Submission re Review of the Code of Conduct on Mortgage Arrears, Consultation Paper CP 63

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General observations and comments relating to the CCMA and proposed changes:

The Consultation Paper (CP63) on the Review of the Code of Conduct on Mortgage Arrears states that the aim is of the modifications to the current CCMA (Code of Conduct on Mortgage Arrears) are to strengthen the protections for borrowers, and to "provide an integrated and cohesive package of consumer protection measures for borrowers" (page 3). A number of the proposed changes, however, would not appear to increase customer protection (borrower protection) and could potentially reduce the protections currently available, for example:

- The removal of the 12-month moratorium on legal action in certain circumstances for those deemed "not co-operating" by the lenders undermines current borrower protections.

- The apparent proposed changes to contact from lenders to borrowers (previously three contacts per month) will potentially negatively effect borrowers rather than increase protections.

- The "unsolicited personal visit" (Page 8 Guidance) proposal put forward within the document to the borrowers residence is not in keeping with the documents remit of "consumer protection" particularly as in the case where third party may represent the lender.

- The proposal to remove the protections for tracker mortgages would not strengthen the protection for borrowers, i.e., "allowing a lender to move a borrower in arrears off a tracker rate". This provision appears to grant the lender the ability to require a borrower to move from a tracker rate if the "long term" benefit is deemed to be sufficient by the lender but has no provision for the affordability of the potential change in the short term or long term.

There is very little emphasis on borrowers in "pre-arrears" throughout the CP63 document. The new CCMA should clearly distinguish between lenders who are in arrears versus those that are in pre-arrears. Prevention of arrears should be as important as dealing with arrears cases. Particularly, the CCMA should clearly detail the circumstances under which a "pre-arrears" borrower enters into the MARP. In the case of a pre-arrears borrower they should only enter the MARP when they are fully briefed on the consequences of entering the MARP (including credit rating implications) and when they have been provided with an opportunity to optionally agree to enter the MARP this is not contained in the review document or in the current CCMA. A borrower who has not violated the terms of the agreement with the lender should be given much more flexibility and choice in terms of the outcome of the MARP. Clarification should be provided for pre-arrears customers who have entered the MARP voluntarily and who may wish to exit the MARP before its completion.

Some flowcharts within the document would help to clarify the flow of events for customers. A flowchart should be provided for both arrears and pre-arrears borrowers so that lenders representatives and borrowers are very clear as to the process they are entering and the point at which the borrower cannot voluntary exit the MARP, i.e., the point at which the lender considers the borrow to be a "MARP case".

The remainder of this submission deals with many of the proposed changes in detail.

1. Co-operation and engagement:

In the case of pre-arrears it is unclear from reading the CP63 document or the previous CCMA under what exact circumstances a pre-arrears case enters the MARP. Pre-arrears borrowers have not violated the terms of their borrowing arrangement and, therefore, should only become a MARP case when the borrower has agreed in writing to enter the MARP. The new CCMA should clearly outline the exact point where the customer enters the MARP and this could be clearly shown in a flowchart for both arrears and pre-arrears borrowers. This would clearly illustrate to lender representatives and borrowers the precise point when the MARP begins for a customer. The new CCMA should clearly place the onus on the lender to explain the MARP to the borrower prior to entering the process and the lender should be required to have the borrower sign an acknowledgement that they fully understand the MARP and the consequences (including the credit bureau implications) of entering the MARP prior to any borrower being considered a MARP case.

2. Contact between the lender and the borrower:

The CP63 document refers to contact between the borrower and the lender and specifically includes the telephone for use in these cases. It is our contention that, in the case of joint borrowers, telephone conversations that deal with details of arrears or pre-arrears cases are not a sufficient form of communication since it does not provide all borrowers equal opportunity to provide input to or engage in the discussion regarding their borrowing arrangements. It is our contention that joint borrowers (or their representatives) should be provided with equal opportunity to review all information relating to a borrowers arrangements and to provide equal input into all communications relating to borrowing arrangements. The lender should, therefore, in all cases of joint borrowers provide all discussion information in writing. This could be particularly relevant to joint borrowers who are not in agreement or regular contact. This is not dealt with in the CCMA.

The CP63 document does not address the situation where joint borrowers disagree to the terms offered by the lender following the MARP, i.e., where one borrower wishes to avail of the arrangement but another equal party to the borrowing does not. This should be clarified in the new CCMA.

Telephone conversations entered into by the lender and the borrower should be recorded (as laid out in the current CCMA) but these recordings and/or transcripts should be made available to the borrower on request. Many borrowers would not have the facility to record conversations and may wish to retain a copy of communications for their interests and review.

Unsolicited personal visits were not mentioned in the previous CCMA (although it appears they were issued as guidelines) and are now proposed to be given full provision. Unsolicited visits to the borrowers residence as set out by the CP63 by the lender should not be permitted under the CCMA as this will not be in the interest of the borrower and would not appear to represent a furthering of the protection of the customer as set in the aims of the document. Part (c)(v) of the proposed provision regarding personal visits (Provision 25, (c)(v)) clearly states the option of visiting the branch should be offered as an alternative which would appear to somewhat negate the need for the unsolicited personal visit (the lender could send an invitation to attend the branch and a no-show will be considered “non co-operating”). Unsolicited personal visits could be wrought with possible stressful conflict and

represents and may represent an unwarranted invasion of privacy. Given that a third party may represent the lender it is not guaranteed that the lender can ensure the conduct of the third party during these personal visits.

The CP63 document suggests the removal of the limit on the number of "three successful contacts" by the lender to the borrower but does not specify and replacement limit which could imply unlimited contact. This change would not represent a furthering of the protections for the customer as set out in the aims of the document. This could have serious consequences for the borrowers' stress levels. Reasonable limits should be set in the new CCMA. Stating that the delay in processing "is in the best interests of the borrowers" would not outweigh a customers right to protection against excessive communications from an over-zealous lender or third party representing the lender.

3. Link between the CCMA and the Personal Insolvency Act:

This section of the CP63 document would not appear to clearly link the Insolvency Legislation with the proposed CCMA. The new CCMA should include a clearly defined link between the MARP and the point of entry into the Personal Insolvency over and above the adding of a "link to the website" or the provision of information (Provision 22 (c), CP63 Page 9). If there is no clearly defined link between the Insolvency Process and the MARP established at the time of publishing of the new CCMA then this should perhaps be excluded as it may confuse customers more if not clear link has been outlined.

The 30-day alternative period of time for consideration of legal action is, in our opinion, insufficient. Considering the gravity of the potential situations and the need to consult third parties for advice a period of 30 days would be totally impractical. The 12-month moratorium should be retained as there would appear to be little risk to the lender to allow the insolvency proceedings co-exist with the moratorium period. The moratorium could be lifted once the Insolvency Service confirms the case is now being pursued under the Insolvency Legislation.

4. Use of the Standard Financial Statement (SFS):

The central bank in this CP63 document "is seeking views" (page 12) on situations where a full SFS need not be completed. We would suggest that the situation where a pre-arrears customer has voluntarily requested a short-term resolution to their mortgage difficulties should not be required to submit a full SFS. Bank account details and an overview of the customers financial situation should be sufficient in this case. Mortgage moratoria have been available to customers for many years prior to the introduction of the SFS, therefore, customers who have not violated the terms of their original borrowing agreement should not be required to enter a full SFS as this would be a preventative measure for which the benefit of doubt should be afforded to customers and simple short-term measures can be applied.

The MARP should differentiate clearly between customers who attempt to be pre-emptive and find themselves in financial uncertainty rather than financial difficulty (have already not made a payment). This may include filling out a different form to make this differentiation clear, i.e., a lesser financial statement or the simple provision of bank account details/transactions. There is little sense in the lender discouraging or making it onerous for the pre-emptive borrower attempting to avoid arrears enter a request for financial assistance.

Entry into the MARP for pre-arrears (pre-emptive) customers should be totally voluntary. The lender should be required to explain the process fully to the customer and the borrower should sign an agreement that they wish to enter the MARP and that they have fully considered the implications of entering the MARP.

The proposition by a lender following the application of the MARP to a pre-arrears customer should not be binding in any way as such borrowers have not violated the terms of their original borrowing terms.

5. Reviews of alternative repayment arrangements:

Where a borrower no longer requires financial assistance from the lender the borrower should be in a position to exit the arrangement prior to the end of the review period. This should be explicitly stated in the new CCMA.

Where the initial time for the first review of the arrangement has elapsed, no review should take place if the customer does not request it, i.e., the lender should write to the borrower and ask the borrow to respond as to whether they still need the financial assistance. If the arrangements are not required no review should be initiated.

6. Treatment of appeals and complaints:

The appeals process should be as independent as possible. The CP63 document proposes using the internal complaints procedures of the lender for parts of the appeals. The internal complaints procedure of the lender may be less independent than the previous arrangements under the current CCMA. Additionally the internal complaints procedures within the differing lenders may be inconsistent thereby treating borrowers appealing the MARP outcome in an inconsistent manner. We would propose that all those in the MARP process have the same appeals procedure and that consistency brings about the greatest level of fairness between lenders, i.e., the appeals should be as in the current CCMA with a possible increase in the level of independence. For example we would suggest that appeals be subject to the scrutiny of an independent review agency similar to the Credit Review Agency (currently available to farmers and small businesses).

7. Information on other options:

The changes in the CP63 document appear to be in keeping with the aims of the document to strengthen customer protections.

8. Tracker mortgage:

The lender "requiring a borrower to change from an existing tracker rate to another rate" does not appear to be in keeping with the aim of the CP63 document, i.e., to further the protections for customers. "Requiring a borrower to change" implies the forceable movement of a customer to a new rate. This could have very serious implications for borrowers particularly in marginal situations where a customer sought financial assistance. In the case where a borrower is moved to a variable rate it is impossible to give guarantees of the future affordability of the payments. This may still be the case where a lender has offered a modification which is "advantageous to the borrower in the long term". The interpretation of "advantageous" appears to be at the remit of the lender. The borrower

should be in a position to agree that this is “advantageous” and agree to review the terms, i.e., the change should be optional but not “required” by the lender. Additionally, the document specifies that the advantage to the customer is in the “long term” this could result in a debt write-off that produces a new mortgage that is not as affordable to the customer. The new terms must be affordable in the long-term and short-term as the borrow has entered this process due to financial difficulty or financial uncertainty. A genuinely “advantageous” deal will be acceptable to both parties and should be a mutual arrangement.