

Review of the Code of Conduct on Mortgage Arrears, Consultation Paper CP 63

Fianna Fáil welcomes the decision to review the Code of Conduct on Mortgage Arrears.

The current situation in relation to mortgage arrears is alarming. Over 143,000 residential mortgages are in arrears and a further 37,000 buy to let borrowers are behind on their mortgage payments. It represents both an economic and social crisis and failure to tackle the problem head on will condemn thousands of families to remain on the margins of society.

Ensuring that the Code of Conduct on Mortgage is fair and balanced is a very important aspect of tackling the mortgage crisis. However it must be seen in the context of an overall package of measures to deal comprehensively with the situation.

1. Co-operation and engagement.

The Code rightly highlights the significant consequences for a borrower of being classified as not co-operating including limiting their eligibility for options under the Personal Insolvency Act.

Given the fact that once a customer is deemed to be not co-operating the Bank is then freed from the provisions relating to the restriction on imposing charges and/or surcharge interest on arrears and also the 12-month moratorium no longer apply, every effort should be made to avoid a borrower falling in to this category. The reality for many families that fall into mortgage difficulties is that there is an immense sense of shock which can manifest itself in an initial inability to grasp the seriousness of their situation. Mortgage holders who fall in to difficulty need to be treated sensitively and any rush to classify them as not co-operating must be avoided.

In communicating to a borrower the consequences of being classified as not co-operating it is imperative that they use clear understandable language. We believe that the Central Bank should be provide guidance to banks in this regard and review the standard wording used by the banks in such circumstances to ensure they meet these criteria.

The proposal 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” is welcome but needs to be put on a firmer basis.

2. Contact between the lender and the borrower

The proposal to “remove the limit of three contacts per calendar month” is of considerable concern. Even under the current limited contact arrangements many borrowers report feeling unduly pressurised by their bank when they fall into difficulty.

We believe the removal of a specific limit on the number of contacts and its replacement with a vague requirement that “lenders draw up and implement a contacts policy” and “ensure that communications with borrowers are not aggressive” has the potential to significantly alter the balance of power in the relationship between lender and borrower in a way that will have significant adverse impact on people who are already in a very difficult situation.

It is our contention that the banks should focus on improving the quality of their engagement with customer rather than simply allowing them unlimited contact on a monthly basis.

We are not aware of any empirical evidence that a greater number of communications leads to a better outcome. If the banks have such information they should make it public.

A far better proposal would be for the banks to invest significantly in staff training to deal with distressed borrowers. Their staff training manuals in this regard should be available to the Central Bank for review to ensure they meet best practice.

3. Link between the CCMA and the Personal Insolvency Act

We welcome the suggestion that “a lender must include a link to the website operated by the Insolvency Service of Ireland on the dedicated section of its website”.

We suggest that this needs to be extended such that a bank’s website must include details of the restructuring options that are available to a customer.

The proposals as to what must occur when “a lender is not willing to offer a borrower an alternative repayment arrangement” highlights what we believe is a significant deficiency in the Personal Insolvency Act which cannot be solved by means of alterations to the Code of Conduct on Mortgage Arrears.

We believe the Personal Insolvency Act should be amended to remove the power of veto which the Government built in to the legislation, effectively putting the banks in the driving seat.

We propose setting up an independent Mortgage Resolution Office under the Insolvency Service with the authority to provide actual settlements. It would have the power to issue a Mortgage Resolution Order effectively acting as a binding arrangement between a borrower and their lender.

The legislation we have published proposes to afford the office a number of options which can be included in the Mortgage Resolution Order, including:

- a split mortgage where part of the loan is parked for up to 10 years
- interest only payments for up to 4 years;

- extending the period of the mortgage by up to 20 years;
- a repayment holiday for up to 12 months;
- an adjustment to the interest rate;
- a debt for equity swap;
- participation in the deferred interest scheme and,
- in the event of voluntary surrender, that the financial institution lease the family home to the borrower at a market rent.

It is our contention that the Mortgage Resolution Order process would ensure that all distressed mortgage-holders are dealt with in a consistent manner by an independent office. It would give borrower the certainty and space required to work through their financial difficulties so that they can retain their family home.

4. Tracker mortgages

A tracker mortgage is a very valuable asset for borrowers. It is estimated that there are 375,000 residential tracker mortgages in Ireland. The rate of interest on tracker mortgages can be up to 3% less than the comparable standard variable rate mortgage.

The presence of tracker mortgages on banks' loan books represents a significant drain on their profitability. In the case of Permanent TSB it recently described its losses as "eye watering". It is understandable that banks from their own point of view would seek to reduce these losses as much as possible.

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."

This would be a significant change from the current CCMA and we are concerned that banks would apply undue pressure to encourage borrowers to relinquish their tracker rate without the alternative arrangement actually improving the borrower's financial position.

It is our contention that it should the problem that tracker mortgages represent for banks should be tackled as part of overall review of bank debt. The Government should put the case for a transfer of tracker mortgages to a special purpose vehicle with a long term funding arrangement backed by the ECB to our European partners.

A comprehensive solution along these lines would remove the incentive for banks to try and persuade people to relinquish their tracker mortgage in circumstances in which the benefit to them cannot be assessed with certainty.

