Ulster Bank

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Dear Bernard

Ulster Bank Group (UBG) welcomes the issuance of Consultation Paper 63 (CP63) on revisions to the Code of Conduct for Mortgage Arrears (CCMA). We are pleased to note that a number of issues we raised during previous consultations and in discussions with you are now being addressed. Our aim is to continue to collaborate with you to ensure an appropriate regulatory regime for the management of mortgage arrears is in place.

In our consideration of the proposed changes outlined in CP63, we are driven by a number of key priorities which we believe are fundamental to the successful resolution of mortgages arrears in the best interests of consumers and financial institutions. These are:

1. the importance of early and continuous engagement between customers and lenders to resolve mortgage arrears problems
2. seeking clarity and certainty and the reduction of ambiguity in the provisions of the Code , in order to mitigate the risk of inadvertent or unexpected delays in the arrears management and resolution process
3. the mitigation of moral hazard by having clearly defined expectations of, and requirements on, customers
4. the need to draw clear and commonly understood distinctions between:
    a. customers who are co-operating and those who are not
    b. customers whose positions are unsustainable and customers whose arrears may be reasonably viewed as sustainable by the establishment of a suitable alternative arrangement
    c. customers who are in genuine mortgage distress and those who have a temporary short term shortfall in payments for which there is evidence that the customer can return to full payment capacity within a defined and limited period of time
    d. security comprising in whole or in part of an owner-occupied family home, and security relating to a non owner-occupied residential property

e. customers who have borrowed for personal consumer use vs. customers who have borrower for commercial (including speculative) reasons

5. recognition of the bank's legitimate contractual and property rights
6. the legal requirement for any regulatory intervention to be kept to a reasonable minimal level

We would note that, notwithstanding prior discussion with stakeholders, the CBI consultation protocol has not been met in this case with a very short time period for response, compounded by the Easter break.

We would request for all future consultations that the standard minimum consultation period of 3 months be provided, in order to balance competing regulatory priorities and allow sufficient time for proper internal discussion and assessment of the proposals.

Even where pre-consultation has been carried out, when the wider variety of changes proposed are complex and numerous, it can take some time to properly review and discuss these changes internally, particularly when other overlapping regulatory priorities such as the target regime under MARS and implementation of the Personal Insolvency Act are being worked on at the same time.

As a number of changes were discussed in CP63 without any proposed text, and as substantive discussions are still required around a number of issues, we believe a further round of consultation will be required around the next version of the proposed changes.

Two appendices are attached to this letter.

In Appendix 1 we have provided an executive summary of the main points of concern to us.

In Appendix 2 we have expanded on these points, including alternative approaches that may be appropriate and, where possible, continue to address any regulatory concerns underpinning the relevant new or amended provision.

We would be happy to meet you to discuss any aspects of this submission.

Kind regards

S. P. Bell

Stephen Bell
Chief Risk Officer
Ulster Bank Group

Appendix 1 – Executive summary of key points of concern

Concern	*UBG position*
1. *The application of all (or parts) of the CCMA in the enforcement of security against non-owner occupied homes*	The CCMA should be amended to only apply where the security relates to owner occupied homes. Arrears on lending secured by other residential properties should be handled under the CPC (for consumer purpose loans) and the SME Lending code (for business purpose loans).
2. *The application of all (or parts) of CCMA to business / commercial / corporate lending*	The way the CCMA addresses arrears situations is not appropriate for business lending and we recommend either excluding the applicability of certain parts of the CCMA to business purpose loans, or removing business loans from the CCMA altogether (while building certain protections into the SME Lending Code where the security concerned is a principal dwelling house).
3. *Reducing moral hazard by clear definitions of borrowers not co-operating*	The types of customer behaviour which should be viewed as "not co-operating" should be expanded to ensure the process runs effectively and is not arbitrarily delayed or frustrated.
4. *Dealing with abandoned properties and uncontactable customers*	In order to protect the bank's security, and in the event our request that the scope of the CCMA is limited solely to owner-occupied is not agreed, the CCMA should not be applied (or customers should be immediately deemed as not co-operating) where banks have a formed a reasonable belief that the property concerned is abandoned, or where customers are completely uncontactable.
5. *Unsolicited contact – telephone and personal visits*	Banks should be in a position to engage customers as required and any restrictions applicable should be clear, justifiable and proportionate.
6. *Early termination of moratorium for co-operating customers where the MARP completes without an agreed arrangement*	The proposal to allow for early termination of the repossession moratorium is supported where the Mortgage Arrears Resolution Process ("MARP") completes and the customer refuses an offered arrangement (or where no sustainable arrangement is offered).
7. *Dealing with customers with short term arrears problems*	Customers who have short term arrears problems should not be subject to the MARP in circumstances where their problem can be demonstrably remedied within a set period of time.
8. *Content, format and timeline for completion of SFS*	Reduction or non-completion of the SFS is justified in certain circumstances. the CCMA should clearly allow a SFS to be provided orally provided a contemporaneous record is kept and a written SFS can being reproduced and provided to the customer on request.
9. *Review of customers following arrangements being put in place*	Revised timelines for reviews of arrangements are appropriate, however those outlined in CP63 should be amended.
10. *Handling of complaints through the relevant complaints handling department*	Banks should have discretion to allow relevant complaints to be handled through their CPC-compliant complaints handling centres.
11. *Restrictions on tracker mortgages*	Banks should not be restricted in making arrangements which involve the removal of tracker rates.
12. *Cross-over with Personal Insolvency Act 2012*	It is not in the interests of customers or banks, and it is not in keeping with the thrust of the Personal Insolvency Act, for personal insolvency reliefs and processes to be brought to the attention of customers until all standard arrears management processes have been unsuccessfully exhausted.
13. *Mandatory call recording of all calls from or to customers in arrears*	Call recording is sensible however it should be strictly limited to contacts made by the bank under the CCMA or calls from customers to numbers provided by the bank in the context of arrears management under CCMA.
14. *Cessation of application of the CCMA / MARP when legal proceedings commence*	Clear guidance should be provided in the CCMA as to the point at which the CCMA generally or the MARP specifically will no longer apply when legal proceedings have formally commenced.
15. *Dealing with borrowers where third parties are nominated by borrowers*	The bank should maintain the discretion in appropriate circumstances to only deal with third parties, and should be in a position to refuse to deal with third parties where there is evidence to suggest prior or current behaviour on the part of the third party which is not in keeping with best practice or the public interest.
16. *Handling requests not to contact the customer by certain means*	The CCMA should specifically provide that banks are not bound by requests not to contact customers by specified means in respect of relevant communications required by the CCMA.
17. *Timeline for implementation*	Sufficient time must be provided to properly implement and embed all procedural and technology changes and related controls, and carry out necessary training. Particular regard should be given to the longer timelines required in respect of IT infrastructure and call recording. We have indicated a minimum of 6 to 12 months may be required for such changes depending on the complexity and level of change involved.

Appendix 2 – Detailed outline of key points of concern

1. *The application of all (or parts) of the CCMA to enforcement of security against non-owner occupied residential properties*

Ulster Bank position: The CCMA should be amended to only apply where the security relates to owner occupied homes. Arrears on lending secured by other residential properties should be handled under the CPC (for consumer purpose loans) and the SME Lending code (for business purpose loans).

UBG recognises that the key political and regulatory driver behind the protections and restrictions imposed by the CCMA is to ensure people in significant arrears do not lose their family home unless all reasonable efforts to resolve the arrears problem have been exhausted, and customers have been given sufficient time, breathing room and support to address their position.

The provisions of the CCMA restrict the otherwise legal protection by the bank of its contractual and property rights, particularly with regard to the imposition of a moratorium on legal action for repossession, the prohibition of the application of surcharge interest / charges, and the restrictions on agreeing an arrangement with customers involving a transfer from tracker rates to other rates.

UBG believes that this restriction is not warranted in respect of lending secured on property that is not occupied by the borrower as their primary residence (i.e. that is not their family home). The inclusion in the definition of "primary residence" in the CCMA of a property which is "*a residential property in this State which is the only residential property owned by the borrower*" mean a significant number of properties which in no way constitute 'family homes' are having to be managed under a process designed to restrict the bank's management of arrears problems, and delays the repossession process where this is appropriate.

It would appear clear from various pronouncements of Governor Honohan, Matthew Elderfield and the Minister for Finance, as well as the special treatment of principal private residences under the Consumer Credit act, 1995, the Personal Insolvency Act, 2012, and the draft provisions of the Land and Conveyancing Law Reform Bill, 2013, that the prevailing political view is that a faster resolution of arrears relating to buy-to-let and investment properties is now required (i.e. more streamlined and faster than for dealing with owner-occupied mortgage arrears).

Consequently we believe that the current revision of the Code should be used to remove non-owner-occupied homes from the scope of the CCMA. By extension, we also believe the SME Lending Code[1] should be amended to make it abundantly clear that any extension of the CCMA to relevant arrears handling under section 2.10 of the SME Lending Code("*Any enforcement of a personal guarantee over a principal private residence must be in accordance with the Code of Conduct on Mortgage Arrears*") only applies in respect of the residential property which the borrower occupies as his / her principal private residence in the State, and explicitly does not include any other residential properties.

It is worth noting that in the event loans secured on such properties were to be taken outside the coverage of the CCMA, the management of arrears on such loans would be still subject to regulatory protection under the Consumer Protection Code[2] (where the purpose of the loan is for personal consumption, such as to purchase of a holiday home, and not with a view to profit / income) and the SME Lending Code (where the loan is for business purposes – i.e. with a view to profit / income such as a Residential Investment Property / Buy-to-Let, or a standard business loan).

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[1] http://www.centralbank.ie/regulation/processes/consumer-protection-code/Documents/Code%20of%20Conduct%20for%20Business%20Lending%20to%20Small%20and%20Medium%20Enterprises.pdf

[2] http://www.centralbank.ie/regulation/processes/consumer-protection-code/Documents/Consumer%20Protection%20Code%202012.pdf

Examples of anomalous situations which are currently affected by the CCMA which do not appear to be justified by the underlying rationale for the protections in the CCMA are included in Annex I to this Appendix.

In the event the CCMA is not clearly limited to mortgages over owner-occupied principal private residences, we would request that the wording of part (ii) of the definition of primary residence be amended to "*a residential property in the State which is the only residential property owned by the borrower in the State or elsewhere*" to make it abundantly clear that a customer who owns a residential property outside the State is clearly not covered by that part of the definition of the Code.

2. *The application of all (or parts) of CCMA to business / commercial / corporate lending (including speculative lending such as residential investment properties or buy-to-lets)*

Ulster bank position: The way the CCMA addresses arrears situations is not appropriate for business lending and we recommend either excluding the applicability of certain parts of the CCMA to business purpose loans, or removing business loans from the CCMA altogether (while building certain protections into the SME Lending Code where the security concerned is a principal dwelling house).

As noted above, the CCMA currently applies to business lending under section 2.10 of the SME Lending Code where the bank seeks to enforce a personal guarantee over a principal private residence (in this regard we note previous CBI correspondence has indicated that no provision is provided for the guarantor and the borrower to be the same person (i.e. a director could provide a guarantee in his own personal capacity in respect of his limited company's business loan), and that while the SME Lending Code refers to PPR this should be read as primary residence under the CCMA).

Further, as "mortgage" is undefined in the CCMA, it appears that under the CCMA any loan for business purposes where the security relates to either the primary residence of the borrower or to the only residential property in this State owned by the borrower could automatically be subject to all the provisions of the CCMA.

In terms of what constitutes business-purpose lending, our understanding is that it is anything with a present or future profit motive which does not involve personal consumption by the borrower. This was outlined in the recent case of AIB plc v Higgins and Ors[3], citing the judgment of the European Court of Justice in Benincasa v Dentalkit[4] in stating "*only contracts concluded for the purpose of satisfying an individual's own needs in terms of private consumption*" would qualify as consumer-related and protected activity.

In this regard, we believe any loan to purchase residential investment property / buy-to-let property in which the borrower or his dependants do not intend to reside in should be correctly viewed as being purely for speculative business purposes.

In addition to our general stance that we do not believe the CCMA should extend to loans secured by residential property which is not owner occupied, from a practical perspective, the sensible management of customers in business arrears, particularly for large business / commercial / corporate customers, often does not correspond with the approach outlined in the CCMA.

Where a loan is very large, or multiple loans with common security are involved, or where mixed purpose property is concerned (and the property cannot easily be split for security purposes, such as a newsagents , pub, or farm which is also used as the business owner's residence), managing those arrears under the CCMA, and targeting CCMA-style solutions, often do not make sense. The concept of "sustainability", and considerations attaching to this, for large commercial loans are completely different than for a retail

[3] [2010] IEHC 219, 3 June 2010
[4] ECJ Case C-269/95

mortgage. Sustainability in terms of the economic success of a business (or at least the predictability of the quantum and regularity of future income) is much more complex and subject to ongoing fluctuation than sustainability in the context of a customer's affordability in the context of a house mortgage being repaid through a regular and consistent income such as salary. In many cases for large commercial loans, asset selling or equity swaps may be necessary before alternative payment arrangements can be looked at.

While we recognise that an underlying concern of the customer's family home not being repossessed other than a matter of last resort may still be apply to such loans, we do not believe that other provisions of the CCMA such as restriction of legitimate contractual rights regarding surcharge interest, charges, tracker rate restrictions etc. should apply to the terms of the loan itself, particularly for large commercial contracts.

We believe a more straightforward and proportionate approach would be to exclude the application of business purpose loans from the CCMA in its entirety (this may be done by way of a clear definition of mortgage which defines the purpose of borrowing as being for non-business purposes). The SME Lending Code provides a better framework for dealing with business-purpose loans in general. If it was felt a moratorium was still required for business loans where security consists of a principal private residence, and possibly also the requirement to capture the borrower's or guarantor's personal details as part of the SFS, then these could be achieved by changing section 2.10 of the SME Lending Code to only apply specified relevant sections under the CCMA, rather than applying a wholesale blanket application approach.

Examples of business purpose loans which do not easily fit with the MARP and CCMA are also outlined in Annex 1 to this Appendix.

3. *Reducing moral hazard by clear definitions of borrowers not co-operating*

Ulster Bank Position: The types of customer behaviour which should be viewed as "not co-operating" should be expanded to ensure the process runs effectively and is not arbitrarily delayed or frustrated.

Recent judicial experience has indicated that unless very clear drafting and definitions of non co-operation are provided in the CCMA, many judges may feel that they are left in a position where they cannot issue judgments against defendants even if the bank's (and possibly the regulator's) view would be that the customer is not co-operating, as the rules are not sufficiently clear or flexible.

A number of provisions (both existing and in the proposed changes) appear to be too subjective as currently drafted and as such do not bring clarity or certainty to the process. This can frustrate the process as well as creating unreasonable expectations for borrowers in arrears, and is compounded by the proposed insertion of "only" into the definition of not co-operating (meaning unless the very narrow definition is met, a customer can always claim they were co-operating under the Code).

While the CBI cannot directly regulate consumer behaviour, it is clear from several recent judgments (including Irish Life and Permanent plc v Duff[5]) that the CBI in drafting the Code has the power, through the definition of not co-operating, to set the situations in which a customer can seek to challenge the process, and to set minimum required standards of behaviour by consumers in order to avail of certain defences in court proceedings relative to the CCMA.

Consequently we would propose the following changes to ensure customer's responsibilities and expectations are clear to borrowers, banks, judges and the regulator alike:

- the proposed wording *"has made contact with, or responded to communications from, the lender or a third party acting on the lender's behalf but has repeatedly failed to do so with a view to reaching an alternative repayment arrangement or other solution in relation to the arrears"* provides too much

[5] [2013] IEHC 43

scope, through use of the word "repeatedly", for a customer to demonstrate that occasional / irregular but incomplete responses should be satisfactory to frustrate the bank's process. We believe the intention of the CBI with this proposed change would be reflected by changing it to state that customers who have, without reasonable cause, failed to respond in full as requested within the reasonable time period designated for response in a request from a bank for information, would be deemed to be not co-operating. This would focus on the importance of timely provision of complete information rather than the repetitive nature of action taken by the customer. By clearly delineating a maximum timeline for customers to respond to requests in full for information, a clear incentive for customers to co-operate would be provided, in turn helping to ensure the process can proceed to recovery or resolution (as appropriate) in a timely manner (for this reason we would prefer a timeline corresponding with what is reasonably provided by the bank, rather than an arbitrary 3 month timeline).

- Certain minimum standards of behaviour should be expected of customers engaged in the CCMA process. We would suggest, for example, that:
    - if a customer is not prepared to put repayment of their mortgage debt to the top of the hierarchy of debt repayments (i.e. above unsecured repayments), this should automatically be deemed non co-operative behaviour.
    - it may be appropriate to determine that if customers are not willing to reduce spending to reflect a reasonable standard of living in terms of certain expenses, this would automatically be deemed not co-operating, such as refusing to change lifestyle choices such as private school fees, satellite television fees, golf club subscriptions etc. It could be appropriate in this regard to link minimum thresholds to the Government's finalised guidance on reasonable living standards.
    - in the event our request that the CCMA is limited to solely owner-occupied homes is not agreed, if a customer proves uncontactable (for example because they appear to have absconded from the country, their home appears to be abandoned (or the people living in their home are not aware of their presence or advise they have left the country and are not contactable), or where all previously provided contact details are not connecting), we believe this should be automatically deemed not co-operating, at least unless and until the customer contacts the bank again and establishes genuine reliable communication channels.
    - breach of contract (covenant, condition or agreement) by the customer (other than the existence of arrears) should be deemed as not co-operating. Examples of such would include letting out a property which is required to remain owner-occupied, diverting income (rental or salary) from accounts agreed under the terms of the loan to be mandated to a specific account (possibly as additional security), failing to maintain adequate insurance or an adequate repayment vehicle. It may be appropriate to provide a short period of time for the customer to rectify the situation (including getting retrospective agreement from the bank) depending on circumstance, but at a basic level it would not be appropriate for the CCMA to operate in a way which supports and allows a customer to breach their contract with the bank (other than the existence of arrears) without the bank's agreement.

We also note your proposal in CP63 (although it is not reflected in the draft text) that "*where a borrower has been classified as not co-operating, he or she should be given one further opportunity to re-engage and to be considered as co-operating again. It is proposed that the lender would not be required to apply the MARP framework to that borrower if he or she is subsequently deemed to be not co-operating*". We are broadly in agreement with the proposal to allow one remediation of classification of not co-operative, however:

- we believe that the bank should be in a position to provide a time limit (such as 2 weeks after the customer is notified they have been deemed not co-operating) and / or a position in the process (such as the bank issuing formal legal proceedings) after which a customer cannot avail of any 'once-off option'
- we believe the further proposals in terms of pre-notifying the customers of impending classification as not co-operating would only serve to facilitate additional dragging out of the process (in any

event such warnings are already provided at earlier relevant stages in the process, such as when information is being sought, where establishing contact is being attempted, or where proposals on arrangements are being provided). Consequently we would suggest the proposed pre-notification under the redrafted 3.27 would be better redrafted as the relevant notification provided after a customer has been deemed not co-operating. This warning would serve to give the customers the notice of their "one more chance" and the effects of not co-operating quickly and consistently from then on. As such it would be more likely to lead to better long-term customer engagement than a cycle of last-minute warnings of impending classification and short term remedial reaction (which result we believe would be driven by the proposal as currently drafted).

- We note it may be unfair to not provide the "one extra chance" subsequently following an arrangement being established in circumstances where that arrangement had been put in place after an initial incidence of not co-operating, and where the subsequent inability to meet the terms of the arrangement and an instance of non co-operation occurs a significant length of time subsequent to the original arrangement being in place and working effectively.
  This could arise, for example, if a customer in arrears following a pay reduction had initially been deemed non co-operating before co-operating and coming to an arrangement such as a permanent restructure, and 10 years later under similar circumstances went into arrears again and was not co-operating initially before seeking to engage again.
  We would therefore suggest that the CCMA should provide that if the process revives after a customer is unable to continue to meet the repayments under an agreed arrangement for unforeseeable reasons outside their control, the customer's one chance to remedy a designation of not co-operating would be restored if already availed of prior to the arrangement being put in place.

4. *Dealing with abandoned properties and uncontactable customers*

Ulster Bank Position: In order to protect the bank's security, and in the event our request that the scope of the CCMA is limited solely to owner-occupied is not agreed, the CCMA should not be applied (or customers should be immediately deemed as not co-operating) where banks have a formed a reasonable belief that the property concerned is abandoned, or where customers are completely uncontactable.

Given the significant risk to the value of the bank's security depreciating where a relevant property has been abandoned, it is important for the bank to be able to proceed as quickly as possible where it has a reasonable belief that a property has been abandoned. If it is no longer being used on an owner-occupied basis and is vacant, we do not believe the moratorium on repossession is merited.

Similarly where a customer proves uncontactable (no evidence of them being present in their known residential address, previously provided contact telephone numbers disconnected, mail being returned undelivered etc., and may be corroborated by evidence that the customer has absconded from the country), the relevant notification provisions of the CCMA do not make practical sense (i.e. you cannot provide relevant communications or warn customers of impending status of not co-operating if they cannot physically be contacted) and the ongoing moratorium does not appear to be justified.

We suggested earlier that, in the event the scope of the CCMA is not limited solely to owner-occupied homes, a possible solution in these circumstances would be to determine such evidence to be an immediate trigger to deeming the customer not co-operating with immediate effect. An alternative approach to non co-operation may be to provide an exclusion from the CCMA in general where the bank is reasonably of the belief that either or both scenario is occurring. Either way the provisions would be supplemented by a requirement for the banks to record relevant evidence demonstrating the basis for the determination that the customer is uncontactable or believing the property is abandoned. Further provision could be made whereby if the customer subsequently establishes reliable contact and recommences occupancy of the property, then the MARP may recommence (provided the bank has not already commenced formal legal proceedings at that stage).

5. *Unsolicited contact – telephone and personal visits*

Ulster Bank Position: Banks should be in a position to engage customers as required and any restrictions applicable should be clear, justifiable and proportionate.

We welcome the proposed changes which will remove the general ban on more than 3 unsolicited contacts per month, and partly reflect your communication in April 2012 regarding unsolicited communications. As you are aware, experience has consistently demonstrated that early and regular engagement with customers is critical in seeking to address an arrears position in the best interests of the customer.

However, as noted earlier, it is important that the drafting of the Code is such that inadvertent consequences do not arise to frustrate the normal operation of the process. We would therefore raise the following issues with regard to the proposed text:

- The terminology "aggressive" and "intimidating" may be interpreted differently by different banks, customers, or judges – as such, it would be better if this terminology was removed (given there is a general requirement to treat customers fairly in communicating with them, this arguably is already in place), or, if it is to be included, certain criteria or indicia of aggressive or intimidating behaviour may be helpful in ensuring customers and banks understand what the relevant behavioural thresholds are
- The requirement to give borrowers "sufficient breathing space" appears excessive and is unclear. In reality, a bank does not contact a customer unless it needs to and is doing so for a specific purpose. As such, any arbitrary "breathing space" requirement could serve to interfere in necessary customer engagement where the need to contact a customer arises. For example, if following an unsolicited telephone call, the caller from the bank realised they had omitted certain information, or wanted to clarify something they had been told, or if some unconnected issue were to arise meriting a phone call, it would appear that an unspecific length of time would be required before seeking to contact the customer. This does not lend itself to regular and necessary engagement where required, and as such should be removed. The general requirement that unsolicited contact should be proportionate and not excessive should work to ensure unnecessary and disproportionate contact can be addressed through regulatory engagement (including enforcement where appropriate).
- The provision that future contact should be agreed should be explicitly without prejudice to the bank's right to contact the customer on an ongoing unsolicited basis as otherwise it could be read (as currently written) incorrectly as disallowing any future contact after unsolicited contact is first established.
- The requirement for board of directors sign-off on contact policy may be inappropriate. The relevant oversight committee for developing policy on the handling of mortgage arrears (where sucha committee is in place under the governance structure of the bank) would be a more appropriate venue for the approval of such a policy.

We would also disagree with any suggestion that unsolicited contact should be restricted until the customer is imminently due to be classified as not co=-operating. If a personal visit may best achieve early engagement with a customer, a general requirement for contact (including visits) to be proportionate and not excessive should be sufficient to allow banks scope to visit customers when deemed appropriate and most likely to achieve necessary engagement to resolve the situation.

We would also note that changes to the unsolicited contact provisions in the CCMA, or changes in scope of the CCMA, would logically justify changes to the provisions in the CPC insofar as lending secured on other residential properties is concerned. It would not make sense, for example, for the bank to be more restricted in seeking to achieve early engagement on, and faster resolution of, arrears relating to second residential properties used as holiday homes or buy-to-lets, than for seeking to resolve arrears problems relating to owner-occupied homes. We would therefore request the contact limit restriction in general be removed from the CPC for arrears related all lending (secured and unsecured). If this was not agreeable, a

more limited removal of the restriction relating to lending secured by residential properties not covered by the CCMA would at least seem merited.

6. *Early termination of moratorium for co-operating customers where MARP process completes without an agreed arrangement*

Ulster Bank Position: The proposal to allow for early termination of the repossession moratorium is supported where the Mortgage Arrears Resolution Process ("MARP") completes and the customer refuses an offered arrangement (or where no sustainable arrangement is offered).

We welcome the proposed amended text which provides for an early termination of the moratorium when a borrower refuses an offered arrangement, and we would agree with the general proposal in CP63 (although it is not reflected in the amended text) that, where no arrangement can be provided on the basis no sustainable arrangement can be offered, the moratorium would become immediately rescindable on completion of a certain period of notice, subject to a minimum period of notice. Such action would be in line with the generally stated intention of the CBI and Government to seek to draw a line under unsustainable arrears situations as quickly as reasonably possible.

7. *Dealing with customers with short term arrears problems*

Ulster Bank Position: Customers who have short term arrears problems should not be subject to the MARP in circumstances where their problem can be demonstrably remedied within a set period of time.

We note the subtle proposed change in definition of arrears customers who are captured by the MARP from after 31 days arrears to day 1 arrears. We are concerned that a certain element of natural flexibility inherent in the exiting framework, whereby customers who are not currently captured by the MARP for very short-term reasons (such as an emergency unplanned expense) or reasons outside of their control (such as a technical problem receiving their pay or income on time) would now appear to be captured under the proposed revised wording. We do not believe this is appropriate or proportionate given that many of these customers would not have a genuine arrears problem and would not merit the close scrutiny and process-driven work required by the MARP.

This change, if implemented, potentially creates a number of administrative challenges, including identification of such customers as arrears customers for reporting purposes, ensuring relevant discussions are recorded and filed as arrears cases, understanding the correct time to procure the relevant information for the SFS etc.

As we are unclear as to what the motivation is behind introducing an earlier definition of customers subject to the MARP, it is not possible to propose an alternative approach to address relevant regulatory concerns. In the absence of such understanding, we would request that the definition remains unchanged from the existing drafting.

On a related issue, we note that the revised wording of the CCMA proposes in draft provision 3.37 that *"Prior to completing the full assessment of the borrower's standard financial statement, a lender may put a temporary arrangement in place where a delay in putting such an arrangement in place will further exacerbate a borrower's arrears or pre-arrears situation. Such a temporary arrangement should not last for more than three months. Any subsequent arrangement should be based on a full assessment of the standard financial statement"*.

We believe that short term arrangements (which could be similar to the temporary arrangements referred to here, although we are unsure whether this was the intention) without completion of a full SFS would be appropriate where the customer's specific circumstances are such that there is a very short term payment

capacity and the bank has been provided with evidence that the customer will return to full mortgage repayment capacity within a defined period of time. In these circumstances, completion of an SFS and various arrangements would be anticipated to be unnecessary, and in many circumstances a limitation of 3 months on such arrangements would appear to be inappropriate.

Examples of such situations may include (but are not limited to):

- where a customer has a reduction in income (for example through a pay cut) but can continue to afford their repayments in full by cancelling certain subscriptions which require a minimum period of notice, or
- where a customer has a reduction in income a number of other unsecured loans are due to expire in a short period of time, after which the customer will have sufficient repayment capacity to meet mortgage repayments in full, or
- a discussion with unsecured creditors is necessary to arrange a reduced monthly repayment for those unsecured debts over a longer term is required, or
- where the borrower is moving between jobs and will be out of work until the commencement of his new contract of employment which has already been agreed but not due to start immediately, or in similar vein, if the borrower is availing of short-term unpaid maternity or paternity leave, or if the borrower is injured and cannot work for limited period of lime and is not entitled in his employment to paid sick leave sufficient to cover the short time during which he is recovering.

In all these cases it is clear the customer simply requires a short term repayment moratorium after which the repayments can continue in full (either with recapitalisation and a term extension to maintain similar monthly repayments, or with a short term temporary increase in repayments to cover the shortfall that has arisen in the meantime), and as such completion of a full SFS and detailed consideration of arrangements at any early stage would not be necessary.

The provision of an immediate short-term payment moratorium would allow the customer the breathing room to surmount the repayment obstacle. In the event that the customer's situation is not resolved as expected within the expected period of time, a full SFS and review would then be appropriate.

We believe this is a reasonable approach to such customers in arrears, and as such support an amendment of the draft requirement 3.37 to allow for the provision of a payment moratorium for a limited period of time without completion of the SFS where the customer has demonstrated to the bank's satisfaction that full monthly repayments can recommence within a defined limited period of time. In light of the examples above, we believe an arbitrary 3 month threshold may be too short, as if the customer's position is confirmed and, for example, the bank believes a 6 month period would be sufficient, the merit in going through a full SFS review and proposals for arrangements would still be questionable (a reduced analysis of income and expenditure may still be appropriate) . A requirement to outline to customers the financial consequences of the term extension, recapitalisation or short term topped up mortgage repayments on recommencement would also seem to be appropriate in this context.

8. *Content, format and timeline for completion of SFS*

Ulster Bank Position: Reduction or non-completion of the SFS is justified in certain circumstances. the CCMA should clearly allow a SFS to be provided orally provided a contemporaneous record is kept and a written SFS can being reproduced and provided to the customer on request.

In respect of your request in CP63 for examples where full completion of a SFS is not necessary, we believe that many of the examples cited in 7. above would be equally applicable to a significantly reduced SFS (if a full exception was not provided for such examples).

In respect of the new wording that a standard financial statement must be provided to the borrower "*at the earliest appropriate opportunity*", we believe this is not sufficiently clear (particularly if the proposal is kept for the MARP to apply to customers who are in arrears from day 1 rather than day 31) and may give rise to confusion and avoidable arguments in court by borrowers that the bank has not technically complied with the necessary process under the Code (for example by arguing the SFS should have been provided earlier, in that an earlier time would have been more appropriate).

We suggest either the existing pre-CP63 wording be maintained, or the proposed wording be amended to reflect that the SFS should be completed by the customer with the bank once communication with the customer regarding the arrears situation has been established, and it is apparent that a review of the customers situation is appropriate with a view to either offering to put an arrangement in place or advising the customer that the bank's view is that no sustainable arrangement can be offered.

As you are aware, the bank's preference is that the bank can collate and record the relevant information under SFS through verbal communication with the customer, and can provide the customer with a written record on request. In addition, we are concerned with a mandatory requirement to offer to assist customers (both as proposed in respect of unsolicited personal visits, and in general in respect of completion of the SFS) in completing the SFS, as in some exceptional cases (particularly commercial cases where complex litigation may be an issue) the bank may feel it is more appropriate to be removed altogether from the customer's own statement of their financial position.

To ensure the bank would not be deemed to be acting outside of the requirements of the CCMA by reason of the requirements being overly vague or ambiguous, we would suggest sections 3.29 to 3.31 of the revised CCMA be reworded along the lines of the following:

3.29 *A lender must obtain relevant information from a borrower in arrears or pre-arrears as outlined in the Central financial statement*

3.30 *In relation to all MARP cases* [assuming the 31 day threshold is reintroduced], *a lender:*

- *a)* *must obtain the relevant information as outlined in the SFS once contact regarding the arrears or pre-arrears situation has been established, and it is apparent that a short-term payment moratorium would be insufficient to allow the customer to return to full mortgage repayments within an agreed period of time;*
- *b)* *may offer, where the lender deems it appropriate, to assist the borrower in completing the SFS; and*
- *c)* *must inform the borrower that he/she may wish to seek independent advice to assist with completing the standard financial statement, e.g., from MABS or an appropriate alternative*

3.31 *The lender must pass the complete information obtained through the standard financial statement to its ASU immediately on receipt, and must provide a copy of the information, on request of the borrower, following receipt of such information.*

On a separate but related note, one area not addressed currently by the CCMA which probably merits further discussion involve what banks are expected to do (and what responsibilities should customers have in this scenario to avoid being deemed not co-operating) to resolve a situation regarding joint borrowers who have separated where the information provided in the two SFSs is clearly and materially inconsistent.

9. *Review of customers following arrangements being put in place*

Ulster Bank Position: Revised timelines for reviews of arrangements are appropriate, however those outlined in CP63 should be amended.

We note from CP63 (although no draft wording was provided) that you propose to remove the requirement for ongoing reviews where the relevant arrangement put in place are applied over the life of a mortgage

('permanent restructures'), such as term extensions and capitalisation of arrears. We would ask that a specific provision be inserted to allow for banks to conduct such reviews at our discretion where we would deem them to be appropriate (e.g. where we have reason to believe the customer's position may have improved).

As regards reviews of 'normal" arrangements put in place which are not permanent restructures, the revised wording under CP63 is not clear in respect of when the reviews should take place – for example, in respect of short term and long term reviews, it appears that a review must take place at some stage during the relevant term of the arrangement, whereas in respect of medium term arrangements the draft requirements clearly require a review on the specific 3 year anniversary of the arrangement being entered into.

As reviews will be automatically required during the term if problems arise, we would suggest a more workable requirement for arrangements which are proceeding as planned would be:

- for short term arrangements to be subject to review at the end of the relevant term of the arrangement (i.e. no interim review requirement)
- for medium term and long term arrangements that the bank be required to review the arrangement at least once between a third and two-thirds of the way through the term of the arrangement

We do not believe a full review will usually be merited where a customer has met the terms of the arrangement and has not indicated any difficulty in returning to the relevant post-arrangement repayment schedule. We would suggest the conduct of such a review be left as a matter of discretion to the bank.

10. Handling of complaints through the relevant complaints handling department under CPC rules

Ulster Bank Position: Banks should have discretion to allow relevant complaints to be handled through their CPC-compliant complaints handling centres.

We note your proposal in CP63 (although it is not reflected in the draft wording of the revised Code) that complaints relating to the treatment of customers under the MARP or regarding compliance with the CCMA may be handled by the bank's complaints department. We are in favour of the ability to do this, and we would request that the provision be inserted in a discretionary manner such that each bank can decide whether and when to handle such complaints outside of the Appeal Board and instead by the Complaints Handling Centre, rather than a prescriptive requirement requiring all such complaints to always be taken out of the Appeals Board process.

11. Restrictions on tracker mortgages

Ulster Bank Position: Banks should not be restricted in making arrangements which involve the removal of tracker rates.

We note the proposal in CP63 (although it is not reflected in the draft wording of the revised Code) to allow arrangements to involve the removal of tracker rate reversion provisions where it would be financially advantageous to the customer.

We would reiterate that our belief is that where a customer has broken the terms of a contract (including, but not limited to, the existence of arrears), the bank should not in any case be legally prohibited from the removal of a tracker rate as part of agreeing an arrangement or permanent restructure. In the case of Irish Life and Permanent plc v Financial Services Ombudsman[6], White J determined (in the circumstances of the case) that where the bank and the customer were discussing a change in the mortgage interest rate type, the parties were not in a fiduciary relationship with each other, as in law the bank was entitled to have

[6] [2011] IEHC 422

regard to its own financial interest. It is well established that in the current circumstances of the financial markets, maintenance of tracker rates other than where legally and contractually required is often not in the banks' financial interest, and as such we believe it is inappropriate to generally prohibit the transfer from a tracker rate as part of an arrangement in circumstances where the customer has breached their contract.

In any event, in respect of the proposal that banks should be in a position to agree a transfer from a tracker rate where it is financially advantageous to the customer, we would agree to this change and would make the following observations:

- in circumstances where it would not be in the bank's financial interest to offer an arrangement on a tracker rate (as it would maintain a loss-making situation), we believe it would be financially advantageous to the customer to be offered an arrangement at a different rate rather than for no sustainable alternative to be offered
- in any circumstance in which the bank were to offer an arrangement involving a transfer from a tracker rate, the financial advantage to the customer could be represented by an extended term, meaning the customer pays less per month, even if the total amount repayable may be more than if the customer had not gone into arrears (i.e. debt write off or a "payment in lieu" should not be a necessary precursor to the customer's financial advantage being established, as implied in CP63)
- any revised wording allowing for transfers from tracker rates must be clear that "permanent restructures" are not excluded from such allowance

12. *Cross-over with Personal Insolvency Act 2012*

Ulster Bank Position: It is not in the interests of customers or banks, and it is not in keeping with the thrust of the Personal Insolvency Act, for personal insolvency reliefs and processes to be brought to the attention of customers until all standard arrears management processes have been unsuccessfully exhausted.

We note that the Personal Insolvency Act is aimed at insolvent customers who have exhausted all relevant business-as-usual options in respect of their arrears, particularly in respect of secured property under a personal insolvency arrangement where the customer must be able to demonstrate they have co-operated with a bank for at least 6 months before seeking the relevant insolvency relief.

We therefore believe the requirement to provide information on personal insolvency reliefs as part of the mortgage arrears process is totally inappropriate unless and until it is determined the customer's position is unsustainable or the customer refuses an offered arrangement. As a result, all proposed required references to personal insolvency reliefs /processes should be removed regarding generic website material the MARP booklet, and in any other information provided at the start of, and during the life of, the MARP process, otherwise the customer may be confused as to what options are open to him/her, or worse the provision of this information may act as an incentive to seek to bypass the MARP.

In addition, we would disagree with any proposal that banks should be required to provides customers' with information produced by the Government or other third parties regarding the personal insolvency processes. Informing the customer of the persons and / or places to approach for more information should be sufficient.

There are other issues regarding the crossover between the Personal Insolvency Act, the CCMA, the CPC and the SME Lending Code. These are not covered in this submission, however we would suggest a separate discussion is merited regarding these, and that no revisions should be made to the CCMA until these discussions occur in order to ensure any necessary change is consolidated and not staggered over a longer period of time.

13. *Mandatory call recording of all calls from or to customers in arrears*

Ulster Bank Position: Call recording is sensible however it should be strictly limited to contacts made by the bank under the CCMA or calls from customers to numbers provided by the bank in the context of arrears management under CCMA.

While the general requirement to record calls with customers in arrears is understood in the wider context of demonstrating compliance and record keeping, it is important to recognise the difference between customers in arrears under the MARP and customers outside the MARP, particularly customers whose arrears may be very short term and with whom the bank has not yet established communication channels under the MARP.

For example, if a customer was in arrears because of a problem arising with an unrelated payment coming in or out of a customer's current account (such as a salary payment being delayed or misdirected, or a direct debit being incorrectly taken out of the account either at the wrong time or in a larger amount than should have been the case, resulting in funds in the account being insufficient for the purpose of a mortgage repayment being made), the customer would not have a genuine arrears problem requiring review under the MARP.

As written if that customer rings a branch or other standard helpline regarding the status of the payment or explaining what went wrong, the CCMA would seem to require the call to be recorded as it ultimately has a bearing on the customer's mortgage repayment. This would be difficult to control and appears inappropriate.

In addition if a customer were to call the wrong department in the bank regarding their arrears and were advised the correct number to contact, as the requirement is written generally that original incorrectly directed call would need to be recorded, which does not appear to be appropriate.

We would suggest that the requirement be reworded to require call recording of any calls made by the bank under the MARP, or made by the customer to phone numbers specifically provided by staff under the MARP or in the general website section / information booklet relating to arrears.

14. Cessation of application of the CCMA/MARP when legal proceedings commence

Ulster Bank Position: Clear guidance should be provided in the CCMA as to the point at which the CCMA generally or the MARP specifically will no longer apply when legal proceedings have formally commenced.

The CCMA does not explicitly provide for the point at which the CCMA (or MARP) no longer applies to customers who are in recoveries and legal proceedings have commenced. Further discussion would seem appropriate to determine if and how this may be catered for in the Code, in order to provide more legal certainty to banks, customers, and courts. Our preference would be that the CCMA at least explicitly provide that the MARP does not apply once legal proceedings have been formally issued following a customer being deemed non-compliant (or possibly 30 days or later thereafter).

We would also request that requirement 3.56 be amended to reflect that the bank must not apply to the courts to commence legal action for repossession of the borrower's principle private residence unless the customer in arrears has been determined as not co-operating, or on consent of co-operating customers who are in arrears. The current wording has been problematic in that it doesn't define an end point at which the "every reasonable effort" can be clearly determined to have been exhausted. We believe our proposal addresses the concern that banks should not seek repossession without having followed the MARP.

15. Dealing with borrowers where third parties are nominated by borrowers

Ulster Bank Position: The bank should maintain the discretion in appropriate circumstances to only deal with third parties, and should be in a position to refuse to deal with third parties where there is evidence to suggest prior or current behaviour on the part of the third party which is not in keeping with best practice or the public interest.

We note the proposed requirement to contact customers as well as nominated third parties when such third parties have been duly nominated. While we do not disagree with this in principle, we would suggest, particularly for sensitive cases (e.g. where the health of the borrower is an issue) or large commercial cases, some discretion should be afforded to the bank by the Code to only contact the third party and not the borrower where this is what the borrower has requested.

In addition, we would reiterate our previously raised concerns that the bank is not permitted currently under the Code to refuse to deal with certain third parties where there is good reason to do so, particularly in the continuing absence of legislation regarding the regulation of debt advisors. We believe that banks should be afforded this right and the Code should provide some exception to the obligation to deal with third parties where the bank has reasonable evidence that the third party has engaged in certain behaviour which would not be deemed to be in keeping with best practice or the public interest.

16. Handling requests not to contact the customer by certain means

Ulster Bank Position: The CCMA should specifically provide that banks are not bound by requests not to contact customers by specified means in respect of relevant communications required by the CCMA.

The CCMA is silent on customer expectations and bank's obligations if a customer requests communications under the Code to only be made by specified means (e.g. if a customer says they don't want to receive letters, they only want to receive telephone calls, or vice versa). Given the importance of customer engagement and the bank meeting its regulatory obligations, we would request that a specified provision be inserted in to the Code outlining that banks are not required to abide by a customer request to only contact them via a specified medium in respect of communications required under the Code. This might also be bolstered by an additional classification of not co-operating customers where the customer refuses to communicate by telephone or mail.

17. Timeline for implementation

Ulster Bank Position: Sufficient time must be provided to properly implement and embed all procedural and technology changes and related controls, and carry out necessary training. Particular regard should be given to the longer timelines required in respect of IT infrastructure and call recording. We have indicated a minimum of 6 to 12 months may be required for such changes depending on the complexity and level of change involved.

We note that CP63 did not provide an indicative timeframe for implementation of relevant changes. From experience of previous implementation of the Code and the subsequent amendments, we would request that an explicit implementation window be provided.

While we cannot provide a reliable indication of how long it will take to implement the changes (as decisions around a number of changes are not yet fully developed or affirmed), as a general guide we would indicate that documentary changes usually take 3 to 6 months at least (particularly where the documentation is centrally driven from a technology system) and training and revision of processes can require a similar concurrent period of time to embed properly with relevant controls and training.

Having already investigated the feasibility and challenges of call recording in certain circumstances, we would also warn against a short time period in respect of the proposed requirement to record all calls from

or to customers in arrears (initial investigation suggests that even assuming a more limited scope as request, this could still reasonably take at least 6 to 12 months).

Also, given the importance of demonstrating Code compliance in court actions, it is vital that the bank's ability to proceed to legal action is not unduly restricted by the imposition of an implementation deadline which does not provide a realistic timeframe in which to implement the necessary changes properly.

Consequently we would ask at this stage for an explicit implementation window of at least 6 months to be provided in the Code for changes other than call recording, and this proposed timescale will need be reviewed following the next stage of consultation by which time certain policy decisions and changes will have progressed by the Central Bank.

18. Minor technical amendments

There are a series of minor technical amendments we would suggest to the draft revised wording of the CCMA under CP63 in order to provide additional clarity in respect of expectation and responsibilities of banks under the Code:

- in the draft amendmetns to the £application of the Code" section, we note that Provision 6.8 of the CPC is expressly disapplied for mortgage arrears under CCMA. In light of court judgments, and for the avoidance of doubt, we would request that a specific provision be inserted permitting the bank to discuss the existence of arrears and / or arrangements with guarantors where the bank deems such discussion appropriate. We also seek that a similar amendment be made to the SME Lending Code and CPC as regards any lending secured by residential property which is not covered under the current (or proposed future) scope of the CCMA.
- in the definitions section, mortgage is not defined – as articulated earlier, a definition would be helpful in providing greater legal certainty as to the applicability of the Code.
- the definition of unsolicited personal visit does not include specific reference to communicating with customers in the context of those visits. We do not believe the restrictions on unsolicited visits should apply to visits for purposes not related to communicating with customers (such as valuations, surveys, or to generally establish whether anyone is currently occupying the property).
- in the definitions section there is no definition of sustainability. Separate to the previously raised concerns regarding the differential position of corporate / business lending arrears, in order to pre-empt any challenges in hindsight where an agreement collapses that suggest the bank did not comply with the MARP, we would suggest a sustainable arrangement should be defined as an arrangement which the bank has reason to believe, based on the information and assurances provided to them by the customer, that the customer will be able to repay during the term of the arrangement, and that the customer will be able to repay the remainder of the mortgage as agreed at the end of the arrangement [this should be checked against our working definition of sustainability for the purpose of targets].
- in the draft revised sections 3.12, 3.22 and 3.42, reference is made to "any other credit reference agency or credit register". As the new universal credit register under the Credit Histories Bill in the Republic of Ireland has not been commenced, we would suggest that these changes should not be made to the requirements unless and until it is due to be commenced.
- in the draft revised sections 3.12 and 3.13, reference is made to providing customers with "details of any other Government initiatives to assist borrowers in financial difficulty" – we do not believe placing the onus on the bank to continuously identify external initiatives beyond our control and make our customers aware of them is a fair or practical requirement. As such we would suggest this should be removed, or relevant initiatives which the bank must refer to should be specified exactly in the Code. In a similar vein, the draft requirement 3.46(b) to provide relevant publications produced by the Insolvency Service of Ireland should be replaced by a requirement to signpost where specified publications are available (or preferably general contact details, including the website, of the ISI).

- In draft requirement 3.24, we would request a clear cut-off point be provided after which the arrears information is no longer required.
- in the draft requirement 3.25 dealing with unsolicited personal visits, the reference to "a local branch" should be changed to "a bank premises". Also in respect of draft requirement 2.25 (and draft requirement 3.30 as previously stated) the requirement of the bank to offer to explain the standard financial statement to the borrower and to offer to assist the borrower to complete the standard financial statement should be amended to provide the bank with some discretion in given circumstances whether to offer these (particularly where there is some hostility from the customer or where litigation is a realistic possibility).
- in the draft revised sections 3.44 and 3.45, it should be clear that the reference to "associated costs or charges" relates to costs and charges that may be imposed in a general sense by the bank in relation to the arrears, and not the specific monetary amount of charges in the customers specific circumstances or any charges or costs from third parties (or bank charges not directly related to the arrears).
- in general, we would note references to provisions in other codes such as the CPC to specific provisions in the CCMA will need to updated to ensure they continue to refer to the correct requirements.

Appendix 1 – Annex I

Examples of loans secured on primary residences under the CCMA (as currently drafted) which we do not believe should fall under the CCMA at all (i.e. they should fall under the CPC or SME Lending Code, with additional specified protections if appropriate) or alternatively should not be subject to certain provisions of the CCMA or MARP

- Customers who reside outside of the State who have a borrowed to buy a holiday home or residential investment property in the Republic of Ireland (in such circumstances unless and until the bank has evidence that the customer owns a residential property outside the State, which can be hard to establish, the safe option under the current wording of the CCMA would seem to be to assume the CCMA applies).

- Customers who have a series of multi-million Euro commercial loans and business overdraft facilities, which are all cross-secured against a series of properties, including the customers Principal Private Residence

- Business customers who have borrowed to purchase a large plot of land in the State for the purpose of residential real estate development, such loan being secured on that land, and who either currently reside on property constructed on the land, or the property constructed on the land is the only residential property owned by that borrower

- Business customers who have principally borrowed to purchase a property to run their business, however the property also serves as their residence and cannot easily be annexed (or cannot be annexed without the customer's consent, which consent may not be forthcoming if the customer wishes to frustrate repossession proceedings for the business-related portion of the land).