



IRISH CONGRESS TRADE UNIONS

SUBMISSION TO THE CENTRAL BANK

**Consultation on the Review of the Code of Conduct on Mortgage
Arrears**

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Fair & Transparent

The Irish Congress of Trade Unions is the representative body for workers and their unions on the island of Ireland. Congress has been calling for some time for greater legal protection for ordinary working families, in particular from threats of repossession and excessive debt collection tactics. It is essential that working people are provided with realistic ways to deal with over indebtedness and mortgage distress.

Congress welcomes the review and updating of the Central Bank's Code of Conduct on Mortgage Arrears. We acknowledge that a review cannot deliver the type of bold intervention necessary to reduce household debt and stimulate growth, as advocated by Congress in various submissions. However the protections contained in the Code of Conduct on Mortgage Arrears are crucial to the negotiations between bank and borrower. As the representative body for workers in Ireland, Congress is engaging with this Review from the perspective of seeking improvements to the Code to ensure that the process and outcome of a personal insolvency arrangement does not place employees at risk of losing their jobs or careers.

The Central Bank Code of Conduct on Mortgage Arrears (CCMA) aims to provide "appropriate and effective consumer protection and to ensure that borrowers who are experiencing, or are concerned about, mortgage arrears are treated in a fair and transparent manner."

Overall Congress is disappointed that there is still no move from the position where the banks retain control by deciding on a 'case by case basis'. An issue of serious concern is the lack of transparent oversight and independent appeal. It is to be hoped that the new Insolvency Service of Ireland (ISI) delivers much needed advocacy for those in mortgage distress, to ensure that they can strike a fair arrangement in a system in which they are very much at a disadvantage.

Alternative Repayment Agreement should not require employees to give up their jobs

A particular cause for concern is the suggestion (in a number of media reports) that a condition for agreeing an arrangement will be giving up employment if the cost of childcare is higher than the net wage. Such a condition is an unjust attack on the right to earn a livelihood. It is indirectly discriminatory as it affects women more than men.

It is also completely counterproductive, as childcare costs are only a necessity for a limited period, whereas all reports show that finding a job after a lengthy period outside the workforce can be extremely difficult. This would also have a detrimental impact on the lifetime earning capacity of the woman in question.

Other factors to take into account when calculating repayment arrangements are that employees should be provided with sufficient resources to travel to work, to undertake their work and to retain membership of their trade unions and professional associations. Allowing the employee to undertake continuous professional development and other employment and career related learning will increase their chances of securing a job or promotion, making their debt more sustainable in the long run.

Contacts with borrowers should not jeopardise their employment

The proposals to “remove the limit of three contacts per calendar month” (page 8); and allow “unsolicited personal visits to a borrowers primary residence (page 26) at a date and time of the lenders choosing” give rise to serious concern.

Congress’ analysis is that the Central bank has consistently underestimated the extent to which banks and third parties acting for them have been willing to go to pressure borrowers. The misplaced notion that these issues are being dealt with by a stern but kindly gentleman banker, who has the best interests of the borrower at heart, continues to inform the Code.

The Review document offers no justification for removing the existing limit of three contacts per calendar month. Instead it includes a requirement that lenders give borrowers ‘breathing space’ between each unsolicited communication. What constitutes ‘breathing space’ is to be left to the lender, or the third party to decide.

There can be no doubt that this overly vague requirement offers no meaningful protection whatsoever and will lead to significantly increased contact and stress for the borrower. Unfortunately many of the banks and financial organisations are paying little attention to the standards of the debt collecting agencies they employ.

Lenders do not need to make repeated contacts, threaten violence or use obscene language to be threatening. A single contact with a borrower, at his/her place of work, can cause serious stress and can threaten or undermine their position at work.

Congress has received many calls from workers concerned about the work-related consequences for them of such contacts. For example, many have obscure clauses in their contracts requiring them to be of ‘good standing’ with creditors. Others work for employers who have outdated attitudes towards debt, considering indebtedness to be a sign of ‘poor judgment’ or ‘irresponsibility’ and an indicator of general undesirability in an employee, especially when it comes to promotion.

In the past, many workers would have happily ticked ‘yes please contact me at work’ when applying for a loan, or might have given their work e-mail in answer to the ‘best way to contact me’ question. However this was not given in the context of discussing debt. No one needs a job more than those who are struggling to pay their debts.

Congress is calling for the Code of Conduct to strictly prescribe contact at work by Lenders and any third parties acting on their behalf. Practices such as the following should be specifically prohibited in Lenders’ contact policy or practice:

- Contacting the debtor through their work phone or email ;
- Leaving messages for the debtor in their workplace;
- Contacting the debtor on their personal mobile phone while they are at work;
- Leaving messages for the debtor, with only the name of the employee of the lender so that the debtor unknowing calls back while at work;

- Contacting debtors directly, bypassing their known appointed representative;
- Arranging meetings or house visits at times when the debtor is scheduled for work.

Credit reports and credit history has no proven relationship with job performance, but there is a danger that the stigma of financial failure will place an enduring burden on employees. It is not just future promotion and job security that may be in jeopardy, being listed on the personal insolvency register is likely to present a real obstacle when seeking employment. Any employer will be able to run their own check of the Personal Insolvency database on job applicants. Congress recognises that it is the role of Government to legislate to protect employees from this type of unfair discrimination but it is worth pointing out that many jurisdictions include this type of protection as part of their Insolvency or Bankruptcy legislation. For example, Section 525 of the U.S. Bankruptcy Code prohibits discrimination in employment against anyone solely on the basis of insolvency.

Congress is calling on the Central Bank to support the introduction of legislation to prohibit an employer's use of credit information for employment purposes, unless the information can be objectively justified as being relevant to the job.

Other practices of concern include the use of official-looking documents resembling court summonses.

The Central Bank should clarify that attempts to justify these under the guise of informing the borrower what could happen, will not be accepted.

Responding to Complaints and Appeals

The Code requires the lender to establish an Appeal Board. This is to be comprised of three of the lending institutions senior personnel and one member who is not involved in lending matters - such as a member of the Audit Committee or an external professional (selected by the Lender and without any requirement for independence or to represent borrowers interests). Given the seriousness of the issues at stake and the imbalance in the power relationship this structure does not meet any fair assessment of independence.

Borrowers will be very wary, concerned that complaints will not be considered objectively, or worried that by making a complaint they may end up being treated worse than those who say nothing.

Extensive work is taking place to get the new Insolvency Service of Ireland (ISI) operational as quickly as possible.

Ends

**Irish Congress of Trade Unions,
April 2013**