

Consumer Protection Codes Division
Central Bank of Ireland
PO Box 9138
6-8 College Green
Dublin 2

10th April 2013

Dear Sir/Madam

Re: Code of Conduct on Mortgage Arrears Consultation Paper 63

KBC Bank Ireland ("KBCI") welcomes the opportunity to respond to the proposed amendments to the Code of Conduct on Mortgage Arrears ("CCMA") as set out in Consultation Paper 63. In responding, KBCI acknowledges and supports the majority of the proposed changes but is of the view that there are a number of critical issues which require further clarification and/or amendment. Failure to address these issues will further frustrate and delay lender's abilities to provide appropriate and sustainable resolutions to borrowers, thereby resolving mortgages in arrears. The key issues that need to be addressed are as follows;

1. Definition of a Primary Residence

The current definition of a primary residence included in the CCMA allows single Buy to Let (BTL) properties to avail of the protections of the Mortgage Arrears Resolution Process ("MARP"). KBCI strongly disagrees with this approach which impedes the lender from assessing and managing BTL's with the same commerciality with which the loan was originally provided. On this basis it is proposed that the definition of a primary residence be amended to only include owner occupied Principle Private Residence's ("PPR"). This approach is consistent with both the Personal Insolvency Act 2012 and the Land and Conveyancing Law Reform Bill 2013.

2. Co-operation

Notwithstanding the ongoing discussions with the Central Bank of Ireland ("CBI"), there still remains ambiguity in relation to the definition and treatment of not co-operating borrowers. The significant issues faced are set out below;

Issue 1: The proposed definition of not co-operating does not address where a borrower fails to take the appropriate actions necessary to address their financial situation, for example; (i) where the borrower fails to prioritise the repayment of the mortgage over unsecured debt, (ii) where the borrower neglects to adjust lifestyle spending appropriately; and (iii) where the borrower takes on additional borrowings. This is a major obstacle to the resolution of mortgage arrears.

Proposal: Inclusion of an additional category in the definition of not co-operating where the borrower can be deemed not co-operating where there is failure to complete a requested action in order to address the arrears situation as described in the above examples.

Issue 2: KBCI fundamentally believes that once a borrower has been deemed to be not co-operating a further opportunity for re-engagement as outlined in the Consultation Paper is unnecessary and counterproductive given the steps which will have been taken by lenders prior to deeming a borrower as not co-operating. These steps include advising the borrower of the implications of been considered as not co-operating and providing numerous opportunities for the borrower to commence meaningful engagement with the lender.

Proposal: It should only be at the discretion of the lender as to whether an opportunity for further engagement should be allowed. Where a lender allows this opportunity for re-engagement the customer should only be deemed to be co-operating once a sustainable resolution has been agreed.

Issue 3: The proposed definition of not co-operating also allows for a situation where a customer with an historic arrears balance, who is not making or responding to contact from the lender in relation to the outstanding arrears, cannot be considered as not co-operating due to the fact that they are meeting their current mortgage repayments or the terms of their alternative repayment arrangement. This could result in a customer remaining in arrears of greater than 90 days indefinitely impeding the lenders ability to resolve the arrears situation.

Proposal: Amendment of part (c) (i) of the definition of a not co-operating borrower to include a situation where an historic arrears balance exists, for example, "a three month period elapses during which the borrower has failed to meet his/her mortgage repayments in full as per the mortgage contract or has failed to meet in full repayments as specified in the terms of an alternative repayment arrangement or **the borrower has an arrears balance remaining on the mortgage.**"

3. Contact between the lender and the borrower:

The proposed amendments to the provisions regarding engagement with the borrower, including the removal of the limit on unsolicited communications, are welcomed by KBCI. However, significant obstacles remain which restrict lenders from engaging with borrowers to assist and resolve their arrears situation.

Issue 1: It is proposed in the Consultation Paper that an unsolicited visit can only be undertaken once all other contact attempts in relation to the borrowers arrears have failed; and immediately prior to classifying a borrower as not co-operating. There may be occasions where it is not appropriate for a lender to wait to visit until a borrower is about to be deemed not co-operating as the borrower may be up to 90 days in arrears and a visit may not have the same positive effect that it would have at the earlier stages of arrears, for example, at 60 days in arrears. Furthermore, given the

seriousness of a greater than 90 day arrears situation it is critical that personal visits can be made to prevent this from occurring.

Proposal: KBCI proposes that the obligation on unsolicited personal visits is amended as follows, "A lender may make an unsolicited personal visit to a borrowers primary residence at any point where; (i) all other reasonable and proportionate attempts at contact have failed or (ii) borrowers have contacted the lender or responded to communications from the lender but have failed to do so with a view to reaching an alternative repayment arrangement or solution in relation to the arrears."

Issue 2: Provision 21 of the Consultation Paper requires that a lender must communicate and implement a policy regarding unsolicited communications which must be approved by the Board of Directors. A lenders unsolicited communication policy is a dynamic and iterative operational policy and on this basis KBCI considers that it is more appropriate for the policy to be managed and agreed by ASU Senior Management rather than the Board of Directors.

Proposal: Removal of the requirement for approval of the unsolicited communications policy by the Board of Directors as set out in Provision 21.

Issue 3: The requirement to maintain recordings of mobile telephone calls to or from borrowers in relation to the arrears or pre-arrears situation will fundamentally restrict the lender's ability to communicate with borrowers. This requirement will delay and create further obstacles to engagement with borrowers in financial difficulties, specifically, where the engagement is being made by field officers who use mobile telephones to contact borrowers.

Proposal: Removal of the requirement to record mobile telephone calls to borrowers in relation to his/her arrears situation as set out in Provision 65.

4. Mortgage Arrears Resolution Process

KBCI would disagree with the proposed amendment of Provision 17 to include borrowers with arrears outstanding less than 31 days within the definition of MARP. There may be administrative reasons as to why a borrower may experience a temporary arrears situation less than 31 days and where it would not be appropriate to apply the MARP to these customers. KBCI would propose that the definition of MARP remains as included in the existing CCMA.

5. Tracker Mortgages.

Tracker mortgages provide a fixed margin over ECB and were offered to customers with specific terms and conditions. On the introduction of short term, medium term and long term resolution options, the terms of the original mortgage are not being maintained by the customer. Therefore, in these circumstances, the bank should be able to amend the terms and conditions of the mortgage and change the basis on which the interest rate is calculated. When offering a resolution option a key component in determining the absolute rate on the restructured mortgage will be the customer's ability to meet their revised repayments and that these repayments are sustainable.

6. Use of the Standard Financial Statement ("SFS").

Issue 1: While the SFS is a useful tool when completing financial assessments with borrowers, there are a number of situations where the completion of an SFS is not required.

Proposal: KBCI would consider that the completion of an SFS is not required in the following situations:

- a) Where the arrears situation is short term and the borrower has confirmed verbally or in writing that a longer term alternative repayment arrangement is not required;
- b) Where an SFS has been completed in the previous 12 months and the borrower has confirmed that their circumstances have not changed; and
- c) Where an arrears balance is being capitalised and the full scheduled mortgage repayments have been made by the borrower for a period of time e.g. the preceding six months.

The information to be provided in these cases should be determined by the lender on a case by case basis as considered appropriate to each borrower's situation and the lenders previous experience with the borrower.

Issue 2: In its current format the SFS does not highlight to borrowers the importance of prioritising their mortgage debt ahead of other debts they may have.

Proposal: KBCI would recommend that the SFS be amended to include Primary Residence mortgage repayments with the household expenditure section, as opposed to in the general debt repayment section, to highlight to borrowers the importance of the prioritisation of the mortgage over other forms of debt.

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

Issue: Provision 22 of the Consultation Paper requires that the lender provides the borrower with the relevant publications, produced by the Insolvency Service of Ireland, on the processes under the Personal Insolvency Act 2012. KBCI fundamentally disagrees with the provision of information on insolvency arrangements to a borrower at this early stage in the arrears process. Personal Insolvency is an extreme measure only to be taken in a case where an individual is insolvent and no other options are available. The provision of this information at such an early stage in the arrears process may deter borrowers from fully engaging in the MARP. KBCI also strongly disagrees with the requirement to provide documentation from an external agency when writing to borrowers at any stage of the MARP.

Proposal: KBCI considers that information in relation to Personal Insolvency should only be provided to borrowers, as set out in provision 44 and 45, where the lender is unwilling to offer the borrower an alternative repayment arrangement or where the

borrower is unwilling to enter into an alternative repayment arrangement offered by the lender. KBCI proposes that information in relation to Personal Insolvency is provided by a lender by way of a reference to the Insolvency Service website rather than the provision of relevant Insolvency Service publications as currently proposed under Provision 46 (b).

8. Review of alternative repayment arrangements.

Issue: Provision 47 of the Consultation Paper requires lenders to formally review the borrower's case, including the standard financial statement where an alternative repayment arrangement has come to an end. At the outset of any alternative repayment arrangement the borrowers ability to revert to capital and interest repayments at the end of the term will be assessed, the borrowers financial situation will also be reviewed during the period of the alternative repayment arrangement as required by Provision 43 of the Consultation Paper and borrowers will be notified at least 30 days in advance of the end of the arrangement and requested to contact their lender if they are concerned about their ability to revert to full payments. On this basis KBCI considers that a formal review at the end of an alternative repayment arrangement is unnecessary.

Proposal: Removal of the requirement, as set out in provision 47(b), to formally review the borrower's case when the alternative repayment arrangement comes to an end.

Additional feedback

In addition to the strategic issues outlined and the drafting amendments we request that the following items also be considered;

1. Inclusion of Debt Write off as an alternative repayment arrangement.

The amended CCMA, as proposed, has included debt write off as a possible alternative repayment arrangement to be considered by lenders. KBCI strongly disagrees that debt write off should be positioned as an alternative repayment arrangement. Inclusion of debt write off as an option for an alternative repayment arrangement option will result in the moral hazard of borrowers considering that it is the alternative repayment arrangement for which they should be considered and may result in deterring borrowers from considering appropriate alternative repayment arrangements. In this regard KBCI believes that debt write off is removed from the list of alternative repayment arrangements included in provision 38 (k).

2. Unsustainable Mortgages

KBCI is in agreement with the proposal to remove the 12 month moratorium to commence legal proceedings where a mortgage has been deemed to be unsustainable. KBCI would support a 30 day notice period setting out the alternative options available to the borrower such as voluntary sale or voluntary surrender where a mortgage has been deemed unsustainable.

3. Appeals and Complaints.

KBCI strongly supports the proposal for appeals in relation to the lender's Compliance with the CCMA and the borrower's treatment under the MARP to be considered and

managed in accordance with the lenders complaints process. KBCI proposes however propose that where a borrower provides additional information as part of an appeal the lender's Arrears Support Unit rather than the Complaints Department/Appeals Board should be given the opportunity to review the case in light of the new information received.

4. Temporary Arrangements

Provision 37 of the Consultation Paper allows the lender to put a temporary arrangement in place to complete a full assessment of the SFS. In order to avoid ambiguity it should be clarified that the three month temporary arrangement can be put in place prior to the lender receiving the SFS allowing the borrower sufficient time to complete the SFS.

5. Requirement to amend other legislation/regulation.

KBCI would like to highlight the importance of considering and where relevant amending other affected pieces of legislation/regulation when amending the CCMA. For example, during the Personal Insolvency process, lenders may be required to refrain from contacting a borrower for a period of time where no payments are being received from the borrower. This is a clear conflict between the Personal Insolvency Legislation and the proposed CCMA. A further example would be to remove the three contacts rule in the Consumer Protection Code 2012 for consistency with the proposed amendments to the CCMA.

Conclusion

KBCI agrees with the Central Bank of Ireland that the resolution of the mortgage arrears crisis is in the interests of borrowers, lenders and society as a whole. In this regard the above proposals should be considered in light of the significant investment made by lenders in the resolution of the mortgage arrears crisis and the experience gained by lenders in dealing with borrowers in mortgage arrears over the last number of years.

It should also be noted that there will be significant system, procedural and documentation changes that will be required to be made by lenders in order to implement the changes proposed in the amended CCMA and appropriate timelines should be considered when preparing the implementation timeframe.

KBCI welcome the opportunity to discuss any of the above items further and should you have any questions or should you wish to partake in any discussion, please feel free to contact the undersigned.

Regards



Christine Moran

Executive Director