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10th April 2013.

The Consumer Protection Codes Division,
Central Bank.
PO Box 9138,
6/8 college Green,
Dublin 2.
Email : code@centralbank.ie

Re : Consultation Paper CP63
Review of the Code of Conduct on Mortgage Arrears

Dear Sirs,

We are pleased to participate in the public consultation process relating to CP63, Review of the Code of Conduct on Mortgage Arrears.

Our Submission is limited to a consideration of the Central Bank's revised proposal to provide for an appropriate Appeals process to achieve transparency, consistency and consequently fairness in the proper resolution between bank and borrower on the issue of mortgage arrears.

By way of an overarching point, we believe that the minimum written procedure set out at paragraph 44 of the current CCMA is itself insufficient to enable a borrower to understand the manner by which his or her appeal is to be conducted

We accept that varying degrees of protection may be necessary, depending upon the basis of the borrowers appeal under the CCMA. With this in mind we would accept, for example, that where bases 42 b) and c) (paragraphs 49 b) and c) of proposed revised code) are at issue that it is a matter for the borrower in the first instance to make plain on appeal his or her complaint in respect of the lenders treatment of his or her case, or his or her complaint as to the lenders compliance with the requirements of the Code. However, we would submit that a greater degree of procedural protection and assistance is required where a borrower seeks to appeal the decision of the lender's ASU.

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As a matter of current practice in publishing to borrowers the manner of dealing with appeals lenders have simply adopted paragraphs 44 a) to e) of the current code. The difficulty which we perceive with this, and have witnessed in practice, is that a borrower simply does not know how the Appeals Board addresses, or will address, the grounds of appeal raised by the borrower. Simply put, there are no procedures, even in basic terms, nor principles or policies contained within the CCCMA, which guide an Appeal Board in reaching its decision. How is borrower to understand how to frame an appeal?

APPEAL FROM THE DECISION OF THE LENDER'S ASU

We contend that in order to effectively challenge a decision of a lender's ASU a borrower/appellant ought be appropriately appraised of the reasoning of the lenders ASU/the bank in reaching its decision.

Whilst it is understood that a lender is under Paragraph 39 of the current CCMA obliged to give reasons in writing to the borrower, it is our experience that in many cases these reasons are not sufficiently detailed. The borrower is not given, and ought to be given, a memorandum of the lender setting out in reasonable detail the basis on which it reached its decision.

It is self-evident that in order to appropriately challenge a refusal, the reasons for same must be adequately available to an Appellant.

It is our suggestion therefore that the Code be amended to provide that if a lender is not willing to offer a Borrower an alternative payment arrangement, the reasons for its conclusion that a particular mortgage is unsustainable and the reasons for its conclusion that an alternative repayment arrangement is unlikely to be appropriate, a notice should be given by the lender in writing to the Borrower adequately and sufficiently explaining the reasons of the lender.

This addition or amendment to the Code is equally necessary for the purposes of the Appeals Board itself as an Appeals Board could not properly understand the reasoning of the lenders ASU without being given details in writing.

DOCUMENTS TO BE PROVIDED TO AN APPELLANT BORROWER OR A BORROWER APPELLANT ON APPEAL

The next point raises a procedural issue which regrettably has not been addressed thus far in the Code. In essence it is our Submission that an Appellant ought properly be provided with the documents which the bank/respondent has itself provided to the Appeals Board if any.

What happens currently is that an appellant purely lodges his or her papers in respect of the decision of the lenders ASU, the bank then lodges its own papers with the Appeal Board. Should the Appeal Board decide that the bank's approach was appropriate in the circumstances; the lender will never have been given a fair and adequate opportunity to respond to the bank's reply. This is particularly so if the lender was of the view that the bank had fundamentally erred in its decision. In simple terms we are of the view that the Appeals process as currently constructed is a "blind process" whereby an Appellant is asked to challenge a decision:-

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- (a) Not being sufficiently appraised of the grounds of the lenders ASU/bank, and
- (b) Not having been informed of the bank's justification to the Appeals Board for its approach.

APPEAL IN RESPECT OF THE LENDERS COMPLIANCE WITH THE REQUIREMENTS OF THE CODE/APPEAL IN RESPECT OF THE LENDERS TREATMENT OF THE BORROWERS CASE UNDER THE MARP PROCESS

Again in this context we believe that the procedure of the Appeals process is lacking. Taking an appeal on the basis of the lenders treatment of the Borrowers case; Whilst we accept that it is in the first instance for the Borrower to set out why he or she complains of the lenders treatment we believe that in the event that the lender contradicts the Borrower's version of events, an Appeals Board simply cannot resolve the dispute without reference to a response from the Borrower to the lenders contradictory statement.

As we believe this to be the case we believe that the Appeal process should provide that where a lender contradicts a version of facts put forward by a Borrower, a Borrower should be entitled to see that statement or memorandum setting out the lenders version of events.

Finally we would like to acknowledge and thank Patrick O'Reilly for his assistance in the preparation of this submission.

Yours faithfully,

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