



Banc Ceannais na hÉireann  
Central Bank of Ireland

Eurosystem

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## Feedback Statement on CP98 – Increased Protections for Variable Rate Mortgage Holders



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## Introduction

There is a strong consumer protection framework currently in place to protect mortgage borrowers through the Consumer Credit Act 1995, Consumer Protection Code 2012 (the Code), the Code of Conduct for Mortgage Arrears 2013, and the European Communities (Consumer Mortgage Credit Agreements) Regulations 2016 (transposing the EU Mortgage Credit Directive). These existing protections include information to be provided when a personal consumer is taking out a mortgage, suitability and affordability assessments and protections for personal consumers who are in arrears.

Notwithstanding the existing framework, the Central Bank identified that there was scope to increase the level of transparency for variable rate mortgage borrowers. The Central Bank therefore developed proposals for potential new protections for variable rate mortgage holders, by way of enhancements to the Code. This followed on from work previously carried out by the Central Bank, which identified a lack of clarity as to what the terms and conditions of variable rate contracts mean, how such rates are calculated and how such rates can change over time. Further, the Central Bank identified in its July 2015 Economic Letter (Switch and Save in the Irish Mortgage Market?) a number of non-financial barriers to mortgage switching that can, at least in part, be addressed by better transparency and more useful information being provided to personal consumers.

A public consultation paper on Increased Protections for Variable Rate Mortgage Holders (CP98) was published on 12 November 2015 and closed for submissions on 12 February 2016. Proposed amendments to the Code and proposed new provisions were included in the consultation paper. The CP98 proposals were aimed at increasing transparency and facilitating consumer choices. CP98 invited views from interested parties on the proposed Code amendments.

The measures proposed in CP98 sought to enhance protections in a number of areas. The following measures were proposed:

- (i) a new requirement on regulated entities to prepare and publish a variable rate policy statement;
- (ii) a new requirement on regulated entities to give information on alternative product options; and
- (iii) a new requirement on regulated entities to provide the reason for a variable rate change.

Views were also requested from stakeholders on the following:

- (iv) whether to increase the period of notice required to be given to a borrower before a variable rate is increased.

Responses to CP98 were received from eight external stakeholders, comprising a mix of consumer, industry and other stakeholders. While on balance, a majority of respondents welcomed the proposals in principle, some expressed concerns that the proposals would not benefit consumers or suggested different measures to those proposed in CP98.

Following detailed analysis of the comments received during this consultation process, in addition to undertaking some further research and analysis of the issues under consideration, we have published an addendum to the Code (the 2016 Addendum) which is attached at Appendix 1.

The new and amended requirements, set out in Part 1 of the 2016 Addendum, are in addition to the existing requirements with which regulated entities must comply when dealing with variable rate mortgage holders, whether as a lender or as a credit servicing firm. All holders of a variable rate mortgage to which Part 1 of the 2016 Addendum applies will therefore benefit from these enhanced transparency requirements regardless of the ownership of their loans.

We would like to express our appreciation to all those who provided assistance and feedback during the consultation process.

**Please note that this document is for information purposes only. It does not amend or alter the Code and does not form part of the Code. This document does not constitute legal advice and should not be used as a substitute for such advice. The Central Bank does not represent to any person that this document provides legal advice. It is the responsibility of all regulated entities to ensure their compliance with the Code. Nothing in this document should be taken to imply any assurance that the Central Bank will defer the use of its enforcement powers where a suspected breach of the Code comes to its attention.**

This document sets out the Central Bank's position on (i) to (iv) above raised in CP98.

## **1. Variable Rate Policy Statement**

### **1.1. Proposals outlined in CP98**

In CP98, we stated that there is a concern that the factors that may impact on the setting of a variable rate are not sufficiently clear for borrowers.

Currently, borrowers are not informed of the factors that impact on the calculation of such interest rates and the criteria applicable to setting those rates. In CP98, we proposed that regulated entities be required to prepare and publish on their websites a summary statement of their policy for setting a variable mortgage rate. It was proposed in CP98 that regulated entities would be required to:

- (i) clearly and unambiguously identify the factors which may result in changes to the variable rate;
- (ii) outline the criteria and procedures applicable to setting the rate; and
- (iii) clearly outline where the regulated entity applies a different approach to setting the rate for different cohorts of borrowers.

It was also proposed in CP98 that when a regulated entity offers a variable rate mortgage to a personal consumer, the regulated entity would be required to include the summary statement in the offer document. Regulated entities would also be required to notify variable rate mortgage borrowers in the event of a change to the regulated entity's summary statement and make available an updated summary statement on their website. Views were also sought on whether the Central Bank should prescribe the format and content of the information to be provided in the summary statement.

### **1.2.Submissions**

Of those that responded to the proposal that regulated entities be required to publish a summary statement of their policy for setting variable mortgage rates, the majority broadly agreed and some respondents submitted suggestions regarding the format and level of detail to be contained in the summary statement. Notwithstanding support from the majority of respondents, the suggested contents of the summary statement varied in the level of information to be provided to personal consumers. In addition, of those who commented on the proposal that the Central Bank would prescribe the format and content of the information to be provided in the summary statement, all were in favour.

A number of respondents agreed with the proposal that the Central Bank should prescribe the format and content of the summary statement, with some submitting that a uniform format would help to avoid consumer confusion and will enhance consumer understanding. Respondents also stated that the summary statement should have a simple structure and that while the amount of information should be sufficient to enable

understanding, it should be presented in clear and easily understandable language/plain English. It was also submitted that the summary statement should be clear on how often it is subject to revision.

Some respondents provided suggested content for the summary statement, with one submission including a sample of information that is provided to personal consumers by one lender in Sweden. Others stated that the content should be simple and relevant, with clear wording and content, and be in a uniform format for all regulated entities. It was also suggested that the mechanics of the development of the rate should be clearly and concisely detailed and included as a contract condition.

A respondent submitted that it would be inappropriate to include the summary statement as part of the Letter of Offer (offer document) as the Letter of Offer is a legal document. This respondent submitted that it was not possible to 'future proof' the content of the summary statement to address the issue of changes to legislation and regulation after the contract issues which could alter the understanding and interpretation of the intended objectives of the proposed measures. They also cited, by way of example, that the requirements for additional capital buffers are adjusted in accordance with international developments which are beyond the scope of local mortgage lenders.

It was also submitted that the disclosure of commercially sensitive information regarding pricing could be anti-competitive, as it might lead to the alignment of pricing of regulated entities to the ultimate detriment of the consumer. It was recommended that the disclosure be at a high level as too much detail on the factors may result in changes to the variable interest rate, including funding, capital and cost structures, would hinder the comparability of products for consumers when assessing their financial positions and options, and result in a conflict with the objectives of the proposals.

A respondent submitted that the requirement to notify personal consumers where there is a change to the variable rate policy statement should be to update the summary statement on the regulated entity's website as soon as possible and to notify affected consumers in their annual statement.

Another respondent submitted that the proposed measures will not benefit borrowers, may lead to an increase in mortgage rates and should therefore not be implemented. The views were expressed that these rules will increase the costs for lenders without benefitting consumers and that lenders should be obliged to offer existing customers the rates available to new customers.

### 1.3.Response

In relation to feedback that the proposed measures will not benefit borrowers, may lead to an increase in mortgage rates and should therefore not be implemented, it should be noted that the objective of these measures is to enhance the existing requirements to ensure greater transparency for variable rate mortgage holders. In particular the measures will ensure that:

- personal consumers taking out new mortgages are provided with the necessary information to allow them to understand how their lender calculates its variable interest rate and why the lender might change that rate. This information will enable consumers to compare different lenders and to make an informed decision as to whether a variable interest rate is right for them;
- existing mortgage holders have clarity, on an ongoing basis, in relation to the reasons for any rate changes and how such changes will impact on the affordability of their mortgage; and
- existing variable rate mortgage holders are better informed about other products that could provide savings for them and are provided with a link to information about switching lenders or mortgage type. This information will assist them to take action, if they wish to do so.

Also, the proposed measures will require regulated entities to inform consumers about when and why their lender applies a different approach to setting the variable interest rate for different cohorts of borrowers. Regulated entities will also be required to inform consumers about other mortgage products that could provide savings to the consumer.

As outlined above, one respondent opposed the CP98 proposal that regulated entities would be required to include the summary statement in the offer document. The increased transparency measures are not intended to interfere with the contractual relationship between the parties or the commercial decision of regulated entities as to how to construct their variable rate mortgages. The Central Bank has addressed the concerns raised by amending the requirement such that regulated entities will be required to provide the summary statement *with* the offer document, instead of requiring that it form part of the offer document.

Regarding feedback on a potential anti-competitive impact of the proposal to require a summary statement, the Central Bank is satisfied that the proposed requirements do not have potential anti-competitive impacts. We do not believe that there are any reasons why the disclosure of the content

required for inclusion in the summary statement would constrain competition or should not be included on the grounds of commercial sensitivity. Nevertheless, these concerns were taken into account in prescribing the format and content of the variable rate policy statement.

As outlined above, of the responses to the question about whether the Central Bank should prescribe the format and content of the summary statement, all were in favour of the proposal. A number of respondents made suggestions regarding the format and content of the summary statement. The Central Bank considered that the level of detail contained in the statements submitted would not meet our expectations regarding the level of information that should be provided to personal consumers.

Given the general support of the proposal to prescribe the format and content of the summary statement, the Central Bank is of the view that the format and content should be prescribed. This approach also ensures that the Central Bank's expectations regarding the level of detail to be included in the summary statement are clear.

The summary statement will not be a generic statement across industry as it is intended that it will provide personal consumers with information specific to the regulated entity on its factors and criteria for setting variable rates. Consequently, while the format and content of the overall summary statement is prescribed in the Code (headings, format and a warning statement), the remainder of the prescription in the Code comprises instructions for regulated entities on what must be included under each heading. Regulated entities are required to draft this content in a clear and consumer friendly manner and in plain English. Finally, regulated entities must conduct consumer testing on the content before providing the summary statement to consumers or publishing it on their websites.

The summary statement will provide information to consumers under the following prescribed headings:

- What do we consider when setting or changing our variable interest rates?
- How do we make decisions when setting or changing our variable interest rates?
- Why do we offer different variable interest rates?
- Could you get a different type of interest rate or a lower rate?
- Guidance to regulated entities when completing their variable rate policy statement.

Regarding the submission that regulated entities should only be required to provide an update annually and on their website in relation to changes to the summary statement, the Central Bank considers that it would not be sufficient. Therefore, under new Code Provision 4.28d, we have imposed a requirement that, when a regulated entity makes a change to its summary statement, it must provide a notification to personal consumers setting out the changes 'as soon as possible' and separately update their website.

## **2. Information on alternative product options**

### **2.1. Proposals outlined in CP98**

As outlined previously, there appear to be non-financial barriers to mortgage switching at present that can, at least in part, be addressed by better transparency and more useful information being provided to personal consumers. It was proposed in CP98 that regulated entities would be required to provide variable rate mortgage holders with a summary of other mortgage products provided by that regulated entity that may provide savings for the personal consumer and details of where the personal consumer can obtain further information on these products. It was proposed that this information would be included in the annual statement of account already required to be sent to personal consumers under Code Provision 6.5 and in the notification of an increase in a variable rate, under Code Provision 6.6. As part of the proposed amendments to Code Provisions 6.5 and 6.6, it was proposed that regulated entities would also be required to provide the personal consumer with information about where he or she can obtain further information on these products and include a link to the mortgage switching section on the Competition and Consumer Protection Commission's (CCPC) website.

### **2.2. Submissions**

All of the responses to these proposals were broadly in favour of regulated entities providing variable rate mortgage holders with a summary of other mortgage products provided by the regulated entities that may provide a saving to the consumer.

It was recommended that regulated entities be required to state clearly on their product documentation that their price is not the best available in the market at the time of offering it.

It was also suggested that regulated entities be required to recommend to consumers that they seek advice before making a decision and should not be directed towards direct sales people of the same institution.

A further recommendation was to require regulated entities to give variable rate mortgage holders information on alternative options, and also that the basis for identifying alternative options should be prescribed by the Central Bank as being the loan which would attract the lowest interest payable over the lifetime of the loan.

In its submission, one respondent proposed that regulated entities would provide general information on all possible options available to mortgage holders, each of which may, or may not, result in savings to the consumer.

A respondent submitted the results of a recent survey on switching which indicates that 32% of surveyed respondents stated that prompts or information from their provider at different trigger points on mortgage options in the market, such as annually with their certificate of interest/when a rate change is about to happen, would be a possible switching catalyst.

### **2.3.Response**

Regarding the suggestion that regulated entities be required to state on their product documentation that their rate is not the best available, the Central Bank does not believe that it would be appropriate to require regulated entities to comment on their rates as against those available from other regulated entities. We have, however, included in the final measures a requirement in Code Provision 6.5 (annual statement) and Code Provision 6.6 (notification of an interest rate increase) for regulated entities to provide a statement that the personal consumer should keep his/her mortgage arrangements under review as there may be other options that could provide savings for the personal consumer. The Central Bank believes that including such a statement in the personal consumer's annual statement and the notification of an interest rate increase, in tandem with the requirement to provide a link to the section of the CCPC's website relating to switching lenders or changing mortgage type, will act as a reminder to personal consumers. This, in turn, will promote consumer choice and switching to a different lender or different product.

While the suggestion is noted that regulated entities be required to recommend to consumers that they seek advice specifically before making a decision, we believe that this is a wider issue which is outside the scope of CP98.

The Central Bank does not propose to prescribe the basis for identifying the alternative options which could provide savings, nor does the Central Bank consider that general information on all possible options available to mortgage holders would satisfy the policy objectives for this provision. Rather, the Central Bank believes that the requirement to provide 'a

*summary of other mortgage products provided by the regulated entity that could provide savings for the personal consumer at that point in time'* is sufficiently clear in terms of what must be included, while leaving responsibility with the regulated entity to operationalise this by reference to its own range of products and lending practices.

### **3. Reason for a forthcoming interest rate increase**

#### **3.1. Proposal outlined in CP98**

Views were requested on a proposal to require regulated entities to include in the notification of an interest rate increase, the reason for the increase in the interest rate.

#### **3.2. Submissions**

Of the opinions expressed on whether regulated entities should be required to include the reason for the change in rate in the notification, the majority were in favour of this proposal.

One respondent submitted that the reason for a change in interest rates should be communicated to personal consumers, as it is relevant information which may influence a decision to switch lenders or mortgage products. They also expressed the view that the rationale for a rate change, if credible and properly communicated, will help to improve the level of trust in the banking sector among many consumers. A further respondent also supported the proposal that regulated entities provide a rationale for a variable rate change, expressing the view that the reason provided to the consumer should tie in with and make specific reference to the regulated entity's summary statement.

One respondent submitted that there is unlikely to be a single reason for an interest rate change. The respondent also expressed the view that it may be confusing to a consumer if, on one occasion, an increase is passed on due to a specified reason but, on another occasion, an increase is not passed on. Another respondent expressed the view that a meaningful rationale should be provided for any rate change.

One respondent, who opposed the proposed requirement, suggested that the provision of the factors affecting a rate change in the summary statement is a sufficient protection for consumers in terms of comparability and transparency. They also submitted that providing reasons for variable rate changes could be anti-competitive as it would include providing commercially sensitive information regarding pricing, and constrain competition in the market to the detriment of the consumer.

### **3.3.Response**

The Central Bank is of the view that regulated entities should tell personal consumers why they have changed their rate as this is relevant information which may influence a decision to switch lenders or mortgage products, and therefore should be provided by regulated entities to personal consumers.

The Central Bank agrees with the suggestion that the reason for the rate increase should be tied into the information provided in the summary statement. This would increase transparency for consumers and the role performed by the summary statement. It also demands that regulated entities are accountable to their customers for the content of their summary statement and for the reasons for changing variable interest rates. Therefore, Code Provision 6.6 will now require that regulated entities provide, in their notification of an increase in variable rate, the reason, by reference to the summary statement, for the change in the interest rate.

Regarding the submission that the proposal would have potential anti-competitive impacts, the Central Bank does not agree with this assertion. As outlined above regarding the publication by regulated entities of a summary statement, we do not believe that the disclosure of the reason for an increase in a variable interest rate would constrain competition in the market or that it should not be required on the grounds of commercial sensitivity. Nevertheless, these concerns were taken into account in prescribing the format and content of the summary statement.

## **4. Notice of a forthcoming rate increase**

### **4.1.Views sought in CP98**

Currently, regulated entities are required to give at least 30 days' notice of a forthcoming change to a variable rate on a mortgage loan, other than a tracker rate. In CP98, views were sought from stakeholders on whether the notification period should be extended in order to give affected personal consumers more time to consider their options and to ensure that personal consumers are provided with sufficient time in advance of an interest rate increase to allow them to plan ahead and address any affordability issues. An extended notification period would also allow personal consumers more time to consider changing to another mortgage product with their existing provider or seek a lower rate with another provider, including time to shop around and complete the switching process. The views of interested parties were requested on the Central Bank's proposal to increase the notification period, and as to what would be an appropriate notice period.

## 4.2.Submissions

Mixed views were expressed on whether there should be an increase in the notification period required for a variable rate increase and the appropriate length of the notification period. There were also mixed views expressed from those in favour of the proposal to increase the notification period as to precisely how much notification should be given.

It was submitted by one respondent that the personal consumer must have sufficient time and information to consider their options and build the increased payment into their household budgeting plans.

Two respondents were not in favour of an increased notification period and expressed similar views that the notification period must give the regulated entity sufficient time to be able to react to movements in the market and external pressures and to adjust rates. It was suggested that, if the notification period is increased, regulated entities would hold off on cutting mortgage rates until there was a more permanent reduction in rates and that regulated entities should be free to match movements in underlying rates and in competitors' rates. It was submitted that a balance needs to be struck between giving sufficient time for the consumer to plan ahead and assess affordability issues and, on the other hand, permitting the regulated entity to react to market fluctuations and external pressures.

One respondent favoured a notification period of 40 working days to give the personal consumer two monthly incomes to smooth the rebalancing of the household budget or to research other mortgage offers. Another respondent suggested that a 90 day notification period would be required to meet the objectives outlined in the consultation paper. A final respondent submitted that a period of 2/3 months might be appropriate to take account of the length of time it takes for consumers to switch mortgage. The submissions included that, according to recent research, 35% of switchers estimated that the process took between one and two months, 8% estimated that the process took between 2 and 3 months, and 16% of switchers estimated that the process took longer than three months.

## 4.3.Response

Based on the submissions received and its own consideration of the matter, the Central Bank is of the view that the net benefit to consumers of an increased notification period has not been established sufficiently at this time. However, the Central Bank may revisit the issue in the future. Accordingly, the Central Bank has decided that the notification period for variable rate increases will remain at the present Code requirement of 30 days.

## 5. Other miscellaneous submissions

One respondent suggested that the cost of further regulation will be passed on to consumers. The Central Bank does not believe that there will be significant additional costs for regulated entities in complying with the proposed transparency measures, on the basis that they are mainly enhancements to existing Code requirements. However, this concern was taken into account, in particular in relation to our decision to prescribe the format and content of the summary statement and the development of the prescribed format.

It was also suggested that the claw-back of incentives on new mortgages is a deterrent to switching. While these comments are noted, this issue is outside the scope of CP98 because it does not relate to enhanced transparency measures.

The view was expressed that mortgage brokers should be permitted to advise on all mortgage products. The view was also expressed that mortgage brokers should be prohibited from taking commission and that their remuneration should be fee-based. These issues are outside the scope of the proposals outlined in CP98.

Two respondents suggested that regulation regarding switching is required, and it was suggested that a standardised switching process for all regulated entities may be required. The Central Bank plans to carry out further work on mortgage switching later in 2016.



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