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[Chairperson]
[Regulated Entity]

23 October 2019

Re: Charging of costs associated with the legal process and other third party charges to borrowers in mortgage arrears

Dear [Chairperson]

Regulated entities are required to conduct their affairs in a manner that ensures that consumers' interests are protected. The protection of borrowers in mortgage arrears continues to be a priority for the Central Bank of Ireland (the 'Central Bank'). In this regard, the Central Bank reminds all regulated entities of existing obligations under the Code of Conduct on Mortgage Arrears 2013 (the 'CCMA'), including the restriction on imposing charges and/or surcharge interest on arrears, unless the borrower has been classed as not co-operating.

The Central Bank has recently concluded an investigation into the practice of charging costs associated with the legal process, including third party costs (the 'costs'), to borrowers in mortgage arrears and charging of interest on the costs (the 'Investigation'). In summary, the Investigation has concluded that:

1. Applying the costs prior to the conclusion of repossession proceedings and prior to the decision by a Court to award the costs to the regulated entity is not in borrowers' best interests. Additionally, it is not in the borrower's best interests to apply the costs prior to settlement between the parties concerned or prior to the borrower being in a position to redeem the mortgage and requesting to do so;
2. Pursuant to the terms of the European Union (Consumer Mortgage Credit Agreements) Regulations 2016 (the 'CMCAR'), charging interest on the costs at any point is contrary to Regulation 29 (2) of the CMCAR.



The purpose of this letter is to set out the Central Bank's expectation of regulated entities in relation to the conclusions of the Investigation (these are set out in the **Annex**) and to seek assurance from the Board of [XXXXXX] (the 'Firm') in relation to this practice. The Central Bank does not intend to outline every circumstance where this issue may be relevant but expects regulated entities to act in the best interests of consumers when considering their own practices.

Next Steps

The Board of the Firm should consider the contents of this letter and provide the Central Bank with confirmation that:

- I. a review has been undertaken to establish whether or not the relevant systems, policies, procedures and practices are in line with the expectations outlined in this letter; and
- II. where it is identified that any systems, policies, procedures and practices are not in line with the expectations outlined in this letter, appropriate action has been taken in relation to any issues identified and any necessary follow up actions have been, or will be, undertaken as a matter of priority.

Please provide, by no later than **20 December 2019**, the above confirmations, together with an outline of what outcomes the Firm proposes to deliver following the review undertaken (including associated timelines) and how the Firm will communicate with affected borrowers.

If you have any questions or would like to discuss the contents of this letter, please contact Aidan O'Connor at 01 224 4568 or email aidan.oconnor@centralbank.ie.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Gráinne McEvoy'.

Gráinne McEvoy
Director of Consumer Protection

cc [CEO]

cc [Head of Compliance]



Annex

The Central Bank's expectations in relation to applying the costs and charging interest on the costs

I. Application of the costs

General Principle 2.1 of the Consumer Protection Code 2012 ("the Code") provides that in all dealings with consumers, a regulated entity must act *"honestly, fairly and professionally in the best interests of its customers and the integrity of the market."*

The Central Bank is of the view that the application of the costs prior to the conclusion of repossession proceedings and prior to the decision by a Court to award the costs associated with the legal process to the regulated entity is not in borrowers' best interests and is therefore not in accordance with the Code. Additionally, the Central Bank is of the view that it is not in a borrower's best interests or in accordance with the Code to apply the costs prior to settlement between the parties concerned or prior to a borrower being in a position to redeem the mortgage and requesting to do so.

For clarity, regulated entities **must not** apply the costs to a mortgage account until:

- a. the Court has awarded the costs to the regulated entity;
- b. a settlement has been agreed between the parties; or
- c. the borrower is in a position to redeem the mortgage and has requested to do so.

II. Charging interest on the costs

Regulation 29 (2) of the CMCAR provides that *"Any charge that a creditor may impose on a consumer arising from the consumer's default, subject to the provisions of section 149 of the Consumer Credit Act 1995 and any requirements that may be imposed by the Central Bank from time to time, shall be no greater than is necessary to compensate the creditor for the costs it has incurred as a result of the default"*.



Charging interest on the costs equates to a gain on these charges and therefore, as it is greater than is necessary to compensate the Firm for costs it has incurred, it is contrary to Regulation 29 (2) of the CMCAR. Accordingly, at no point should interest be charged on the costs.

Furthermore, charging of interest on the costs would preclude them from being excluded from the definition of a “charge” under Section 149 of the Consumer Credit Act, 1995, if applicable, as the firm would be generating income from the third party pass on charges, if charging interest on them.

Although it is noted that Regulation 29 (2) of the CMCAR only applies to mortgage credit agreements entered into from 21 March 2016, it nonetheless sets the level of protections expected for mortgage holders. In the interest of treating customers fairly and equally, the Central Bank expects that equivalent protections provided by Regulation 29 (2) of the CMCAR should also be afforded to all mortgage credit agreements, irrespective of when the agreement was entered into.