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Mr Tom Sheridan
Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach
Leinster House
Dublin 2

2 December 2019

Dear Mr Sheridan,

Please see below further information which the Central Bank agreed to provide to the Oireachtas Committee on Finance, Public Expenditure and Reform, and Taoiseach during our appearance on 24 October 2019.

1. Wider impact of out of court settlement raised by Deputy Doherty

The Central Bank has instructed each lender to consider whether there is potential for wider impact following its investigation of individual outcomes regarding tracker mortgage related complaints, appeals received and court cases lodged. While the supervisory phase of the Tracker Mortgage Examination is now complete, the Central Bank continues to monitor the outcome of any complaints, appeals and court cases, including cases settled by lenders, to ensure lenders are completing a wider read across where necessary.

Our analysis is ongoing on settlement cases including the case referenced and we have not to date identified any concluded settlement cases that have given rise to wider customer detriment. It should be noted that while lenders will consider whether there is potential for wider impact in any such cases, many outcomes are based on the specific detriment to a customer and do not have a wider read across to other customers. With regard to the specific case in question, this was settled on the basis of the specific circumstances of the customer.

The Central Bank previously responded to a query from Deputy Doherty on this matter on 4 July 2019.



2. Bank of Ireland issue raised by Deputy Joan Burton

This matter was dealt with in full by Ms Rowland during the Committee proceedings.

3. The treatment of borrowers by Credit Servicing Firms raised by Deputy Burton

The protection of mortgage loan borrowers, including those in arrears, is a key priority of the Central Bank. All regulated firms, including banks and credit servicing firms, are obliged to comply with the Consumer Protection Code 2012 (the Code) and the Code of Conduct on Mortgage Arrears 2013 (the CCMA) in addition to a range of other provisions of Irish financial services law which are outlined more fully below. Collectively, these 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 regulated firms.

The 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. In other words, there is no reduction in the consumer protection rules for borrowers if their mortgage is sold.

The Consumer Protection (Regulation of Credit Servicing Firms) 2015 brought 'credit servicing' under Central Bank regulation and supervision. 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 to a new non-bank owner. Under the 2015 legislation, 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 Consumer Protection (Regulation of Credit Servicing Firms) 2018, which came into effect on 21 January 2019, has now also brought the loan owners directly under Central Bank regulation and supervision, and within the scope of the relevant consumer protection framework. The net result of these changes means that there are now 35¹ loan owners regulated under the 2018 legislation, as well as seven associated Credit Servicing Firms regulated under the 2015 framework. As the loan owners were required to obtain transitional authorisation status by 21 April 2019, they are now subject to both the Central Bank's regulatory framework and supervisory oversight. Furthermore, in order to move from transitional to full authorisation status, the 35 firms must now pass the Central Bank's robust Authorisation and Fitness and Probity regimes. If any of the firms fail to meet the required standards, they will be obliged to exit the market.

¹ While 37 firms were granted transitional authorisation status, two of these firms subsequently withdrew their transitional application for authorisation, bringing the number of transitional applicants under the 2018 Act to 35.



Since 2015, CSFs have been subject to the provisions of Irish financial services law that apply to regulated financial service providers, including, but not limited to:

- the Consumer Protection Code, 2012,
- the Code of Conduct on Mortgage Arrears, 2013,
- the Central Bank (Supervision and Enforcement) Act 2013 (Section 48) (Lending to Small and Medium-Sized Enterprises) Regulations 2015,
- the Fitness and Probity Regime,
- the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) Minimum Competency Regulations 2017, and
- the Minimum Competency Code 2017.

The Central Bank also published Authorisation Requirements and Standards (the Standards) in December 2015. These Standards require that CSFs must be able to demonstrate that they are in a position to conduct their affairs in a manner that ensures the best interests of their customers are protected. The Standards were imposed on CSFs as a condition of authorisation and must be complied with on an on-going basis.

In advance of the 2018 legislation coming into effect on 21 January 2019, the Central Bank had published and updated the Standards to reflect that loan owners now fall to be directly regulated. The Standards provide that a CSF must structure, organise and resource its business to ensure that it is in a position to demonstrate that it can comply with applicable regulatory requirements. This includes ensuring that adequate and effective control of the firm rests in the State, that all firm records are available to the Central Bank, and that the firm is not outsourcing activities to any extent that would impact on its ability to meet all applicable regulatory requirements.

The Standards also contain additional requirements for CSFs which hold the legal title to credit granted under a credit agreement and which engage in associated ownership activities. These requirements include that each CSF must have effective processes for the development, implementation and oversight of the firm's overall strategy for the management and administration of its portfolios of credit agreements and the maintenance of control over key decisions relating to those portfolios.

The Central Bank is currently in the process of rigorously assessing each of the 35 applications for authorisation to determine, on a case-by-case basis, whether or not the applicant firm has demonstrated that it meets the relevant Standards. The Central Bank is also assessing whether key persons in senior positions with the applicant firms demonstrate that they meet the required Fitness and Probity Standards.

While under consideration for full authorisation, the loan owners are subject to the full suite of consumer protection legislative requirements, including the Central Bank's statutory codes. Each loan owner must also keep the existing associated authorised credit servicing firm in place until its application for full authorisation is approved or refused.

In October 2018, in recognition of the fact that Irish banks, in common with their European counterparts, were increasingly opting for loan disposals (sales or securitisations) as a means of dealing with Non-Performing Loans (NPLs), the Central Bank published a [Section 6A Report](#) on the Effectiveness of the CCMA in the context of the Sale of Loans by Regulated Lenders. Based on a



point in time analysis and informed by various strands of work including inspections, data collection, and stakeholder engagement, the Report found that for borrowers who engage with the process, the CCMA was working effectively and as intended in the context of the sale of loans by regulated lenders. The Report also found that there was no evidence that the CSFs inspected did not seek to engage with borrowers in arrears. The inspected CSFs had frameworks in place to support engagement with borrowers in arrears, as required by the CCMA. A further finding was that where a loan was sold, existing Alternative Repayment Arrangements (ARAs) in place with borrowers continued to be honoured until the agreed term of the ARA ends. There was no evidence that borrowers, whose circumstances had not changed, were being moved off existing ARAs by CSFs during the term of the ARA. The Central Bank did not identify any material breaches of the CCMA by these firms.

However, recognising this was a point-in-time analysis, we are intensifying our focus on this sector, with an emphasis on delivering the outcomes intended by the CCMA. As with the bank sector, workouts remain hugely important in the credit servicing sector. Firms need to engage with their customers in a sensible and proactive manner with a view to finding long-term solutions that work for both parties. A sustainable restructure is good for the borrower and for the lender. While both sectors are offering and implementing alternative repayment arrangements, the long-term sustainability of these arrangements is not always certain. The issue of sustainability of arrangements is something we continue to analyse closely in the period ahead. Of most concern to us is where there is a continued failure to engage, hindering the likelihood of appropriate and sustainable arrangements being put in place. It is important to stress that, for cooperating borrowers, legal proceedings to repossess properties can only commence where every reasonable effort has been made to agree an arrangement with the borrower and, where the time restriction on initiating legal proceedings has expired. We therefore continue to urge all borrowers and lenders to engage and seek solutions that minimise loss of ownership.

In intensifying our supervision of the credit servicing sector, our strategy has a number of elements, including:

1. Detailed data gathering and analysis, including mortgage arrears and repossession data, such as the pattern of arrears in the Irish mortgage market by entity type; mortgage arrears profile; restructuring activity in the Irish market; data on alternative repayment arrangements and complaints etc. Additionally, obtaining direct evidence from consumers to provide first-hand information about their experiences in dealing with the non-bank sector.
2. Intensified risk and evidenced-based supervision, which includes both on-site and offsite inspections. The Central Bank will continue to assertively supervise CSFs' compliance with the CCMA, to ensure that a fair and transparent process is in place for all borrowers, including those whose loans have been sold.
3. Use of our full suite of supervisory powers as appropriate.

The Central Bank's approach to supervision of the credit servicing sector is underpinned by an expectation of high standards and a professional and consumer-focused approach to compliance. We adopt a risk and evidence-based approach in prioritising our work across all retail sectors. This ensures that we are focussing our resources on those areas where we consider there to be a significant threat to our consumer protection objectives. This includes carrying out a comprehensive annual consumer risk assessment, whereby we examine each of the retail sectors



regulated by the Central Bank to identify current and emerging risks. This assessment is informed by intelligence from a number of sources, including:

- our supervisory work and experience;
- external and internal market research and analysis;
- developments at a European and international level;
- advice from the Consumer Advisory Group; and
- our engagement with stakeholders, including consumer groups and statutory consumer bodies.

4. Breakdown of €693 compensation and redress payments raised by Senator Gerry Horkan

The breakdown of the €693m paid by lenders as at 30 September 2019 is as follows:

- Refund payments*: €347m
- Compensation Payments**: €146m
- Payments for Independent Advice***: €22m
- Mortgage Balance adjustments****: €178m

**Refund payment is a refund of overpayments paid by the customer over the period of impact and is the difference between the monthly repayment amount that the customer was charged on the impacted account and the monthly repayment amount that they should have been charged if the appropriate Tracker interest rate had been applied to the account, over the period of impact.*

***Compensation Payment is a payment to reflect the detriment caused to the impacted customer.*

****Payments for Independent Advice is a contribution towards the cost of obtaining independent advice that the impacted customer may wish to seek regarding the redress and compensation offer made to them*

*****Mortgage Balance adjustments arise where the principal balance on the impacted customers account is adjusted to the correct level as if the appropriate Tracker interest rate had been applied to the account from the date of impact and the account balance is put in a position as if the lenders failure had not occurred.*

5. Responses to questions provided in the 28 May appearance

The Central Bank of Ireland has reviewed the documentation forwarded by the committee in relation to this matter. While it is not for the Central Bank to agree or disagree with the views of third parties, particularly where they extend beyond its remit, we can assure you that where the matters discussed pertain to the statutory mandate of the Central Bank they have been examined.

While there are complementarities between some of the statutory requirements which cover the Central Bank, the firms it supervises and the auditors of those firms, their roles are ultimately different. It is the responsibility of directors of banks to prepare financial statements in accordance with the applicable financial reporting framework and applicable laws and regulations. In addition, auditors have a series of statutory responsibilities prescribed by company law.

In its role as banking supervisor, the Central Bank published the Impairment Provisions for Credit Exposures in 2005 which set out extensive requirements for directors and senior managers to follow in relation to the application of International Accounting Standard 39 “Financial Instruments: Recognition and Measurement” (IAS 39). In 2011, the Central Bank issued supplementary Impairment Provisioning and Disclosure Guidelines. These Guidelines highlighted the need for the provisioning frameworks to be appropriate to the economic circumstances with appropriately conservative impairment triggers being adopted requiring the earlier completion of



impairment reviews and an appropriately conservative approach to the measurement of provisions across all loan portfolios. The Guidelines were revised in May 2013 and have since been withdrawn due to the introduction of International Financial Reporting Standard 9 “Financial Instruments” (IFRS 9).

Matters in relation to EBS were covered in Deputy Governor Sibley’s letter of 22 March 2019 to Deputy John McGuinness. We remain satisfied that all requests for Emergency Liquidity Assistance (ELA) followed the Central Bank procedures for ELA, which included a collateral assessment, solvency checks and written correspondence with the Department of Finance.

6. Referrals to the Gardaí raised by Deputy McGuinness

The Central Bank makes reports of suspicions of criminal offences to the Gardaí as appropriate. The Central Bank does not produce statistics on such reports.

7. Sale of loans raised by Deputy McGuinness

The SSM (of which the Central Bank is part) has prescribed that banks should implement ambitious yet realistic strategies to reduce their NPLs, using a very granular, portfolio-by-portfolio approach. They must also set internal targets to reduce their NPLs. This does not necessarily mean portfolio sales, and the Central Bank has been clear that it does not have a preference for loan sales, though in certain circumstances that is a legitimate course of action. We have a preference for sustainably reducing non-performing loans. The Central Bank’s view is that in engaging with distressed borrowers, workout, restructuring and right-sizing debt must also be cornerstones of successful NPL reduction.

8. Fitness and Probity query raised by Deputy McGuinness

The Fitness and Probity (F&P) regime was introduced by the Central Bank Reform Act 2010 (2010 Act) and is critical to the protection of the public interest and to ensuring there is public trust and confidence in the financial system.

The F&P regime applies to persons in key positions (referred to in the legislation as Controlled Functions (CFs) and Pre-Approval Controlled Functions (PCFs)) within regulated firms. The key objective of the F&P regime is that regulated firms and individuals who work in these firms are committed to high standards of competence, integrity and honesty, and are held to account when they fall below these standards. There are 46 PCF and 11 CF roles for regulated firms other than credit unions. In addition to this there are 5 PCF and 2 CF roles that apply to credit unions only. The list of the PCF and CF roles are available on the Central Bank website (links set out below). The Central Bank published a statutory code (Fitness and Probity Standards) and guidance documents to assist regulated firms and individuals in complying with their obligations.



The Central Bank plays a gatekeeper and oversight role in the F&P regime. First, PCF functions require prior approval from the Central Bank thereby ensuring that individuals carrying out PCF roles meet the F&P Standards. Individuals who want to take up a key role in the financial services industry can expect robust challenge by the Central Bank, because senior roles in regulated firms come with serious responsibilities. Failure to obtain the approval of the Central Bank in writing may result in action being taken against a regulated firm under the Administrative Sanctions Procedure.

As to the application process itself, the applicant must complete an online Individual Questionnaire (IQ) which must be then endorsed by the proposing entity. Firms, and their management, have an important role to play in the F&P regime by ensuring their key staff meet and continue to meet the Fitness and Probity Standards.

The IQ is then submitted electronically to the Central Bank for assessment (and to the ECB in respect of PCF applications to Significant Institutions). Answers are assessed with regard to matters such as experience, qualifications, character and conduct. If no concern arises, the Bank may approve the PCF application. If concerns do arise, these are probed further by the Central Bank and if necessary, steps are taken to refuse the application. The Central Bank has found, consistent with international regulators, that where the prospect of refusal is raised, proposed appointees are in most cases withdrawn. Since the commencement of the F&P regime, over 80 applications have been withdrawn where the prospect of refusal by the Central Bank was raised.

The Central Bank may also investigate individuals in CF/PCF roles if there are suspicions over their fitness and probity to perform their role. Investigations can entail a suspension notice as an interim measure and may lead to a prohibition notice, if appropriate. Since 2015, the Central Bank has issued eight prohibition notices, each prohibiting an individual from performing one or more controlled functions at one or more regulated firms for a specified period or indefinitely.

Link to lists of PCF and CF roles:

[46 PCF roles](#) and [11 CF roles](#) (that apply to regulated firms other than credit unions)

[5 PCF roles and 2 CF roles](#) (that apply to credit unions only)

I trust this answers all the queries raised by Committee members but please contact me if you require further information.

Kind regards,

Sonya Felton
Parliamentary Affairs Manager