

Revision of the Code of Conduct on Mortgage Arrears by the Central Bank
March/April 2013

Main issues highlighted by the Central Bank in its Consultation Paper:

- Co-operation and engagement
- Contact between the lender and borrower
- Link between the CCMA and the Personal Insolvency Act
- Use of the Standard Financial Statement(SFS)
- Reviews of alternative repayment arrangements
- Treatment of appeals and complaints
- Information on other options
- Tracker mortgages

Comments from the Department of Finance on any of the above as they are set out in the Revised CCMA, as produced by the Central Bank

Page of the Revised Code	Provision of the Code	Comments from the Department of Finance
	General	Please have a 'Table of Contents' at the beginning as it makes it to find an item in the Code.
19	Not co-operating borrower	b) If the lender is the one who imposes the timeline, can it be considered ' <i>fair and reasonable</i> '? Perhaps the timeline should be agreed mutually between the lender and the borrower. If my reading is correct, provision 35 does not explain how the timeline is set.
19	Not co-operating borrower	Item c ii) (B) on page 19 is ambiguous and needs to be re-written. It is not clear who decides that the borrower ' <i>has repeatedly failed to so with a view to reaching an alternative repayment arrangement or other solution in relation to the arrears</i> '.
20	Standard Financial Statement	The last sentence is ambiguous. It is not clear who may make the change the SFS from time to time – is it the Central Bank or the borrower.
20	Unsolicited communication	Would it be appropriate to include text messages in the definition?
21	Chapter 3, Provisions General, Provision 6	In relation to item 6, is it the intention that the borrower could have an accountant, solicitor or other professional person engaged to act on his/her behalf. Perhaps this could be clarified in the provision.
22	Provision 8	This is a very welcome provision. However, the Department

		would recommend that the annual communication be made by way of a letter from the lender to the borrower.
22	Provision 12	Could you clarify if it is the intention to make this information booklet available to all borrowers or only to those who are in arrears or who have informed the lender that there is a possibility of getting into arrears.
23	Provision 12 h)	Could you confirm that there is a legal basis for this provision i.e. <i>how data relating to a borrower's arrears will be shared with the Irish Credit Bureau or any other credit reference agency or credit register</i> . I realise it was included in the original Code.
23	Provision 12 k)	This provision may be too onerous on lenders. It is not clear how the lenders could source this information and ensure its accuracy. In any event, it would be third party information and could be subject to amendment, depending on Government policy. It could also lead to a borrower accusing a lender of giving misleading information. Perhaps you could use this alternative wording: <i>'advise borrowers to seek details of other Government initiatives to assist borrowers in financial difficulty'</i> .
23/24	Provision 13 f)	Same point as made in respect of Provision 12 k) above. It is not appropriate to include this information as such initiatives may be subject to amendment.
25	Provision 21	The Department welcomes this provision and would recommend that details of the policy regarding unsolicited communications with borrowers be made available on the lender's website.
25/26	Provision 22 a) vii)	Same point as made in respect of Item 12 h) above. Is there a legal basis for sharing this data with the Irish Credit Bureau?
26	Provision c)	The Department suggest that the following be added to this sentence after '2012' ... <i>and inform the borrower of the link to the Personal Insolvency Service</i> .
26/27	Provision 25	The Department welcomes this provision.
27	Provision 25 d)	The Department would consider that the final sentence of 25 d) should be on its own as a new 25 e). It is very important that the borrower is not compelled to fill out the SFS during the visit.
28/29	Provision 33	It is noted that the lender imposes the timeline for return of information and that this timeline must be fair and reasonable. However, the borrower may not accept that the timeline imposed is fair and reasonable. The Department suggests that the timeline should be agreed mutually between the lender and the borrower.
30/31	Provision 42 h)	Same question as at Provision 12 h) above.
31/32	Provision 44 b)	The Department suggests that the following be added to this sentence after '2012' ... <i>and provide a link to the Personal</i>

		<i>Insolvency Service.</i>
32	Provision 45 c)	Same point as at Provision 44 b) above.
33	Provision 46 b)	Same point as at Provision 44 b) and 45 c) above.
36	Provision 65	Has the Central Bank confirmed, from a Data Protection perspective, that it is in order to maintain recordings of telephone conversations with a borrower in relation to arrears and pre-arrears? If it is in order from the Data Protection perspective, then the Department suggests that this is made clear in the Code. This provision should be expanded so as to inform the borrower that calls in relation to arrears and pre-arrears are being maintained.
36	Provision 66	There is a typing error in the second line i.e. <i>the word contained</i> .

Some further comments from the Section with responsibility for dealing with mortgage arrears:

Duration of an alternative repayment arrangement

The paper envisages (pages 18 and 19) that alternative repayment arrangements can be (i) short-term, (ii) medium term or (iii) long-term arrangements. It is not apparent why there is a need to have three duration options and it may be better to only make a distinction between short term and long term? In any event, it would seem necessary to ensure that the borrower is fully aware of the duration type of alternative repayment arrangement that is being offered. A list of possible alternative repayment arrangements are set out in Provision 38 and if one of these options is offered, the duration nature of the alternative arrangement offer should also be made very clear.

Also, given the alternative repayment arrangement classification now proposed by the Central Bank, there will need to tie these into the existing mortgage advisory service protocol provisions, in particular the circumstances in which a borrower will become eligible to avail of the advice service under the protocol (which, as per the protocol, is where the lender offers a long term forbearance offer to the borrower in respect of a PDH mortgage). Clearly a “long term” arrangement should fall within the remit of the protocol. However, it is less clear whether or not that the new concept of a “medium term” repayment arrangement would fall within its scope; however, in the best interests of the customer it would appear desirable that it should (however, if the Central Bank does not pursue the concept of “medium term” then this should not arise as an issue for further consideration).

Also, as per Provision 44, in circumstances where the borrower is not willing to offer an alternative repayment arrangement, there should be a clear onus on the lender to explain why such a decision is being proposed - and the full consequences of this decision for the borrower – and the borrower should also be in a position to avail of financial advice under the long term mortgage advice protocol.

Also, Provision 12 should also reference the protocol and website www.keepingyourhome.ie as a source of information and advice to mortgage holders.

Distinction between cooperating and non-cooperating borrower

The enhanced calibrated nature of the CCMA process will make this distinction even more important and it will be necessary to ensure that the safeguards and protections for both debtors and creditors will be effective and that it is clear who will make the decision on such a matter and if and what appeals process will be available if there is a disagreement between the parties.

Link between the CCMA and the Personal Insolvency Act

The review proposes that, if an offer of an alternative repayment arrangement is not accepted by the borrower, the lender should be required to give a 30 day notice period before commencing legal action for repossession. Also, it asks if the lender considers a mortgage to be unsustainable prior to the expiry of the twelve month moratorium period whether this moratorium period should immediately end (subject to a further 30 day stay period of time). The intention of this 30 day period is to give time to the borrower to consult a PIP to consider and decide whether or not to make a PIA proposal. It appears desirable that a certain reasonable period of time be afforded to the borrower to consider his/her options and position in these circumstances but regard should also be had to the provisions of the new Land and Conveyancing Law Reform Bill 2013 which proposes to give powers to a Court to adjourn a repossession hearing if it considers that a PIA could be a viable alternative.

If a PIA proposal is subsequently made it will also be important that banks fully engage with the PIA process and should be required to consider a PIA proposal de novo on its merits and will not as a matter of routine only accept the initial MARP repayment offer proposed by the bank (assuming there was one).

Resolution options

Paragraph 38 sets out a number of alternative repayment arrangements, and in addition paras 44 and 45 sets out a number of possible further alternative resolution options that would entail loss of ownership of the primary home. From the wording of the document it would imply that these options are unilaterally open to the borrower (it is not clear if that is the case, however) but in any event it should also set out the implications for the borrower if the proceeds from the voluntary sale/surrender does not fully clear the outstanding mortgage amount (and not just the arrears element).

Tracker Mortgages

The consultation document indicates that the Central Bank is considering whether there is merit in allowing a lender to move a cooperating borrower in mortgage arrears off a tracker mortgage where the lender has offered a loan modification which is “advantageous” to the borrower in the long term. If this is to be advanced it is presumed that it would be desirable to make such a change only if it is “more advantageous” to the cooperating borrower (and also that the borrower will be in a position to avail of the financial advice available under the mortgage advisory service protocol or any other advice service the borrower may wish to utilise). It is presumed that the onus will be on the lender to demonstrate that the modification proposed is indeed “more advantageous” to the borrower.

Debt Write off

Reference to debt write off is made in pages 14 and 30 (in the context of moving from a tracker mortgage or agreeing an alternative repayment arrangement). Presumably any debt write off

will be made on an irrevocable basis (assuming that the borrower complies with the alternative offer) and that the borrower will be aware of this.

Application of Code

Should credit unions continue to be excluded from the CCMA where they have extended PDH mortgages (or loans secured on a primary residence)? It would not seem to be appropriate that cooperating credit union mortgage borrowers should, at least on paper, have less protection than the borrowers of other institutions regulated by the Central Bank. Also it would seem desirable to ensure that mortgages, which were initially made by institutions covered by the Code, will continue to be covered by the Code even if those mortgages have subsequently been transferred to entities that may not be covered by the Code.

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