

National Consumer Agency Submission to the Central Bank of Ireland in relation to the Review of the Code of Conduct on Mortgage Arrears

About The National Consumer Agency

The National Consumer Agency ('NCA'/'Agency') is the statutory body established by the Irish Government in May 2007 to enforce consumer law and promote consumer rights. In March 2010, the responsibility for consumer personal finance information and education transferred from the Central Bank of Ireland ('Central Bank') to the Agency.

Introduction

The Agency welcomes the opportunity to submit comments to the Central Bank in relation to the Review of the Code of Conduct on Mortgage Arrears ('CCMA'). The Central Bank will be aware that the Agency participated in the previous consultation on the CCMA in 2010¹.

In general this submission focuses on a number of high level concerns which the Agency deems are worthy of careful consideration, specifically:

- The process of moving a borrower in arrears from a tracker rate;
- The difference between co-operating and not co-operating borrowers;
- The transfer of a mortgage or other loan book to another entity; and
- The treatment of appeals and complaints.

Specific Observations

The process of moving a borrower in arrears from a tracker rate

In its submission on the Review of Consumer Protection Code (CP47)², the NCA set out its comments in regard to tracker mortgages. The NCA would re-iterate the point made in that

¹ <http://www.centralbank.ie/regulation/poldocs/consultation-papers/Documents/CP46%20Review%20of%20Code%20of%20Conduct%20on%20Mortgage%20Arrears/CP46%20Submission%20from%20National%20Consumer%20Agency.pdf>

submission, which is that “*firms are not allowed to get around the overarching principle that they must act in the best interests of their customers*”.

Point (viii) *Tracker mortgages*, of the issues under consideration as part of this review, states that “*where the lender has offered an alternative arrangement which is advantageous to the borrower in the long term, e.g., a debt write off*”. In respect of this point, the NCA would again revert to its previous submission and re-emphasise that “*institutions should offer tracker mortgage holders an independent review (for example via a regulated broker) before making a decision*”. This should ensure that the consumer will understand and be certain that the alternative arrangement is advantageous to them in the long term. The NCA suggests that consumers need to see the estimation of the full benefit of the alternative arrangement by outlining the difference in repayments on a monthly basis as well as crucially the difference in the amount remaining cost of credit.

Furthermore to ensure that the proposed alternative arrangement remains advantageous the NCA considers that safeguards need to be put in place to protect consumers. The NCA recommends that, where a lender is allowed to move a borrower in arrears from a tracker rate to an alternative arrangement, it is imperative that the interest rate is ‘capped’ or ‘fixed’. The Agency considers that this will ensure that the borrower will receive some assurance that the rate will never become excessive, as that would simply create or exacerbate an arrears situation.

The difference between co-operating and not co-operating borrowers

The Agency understands the need to classify borrowers as co-operating and not co-operating. However, the Agency has concerns regarding the amendments to the definition of “*not co-operating*” and the possible implications of being classified as a not co-operating borrower in terms of eligibility under the Personal Insolvency Act. The proposed amendments to the definition are:

- Under part (b) of the definition, a lender can set a reasonable timeframe within which the borrower must respond. Failing to respond or provide the required information may result in the borrower being considered as not co-operating.
- Under part (c) of the definition, where a borrower repeatedly fails to agree an alternative repayment agreement or solution to the arrears, over a three month period, they may also be considered as not co-operating.

The Agency is of the view that these proposed changes and their implications need to be communicated effectively to consumers in plain English. In order to be fair to consumers it

² <http://www.centralbank.ie/regulation/poldocs/consultation-papers/Documents/CP47%20Review%20of%20Consumer%20Protection%20Code/CP47%20Submission%20from%20the%20National%20Consumer%20Agency.pdf>

is vital that they are given the opportunity to understand the consequences of not co-operating with their financial institution when they are in arrears.

The Agency notes that in terms of the amendment to part (c) of the definition, it is important to differentiate between those consumers who do not have the ability to pay and those consumers who do have the ability to pay but are not open to agreeing a solution. The NCA is of the view that financial institutions need to have a fair, realistic and consistent approach when assessing what consumers can afford to pay.

The transfer of a mortgage or other loan book to an unregulated entity

The NCA has concerns around the transfer of a mortgage or other loan book to another entity, and in particular where the entity is unregulated. The NCA has recently raised concerns with the Central Bank regarding issues that came to its attention following the transfer of a hire purchase loan book to an unregulated entity. In this instance the NCA had concerns that the former customers of a regulated entity, found themselves dealing with a company that falls outside the area of regulation and that those customers lost the opportunity to refer their complaints to the Financial Services Ombudsman as a result. To this end, the NCA request clarification of the application of the CCMA in the event a loan book is sold to another entity, regulated or not.

The NCA is of the view that the Central Bank needs to ensure that where a loan book is transferred from one entity to another that due skill, care and diligence is taken to ensure the consumers are protected before, during and after the transfer. The Agency suggests that the Central Bank include provisions in the CCMA to protect consumers in arrears. The transfer must be conducted in an effective and efficient manner in the consumer's best interests. The procedures must set out the protections that are in place for consumers if the transfer does not go smoothly or if issues subsequently arise.

The Agency would also ask the Central Bank to consider the position of consumers, where a loan book is sold to an unregulated entity, and to consult with the Financial Services Ombudsman in advance to ensure that customers do not lose the opportunity to bring their complaints to the attention of the FSO. The NCA considers that the sale or transfer of a regulated entity's loan book must not cause significant imbalance in the consumers' rights and obligations. Furthermore where consumers are no longer able to access the independent services of the FSO or avail of the protections of the Consumer Protection Code 2012³ ('2012 Code') or the Consumer Credit Act 1995, the NCA are of the view that they are being deprived of statutory procedural advantages.

³ <http://www.centralbank.ie/regulation/processes/consumer-protection-code/Documents/Consumer%20Protection%20Code%202012.pdf>

The treatment of appeals and complaints

The Agency agrees with the proposed amendment that the administration and resolution of appeals should come under the provisions in relation to complaints under the 2012 Code. However, the Agency has concerns about the impact on consumers of products sold which are currently not covered by the FSO, for example a mortgage where the complaint related to the sales process and which was drawn down more than six years ago, and specifically what complaints mechanism is available to such a consumer. In addition, if the consumer is in arrears, the NCA requests clarification on whether the FSO is a viable option for the consumer, where the complaint has been exhausted with the institution. The Agency recommends that the Central Bank clarify the position of consumers, who are unsuccessful in securing redress from institutions, where neither the 2012 Code nor recourse to the FSO applies.

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