

Review of Code of Conduct on Mortgage Arrears CP 63



Response from Irish Brokers Association and IMAF

Irish Brokers
association 

independent
mortgage
advisers federation 

Scope

The proposed changes outlined in Consultation Paper CP63 on the Code of Conduct on Mortgage Arrears causes our respective members' grave concerns. In this submission we highlight those concerns and suggest alternatives which we trust you will consider before making the final changes to the Code.

It would appear the proposed changes are more in favour of the banks and offer very little further protection to consumers. Both organisations feel the desire in the original code "to provide appropriate and effective consumer protection measures and to ensure that borrowers are treated in a fair and transparent manner" will be severely diluted by the proposed changes.

In reading the proposed changes, it could be construed that the Central Bank believes banks are once again to be trusted to act fairly and transparently. Unfortunately we have no confidence in such a view.

We refer to your publication on 7th March, whereby at the end of 2012, 79,852 PDH mortgages were restructured, however 37,821 (47%) of the restructured mortgages were in arrears.

Will the banks attitude change over the next nine months? Current regulation has failed to address mortgage arrears and therefore there is a need for clear unambiguous rules and timelines that our banks must abide by if we are ever to seriously address the levels of mortgage arrears that are affecting every aspect of our economy.

If we drill down to an individual bank, namely Bank of Ireland, we note from their annual report of 31st December 2012 that they had 7,188 customers on interest only mortgages, however, only 536, 7% had long term arrangements.

Equally, of an additional 3,038 customers, making a hybrid monthly repayment of all interest and part capital, only 358, 1% had long term arrangements.

Again, we ask will the banks change in the next nine months.

In looking at the individual proposed changes, we would comment as follows.

i) Co-operation and engagement.

We would deem it appropriate that all lenders are made operate under an agreed timeframe for the borrower to return information sought.

The same time constraint should exist for all lenders and not the prerogative of individual lenders to set their own timeframe.

The lender should be deemed to be non-co-operative if it does not respond within the agreed timeframe.

The experience of both memberships is that it is very time consuming and frustrating engaging with banks on behalf of our clients.

It is imperative that there is a dedicated person or team of people identified by name, direct telephone number and direct dedicated email address that a borrower or advisor can liaise with, from start to finish in the process.

When borrowers are under stress, ringing 1800/1850 telephones numbers and waiting in a long line to get through to make contact compounds the difficulties.

ii) Contract between the lender and the borrower.

The proposed change from three maximum contacts to a number, yet unspecified, is totally unacceptable to our respective organisations.

The Central Bank should draw up a contacts policy as part of the code of conduct NOT the banks and the limit of 3 communications should be retained.

iii) Link between CCMA and the Personal Insolvency Act

We would suggest a borrower be given 60 days' notice not 30 days in the context of the new Personal Insolvency Act before a lender commences legal action.

At the commencement of the MARP, where a borrower has requested and authorised a third party to act on their behalf, any verbal and written communication should be copied to this authorised third party with immediate effect. The borrower should not have to pass these communications to the appointed advisor, ref Chapter 3, Section 6

We are concerned that the protection of a twelve month period before legal action for repossession will be amended in "non cooperating cases" and feel there should be a minimum protection of a 6 month period for this type of customer not 30 days before commencing of legal proceedings. This would allow a distressed borrower sufficient time to contact a PIP.

We believe the twelve month moratorium should be applied where the lender has deemed the mortgage to be unsustainable.

(iv/v) Use of the Standard Financial Statement (SFS) & review of alternative repayment arrangement.

The completion of the SFS and the return of all appropriate documentation are essential to MARP.

However it is a very detailed document and we agree with the Central Bank's proposal that in certain circumstances a full SFS will not be required.

We believe all lenders must put a temporary arrangement in place while the SFS is been reviewed and assessed.

Banks advise that incomplete SFS's and insufficient documentation slows down the process of assessing and adjudicating customers' requests.

Also Banks take varying time to review the SFS which is very frustrating for customers and their advisors.

The banks should be required to respond to the customer within one month and sanctions should be imposed if they do not respond within this timeframe.

The SFS must have a minimum shelf life of twelve months and it should not be reviewed every six months unless the customer informs the bank that their financial circumstances have changed.

It makes logical sense to have the completion of an SFS in line with the short, medium and long term arrangements suggested by the Central Bank.

Many distressed borrowers find it very difficult to deal with large institutions and should be encouraged to seek independent advice at the start of the mortgage arrears resolution process.

Customers will benefit from more advice at the initial stages of MARP, as opposed to the completion of the process.

vi) Treatment of Appeals

We have grave concerns about the appeals process and would respectfully suggest that the Central Bank investigates the rulings to date of the Mortgage Appeals Boards.

"How many and what was the percentage of cases for each bank in the following situations?"

- Where the original decision of the bank was appealed and granted in full by the Mortgage Appeals Board.
- Where the original decision of the bank was appealed and partially granted by the Mortgage Appeal Board,
- Where the original decision of the bank was upheld by its own Mortgage Appeals Board?

Pending the results of this investigation we feel that the Mortgage Appeals Board should be reviewed and consideration is given to replacing it with a body similar to the Credit Review Office for small businesses.

This is not in any way to take from the excellent work of the FSO but the office simply does not have the necessary resources to deal with the number of Appeals involved.

We are concerned with a recent observation by the Financial Services Ombudsman that a customer must continue to pay the repayments requested of the lender pending their investigation following the decision of the Mortgage Appeals Board.

This is contrary to natural justice where a decision being appealed is on hold pending this appeal.

We note and support the Private Members Bill moved by Michael McGrath, Finance Spokesman for Fianna Fail calling for the setting up of a Mortgage Resolution Office

vii) Information on other options

We support the views expressed by the Central Bank.

viii) Tracker Mortgages

We are most concerned about the proposed threat to Tracker Mortgages and strongly believe that no changes be allowed to the existing code and the protection it provides.

The IBA (Irish Brokers Association) has conducted an excellent Actuarial analysis which shows that the value of a Tracker Mortgage in terms of early repayment or as part of a debt write off must reflect the value of the Tracker Mortgage. I.e. 25% of the loan amount remaining.

We are particularly concerned that The Central Bank has taken no action against Bank of Ireland or ICS who since the 1 January 2013 has added a 1% surcharge on BTL Tracker mortgage when a distressed borrower has sought to have the mortgage rescheduled.

We deem these customers to be "vulnerable" customers as defined in your Consumer Protection Code 2012 due the levels of stress being experienced.

All Tracker Mortgage customers must be protected and the decision of Bank of Ireland and ICS must be immediately reversed.

We note the approach taken by a British Parliamentary Treasury Select Committee who is dealing with the same issue with the same bank in the UK.

This Select Committee were critical in their comments of the FSA, (Financial Services Authority in the United Kingdom).

Conclusion

In summary, both the Irish Brokers Association and IMAF are of the view that the majority of the proposed changes favour the lender over the borrower, appear to be very much driven by a bank agenda and are not set to level “the playing field” of engagement between customers, their advisor’s or their bank.

We would welcome an opportunity to discuss our views in greater detail with you.