



**CODE OF CONDUCT ON
MORTGAGE ARREARS**

CONSULTATION PAPER 63

IRISH BANKING FEDERATION

We welcome the opportunity to respond to the proposed amendments to the Code of Conduct on Mortgage Arrears (CCMA). Our members continue to focus on working with borrowers to resolve their financial difficulties within the framework of the existing CCMA and have implemented the required changes in structure, process and technology to achieve this.

There are elements of the consultation that we welcome and these are documented in this submission. However, we are disappointed to note that despite significant engagement with the Central Bank in relation to challenges faced by the Industry in implementing effective collection and resolution strategies, the Central Bank does not fully address the material impediments, in particular the continued absence of explicit obligations on the borrower to demonstrate co-operation and the absence of an exit mechanism from the Mortgage Arrears Resolution Process (MARP). We are concerned that the Code as redrafted will significantly impede lenders' operational effectiveness; in particular through the introduction of considerable additional information provision measures, the extension of the MARP framework to all borrowers whose loan repayment is overdue and the linking throughout the MARP process to the Personal Insolvency regime.

We have prepared this response to focus on the key issues arising from the proposed changes to the current Code which we have identified as:

1. Scope of the CCMA
2. Co-operation and engagement
3. Contact between the borrower and the lender
4. Link between the CCMA and the Personal Insolvency Act (PIA)
5. Inclusion of 'debt write off' as an alternative repayment arrangement.
6. Use of the Standard Financial Statement

We have also incorporated some additional comments on topics covered in the consultation document and in relation to matters not included which have been identified by Members when working with borrowers in difficulty.

1. Scope of the CCMA

The CCMA provides valuable protections for borrowers as they go through the process of addressing their mortgage arrears situation in a meaningful way with their lender. From a prudential standpoint, we believe that it is imperative that the scope of the CCMA should be amended to only apply where the security relates to owner occupied Principal Private Residence (PPR) i.e. to the property where the borrower ordinarily resides. Any change to the classification of a property from a Residential Investment Property to a PPR should be agreed in advance by the borrower with the lender.

In addition the Central Bank should consider the applicability of the Code to loans issued to borrowers for commercial purposes where the loan is either:

- a) secured with the borrower's principal private residence or
- b) a case where the property incorporates both a private residence and a commercial area.

As these are commercial loan facilities, we do not believe that the CCMA is the appropriate Code to apply. Given the commercial nature of these borrowings, arrears and financial difficulties should be managed in line with the provisions of the Code of Conduct for Business Lending to Small and Medium Enterprises.

2. Co-operation and engagement

As identified previously, we believe that co-operation between the borrower(s) and their lender is vital to ensure that the most appropriate solution is put in place enabling the individual(s) to return to economic sustainability. Every effort is already made by the lender to;

- a) advise the borrower of the implications of being considered 'non co-operative' under the CCMA
- b) provide full opportunity to the borrower to commence meaningful negotiations with their lender if they have previously not engaged in a proactive manner.

These efforts to contact the borrower are documented in every case and include letters and warnings required under the CCMA. We strongly believe that once a borrower has been deemed to be not co-operating and Provision 28 has been complied with, a further opportunity for re-engagement as outlined in the Consultation Paper is unnecessary and unhelpful. It should be at the discretion of the lender as to the appropriateness of an opportunity for re-engagement. Where a lender facilitates this opportunity for re-engagement the borrower should only be deemed to be co-operating once a sustainable resolution has been agreed.

The proposed amendments in relation to the definition of not co-operating borrowers will help to clarify the seriousness of the situation and highlight the need for meaningful engagement with lenders. However the definition does not identify borrowers who have failed to take the action necessary to address their arrears and we suggest that the following scenarios (not an exhaustive list) should also be considered for inclusion within the definition:

- The borrower fails to prioritise the repayment of the mortgage
- The borrower declines an alternative repayment arrangement offered by the lender
- The borrower neglects to adjust lifestyle spending
- The borrower takes on additional borrowing.



We consider that this clarification would assist the Courts in progressing cases where the borrower is not engaging in a meaningful way with the MARP and particularly refer to the Justice Hogan case from February 2013 as an example of current difficulties. An efficient Court process is essential for the prompt resolution of such cases. For co-operating customers, the lender will already have made every reasonable effort to agree one of the alternative repayment arrangements with the borrower provided for in the CCMA and for customers who are deemed not co-operating, requirement 3.56 should be deemed to have been fulfilled

3. Contact between the lender and the borrower

We have consistently stressed the need for early engagement with borrowers in difficulty and the benefits that this approach brings for all stakeholders in managing the arrears process. We welcome the guidance recently provided to lenders in relation to customer contact and note that these changes have been reflected in the CCMA proposals. The provisions of the Consumer Protection Code (CPC) should also be updated with the relevant changes to customer contact requirements.

The IBF welcomes the amendment of the CCMA to allow unsolicited personal visits. We would consider that unsolicited personal visits can result in positive outcomes at the early stages of arrears and it may not be beneficial, in all cases, to wait until a customer is being deemed 'not co-operating' to conduct an unsolicited personal visit. We therefore request that unsolicited personal visits should be permitted at any point during the MARP after all other reasonable and proportionate attempts at contact have failed.

The requirement to maintain recordings of all telephone calls to or from borrowers in relation to their arrears or pre arrears will fundamentally restrict the ability to communicate with borrowers. To support their customers, many Bank personnel have provided a range of contact details to borrowers which include mobile phone numbers. Specifically, the requirement to record all telephone calls will limit the operation of account/relationship managers using mobile phones and the provision of support to borrowers through a national branch network operated by some lenders. Based on the experience of our Members, we believe this proposal has the potential to significantly limit rather than encourage positive engagement between the borrower and lender. We note also the Central Bank view on the findings of recent consumer research undertaken in relation to CCMA and the comments published on the benefits of early and meaningful engagement '*It is clear from our on-going mortgage arrears work that borrowers who engage early and meaningfully with their lenders get the best possible outcomes and benefit from the full protections that the CCMA provides*'.

4. Link between the CCMA and the Personal Insolvency Act (PIA)

The IBF welcomes the enactment of the Personal Insolvency Act which is a significant step in the support of cases where the consumer is in an unsustainable financial situation. However, members have considerable concerns with the proposal for lenders to provide information on the Insolvency Service at the outset of the Mortgage Arrears Resolution Process (MARP).

In particular, we are concerned that lenders are required to include documentation from an external agency when writing to borrowers at step one in the MARP process. This is likely to cause significant confusion among customers in difficulty as it implies that the borrower has a choice between the MARP and the PIA. The PIA provides a platform for managing situations where the borrower is insolvent and there are consequences from participating in the process. Also, we believe that it is important to strike a balance between providing relevant, timely information to borrowers with the possibility of 'information overload' at an early stage in the process when they already have a significant amount of financial issues to deal with.

Were this proposal to go ahead, there is likely to be a significant impact on the Insolvency Service which may be required to deal with a large number of enquiries from ineligible borrowers rather than focusing on the cases which are in scope under the legislation. Critically, it is a requirement of the PIA process that the borrower must be co-operating with their lender for at least 6 months within the MARP. To ensure clarity for the borrower we recommend that the requirement to include 'relevant publications, produced by the Insolvency Service of Ireland' be removed from (22c), 44(b), 45 (c), 46 (b). Details of the Insolvency Service website could be made available on the appropriate page of lender websites to ensure consumers are reviewing the most up to date information available. The reference to the Insolvency Service website rather than specific information on PIA arrangements will also ensure that lenders do not pre-empt any discussion between the borrower and an insolvency expert in relation to their individual situation.

4. b) Application of the 12 month moratorium

We do not believe that the 12 month moratorium should apply in scenarios where a lender has determined that the mortgage is unsustainable. In these situations, we agree with the Central Bank's proposal that a 30 day notice period is sufficient. This will ensure that the borrower's financial situation can be addressed as soon as possible rather than delaying and potentially exacerbating the circumstances of the consumer.

5. Inclusion of 'debt write off' as an alternative repayment arrangement.

The amended CCMA proposed has included 'debt write off', Provision 38 (k), as a possible alternative repayment arrangement to be considered by lenders. We would not agree that debt write off is an alternative repayment arrangement and its inclusion may lead borrowers to believe that such an option could be offered by Lenders. This will result in the increased risk of strategic default deterring borrowers from considering a viable solution for their situation.

6. Use of the Standard Financial Statement (SFS)

The paper refers to consideration of situations where completion is not warranted. We concur with the view that an SFS is not required in all cases for example where an event of an unexpected nature triggers a temporary affordability issue. We also suggest the following (again non-exhaustive) list of scenarios where this would be considered:

- Temporary situations where a borrower requires financial support e.g. illness / accident etc.
- Capitalisation of an arrears balance where the scheduled monthly payment has been met for a period of months (for example the preceding six months)

The key information to be provided in these cases should be considered on an individual basis and be appropriate to each borrower's situation as well as the lenders previous experience. This will enable the lender to complete an assessment using the most appropriate information.

Where an SFS has been received within the previous 12 months and a further forbearance arrangement is being sought, the borrower can provide supplemental information either verbally or in another written format.

Feedback on further topics included in the Consultation Paper

Reviews of alternative repayment arrangements

We welcome the proposal to discontinue a bi-annual review of an arrangement as this will alleviate unnecessary communication to borrowers particularly in situations where the revised repayment arrangement is being met. It also removes the concern caused by review letters when issued to borrowers at six monthly intervals and where there has been no change in financial circumstances. However, we are not in agreement with the proposal to conduct reviews based on the duration of the newly defined term of the arrangement. In practice, lenders review cases in line with the approved credit policy which has been notified to the Central Bank and this agreed process should continue.

We are further concerned with the requirement to formally review a borrower's case, including the SFS, where an alternative repayment arrangement has come to an end. Prior to providing a resolution option to a borrower a lender will assess the borrower's ability to revert to capital and interest repayments at the end of the term of the resolution option. The lender will also review the appropriateness of the option throughout the term and in compliance with provision 48 will notify the borrower in writing at least thirty days in advance of an arrangement ending. In this regard it is felt that the requirement set out in provision 47(b) is unnecessary.

Treatment of appeals and complaints

Based on the experience of lenders, we strongly support the proposal in the consultation paper that both 44 d (ii) and (iii) and 45 e (ii) and (iii) should be managed by the Complaints unit of the financial institution. The framework for managing complaints is well established and the Consumer Protection Code 2012 augments the process of oversight for all interaction with Consumers in this area. The change would ensure that any appeal in relation to the decision of the Arrears Support Unit (ASU) would be given the appropriate level of assessment required by the independent Board of each institution.

We further consider that Provision 51 needs to be clarified to state that the make-up of the Appeal Boards should be *'three of the lender's senior personnel, or experienced external professionals who have not been previously involved in the borrower's case within the MARP.*

Information on other options

Under the current Code, the lender is required to provide information on options open to the borrower and this is further developed in the draft Code provisions 44 and 45. We recommend that a short summary of each option, similar to the definitions in Chapter 2, is the most appropriate for inclusion.

Tracker mortgages

We believe that it is not unreasonable for the lender to amend the interest rate in line with currently available rates in cases where a borrower has been offered a sustainable loan modification which addresses their particular circumstances. From a prudential perspective, it is also vital that solutions are sustainable from a lender standpoint in the context of the long term viability of the mortgage market.

Additional feedback on topics not included in the Consultation Paper

In addition to the strategic issues outlined above and the drafting amendments we request that the following items be considered before finalising the revised CCMA:

Removal of customers from MARP

The draft Code has not taken into account the need to provide an exit mechanism / trigger from the MARP. This is needed in cases where the financial assessment or required review process demonstrates that the customer has satisfactory capacity to facilitate repayment of current mortgage payments, now and in the future. In such cases, the lender will advise the customer of a decision not to offer them an alternative repayment arrangement and also advise them of their right to appeal (rule 44). Any borrowers who subsequently fail to address their arrears situation should be dealt with as non co-operating. If the customer does not appeal or where the appeal is not upheld, the customer should be formally removed from the MARP as they are not in arrears and no longer considered to be pre-arrears. Without such an exit mechanism, it would appear that a borrower may remain in the MARP for the life of the loan even where their position has been permanently resolved. This will also lead to an overstatement of the Central Bank data in relation to the number of mortgage borrowers who are in difficulty which will impact on the development of trends and analysis particularly when comparing with other countries.

Application of MARP framework

Our Members query the rationale and intention behind the removal of the statement “31 days from the date the arrears arose’ from Section 17. This has significant implications for those individuals who may have a direct debit returned unpaid only for it to be provided for on re-presentation. Although some of these individuals may already be identified by the Bank as falling within the ‘pre arrears’ population, some borrowers may for simple administration reasons (e.g. change of bank account) be experiencing a temporary arrears position and may not need/want consideration under the CCMA.



As highlighted at the outset of this submission, our Members have fully implemented the current CCMA and continue to work with borrowers in difficulty to resolve their financial situation. As an industry we have brought to the attention of the Central Bank issues that we identified in implementing the CCMA based on our experience of working with borrowers and other stakeholders in this process. Some of these topics were addressed through the provision of further guidance from the Central Bank and we have continued to highlight additional issues as they arise. We believe that on-going engagement to address the issues and potential consequences of the practical, prudential and policy concerns raised by our Members is important for the successful implementation of any revision to the current CCMA.

Finally, we would emphasise that there will be significant technical development, communication and training required by lenders in order to introduce the changes currently proposed in the draft provisions and this should be considered when preparing the implementation timeframe.

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