



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

T +353 (0)1 224 6000

Bosca PO 559
Baile Átha Cliath 1

PO Box 559
Dublin 1

www.centralbank.ie

Deputy John McGuinness
Chair of the Committee
Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach
Leinster House
Kildare Street
Dublin 2

15 July 2021

Re: Consumer protections for Irish SMEs and homeowners whose loans have been sold to Credit Servicing Firms.

Dear Deputy McGuinness,

I refer to your email to the Governor dated 3 May 2021 regarding the Consumer Protection (Regulation of Credit Servicing Firms) Act 2018 (the 2018 Act), which has been passed to me for response.

The regulation of credit servicing firms and the protections for borrowers has been extensively covered in correspondence between the Central Bank, yourself and the Oireachtas Committee on Finance, Public Expenditure, Reform and Taoiseach, over the past few years.

Regulatory framework for the protection of borrowers

The regulatory framework provides a significant number of protections and supports for borrowers in or facing mortgage arrears, in recognition of the distress and, in the case of mortgages secured on a borrower's primary residence, the vulnerability of borrowers at risk of losing their home. Most loan agreements include a clause that allows the original lender to sell the loan on to another firm. When a loan is sold, the relevant Irish and EU consumer protections continue to apply.

The protection of mortgage loan borrowers, including those in arrears, is a key priority for the Central Bank. All regulated firms, including banks, retail credit and credit servicing firms, are



obliged to comply with the Consumer Protection Code 2012 (the Code), the Code of Conduct on Mortgage Arrears 2013 (the CCMA), the Central Bank (Supervision and Enforcement) Act 2013 (Section 48) (Lending to Small and Medium-Sized Enterprises) Regulations 2015 (SME Regulations 2015), in addition to a range of other provisions of Irish financial services law which are outlined more fully below. As such, borrowers have the same protections regardless of the type of regulated entity that owns their loan.

Collectively, the abovementioned codes and legislation provide a strong consumer protection framework, providing rules with which regulated firms operating in Ireland must comply by law. The Central Bank has reviewed, advocated for and strengthened, where necessary, these rules in order to ensure that the regulatory framework remains fit for purpose and continues to ensure the protection of all consumers in their dealings with all regulated firms.

Credit servicing regime

When loans are sold or transferred, the holder of the legal title to the credit, the decision maker and strategy setter of a portfolio of credit agreements must be authorised by the Central Bank as either a credit servicing firm, retail credit firm or credit institution.

Since the introduction of the Consumer Protection (Regulation of Credit Servicing Firms) Act 2015 (the 2015 Act), credit servicing firms have been subject to the provisions of Irish financial services law that apply to regulated financial services providers. This resulted in a significant strengthening of consumer protection for borrowers whereby all consumer protection obligations would travel with loans, if they were sold by a bank. Under the 2015 Act, the new loan owners themselves did not directly fall to be regulated; rather, it was the company appointed to 'service' those loans by the loan owner.

The 2018 Act, which came into effect on 21 January 2019, has now also brought loan owners directly under Central Bank regulation and supervision under an extended definition of credit servicing, and also within the scope of the relevant consumer protection framework. This extended definition of credit servicing includes:

- holding the legal title to credit granted under the credit agreement;
- determination of the overall strategy for the management and administration of a portfolio of credit agreements; and
- maintenance of control over key decisions relating to such portfolio.



While the 2018 Act captures “legal owners”, it does not capture “beneficial owners”. Beneficial owners typically retain the economic interest in a portfolio, but do not legally own the portfolio. The portfolio is owned by another entity (the loan owner) who holds the legal title to the security for the loan and has the contractual relationship with the borrower. Beneficial ownership is not a regulated activity, as it is not an activity captured by the 2018 Act. It is a matter for the Oireachtas to determine if beneficial ownership should be regulated.

It is also worth reiterating that in the context of the activity of the determination of the overall strategy for the management and administration of a portfolio of credit agreements, the Central Bank has no power, nor would it be appropriate for it to have the power, to impose requirements on loan owners requiring them to have particular commercial strategies or to make particular decisions, where they are complying with regulatory and contractual obligations. Regulated entities are entitled to rely on their contractual rights and make their own commercial decisions within the parameters of consumer protection framework. Where loan owners are not acting in a manner which is compatible with relevant regulatory and contractual requirements, we do of course intervene and challenge these firms on how they discharge their strategies with the objective of ensuring long term sustainable solutions are in place for borrowers in arrears or distress.

SME Regulations 2015

The SME Regulations 2015¹ includes protections for micro, small and medium-sized enterprises who have, or are facing, arrears or financial difficulties. Key protections include that a regulated entity must offer the SME borrower the option of a review, to identify what options are available to address the anticipated arrears or financial difficulties. The regulated entity must have in place policies and procedures for dealing with borrowers in financial difficulties, the core objective being to assist borrowers with resolving their financial difficulties. An appeals mechanism is also provided for, where an entity refuses to offer an alternative arrangement.

¹ The SME Regulations apply to micro, small and medium-sized enterprise within the meaning of the Commission Recommendation 2003/361/EC



Based on the continuing supervision of the credit servicing sector, the Central Bank has not identified any systemic issues, with regard to the SME Regulations 2015, in this sector. However, as we have set out on a number of occasions previously, if there is any relevant information that you wish to bring to our attention, we will of course consider it, in the context of our supervision of the sector.

I trust that the above is of assistance.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Gráinne McEvoy', written in a cursive style.

Gráinne McEvoy
Director of Consumer Protection