

Phoenix Project Ireland comments on Overall and Specific Proposals in Review of CCMA-8th April 2013.

i) Co-operation and Engagement

Phoenix Project Ireland (a registered Charity and Independent Law Centre ,is the only body in Ireland with the sole and specific purpose of advising and providing ongoing multi disciplinary support to Distressed Borrowers free of charge).Phoenix Project has had direct involvement with thousands of users of the MARP and other central bank Codes, since inception in 2009 .

Everyone we speak to is willing to engage and communicate with their banks, complete Standard Financial Statements and attend meetings. From our huge sample we do not see evidence of Strategic Defaulters or reticence for any reason to engage. Everyone we see would do **anything they possibly can** to receive a resolution that is workable for them to restore their basic functioning lives.

ii) Contact between the Lender and Borrower

However the biggest problem we see is Banks inability to engage and co operate with clients. It is extremely difficult to meet decision makers in any Lending Institution, the Individuals charged with Customer contact have no authority beyond information gathering and this is a huge source of frustration, not just for borrowers but also for those bankers who are in the invidious position of engaging with the distressed public without authority to provide resolution or certainty. Once the matter goes past the front line of initial bank contact we see hundreds of examples of unanswered or lost correspondence, meeting requests ignored, different sections of same Lender engaging in different cross purpose contact with clients on an ongoing basis. As per ILP V Duff we have countless examples of banks failing to engage in MARP at all .We have countless other examples of many Lenders including the Specified Institutions paying lip service only to MARP and ignoring its spirit.

We are surprised by the outcomes from your consumer based research sampling exercise because it does not accord at all with our experience of many many multiples of that sample. Can you provide details of sampling methodology including statistical basis for sample size and sample selection?

We would be delighted to assist you frame questions and identify independent sources for a much larger sample for your next survey.

iii) Link between the CCMA and Personal Insolvency Code

What really is the spirit of CCMA/MARP and Personal Insolvency Code?

It is clear that as bank discretion drives all of these resolution processes Resolution will continue to be bank driven but undefined for the distressed borrower.

This on the fence position on Resolution which has been developing traction since 2009 is at the heart of a developing huge national economic and social polarisation, whose consequences and more

constructive alternatives are clearly dealt with in Chapter 3 of the IMF World Economic Outlook Report 2012.

Resolution is declared to be at the core of MARP and the Personal Insolvency Code but Resolution remains unavailable, undefined and at Banks discretion. Phoenix experience since 2009, despite exposure to thousands of different distressed loan types, is that we have not yet seen even **ONE** permanent resolution offered and we do not see the likelihood of this happening anytime soon as despite the introduction of the Personal Insolvency Code and Central Bank March 2013 MAR Targets we see no positive change in banks engagement and if anything it is becoming more harsh ruthless and worst of all less transparent.

Our concerns with Central Bank Targets are that they are also undefined. What is the definition of “Proposal to Borrowers of Sustainable Solutions”?

iv) Use of Standard Financial Statements

Resolution Solutions for banks is clearly different to resolution for distressed borrowers.

Resolution for Banks is deliberately shrouded in case by case, confidentiality, but from everything we see and the very definition of banks it has to be based on Banks' management of their balance sheet and desire to avoid absorbing losses on their mortgage books. What we see emerging in late 2012/2013 as the pattern for determining viability, is a cost benefit analysis of SFS data whereby it seems that bank restructure offers are emerging only if that restructure is deemed, by faceless credit committees, to have the capacity to make more money, in the long term, than existing products. So recently we are seeing the emergence of Offers of very costly restructures of inter-alia tracker mortgages, for younger employed people where the cost of funds, spread over a longer time period, (hidden in the depths of lengthy loan offers) are many multiples of their existing cost of funds—hence confidentiality.

Resolution for the thousands of consumers we see, on the other hand, is security of their family home and livelihood which is at serious odds with bank's unacceptable attempts to preserve their capital despite the long term social and economic effects. Unfortunately, we have continuously to advise clients, that the much promised protection for homes and livelihoods from the ravages of this crisis, is not enshrined anywhere in this or previous codes or in Irish law or regulation, except for recent emerging case law.

In our view if government wants to constructively address this growing problem the first step is for Central Bank to determine and define Sustainable Solutions. Despite the case by case plea, our experience shows that Lenders have long since defined Sustainable Solutions by way of a limited number of categories. So once we identify where banks will be allowed draw the line on Sustainable Solutions, the next step is to accept that all other Resolutions, as far as banks are concerned, (as trade down loans and Mortgage to Rent are unavailable and unworkable) amount to repossession pursuant to their security documents.

Then the next question is how many of the current but rising 180,000 home and BTL loans, currently in arrears, will be restructured to viable products for banks and how many will be repossessed?

Data to answer all these questions is available to Central Bank, through SFS analysis and it is vital and overdue that transparent fair analysis of that data is used as a starting point for real resolution.

From the very big sample of that data we see (we believe we have the biggest independent data sample across Institutions) we are of the view that the vast majority of distressed mortgages are headed to repossession with recourse to borrower for all associated costs and shortfalls because they do not pass bank Sustainable Solution tests.

The next big question is what will banks do with all these repossessed/surrendered homes?

International experience shows that once repossession takes place and loans are written down in bank balance sheets bank has no interest in achieving value for these properties or mitigating loss for borrowers but because of their obsession with moral hazard (otherwise defined as a customer gaining any possible perceived advantage on them) banks will not release borrowers from an obligation from the shortfall denying that person any real resolution or certainty, which heretofore was a prerequisite of consumer confidence.

v) Review of Alternative Arrangements.

In the limited number of cases where banks will address Sustainable Solutions this ongoing review process is another tool in reinforcing national economic uncertainty.

How long can these reviews continue?

When can distressed borrowers expect a line to be drawn under their ongoing burden so they can recommence normal personal and economic lives?

vi) Treatment of Appeals and complaints

The Appeals process in MARP is contrary to fair procedures and natural Justice, is not transparent or independent and the Ombudsman's role is inappropriate and contrary to the spirit of its founding legislation.

viii)Information on other options

1. *New Products and Independent Advice*---The Central bank needs to ensure much greater protection for the consumer re **advice** re all new restructures. This must involve **mandatory** independent legal (as has been done by Lenders for years pursuant to Family Home Protection Act 1976) and financial advice before the consumer can sign off on any new product. This does not exist at present and many distressed borrowers are being pushed to sign uneconomic and imprudent revised loans without adequate independent advice.

2. *Voluntary Surrender*- Again the code needs to provide that repossession should not be solicited or voluntary surrender accepted, without full due process or without banks obtaining **legal** (as has been

done by Lenders for years pursuant to Family Home Protection Act 1976) **and financial sign off** that client obtained full independent advice ,particularly re family home.

The Free Phone helpline being offered provides information only and is suggested to clients far too late in the process. The agencies, such as MABS and FLAC, to which this helpline and Lenders generally refer distressed borrowers are unable to provide the full services required by these borrowers and we receive many onward referrals from these agencies. The €250.00 service available from CAVA members needs to be defined in full and you might please define same or have CAVA do so publicly as our clients are having great difficulty availing of it and those who have, again received general information only. As a result we are having difficulty with referring clients to this service as we are unclear as to what precisely this CAVA service purports to offer them.

3. *Plans for future of repossessed property*—US experience shows that repossessed properties are bought in large lots by single owners at huge discount. These new owners who tend not to emerge from the open market then let or sell these properties at huge profit to the dispossessed and agencies looking after them. The paymaster in Ireland, considering our existing social housing commitment is likely to be the state/taxpayer. This should not be permitted to happen here and controls to avoid this need to be implemented .

4. *Bank obligation to mitigate loss*—The Code needs to **impose strong obligation** on banks to mitigate loss for borrowers once banks get control of borrowers assets. The contrary is happening at present. There is no control on bank spending on professional services for repossession nor is there any control on management of repossessed assets to ensure recovery of best value for owners who ultimately bear all of these costs added to their loan arrears shortfall. At a minimum failure to control this by banks should give distressed borrowers power to have shortfall reduced commensurate with bank neglect to ensure best value when they repossess.

5. *Separations*-Code should force banks to comply with judicial separation orders as thousands of separated families cannot move on because of Lenders refusal to tackle their legal issues.

6. *List of Sustainable Resolution Products available to Clients*-. We have asked senior people in a number of key banks to let us have a list of the suite of products available for resolution so we can prepare and reassure our clients for these but this request is cynically replied to with the list of options set out in the Keane Report many years ago with no elaboration. **More transparency about these products is urgently required. Why are Lenders so determined to protect their secrecy?**

7. *March 2013 MAR Target* requirement for **Offers** for Sustainable Solutions does not go far enough. An offer is not a resolution and there is worryingly huge room for lip service here. Also this leads back to the need for a disclosure on what these Sustainable Solutions consist of.

Conclusion—Much more must be done as a matter of extreme economic and social urgency to provide a real integrated and cohesive package of consumer protection measures in this current crisis. At present the legislature and Central Bank seem quite happy with lip service to MARP, Consumer Codes and

Consumer Credit Acts so at Phoenix we are advising all clients not to surrender possession without their legal right to independent advice and due process.

We also plan ,with our client's consent, to send you separately, sample copies of correspondence with all banks including the Specified Credit Institutions demonstrating high levels of poor Lender engagement and communication ,breach of MARP , failure to address resolution except in a very narrow profit focused way and unnecessary trampling on distressed borrowers rights.