Response to Consultation Paper 63 Regarding a new Code of Conduct on Mortgage Arrears.

From: MDC Mortgage Brokers t/a Irish Mortgage Brokers 33 Pearse St. Dublin 2

Dear Sirs,

We would make the following suggestions.

1) That the use of 'auto-diallers' is removed, while at the same time the restriction on unsolicited contact is changed. Contact must be appropriate and not excessive as per s21 CCMA 2010 and proposed s20 CCMA 2013, however, when there is no answer or message left an auto-dialler can create excessive 'attempted contact' which may not be appropriate. The best solution is to allow people to call other people more often and to apply the record keeping requirements as per existing CPC of these attempts.

2) That contact be restricted slightly from the s. 46 of the CCA 1995 times. Contact is not appropriate up to 9pm for people with young families, 7pm is a more appropriate hour, and Saturday's should be restricted unless there are two failed weekday attempts of contact.

   The remedy in this instance could be that in order to contact people with young families after 7pm there should be express permission during a contact when they don't have time to speak, or by prior arrangement, or where there are two failed attempts at contact prior to this. The removal of three unsolicited contacts (as per s21 CCMA 2010) will assist both lender and borrower in the resolution process but it should come with some concession recognising that a person has rights to private time free of molestation from creditors. The CCA 1995 guidelines warrant review when applied to mortgage arrears and a new set could be applied when the contact is specific to this area.

   It would also help to have a 'contacts policy' as suggested in the review, to have a prominent position on a lenders website.

3) There new CCMA needs some kind of provision (similar to the time-lines provided for complaints resolutions) for credit decisions. We are seeing delays of up to one calendar month for a decision on what should be a simple credit decision. This delay only protracts resolution and cannot be overstated in the reason for many cases not curing.
4) It would be beneficial to give the borrower the right to have assistance from an independent party to fill in Standard Financial Statements as mentioned in s30(b) but 'appropriate alternative' should be defined as a person qualified in financial advice and preferably regulated by the Central Bank or a solicitor, accountant or insolvency practitioner.

5) That banks openly and transparently supply settlement documents to clients looking to sell for a loss or 'short sale'. To date our experience is that only after extensive negotiations are the banks willing to allow this outcome. During that time it can result in further unnecessary

erosion in the individuals income, financial position and general financial well being.

Particularly in the case of property investors who are acutely aware that their financial position is deteriorating. If there is going to be any sincere link to insolvency legislation then going into that process with unsecured debt is more advantageous to both bank (who can take over the asset before it is allowed to deteriorate) and borrower (who can opt perhaps for s69 Debt Settlement rather than full Personal Insolvency) alike.

We welcome the provision of information clause (12(d)), but this should include some kind of lender policy information as well, not just statements of fact, as the operational interpretation is based on those two things when dealing with a lender, not just one.

6) In the case of investors there may be tax liabilities which arise as a result of negotiated repayment agreements (typically where capital becomes repayable), that there is acknowledgement that provision must be made for such tax bills. We have seen examples where this is not given due regard and clients are then going to face a tax liability (for which there is no avoidance even through personal insolvency), respect for the tax authority should take precedent over the bank, as for how this can be inserted into code, we have no suggestion.

7) On the topic of non-engagement, we welcome the formalizing of this definition. There is one small point to make regarding the three month rule and 'alternative payments' definition. We have seen situations where clients make an alternative repayment submission which is not acted upon or rejected, for this reason it should not be restricted to being only the bank or lenders alternative plan or it creates a power imbalance. Where there is a dispute, proven frustration or whereby a complaint has been raised (even in cases where the postal rule is used to set the date of submission) an extension or re-setting of the time could be advisable. If the targets being set by the Central Bank are sincere then it is time for banks to be on the bank foot in the negotiation process so that every effort is made to come to meaningful long term solutions.

8) We believe that upon attempting resolution that SFS's should not be requested more than twice in 12 months, we welcome the ideas in Appendix 1 provision 37, but it would be more compelling to also have a limit on the number of SFS's completed during the resolution.

   Currently we have clients who are being asked to re-submit SFS's in order to get a credit decision having only submitted one within three months and there being no material change of circumstance, it is branded as an 'internal policy' demand but serves only to create another hurdle on the route to resolution. This is a bureaucratic delay which serves neither lender or borrower. Some reasonable restrictions on the provision of up to date documentation would be beneficial for any process to work efficiently.

9) There is a borrower ability to use the FSO office to cause delay where there may not be firm foundation, this is under the suggestions which link the CCMA to the insolvency Act. Where the FSO is processing a complaint, should there be delay in that process (as sometimes occurs – and which by the nature of complaint handling, due process and FSO ruling) it could become an abused clause. There should be some kind of pre-qualification to this point which ensures it doesn't become used as an informal brand of forced forbearance.

10) Where a mortgage is deemed unsustainable, should a borrower wish to waive the 12 month moratorium on repossession this should be allowed. And selling at loss (as per point 4 of this letter) should not be discouraged or delayed in this instance by the lender. It would add to

efficiency and fairness to have some kind of time limit for the provision of necessary documentation to facilitate short-sales.

11) The 30 notice period (given that the process of repossession is not fast) is appropriate, we support this but would ask that the likes of point 6 above are considered. The 'decline' must have further qualification than the bank putting forward a plan that is rejected. As per the precedent set out in the UK Palk v.s. Mortgage Services Funding 1992 (which also applies to the granting of short sales without lender consent), there are responsibilities on both borrower and lender alike, and contractual rights alone should not be the only grounds for determining which work out plan is most appropriate.

12) On the 'reviews of arrangements', it may be worth formally determining the when the review begins, if (for instance) on a short term review there is a 12 month review clause, does that mean the process begins at 12 months or is done at 12 months? If the latter then the borrower may need to be preparing paperwork long in advance, to remedy this a simple inclusion in the code of 'to commence at' will suffice.

13) On the collation of appeals records, we believe it would benefit the market and mediators to have the decisions mentioned in Appendix 1 s.53-54 published for the public record. The details are not required, simply the appeals v.s. the upheld/over-ruled statistics and some minor non-client specific data. This will give greater transparency to the financial practitioners and regulators alike as to how financial firms are dealing with appeals.

14) On the removal of trackers (2013 CCMA review point viii), it could be worth asking that any new rate (while higher) has some level of fixed margin, with the recent trend of lenders increasing their interest rates independent of ECB movements, this could become a future contentious issue were it to occur on modified loans.

15) General provision 6, this would be better solved by requiring the lender to issue letters to both borrower and intermediary rather than creating an additional layer of complexity by having a borrower requirement to then copy and post a letter to their advisor. If the concept of having third party representation is sincere then this clause should be reviewed. It could also have detrimental effect when a letter doesn't arrive, is delayed, lost or otherwise. This can be remedied by having the third party copied in on all written correspondence.

16) In the proposed General Provisions, there should be an exclusion on s5 when the request for information is a part 4 data protection request. This is legislated for elsewhere and can prove impossible to provide in the time-frame suggested depending on the complexity of the case.

Sincerely,

Karl Deeter

Compliance Manager
Irish Mortgage Brokers
33 Pearse Street