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RE: Feedback from the Themed Inspection on Residential Mortgage Arrears and Repossessions 2009

Dear <<Greeting>>

In the feedback provided further to the Review of Residential Mortgage Arrears and Repossessions Handling Procedures in 2008 the Financial Regulator indicated that it would be conducting a number of onsite inspections of the arrears and repossessions procedures and practices in place in institutions to ensure that consumers are being treated fairly. The Financial Regulator conducted inspections in 2009 that focused on specific provisions of the Consumer Protection Code ('the Code') and the Consumer Credit Act, 1995, as amended, ('the Act') in addition to reviewing practices applied by firms in relation to residential mortgage arrears and repossessions. This work is now complete and the purpose of this letter is to provide general feedback to mortgage lenders in relation to the findings from this exercise. A number of compliance issues were identified during the inspections and are being addressed specifically with the firms concerned.

The inspections were carried out in a number of credit institutions and other mortgage lenders and showed that in a number of cases there were significant differences in how both types of lender managed arrears cases. During the course of this themed inspection the Financial Regulator uncovered a number of issues in relation to compliance with both the Consumer Protection Code and the Consumer Credit Act¹ including a high level of contact with consumers in arrears in a number of firms, the frequency of application of charges to consumers in arrears and the early commencement of legal action on repossession. This latter issue has now been specifically addressed in the Financial Regulator's Code of Conduct on Mortgage Arrears ('CCMA'), which was amended in February 2010 to give those in arrears up to twelve months before repossession proceedings can begin.

The Financial Regulator also noted positive practices in certain firms such as the establishment of a specialised Restructuring Unit to assist consumers in a pre-arrears situation and the establishment of procedures including committees to review all cases being considered for litigation to ensure that all options available have been examined in relation to the customer before pursuing such a course of action.

While concerns arose in both types of lender, the Financial Regulator found that in general traditional credit institutions had better practices in place for managing arrears, in particular with regard to customer contact. The main differences shown by the inspection between credit institutions and other types of mortgage lenders when dealing with arrears consumers were:

- A much higher level of contact, particularly phone calls, are initiated by other types of mortgage lenders compared to credit institutions when dealing with consumers in arrears; and
- Consumers' of other types of mortgage lenders can incur more administration charges relating to their arrears than those of credit institutions (i.e. arrears management fees/surcharge interest fees and charges for letters issued in relation to arrears). In this regard, none of the credit institutions visited as part of this inspection applied arrears charges to consumers while a minority of other types of mortgage lenders choose not to charge such fees to consumers.

¹ Consumer Credit Act, 1995 (as amended).

Following on from the findings of this inspection the Financial Regulator will review the application of mortgage arrears charges² in conjunction with the work of Mortgage Arrears and Personal Debt Review Group.

The Financial Regulator requests that you consider the issues raised below in the context of your firm and incorporate them into your firm's procedures as appropriate:

1. Charges

- For consumers that are experiencing genuine financial difficulties mortgage lenders should, as a matter of policy, take steps to minimise the charges that the consumer can incur as a result of arrears. The Financial Regulator wrote to mortgage providers on 15 December 2009 in relation to arrears charges, requesting lenders to only impose charges where they can be justified, having considered the individual customer's circumstances and in line with the requirement of the CCMA to handle arrears cases sympathetically and positively with the objective of assisting consumers to meet his/her obligations. While a number of mortgage providers do not apply charges to consumers in arrears, instances of the frequent application of certain charges to consumers in arrears were found in a number of other mortgage lenders inspected.

2. Contacts with Consumers

- General Principle 9 of the Code provides that a regulated entity must ensure that it does not exert undue pressure or influence on a customer. During the inspection the Financial Regulator noted that certain providers initiate a high volume of contact with consumers through phone calls, voice mails, text messages and letters. Mortgage lenders, should ensure that the level of contact (i.e. phone calls, letters, text messages and voice mail messages) applied when communicating with consumers in arrears is balanced. While contact on the part of both the consumer and the mortgage lender is important in dealing with arrears, mortgage lenders and their collection teams need to ensure that a careful balance between the necessity to contact the consumer and a duty not to harass

² Approved under Section 149 of the Consumer Credit Act, 1995 (as amended).

or intimidate the consumer is maintained. All forms of communication, including text messages, should be recorded on the account of a consumer in arrears by the mortgage lenders.

- Technology used for instigating phone contact with consumers in arrears should only be used by firms where the technology allows sufficient time for staff members to familiarise themselves with the history of the account before engaging in conversation with the consumer. The technology should also have the flexibility to take into account any recent actions by the consumer on the mortgage account (i.e. payments made or contact to the lender) in order to prevent the consumer receiving phone calls from their mortgage lender that are not required due to recent consumer action.
- If a written request is received from a consumer or their representatives suggesting an alternative repayment arrangement to be considered by the mortgage lender or seeking information on alternative repayments options to help them address an arrears situation, such requests should always be responded to in writing. The response should include the mortgage lenders decision in relation to any arrangement suggested by the consumer or the options the mortgage lender will consider.

3. Review of Accounts

- Before an account is sent for legal action, a final review of the account should be undertaken by senior management and evidence of this review and the recommendation arising should be retained on file. This final review should ensure that all possible options have been explored with the consumer prior to legal action commencing.

4. Resources

- Principles 1 and 2 of the Code set out that a regulated entity must ensure that it acts honestly, fairly and professionally in the best interests of its consumers and the integrity of the market and also with due skill, care and diligence in the best interests of its customers. In the current economic climate it is important that consumers who are currently making their monthly mortgage repayments but

feel they will be facing financial difficulty in the future are encouraged to make contact with their lenders in order to address the situation before arrears arise. It is recommended that dedicated resources (e.g. the setting up of a Restructuring Unit) are available to deal with queries and discuss arrangements with consumers who find themselves in a pre-arrears situation. Best practice also showed staff with relevant experience, e.g. underwriters, being redeployed to the collections area to discuss and agree arrangements with borrowers in difficulty.

- For a consumer, the local branch of their mortgage lender is often the first place the consumer goes for help when experiencing difficulties with mortgage repayments. In this regard, it is important that any information gathered from consumers through their local branch about their situation is recorded and centrally available. Procedures should be in place to ensure that this information is available to the area dealing with alternative repayment arrangements, particularly if this is done through a central collections area. It is also important that staff at branch level are fully briefed and trained on how to assist consumers who contact the branch looking for help with their situation.

5. Arrears Letters

- Common Rule 12 of the Code requires that the information provided to consumers is clear and comprehensible and that key items are brought to the attention of the consumer. Where a suite of arrears letters are issued automatically by the mortgage lender's systems, the lender should ensure that when an alternative repayment arrangement is put in place on an account, the appropriate letters continue to issue in the correct format, including accurate information and at the correct time.

In addition to the recommendations set out above, the inspection also found issues in relation to compliance with the requirements of Chapter 4, Provision 11 of the Code which requires that :

Where the mortgage account is in arrears, the regulated entity must inform the consumer in writing of the status of the account as soon as possible after it becomes aware of the arrears. This information must include:

- (a) *The date the mortgage fell into arrears;*
- (b) *The number and total of payments missed;*
- (c) *The amount of the arrears interest charged to date; and*
- (d) *The interest rate applicable to the arrears, and details of other fees and charges used to calculate the arrears interest amount.*

The inspection showed that most mortgage lenders letters did not set out **all** of the information required under this provision of the Code in letters issued to consumers about the arrears on their account.

Also, the inspection showed that most mortgage lenders were of the view that this provision of the Code only applied to the first arrears letter issued to a consumer when they fall into arrears but this interpretation is incorrect. For this reason, a clarification on the information to be included in all arrears letters is set out below which must be adhered to:

Clarification on Chapter 4, Provision 11 of the Code

‘The purpose of this provision is to make the consumer aware of all relevant information relating to the arrears as soon as possible and also to ensure the consumer is kept fully informed of this information. As the amount of arrears and any interest charged will increase if the arrears situation persists, the information required under the provision should be included on all letters issued in relation to the arrears status of the account.’

As a result of these findings in relation to Chapter 4, Provision 11 of the Code, all mortgage lenders must immediately review all letters that are issuing to consumers about their arrears to ensure that all such letters include all the information required under Chapter 4, Provision 11 of the Code and not just some of information required.

The area of arrears and repossession handling by mortgage lenders continues to be a strong focus for the Financial Regulator. The current economic climate has resulted in arrears situations arising for many more people than would previously have been the case. It is important that the approach of mortgage lenders in addressing arrears situations is in line with this changed environment. Since work on this inspection was undertaken, the CCMA has been introduced on a statutory basis as a measure to ensure that this is the case.

The Financial Regulator has already commenced a themed inspection to ensure that the CCMA has been implemented and is being complied with by mortgage providers. As part of this theme, the Financial Regulator is currently onsite conducting inspections in a number of institutions and this will continue over the coming months.

If you have any queries on the contents of this letter, please contact Terry Murphy at terry.murphy@financialregulator.ie or Orla Nealon at orla.nealon@financialregulator.ie

Yours sincerely,



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Deputy Head
Consumer Protection Codes