



FINANCIAL REGULATOR
Rialtóir Airgeadais

Information Release

23 April 2010

Arrears and Repossessions Inspections Reveal Regulatory Concerns

-Separate Investigations into Arrears Handling Continue-

The Financial Regulator today (23 April 2010) published findings from a themed inspection on arrears and repossessions handling across credit institutions and other mortgage lenders. The inspection was carried out onsite in 2009 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. The findings from this inspection relate to practices in place in institutions prior to the implementation of the statutory Code of Conduct on Mortgage Arrears in 2009.

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, which was amended in February 2010 to give those in arrears up to twelve months before repossession proceedings can begin.

While concerns arose in both types of lender, the Financial Regulator found that in general traditional deposit taking bank and building societies (known as 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:

¹ Consumer Credit Act, 1995 (as amended).

- 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.

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 the Mortgage Arrears and Personal Debt Review Group. The Financial Regulator has also written to all mortgage lenders with feedback and recommendations based on its findings from the inspection including:

Charges

- For consumers that are experiencing genuine financial difficulties, all 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 recently wrote to all mortgage lenders requesting them to only impose charges where they can be justified, having considered the individual consumer's circumstances and in line with the requirement of the statutory Code of Conduct on Mortgage Arrears to handle arrears cases sympathetically and positively with the objective of assisting consumers in meeting their obligations.

Contacts with Consumers

- Mortgage lenders, particularly those that are not credit institutions, should ensure that the level of contact (such as 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 or intimidate the consumer is achieved and maintained.
- All lenders should immediately review all letters issuing to consumers in relation to arrears to ensure they contain all of the information required under the Code as the

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

inspection showed that most mortgage providers did not set out all of this information in all letters they issue to consumers in arrears.

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.

Resources

- 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. 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.

The area of arrears and repossession handling by mortgage lenders continues to be a key focus for the Financial Regulator and a themed inspection is underway to ensure that the statutory Code of Conduct on Mortgage Arrears is being complied with by mortgage lenders. As part of this theme the Financial Regulator is currently onsite conducting inspections in a number of institutions.

In addition to the thematic work in this area the Financial Regulator has also begun publishing quarterly data on Residential Mortgage Arrears and Repossessions. The most recent data for end-December 2009 showed that 28,603 mortgage accounts were in arrears for more than 90 days. Further information on this data is available on www.financialregulator.ie

Any breach of a legislative provision or regulatory requirement, such as the Consumer Protection Code, may be considered under the Administrative Sanctions Procedure.

-ends-

Media Queries: Press Office (01) 224 6299

Notes to Editors

1. Mortgage lenders inspected covered both credit institutions and other mortgage lenders. 'Credit Institutions' refers to banks and building societies and 'other mortgage lenders' refers to non deposit taking lenders.
2. The inspection reviewed the compliance of mortgage lenders with specific provisions of the Consumer Protection Code and the Consumer Credit Act, 1995 (as amended) including:

3. Consumer Protection Code

Chapter 1 – General Principles

The General Principles of the Code provide, inter alia, that a regulated entity must ensure in all its dealings with consumers and within the context of its authorisation it:

- acts honestly, fairly and professionally in the best interests of its customers and the integrity of the market;
- acts with due skill, care and diligence in the best interests of its customers;
- has and employs effectively the resources and procedures, systems and control checks that are necessary for compliance with the Code;
- makes full disclosure of all relevant material information, including all charges, in a way that seeks to inform the customer; and
- does not exert undue pressure or undue influence on a customer.

Chapter 4 – Loans

Provision 5: A regulated entity must have in place procedures for the handling of arrears cases.

Provision 11: Where a 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.

4. The Consumer Credit Act

Section 46 of the CCA provides that:

A creditor, owner or a person acting on his behalf shall not visit or telephone –

(a) a consumer without his consent:

(i) at his place of employment or business unless the consumer resides at that place and all reasonable efforts to make contact with him have failed,

(ii) at any place,

(I) between the hours of 9 o'clock in the evening on any week day and 9 o'clock in the morning on the following day, or

(II) at any time on a Sunday or a public holiday (within the meaning of the Holidays (Employees) Act, 1973),

(b) a consumer's employer or any member of the consumer's family unless that employer or family member is a party to the agreement, without the consent of the consumer, given in writing and separate from any other term of agreement, for any purposes connected with any agreement other than the service of a document in connection with legal proceedings.

Section 134 of the CCA provides that:

(1) Where it is the policy of a mortgage lender to charge interest in respect of arrears on housing loans or on housing loans of a particular type the mortgage lender shall ensure that, any information document relating to, application form for, or document approving, such a loan and any communication in relation to arrears of payments due on such a loan shall state the amount of the increase in interest and other charges which a borrower may become liable to pay in respect of such arrears.

(2) Any communication issued by or on behalf of a mortgage lender to a borrower which refers to the possibility of possession proceedings being taken under the mortgage, shall contain an estimate of the cost to the borrower of such proceedings.

5. Themed Inspections:

Themed inspections examine issues across a sector. Where a specific compliance issue arises with an individual firm, this is addressed directly with the firm and where appropriate, regulatory action may be taken.

6. Date of introduction of the Consumer Protection Code for mortgage lenders

The Consumer Protection Code has applied to credit institutions since July 2007. However, it became effective for other mortgage lenders on 1 June 2008.

7. Date of introduction of the Code of Conduct on Mortgage Arrears.

The Code of Conduct on Mortgage Arrears was introduced in February 2009 for all mortgage providers. In the initial two-month period following implementation the Financial Regulator was particularly cognisant of issues relating to systems development or other technical difficulties and staff training in monitoring compliance. The Code was amended in February 2010, increasing the timeframe before a lender can begin repossession proceedings to twelve months.

8. Data on Residential Mortgage Arrears and Repossessions

The Financial Regulator published new data on mortgage arrears and repossessions on 3 March 2010. The data included arrears figures, court proceedings and repossessions statistics for the quarter ended December 2009. The data is published on www.financialregulator.ie