



Consumer Protection Codes Division
Central Bank
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Review of the Code of Conduct on Mortgage Arrears-Consultation Paper CP63

10 April 2013

The Insolvency Service of Ireland (ISI) has been established under the Personal Insolvency Act 2012. The role of the ISI is to restore insolvent debtors to solvency in a fair, transparent and equitable way. The ISI welcomes the opportunity to contribute to a consultation process which deals with the important area of reviewing the framework of rules for lenders who are dealing with borrowers in arrears with their mortgage repayments.

The ISI notes that the aim of the proposals set out in this consultation process is to provide increased consumer protection measures for borrowers where necessary while also seeking to promote resolution of arrears. The ISI is supportive of a framework which seeks to ensure that lenders offer appropriate resolutions to borrowers in arrears and that borrowers are dealt with in a fair and transparent manner.

The ISI wishes first to comment on the specific areas where the Central Bank of Ireland specifically invited comments, namely;

- i) Co-operation and engagement
- ii) Contact between the lender and borrower
- iii) Link between the CCMA and the Personal Insolvency Act 2012
- iv) Use of the Standard Financial Statement (SFS)
- v) Reviews of alternative repayment arrangements
- vi) Treatment of appeals and complaints
- vii) Information on other options
- viii) Tracker mortgages

i) Co-operation and engagement

No observations.

ii) Contact between the lender and borrower

No observations.

iii) Link between the CCMA and the Personal Insolvency Act

The ISI is of the view that the proposed referral of borrowers in, or concerned about, financial difficulties to the ISI website may be premature. The same applies with respect to the proposed requirement to issue ISI publications to borrowers in arrears of 31 days. Missed payments will happen from time to time for a variety of reasons, most of them not relating to personal insolvency.

The Central Bank is proposing that where a lender has complied with the MARP and offered an alternative repayment arrangement to the borrower but the borrower declines the arrangement offered, a lender should be required to give a 30-day notice period before commencing legal action. The intention is to allow the borrower a period of time to consider his or her options, and in particular whether to consult a Personal Insolvency Practitioner. This seems sensible and the ISI would support such a change to the existing code.

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 or whether a 30-day notice period is a sufficient alternative period of time for a borrower to consider his or her options in this circumstance. The ISI considers that little is to be gained from applying the balance of the 12-month moratorium where no sustainable resolution of the arrears situation is possible between borrower and lender. A 30-day notice period would be consistent with the prior situation where an alternative repayment arrangement has been declined by the borrower and this time period should be sufficient to ensure that a debtor has the opportunity to consult with a PIP and, if appropriate, to apply for and obtain a protective certificate before legal action for repossession concludes.

iv) Use of the Standard Financial Statement (SFS)

No observations.

v) Reviews of alternative repayment arrangements

No observations.

vi) Treatment of appeals and complaints

No observations.

vii) Information on other options

No observations.

viii) Tracker mortgages

No observations.

The ISI would also make the following comments on other aspects of the Code:

Definitions, Chapter 2, page 19

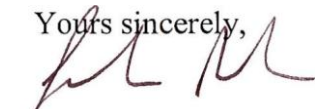
Not co-operating: part c) ii) (B) of this definition specifies that a debtor may be considered to be not co-operating where he or she 'has made contact with, or responded to communications from, the lender or a third party acting on the lender's behalf but has repeatedly failed to do so with a view to reaching an alternative repayment arrangement or other solution **in** relation to the arrears'. The ISI considers that having this definition will be helpful in assessing whether a borrower meets the qualifying requirement on co-operation as contained **in** section 91 of the Personal Insolvency Act 2012 as unless a debtor has been classified as not co-operating, he or she may presumably be considered to be co-operating.

References to publications of the Insolvency Service of Ireland

In several of the mentions in the Code of the Insolvency Service of Ireland there is reference to providing the borrower with relevant publications, produced by the Insolvency Service of Ireland, on the processes under the Personal Insolvency Act 2012. The ISI intends primarily to provide publications and documents via its website rather than as printed materials and would ask that this intention be reflected in the relevant provisions of the Code.

If you have any queries in relation to these comments or require any clarification please feel free to contact either John Phelan or myself.

Yours sincerely,



Lorcan O'Connor
Director

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