate over time and given changing borrower circumstances. A number of new requirements are proposed to ensure that reviews are completed when necessary, and in a transparent manner.
- vi) **Treatment of appeals and complaints** - The Central Bank recognises the importance of providing a suitable appeals and complaints process for borrowers who are not satisfied with how their case has been dealt with. Further, it wants to ensure that lenders consider appeals by borrowers fairly, independently, consistently and in a transparent way. Certain changes are being proposed in order to strengthen the appeals process and to make it more efficient for both borrowers and lenders.
- vii) **Information on other options** – The Central Bank is seeking to ensure that there is transparency in relation to options such as voluntary surrender or trading down so that borrowers have a full understanding of these options before making a decision. Consequently, it is proposing to expand the requirement for lenders to provide information on these types of options.
- viii) **Tracker mortgages** – The Central Bank is considering whether there is merit in allowing a lender 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, e.g., a debt write off.

This is an important consultation and the Central Bank would encourage interested parties to engage with the review of the CCMA, by providing comments on the overall proposals, and in specific areas.

The following sections provide further information and detail on the issues and proposals referred to above.

1. Co-operation and engagement

The CCMA allows a lender to classify a borrower as “not co-operating”. The impact of this classification is that the lender may apply penalty charges and may commence legal action for repossession immediately. In order to ensure that a consistent approach is taken by all lenders, the CCMA currently defines not co-operating as follows:

“A borrower can be considered as not co-operating with the lender where any of the following apply to their particular case:

- a) the borrower fails to make a full and honest disclosure of information to the lender, that would have a significant impact on their financial situation;*
- b) the borrower fails to provide information sought by the lender relevant to the borrower’s financial situation ; or*
- c) a three month period elapses during which the borrower:*
 - (i) has failed to meet his/her mortgage repayments in full as per the mortgage contract or has failed to meet in full repayments as specified in the terms of an alternative repayment arrangement; and*
 - (ii) has not made contact with, or responded to, any communications from the lender or a third party acting on the lender’s behalf.”*

Co-operation between the lender and the borrower is a key principle underpinning the CCMA. In addition to the consequences of non co-operation that are set out above, co-operation with the CCMA is one of the criteria that a Personal Insolvency Practitioner is required to consider when assessing whether a borrower is eligible for a Personal Insolvency Arrangement under the new Personal Insolvency Act. It is, therefore, crucial to ensure that the definition is appropriate and is as clear as possible.

Currently, if a borrower responds to some communications, but does not meaningfully engage with their lender to address or resolve the arrears problem, the lender is prevented from classifying the borrower as not co-operating and, therefore, that borrower will continue to receive the full protections of the CCMA, including the 12-month moratorium, even though the lender cannot progress the resolution of the arrears.

The Central Bank considers that deliberately delaying real engagement to try to reach a solution is not in the interests of the borrower or the lender and is proposing to clarify the definition of not co-operating (see Appendix I, page 19) by specifying that:

- under part b) of the definition, a borrower may be considered to be not co-operating where he or she fails to provide information, relevant to the assessment of the borrower's case, sought by the lender within a reasonable timeframe, as specified by the lender; and
- under part c) of the definition, a borrower who, over a three month period, has made contact with, or responded to communications from, the lender, but has repeatedly failed to do so with a view to reaching an alternative repayment arrangement or other solution in relation to the arrears, can be considered to be not co-operating.

In addition, the Central Bank is proposing that:

- any timelines imposed by a lender, for the return of information or a completed SFS, must be fair and reasonable (see Appendix I, provision 33); and
- where a timeline is imposed, the lender must highlight 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 (see Appendix I, provision 33).

Where a borrower is in arrears on his or her mortgage and is not co-operating with the lender, the provisions relating to the restriction on imposing charges and/or surcharge interest on arrears and the 12-month moratorium no longer apply. However, the remaining provisions of the MARP continue to apply, such as the requirement for lenders to provide certain information and to consider appeals. The Central Bank is proposing to amend the CCMA to make this clearer (Appendix I, provision 22 (vi)).

In recognition of the serious implications for borrowers that are classified as not co-operating, the Central Bank is proposing to require lenders to explain the meaning and consequences of not co-operating, in their MARP booklet (see Appendix I, provision 12(e)). In order to provide a further safeguard for borrowers, it is also proposed that where the lender intends to classify a borrower as not co-operating, it must give the borrower advance notice, in writing, explaining the implications for the borrower, how he or she can avoid being classified as not co-operating and advising him or her to seek independent advice, for example from MABS (see Appendix I, provision 27).

Further, where a lender has previously advised a borrower that it intends to classify him or her as not co-operating, and that borrower has not subsequently engaged with the lender, it is proposed that the lender must notify the borrower, in writing, that he or she

has been classified as not co-operating and inform the borrower of the intended actions (see Appendix I, provision 28).

The Central Bank is of the view that where a borrower has been classified as not co-operating, he or she should be given one further opportunity to re-engage and to be considered as co-operating again. It is proposed that the lender would not be required to apply the MARP framework to that borrower if he or she is subsequently deemed to be not co-operating.

2. Contact between the lender and the borrower

Currently, under the CCMA and related guidance issued to industry⁴, lenders must comply with the following contact requirements:

- **Provision 7 of the current CCMA** - A lender must, as soon as a borrower goes into arrears, contact the borrower to establish why the repayment schedule has not been adhered to. The intention of this requirement is that the lender will determine whether the borrower is having difficulty repaying their mortgage. In order to achieve this, the lender must have a conversation with the borrower and may attempt to contact the borrower (in a proportionate and non-excessive way) until they have such a conversation and establish, insofar as is possible, whether payment difficulties exist.
- **Provisions 20 and 21 of the current CCMA** - After the initial contact, a lender may have no more than three successful⁵ unsolicited communications per month with a borrower in arrears. A lender may need to make a number of attempts in order to achieve a successful communication, but these attempts must be proportionate and not excessive.
- **Guidance** - A lender may undertake an unsolicited personal visit with a borrower in arrears where all other attempts at contact have failed and immediately prior to classifying that borrower as not co-operating. Advance notice of the intention to make a personal visit must be given to the borrower, in writing, and the borrower must not be required to complete an SFS at that visit, if they do not wish to (see Appendix I, provision 25 (a)-(e)).

In order to encourage borrowers to engage, lenders must undertake all contacts with borrowers in an appropriate manner. The tone of communications must be sympathetic

⁴ As published on www.centralbank.ie in April and December 2012

⁵ Successful communications include a letter, a phone conversation, a text message, an email, or a voicemail. They are considered to be successful for the purposes of the CCMA, because the borrower will be aware that the communication is from the lender and the purpose of that communication.

and encouraging and there must be transparency in relation to the process followed by lenders. Feedback from industry would indicate that the current requirements, particularly the limit of three successful contacts, are preventing lenders from making contact and engaging with borrowers and are therefore impeding the consideration and resolution of borrowers' cases. The Central Bank does not believe that this is in the best interests of borrowers.

Consequently, in order to ensure that engagement between the lender and the borrower can occur, thereby facilitating the resolution of each case, the Central Bank is proposing to:

1. retain the requirement for all contact and communications from the lender, or any third party acting on its behalf, to be proportionate and not excessive;
2. remove the limit of three contacts per calendar month; and
3. require lenders to draw up and implement a contacts policy.

In addition, the Central Bank is proposing that lenders must ensure that communications with borrowers are not aggressive or intimidating and that, where engagement takes place, the lender must allow the borrower sufficient breathing space before attempting any further contact with that borrower. It is also proposed that lenders should, where possible, agree future contact, in advance, with the borrower (see Appendix I, provisions 20 and 21).

3. Link between the CCMA and the Personal Insolvency Act

This review is timely in the context of the recent enactment of the Personal Insolvency Act. The Central Bank is considering the interaction between the CCMA and the new process introduced under the Personal Insolvency Act. The intention is to ensure that the process for insolvent borrowers, who have been through the MARP and wish to enter a Personal Insolvency Arrangement, is as smooth as possible.

The Central Bank is proposing a new requirement whereby a lender must include a link to the website operated by the Insolvency Service of Ireland on the dedicated section of its website, for borrowers in, or concerned about, financial difficulties (see Appendix I, provision 13 (g)). In addition, it is proposed that relevant publications from the Insolvency Service must be provided along with the letter that must be issued to borrowers, where arrears have arisen on a mortgage account and remain outstanding 31 days later (see Appendix I, provision 22 (c)).

Where a lender is not willing to offer a borrower an alternative repayment arrangement, for example where it has been concluded that the mortgage is unsustainable (see Appendix I, provision 44), the Central Bank is proposing that a lender must provide the borrower with:

- the reasons, in writing, why an alternative repayment arrangement has not been offered;
- a copy of the most recent SFS;
- an outline, in writing, of other options open to the borrower; and
- relevant publications produced by the Insolvency Service of Ireland.

Where a borrower is not willing to enter into an alternative repayment arrangement offered by a lender (see Appendix I, provision 45), it is proposed that a lender must provide the borrower with:

- details, in writing, of the alternative repayment arrangement offered;
- a copy of the most recent SFS;
- an outline, in writing, of other options open to the borrower; and
- relevant publications produced by the Insolvency Service of Ireland.

Under the CCMA, where a borrower co-operates with a lender, the lender must wait at least 12 months before applying to the courts to commence legal action for repossession. This 12-month moratorium is intended to provide co-operating borrowers with the necessary time to agree an alternative repayment arrangement with their lender. It commences 31 days after arrears have first arisen on a mortgage account and excludes any time period during which:

- the borrower is complying with the terms of any alternative repayment arrangement;
- the borrower can consider whether he/she wishes to appeal a decision of the Arrears Support Unit;
- an appeal by the borrower is being processed by the lender's Appeals Board; and
- a complaint from the borrower is being processed by the Financial Services Ombudsman.

Under the CCMA, there are two scenarios that affect the application of the 12-month moratorium:

1. Where a lender has complied with the MARP and offered an alternative repayment arrangement to the borrower, the 12-month moratorium does not continue to apply if the borrower declines the arrangement offered. A lender must, however, allow for the borrower's right of appeal to the lender's internal Appeals Board and to refer the appeal to the FSO.

2. Where a lender has deemed a borrower's mortgage to be unsustainable and declined to offer an arrangement, that lender must wait for whatever period of time remains on the moratorium before commencing legal action. This allows such borrowers some time to consider their situation and to make alternative arrangements.

In relation to 1 above, and in the context of the new Personal Insolvency Act, the Central Bank is now proposing that a lender should be required to give a 30-day notice period, before commencing legal action, to a borrower who has declined an arrangement. This would allow the borrower a period of time to consider his or her options, particularly whether to consult a Personal Insolvency Practitioner.

In relation to 2 above, the Central Bank is seeking views on whether the 12-month moratorium should continue to apply where a lender has deemed a mortgage to be unsustainable (bearing in mind that the time remaining will vary, depending on the length of time a lender has taken to assess a borrower's case), or whether the 30-day notice period outlined above, is a sufficient alternative period of time for a borrower to consider his or her options in this circumstance.

1. Use of the Standard Financial Statement (SFS)

Since the introduction of the SFS⁶, a number of wide ranging, and sometimes contradictory, views have been expressed.

Some lenders have highlighted borrower dissatisfaction, as well as their own concerns, that the level of information sought is excessive, particularly in respect of borrowers with a more straightforward arrears situation (for example, where the borrower has had a one-off unexpected expense which has temporarily created an arrears issue). In addition, some lenders maintain that the time taken to complete and assess the SFS is leading to delays in putting arrangements in place, which can result in a deterioration of the borrower's position, while they are awaiting the completion of the review.

However, the consumer research⁷ conducted on behalf of the Central Bank concluded that the majority (71%) of borrowers surveyed were satisfied with the overall ease of completing the SFS. In addition, a number of lenders have expressed the view that the full range of information contained in the SFS is relevant and necessary in order to

⁶<http://www.centralbank.ie/consumer/info/Documents/Industry%20Standard%20Financial%20Statement.pdf>

⁷<http://www.centralbank.ie/press-area/press-releases/Pages/Research%20highlights%20positive%20experience%20of%20borrowers%20engaged%20in%20MARP.aspx>

facilitate full consideration of the borrower's situation. This view is supported by the Central Bank's analysis of data from the main lenders.

In recognition of the time it may take to complete and assess the SFS and the potential deterioration in a borrower's arrears situation while this process is being carried out, the Central Bank is proposing to clarify that a lender may put a temporary arrangement in place for a period of no more than three months, prior to receiving, and completing a full review of, the SFS (see Appendix I, provision 37).

In addition a new requirement is proposed, for lenders to offer to assist borrowers in completing the SFS (See Appendix I, provision 30 (b)).

The Central Bank agrees that there may be some situations where the full range of information contained in the SFS is not required, and is seeking views on those potential situations and the information that would be required in each situation to facilitate proper consideration of the borrower's case.

2. Reviews of alternative repayment arrangements

The CCMA currently requires lenders to review arrangements every six months. This requirement must now be amended to reflect the introduction of longer term alternative repayment arrangements such as long-term interest only and split mortgages, for which bi-annual reviews would be inappropriate.

In order to address this issue, the Central Bank is considering categorising repayment arrangements as short, medium, and long term and specifying the frequency of reviews for each category.

- **Short-term arrangements** would be defined as alternative repayment arrangements with a duration of up to three years. We consider that these arrangements should be reviewed every 12 months.
- **Medium-term arrangements** would be defined as alternative repayment arrangements with a term greater than three years but no greater than five years. It is proposed that these arrangements should be reviewed three years from the date the arrangement was entered into.
- **Long-term arrangements** would be defined as alternative repayment arrangements with a term greater than five years. It is proposed that such arrangements should be reviewed every five years.

The Central Bank is not proposing to require reviews for arrangements that are applied over the life of a mortgage (permanent restructures), such as term extensions and capitalisation of arrears, as they may be overly burdensome for a borrower and it is not clear that they are necessary.

The CCMA currently includes a requirement for a lender's ASU to immediately review a borrower's case, including the SFS, where a borrower ceases to adhere to the terms of an alternative repayment arrangement. In addition to this requirement, it is proposed to require a lender to formally review a borrower's case where an alternative repayment arrangement is coming to an end (see Appendix I, provision 47 (b)). Consequently, formal reviews will mainly capture cases where a borrower's circumstances improve.

In recognition of the importance of the borrower being made aware of when and how reviews will be undertaken, the Central Bank is proposing to require a lender to provide this information to a borrower and to explain the potential impact of reviews when it initially offers an alternative repayment arrangement to that borrower (see Appendix I, provision 42 (e)).

3. Treatment of appeals and complaints

The requirement for lenders to set up an internal Appeals Board was introduced to ensure that an effective framework exists for considering and determining appeals in relation to:

- a) a decision of the lender's Arrears Support Unit (ASU);
- b) the lender's treatment of the borrower's case under the MARP process; and
- c) the lender's compliance with the requirements of the CCMA.

The intention is to ensure that appeals by borrowers are considered fairly, independently, consistently and in a transparent way by the lender's Appeals Board.

Lenders have suggested that appeals in relation to b) and c), above, should be handled by a lender's complaints department. As these appeals are effectively complaints in relation to the process followed by the lender, the Central Bank considers that they could be handled by a lender's complaints department in accordance with the complaints provisions set out in the Consumer Protection Code 2012⁸. This would allow the Appeals Board to concentrate on appeals relating to the outcome of the MARP process, i.e., the decision of the lender's ASU.

⁸ <http://www.centralbank.ie/regulation/processes/consumer-protection-code/Documents/Consumer%20Protection%20Code%202012.pdf>

However, in order to maintain a consistent approach for the treatment of appeals or complaints under the CCMA, it is proposed that a lender's complaints department should be required to report all decisions on complaints relating to b) and c), above, to the Appeals Board on a regular basis, to ensure that it is aware of all issues arising in relation to arrears cases.

In recognition of the need for appeals to be considered fairly, independently and consistently, the Central Bank is proposing to strengthen the appeals process by requiring a lender to undertake an appropriate analysis of the patterns of appeals from borrowers on a regular basis, including investigating whether appeals indicate an isolated issue or a more widespread issue and to escalate this analysis to the lender's ASU, compliance/risk function and senior management (See Appendix I, provisions 53 and 54).

4. Information on other options

In order to address a lack of transparency in relation to options such as voluntary surrender or trading down, and to ensure that borrowers have a full understanding of the option(s) before making a decision, the Central Bank is proposing to expand the requirement for lenders to provide information on these types of options.

In particular, it is proposed that a lender must outline the implications of these options for the borrower and his or her mortgage loan account, including:

- associated costs or charges,
- how much, if any, of the outstanding arrears must be repaid,
- the impact on the borrower's credit rating, and
- the importance of seeking independent advice in relation to these options;

(See Appendix I, provisions 44 (c) and 45 (d))

5. Tracker mortgages

The CCMA currently prevents a lender from requiring a borrower to change from an existing tracker rate to another rate as part of any alternative repayment arrangement offered. This provision 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.

The Central Bank is now considering whether there is merit in allowing a lender to move a borrower in arrears off a tracker rate, where the lender has offered a loan modification which is advantageous to the borrower in the long term, e.g., a debt write off.

Drafting amendments

In addition to the aforementioned issues, the Central Bank is proposing some additional amendments to the CCMA where:

- the existing provisions need to be strengthened to provide increased protection to borrowers;
- new provisions are required; and
- it is necessary to amend provisions to provide clarity or to reflect guidance issued.

These proposed amendments, which are incorporated into a revised CCMA (see Appendix I), attempt to address information gaps, in particular, and to ensure that how a lender operates within the process is as transparent as possible for the borrower. The Central Bank welcomes your views on these proposed amendments.

Making your submission

The closing date for submissions is 10 April 2013. A timeframe of four weeks has been set for responses to the public consultation. While the Central Bank appreciates the brevity of this timeframe, it reflects the urgent need to provide greater clarity and stronger protections in the CCMA. In addition, it also recognises that pre-consultation with relevant industry and consumer stakeholders took place in advance of the review, and the fact that it is a review of an existing code.

Comments and views are welcome, from all interested parties, on both the strategic issues outlined in this paper and the proposed drafting amendments. In addition, views are welcome on any other issues in relation to the operation of the CCMA that should be considered as part of the review.

The Central Bank requests that submissions which put forward arguments for changes to the CCMA will be supported, where possible, by quantitative evidence which will aid its consideration of the issues.

Please make your submissions in writing and, if possible, by e-mail (see details below). When addressing any issue raised in this paper, please use the headings in this paper to identify the section you are referring to. If you are raising an issue that is not referred to in this paper, please indicate this in your submission.

The Central Bank intends to make submissions available on its website after the deadline for receiving submissions has passed. Because of this, please do not include commercially sensitive material in your submission, unless you consider it essential. If you do include such material, please highlight it clearly so that reasonable steps may be taken to avoid publishing that material. This may involve publishing submissions with the sensitive material deleted and indicating the deletions.

Despite the approach outlined above, the Central Bank makes no guarantee not to publish any information that you deem confidential. So be aware that, unless you identify any commercially sensitive information, you are making a submission on the basis that you consent to it being published in full.

Please clearly mark your submission 'Code of Conduct on Mortgage Arrears' and send it to:

Consumer Protection Codes Division
Central Bank
PO Box 9138
6 - 8 College Green
Dublin 2
E-mail: code@centralbank.ie

Appendix I - Revised CCMA

Proposed amendment

Proposed new provision or definition

CHAPTER 1

SCOPE

INTRODUCTION

This Code sets out how mortgage lenders (referred to in this document as “lenders”) must treat **borrowers** in or facing mortgage **arrears**, with due regard to the fact that each case of mortgage **arrears** is unique and needs to be considered on its own merits. This Code sets out the framework that lenders must use when dealing with **borrowers** in mortgage **arrears** or in **pre-arrears**. All such cases must be handled sympathetically and positively by the lender, with the objective at all times of assisting the **borrower** to meet his/her mortgage obligations.

This Code acknowledges that it is in the interests of both the lender and the **borrower** to address financial difficulties as speedily and as effectively as circumstances allow.

LEGISLATIVE BASIS

This Code is issued under Section 117 of the Central Bank Act 1989.

The Central Bank of Ireland has the power to administer sanctions for a contravention of this Code, under Part IIIC of the Central Bank Act 1942.

Lenders are reminded that they are required to comply with this Code as a matter of law.

This Code is effective from XXXX.

This Code replaces the previous Code of Conduct on Mortgage Arrears which became effective on the 1 January 2011.

Any right acquired, or obligation or liability incurred, in respect of a contravention of, or act of misconduct under, the previous code survives the replacement of the previous code with this Code. Therefore, any legal proceedings, investigation, disciplinary or enforcement action in respect of a contravention of, or act of misconduct under, the

provisions of the previous code in force at the time the contravention or act of misconduct occurred, may be instituted, continued or enforced, and any sanction or penalty in respect of such contravention or act of misconduct may be imposed by the Central Bank of Ireland as if the provisions of the previous code had not been replaced.

Where a provision of this Code is amended or deleted, any legal proceedings, investigation, disciplinary or enforcement action in respect of a right acquired, or obligation or liability incurred, in respect of a contravention of, or act of misconduct under, the provision in force at the time may be instituted, continued or enforced, and any sanction or penalty in respect of such contravention or act of misconduct may be imposed by the Central Bank of Ireland as if the provision had not been amended or deleted.

APPLICATION OF THIS CODE

This Code applies to the mortgage lending activities of all regulated entities, except credit unions, operating in the State, including:

- a financial services provider authorised, registered or licensed by the Central Bank of Ireland; and
- a financial services provider authorised, registered or licensed in another EU or EEA Member State and which has provided, or is providing, mortgage lending activities in the State.

This Code applies to the mortgage loan of a **borrower** which is secured by their **primary residence**.

In addition, lenders must apply the protections of the Code to **borrowers** in the following circumstances:

- (i) **Borrowers** in **arrears** and in **pre-arrears**; and
- (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**).

When dealing with **borrowers** in **arrears** or in **pre-arrears**, mortgage lenders are not required to comply with the following provisions of the Consumer Protection Code 2012:

Chapter 6, Post-sale information requirements: Provisions 6.8 and 6.9

Chapter 8, Arrears handling: All provisions

Chapter 10, Errors and complaints resolution: Provisions 10.7-10.12

For the purposes of sections 52(3)(c), 91(1)(g) and 91(2) of the Personal Insolvency Act 2012, the Mortgage Arrears Resolution Process is a process relating to mortgage arrears which has been required by the Central Bank of Ireland.

EXISTING ARREARS CASES

From XXXX 2013, this Code applies to all existing **arrears** cases falling within this Code. Lenders must ensure that they comply with all provisions of this Code from XXXX 2013.

CHAPTER 2

DEFINITIONS

The following are defined for the purposes of this Code:

Arrears: Arrears arise on a mortgage loan account where a **borrower** has not made a full mortgage repayment, or only makes a partial mortgage repayment, as per the original mortgage contract, by the scheduled due date.

Borrower: includes all parties named on the mortgage loan account.

Business day: means any day except Saturday, Sunday, bank holidays and public holidays.

Equity participation: means that the principal sum due on the **primary residence** is reduced, provided that a share in the **borrower's** equity in the **primary residence** is transferred to the lender, or a third party.

Long-term arrangements: Alternative repayment arrangements with a term greater than five years.

MARP: means the Mortgage Arrears Resolution Process.

Medium-term arrangements: Alternative repayment arrangements with a term greater than three years and no greater than five years.

Mortgage to rent: means 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.

Not co-operating: A **borrower** can only be considered as not co-operating with the lender when any of the following apply to their particular case:

- a) the **borrower** fails to make a full and honest disclosure of information to the lender, that would have a significant impact on their financial situation;
- b) the **borrower** fails, within a reasonable timeframe (which timeline may be set by the lender in accordance with provision 33), to provide information, relevant to the **borrower's** financial situation, sought by the lender; or
- c) a three month period elapses during which the **borrower**:
 - i) has failed to meet his/her mortgage repayments in full as per the mortgage contract or has failed to meet in full repayments as specified in the terms of an alternative repayment arrangement; and
 - ii) (A) has failed to make contact with, or respond to any communications from, the lender or a third party acting on the lender's behalf or (B) has made contact with, or responded to communications from, the lender or a third party acting on the lender's behalf but has repeatedly failed to do so with a view to reaching an alternative repayment arrangement or other solution in relation to the **arrears**.

Personal Insolvency Practitioner: a person authorised, under Part 5 of the Personal Insolvency Act 2012, to act as a personal insolvency practitioner.

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;

Pre-arrears: A pre-arrears case arises where the **borrower** contacts the lender to inform them that he/she is in danger of going into financial difficulties and/or is concerned about going into mortgage **arrears**.

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**.

Record: means any document, file, telephone call or information (whether stored electronically or otherwise) and which is capable of being reproduced in a legible form.

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.

Short-term arrangements: alternative repayment arrangements with a duration of up to three years.

Split mortgage: means 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.

Standard Financial Statement: is 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.

Trading down: means where a **borrower** sells his or her **primary residence** and buys a lower value property.

Unsolicited communication: includes any communication that has not been requested by, or agreed in advance with, the **borrower**, and includes, but is not limited to, a letter, telephone conversation and voicemails. It does not include communications where the **borrower** does not answer the call or communications where the number is engaged when the lender seeks to contact the **borrower**.

Voluntary sale: means the voluntary sale by the **borrower** of the **primary residence** in order to repay part, or all, of the mortgage loan.

Voluntary surrender: means the voluntary surrender, by the **borrower**, to the lender, of the **primary residence**.

Unsolicited personal visit: means any visit to a **borrower's primary residence** that has not been requested by, or agreed in advance with, the **borrower**.

CHAPTER 3

PROVISIONS

GENERAL

1. Each branch (or office of a lender in the case of a lender who does not operate a branch network), must have at least one person with specific responsibility for dealing with **arrears** and **pre-arrears** cases and for liaising with the lender's Arrears Support Unit (ASU) in respect of these cases.
2. A lender must draw up and implement procedures for dealing with each of the following types of **borrowers** - those in mortgage **arrears**, those in **pre-arrears** and those which fall under the **MARP**. Such procedures must:
 - a) allow for a flexible approach in the handling of these cases;
 - b) be aimed at assisting the **borrower** as far as possible in his/her particular circumstances;
 - c) set out the how the lender will implement the five steps of the **MARP**; and
 - d) set out how the ASU will assess cases referred to it, including the types of alternative repayment measures or any other relief method that may be offered to **borrowers** by the lender.
3. A lender must have in place management information systems to capture information on its handling of **arrears**, **pre-arrears** and **MARP** cases, including all alternative repayment arrangements put in place to assist **borrowers**.
4. A lender must provide appropriate training for frontline staff dealing with **borrowers** in **arrears** or in **pre-arrears**. All other frontline staff must be made aware of the lender's policy for dealing with **arrears** and **pre-arrears** cases and the relevant contact persons and process.
5. A lender must assist **borrowers** by ensuring that all requests from **borrowers** for documentation and information, required for the purposes of applying for State supports in relation to mortgages, are processed within ten **business days** of receipt of the request.
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.

7. As soon as a **borrower** goes into **arrears**, a lender must communicate promptly and clearly with the **borrower** to establish in the first instance why the repayment schedule as per the mortgage contract, has not been adhered to.
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**.
9. Lenders are restricted from imposing charges and/or surcharge interest on **arrears** arising on a mortgage account in **arrears** to which this Code applies, unless the **borrower** is **not co-operating**.

PROVISION OF INFORMATION

10. A lender must ensure that all communications about **arrears** and **pre-arrears** are provided to the **borrower** in a timely manner. All information relating to a lender's handling of **arrears** and **pre-arrears** cases must be presented to the **borrower** in a clear and consumer friendly manner. The language used in communications must indicate a willingness to work with the **borrower** to address the situation and must be in plain English so that it is easily understood. Legal jargon must be avoided, where possible.
11. A lender must ensure that all meetings with **borrowers** in relation to **arrears** or **pre-arrears** are conducted with utmost privacy.
12. 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:
 - 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:
 - (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.
- 13.** A lender must have a dedicated section on its website for **borrowers** in, or concerned about, financial difficulties which must include:
- 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.

14. At the **borrower's** request, at any time, the lender must confirm the time period remaining during which the lender may not commence legal action for repossession of the **borrower's primary residence**.

MORTGAGE ARREARS RESOLUTION PROCESS (MARP)

GENERAL

15. A lender must ensure that it has in place a Mortgage Arrears Resolution Process as a framework for handling cases as specified in provision 17 below. The **MARP** must incorporate the steps set out in this Code, i.e.:
- Step 1: Communication with **borrowers**;
 - Step 2: Financial information;
 - Step 3: Assessment;
 - Step 4: Resolution; and
 - Step 5: Appeals.
16. A lender must establish a centralised and dedicated Arrears Support Unit (ASU), which must be adequately staffed, to manage cases under the **MARP**.
17. A lender must ensure that the **MARP** framework is applied to the following cases:
- 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.

18. In relation to **pre-arrears** cases, a lender must apply provisions 19, 20, 23, 27 and 28 of Step 1 and all of Steps 2 to 5 of the **MARP** to such cases.

STEP 1: COMMUNICATION WITH BORROWERS

19. A lender must inform the **borrower**, in writing, when it has appointed a third party to engage with the **borrower** in relation to his/her case and must explain the role of the third party.

20. A lender must ensure that:

- 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.

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.

22. When **arrears** arise on a **borrower's** mortgage loan account and remain outstanding 31 days from the date the **arrears** arose, a lender must:

- 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:
 - 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;
- b) provide the **borrower** with the information booklet required under provision 12; and
- c) provide the **borrower** with the relevant publications, produced by the Insolvency Service of Ireland, on the processes under the Personal Insolvency Act 2012.
23. When a lender is contacted by a **borrower** in **pre-arrears**, the lender must provide the **borrower** with the information booklet required under provision 12.
24. Where **arrears** exist on a mortgage loan account, an updated version of the information specified in provision 22(a) (ii) and (iii) and (v) above, must be provided to the **borrower** in writing, every three months.
25. **Unsolicited personal visits**
- a) A lender may only make an **unsolicited personal visit** to a **borrower's primary residence** in the following circumstances:
- 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**.
- 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).

- c) The lender must ensure that the notice issued in accordance with provision 25 b) above:
- 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.
- 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.
- e) A lender may agree a further personal visit with the **borrower** in compliance with provision 3.38 of the Consumer Protection Code 2012.

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.

27. Prior to classifying a **borrower** as **not co-operating**, a lender must:

- 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**;

- b) outline to the **borrower** the implications of **not co-operating**, including:
 - 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 58, applying, and
 - iii) a warning of the impact it may have on the **borrower's** eligibility for a **Personal Insolvency Arrangement**;
- c) outline what a **borrower** can do to avoid being classified as **not co-operating**;
- d) include a statement that the **borrower** may wish to seek appropriate legal and/or financial advice, for example from MABS.

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.

STEP 2: FINANCIAL INFORMATION

29. A lender must use the **standard financial statement** to obtain financial information from a **borrower** in **arrears** or in **pre-arrears**.

30. In relation to all **MARP** cases, a lender must:

- a) provide the **borrower** with the **standard financial statement** at the earliest appropriate opportunity;
- b) offer to assist the **borrower** with completing the **standard financial statement**; and
- b) inform the **borrower** that he/she may wish to seek independent advice to assist with completing the **standard financial statement**, e.g., from MABS or an appropriate alternative.

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**.

32. The lender may require the **borrower** to provide supporting documentation to corroborate the information provided in the **standard financial statement**.

33. Where the lender imposes a timeline for return of information, including a **standard financial statement**, the timeline must be fair and reasonable and the

lender must highlight to the **borrower** that he or she may be considered to be **not co-operating** if he or she does not return the requested information within the specified timeframe.

STEP 3: ASSESSMENT

34. A completed **standard financial statement** must be assessed by the lender's ASU.
35. A lender's ASU must examine each case on its individual merits.
36. A lender's ASU must base its assessment of the **borrower's** case on the full circumstances of the **borrower** including:
 - a) the personal circumstances of the **borrower**;
 - b) the overall indebtedness of the **borrower**;
 - c) the information provided in the **standard financial statement**;
 - d) the **borrower's** current repayment capacity; and
 - e) the **borrower's** previous payment history.
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**.

STEP 4: RESOLUTION

38. In order to determine which options for alternative repayment arrangements are viable for each particular case, a lender must explore all of the options for alternative repayment arrangements offered by that lender. Such alternative repayment arrangements may include:
 - 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.

39. 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.

40. The lender must not require the **borrower** to change from an existing tracker mortgage to another mortgage type, as part of any alternative repayment arrangement offered to the **borrower**.

41. Where a **borrower** is on an existing tracker mortgage and an alternative repayment arrangement that is put in place includes a fixed, or any other, interest period, the **borrower** must be permitted to revert to an interest rate that corresponds to the margin over the prevailing ECB rate or other tracked rate as specified in the original mortgage contract, at the end of the fixed, or any other, interest period.

42. 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:

- 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, and
 - iii) 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, and

- iii) 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.

43. A lender must monitor alternative repayment arrangements that have been put in place for **MARP** cases, on an ongoing basis and formally review these arrangements, as follows:

- a) **Short-term arrangements** must be reviewed every 12 months;
- b) **Medium-term arrangements** must be reviewed three years from the date the arrangement was entered into; and
- c) **Long-term arrangements** must be reviewed every five years.

As part of the review, the lender must check with the **borrower** whether there has been any change in his/her circumstances in the period since the alternative repayment arrangement was put in place, or since the last review was conducted and must consider the appropriateness of that arrangement for the borrower, where there has been a change in that **borrower's** circumstances.

44. 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:

- 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:

- 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:
 - 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.
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.
46. In the circumstances outlined in provisions 44 and 45, a lender must also provide the **borrower** with:
- a copy of the most recent **standard financial statement**; and
 - relevant publications, produced by the Insolvency Service of Ireland, on the processes under the Personal Insolvency Act 2012.
47. A lender's ASU must formally review the **borrower's** case, including the **standard financial statement**, immediately, in the following circumstances:
- Where a **borrower** ceases to adhere to the terms of an alternative repayment arrangement; and
 - Where an alternative repayment arrangement has come to an end.
48. Where an alternative repayment arrangement is coming to an end, the lender's ASU must:
- 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
 - 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.

STEP 5: APPEALS

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:
- the decision of the lender's ASU,
 - the lender's treatment of the **borrower's** case under the **MARP** process, or
 - the lender's compliance with the requirements of this Code.
50. The Appeals Board must determine any appeals with **borrowers**.
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.

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.
53. A lender must maintain an up-to-date log of all appeals received from **borrowers**.
54. A lender must undertake an appropriate analysis of the patterns of appeals from **borrowers** on a regular basis including investigating whether appeals indicate an isolated issue or a more widespread issue. This analysis of appeals from **borrowers** must be escalated to the lender's ASU, compliance/risk function and senior management.
55. A lender must allow the **borrower** a reasonable period of time to consider submitting an appeal to the Appeals Board, which must be at least 20 **business days** from the date he/she received notification of the decision of the lender's ASU.

REPOSSESSIONS

56. The lender must not apply to the courts to commence legal action for **repossession** of the **borrower's primary residence**, until every reasonable effort has been made to agree an alternative repayment arrangement with the **borrower** or his/her nominated representative.

57. 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**.

The twelve-month period commences on day 31 but does not include:

- 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.

58. 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:

- 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
- 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.

59. A lender, or its legal advisors on its behalf, must notify the **borrower** in writing immediately before it applies to the Courts to commence legal action for the **repossession** of the **primary residence**.

60. In cases where legal action to obtain an Order for Possession has commenced, a lender must endeavour to maintain contact with the **borrower** or his/her nominated representative. If an alternative repayment arrangement is agreed between the parties before an Order for Possession is granted, the lender must

put the legal proceedings on hold, for the period during which the **borrower** adheres to the terms of the alternative repayment arrangement.

61. Where a lender has disposed of a property which it has repossessed, the lender must notify the **borrower** in writing, of the following information and of his/her liability for:
- a) the balance outstanding on the mortgage loan account;
 - b) details and amount of any costs arising from the disposal which have been added to the mortgage loan account; and
 - c) the interest rate to be charged on the remaining balance.

The information specified above must be provided to the **borrower** in a timely manner following the completion of the disposal.

RECORDS AND COMPLIANCE

62. A lender must be able to demonstrate to the Central Bank of Ireland that it is in compliance with the requirements of this Code.
63. A lender must maintain full **records** of all the steps taken, and all of the considerations and assessments required by this Code, and must produce all such **records** to the Central Bank of Ireland upon request.
64. A lender must maintain **records** of all communications with **borrowers** in mortgage **arrears** and in **pre-arrears**. Such **records** must be readily accessible and capable of being reproduced in legible form and in a timely manner. Such **records** may include contemporaneous notes of meetings.
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**.
66. A lender must maintain an up-to-date **record** of all appeals considered by the Appeals Board. This **record** must contain the details of each appeal, a **record** of the grounds on which the appeal was considered and the decision of the Appeals Board.
67. All **records** required by, and demonstrating compliance with this Code, must be retained by the lender for 6 years. In addition, all **records** relating to a **borrower**

must be retained for 6 years from the date the relationship with the *borrower* ends.



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