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Re: Central Bank’s expectations of firms in respect of sales, securitisations, purchases and transfers of residential mortgage loans

The protection of consumers in arrears remains a key priority for the Central Bank of Ireland (“the Central Bank”). In its approach to mortgage arrears resolution, the Central Bank focuses on, *inter alia*, ensuring the fair treatment of consumers through its consumer protection framework. The regulatory framework ensures that where credit institutions choose to reduce their levels of non-performing loans through sales, securitisations, purchases or transfers of residential mortgage loans¹ (“Mortgage Loan Transactions”), consumers retain all regulatory protections afforded under the Code of Conduct on Mortgage Arrears, 2013 (“CCMA”) and the Consumer Protection Code, 2012 (“CPC”).

Firms are required to conduct their affairs in a manner that ensures that consumers are protected. In this regard, the Central Bank is satisfied that, in the context of the sale of loans, the CCMA is working effectively and as intended for those borrowers who engage with the process². However, in the context of recent activity in the Irish residential mortgage market and evidence of specific instances that could give rise to potential customer detriment, the purpose of this letter is:

1. to set out the Central Bank’s expectations of firms in relation to Mortgage Loan Transactions and to remind firms of their reporting obligations; and
2. to seek assurance from the board of [XXXXXX] (“the firm”) that it has taken the necessary steps to ensure that the policies, procedures, systems and controls of the firm are sufficiently robust.

¹ Including residential mortgage loans which are secured by a borrower’s primary residence (as defined in the CCMA) and residential mortgage loans held by a personal consumer (as defined in CPC).

² As evidenced as part of the [Report on the Effectiveness of the Code of Conduct on Mortgage Arrears in the context of the Sale of Loans by Regulated Lenders](#).



Based on our supervisory experience and evidence gathered through risk-based supervision to date, the Central Bank will pay specific attention to the following in assessing firms' compliance with the regulatory framework in relation to Mortgage Loan Transactions³ and firms' reporting obligations:

a. Due diligence and information sharing between parties

While the Central Bank recognises that errors occur, our expectation is that sufficient due diligence and information sharing takes place at the outset to ensure that complete customer files transfer as part of a Mortgage Loan Transaction. Sufficient due diligence must, therefore, be facilitated by the firm selling/securing the loans and conducted by the firm purchasing the loans, to ensure that any errors identified can be rectified efficiently and correctly in the interests of consumers, irrespective of whether the error occurred pre- or post- the Mortgage Loan Transaction.

To ensure that customers' interests continue to be protected, it is of particular importance that the firm purchasing loans receives all relevant documentation from the firm selling/securing the loans to allow the loans to be administered in accordance with:

- I. the terms and conditions (including the correct interest rates, calculation of monthly loan repayments and non-standard terms and conditions); and
- II. any specific commitments made to consumers (e.g. in facility letters or annual statements).

b. Reporting Obligations

The Central Bank expects all parties to a Mortgage Loan Transaction to have appropriate technical and operational solutions and other transitional arrangements as necessary, to ensure that reporting obligations to the Central Bank can continue to be met. Firms that are party to Mortgage Loan Transactions must ensure that they fulfil their obligations to report statistics and data to the Central Bank in an accurate, consistent and timely manner, in particular under:

- I. the Credit Reporting Act 2013, including but not limited to obligations concerning regular mandatory reporting of information to the Central Credit Register - in particular, reporting of Forename, Surname, Date of Birth, Address and Telephone No. (personal information) to create an accurate "Single Borrower View" of that consumer; and
- II. Section 22 of the Central Bank (Supervision and Enforcement) Act 2013 regarding consistent and accurate reporting of data in the Central Bank's Mortgage Arrears and Repossession Statistics.

³ Including in the context of the regulatory requirements referenced in the Annex to this letter.



In order to ensure a culture where consumers' best interests are protected, where a co-operating borrower is complying with the terms of an alternative repayment arrangement ("ARA") and the loan is subsequently sold to another regulated entity, the new regulated entity cannot unilaterally change the ARA agreed between the borrower and the original lender. The new regulated entity should continue to honour an ARA until review, expiry or by agreement, as appropriate. This includes honouring timelines and terms and conditions for reviews of the ARA. In circumstances where the borrower's circumstances have changed, any change to the ARA must comply with the CCMA and be appropriate, sustainable and proportionate to any change(s) in the borrower's circumstances.

Furthermore, the Central Bank expects that firms undertake a formal consumer impact analysis in the context of decisions regarding Mortgage Loan Transactions. As part of this analysis, the Central Bank expects that firms be able to evidence discussion and challenge at board, board committee and management committee level.

Finally, the Central Bank is seeking assurance of the board of your firm that the firm's policies, procedures, systems and controls have been appropriately tested and are sufficiently robust to ensure the risks and expectations outlined above in the best interest of consumers, are effectively managed and implemented.

Please respond **no later than 18 October 2019** confirming that the board of your firm has considered the contents of this letter and providing the assurances sought above. The firm's response should reference any relevant first, second or third line of defence controls or reviews and include an explanation of how these provide the requisite assurance to the board.

If you have any questions or would like to discuss the contents of this letter, please contact Claire Nevin at claire.nevin@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

Relevant regulatory requirements

The CCMA, CPC, the Authorisation Requirements and Standards for Credit Servicing Firms (“AR&S”) and the Credit Reporting Act 2013 place a number of requirements on regulated firms including those detailed below.

CCMA

➤ Provision 22

“A lender must ensure that:

- a. the level of communications from the lender, or any third party acting on its behalf, is proportionate and not excessive, taking into account the circumstances of the borrowers, including that unnecessarily frequent communications are not made;*
- b. communications with borrowers are not aggressive, intimidating or harassing;*
- c. borrowers are given sufficient time to complete an action they have committed to before follow up communication is attempted. In deciding what constitutes sufficient time, consideration must be given to the action that a borrower has committed to carry out, including whether he/she may require assistance from a third party in carrying out the action; and*
- d. steps are taken to agree future communication with borrowers.”*

➤ Provision 42(f) –

“Where an alternative repayment arrangement is offered by a lender, the lender must advise the borrower to take appropriate independent legal and/or financial advice and provide the borrower with a clear explanation, on paper or another durable medium, of how the alternative repayment arrangement works, including the frequency with which the alternative repayment arrangement will be reviewed in line with Provision 43, the reason(s) for the reviews and the potential outcome of the reviews, where:

- (i) circumstances improve,*
- (ii) circumstances disimprove, and*
- (iii) circumstances remain the same.”*

➤ Provision 43

“A lender must review an alternative repayment arrangement at intervals that are appropriate to the type and duration of the arrangement, including at least 30 calendar days in advance of an alternative repayment arrangement coming to an end. As part of the review, the lender must check with the borrower whether there has been any change in his/her circumstances in the period since the alternative repayment arrangement was put in place, or since the last review was conducted. Where there has been a change in that borrower’s circumstances, the lender must request an updated standard financial statement from the borrower and must consider the appropriateness of that arrangement for the borrower.”



➤ Provision 56

“Where a borrower is in mortgage arrears a lender may only commence legal proceedings for repossession of a borrower’s primary residence, where:

- a. the lender has made every reasonable effort under this Code to agree an alternative arrangement with the borrower or his/her nominated representative; and*
- b.*
 - i. the period referred to in Provision 45 d) or Provision 47 d), as applicable, has expired; or*
 - ii. the borrower has been classified as not co-operating and the lender has issued the notification required in Provision 29.”*

CPC

➤ General Principle 2.1

“A regulated entity must ensure that in all its dealings with customers 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.”

➤ General Principle 2.2

“A regulated entity must ensure that in all its dealings with customers and within the context of its authorisation it acts with due skill, care and diligence in the best interests of its customers.”

➤ General Principle 2.3

“A regulated entity must ensure that in all its dealings with customers and within the context of its authorisation it does not recklessly, negligently or deliberately mislead a customer as to the real or perceived advantages or disadvantages of any product or service.”

➤ General Principle 2.4

“A regulated entity must ensure that in all its dealings with customers and within the context of its authorisation it has and employs effectively the resources, policies and procedures, systems and control checks, including compliance checks, and staff training that are necessary for compliance with this Code.”

➤ General Principle 2.6

“A regulated entity must ensure that in all its dealings with customers and within the context of its authorisation it makes full disclosure of all relevant material information, including all charges, in a way that seeks to inform the customer.”

➤ General Principle 2.9

“A regulated entity must ensure that in all its dealings with customers and within the context of its authorisation it does not exert undue pressure or undue influence on a customer.”



- **Provision 10.1**
“A regulated entity must have written procedures in place for the effective handling of errors which affect consumers. At a minimum, these procedures must provide for the following:
 - a) the identification of the cause of the error;*
 - b) the identification of all affected consumers;*
 - c) the appropriate analysis of the patterns of the errors, including investigation as to whether or not it was an isolated error;*
 - d) proper control of the correction process; and*
 - e) escalation of errors to compliance/risk functions and senior management.”*

- **Provision 10.2**
“A regulated entity must resolve all errors speedily and no later than six months after the date the error was first discovered, including:
 - a) correcting any systems failures;*
 - b) ensuring effective controls are implemented to prevent any recurrence of the identified error;*
 - c) effecting a refund (with appropriate interest) to all consumers who have been affected by the error, where possible; and*
 - d) notifying all affected consumers, both current and former, in a timely manner, of any error that has impacted or may impact negatively on the cost of the service, or the value of the product, provided, where possible.”*

- **Provision 10.3**
“Where an error which affects consumers has not been fully resolved (as outlined in Provision 10.2) within 40 business days of the date the error was first discovered, a regulated entity must inform the Central Bank, on paper or on another durable medium, within five business days of that deadline.”

- **Provision 10.4**
“A regulated entity must not benefit from any balance arising out of a refund, which cannot be repaid, in respect of an error.”

- **Provision 10.5**
“A regulated entity must maintain a log of all errors which affect consumers. This log must contain:
 - a) details of the error;*
 - b) the date the error was discovered;*
 - c) an explanation of how the error was discovered;*
 - d) the period over which the error occurred;*
 - e) the number of consumers affected;*
 - f) the monetary amounts involved;*
 - g) the status of the error;*



- h) *the date the error was resolved;*
- i) *the number of consumers refunded; and*
- j) *the total amount refunded.*

➤ Provision 10.6

“A regulated entity must maintain a record of all steps taken to resolve an error which affects consumers, including details of the steps taken where:

- a) *any affected consumers were dissatisfied with the outcome;*
- b) *there were difficulties contacting affected consumers; and*
- c) *a refund could not be repaid.*

AR&S

➤ Provision 4.1

“A Credit Servicing Firm is required to demonstrate that it is in a position to conduct its affairs in a manner that ensures the best interest of its customers are protected”.

Credit Reporting Act 2013 (Section 11) (Provision of Information for Central Credit Register) Regulations 2016

➤ Regulation 3(a)

“A credit information provider shall, in accordance with such guidelines as may be published by the Bank, provide to the Bank such personal information relating to any qualifying credit application made to the credit information provider on or after the date of commencement of these Regulations and to the credit information subject by whom the application was made.”

➤ Regulation 7(a)

“A credit information provider shall, in accordance with such guidelines as may be published by the Bank, provide to the Bank such credit information relating to any qualifying credit application made to the credit information provider on or after the date of commencement of these Regulations, and to the credit information subject by whom the application was made.”