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Mr Ged Nash T.D.

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Re: Mortgage applications and the Employment Wage Subsidy Scheme

Dear Deputy Nash,

I refer to your email of 2 June 2021 to the Governor of the Central Bank in relation to concerns about the denial of mortgage approval by regulated lenders for potential borrowers whose employer is availing of the Employment Wage Subsidy Scheme.

The Central Bank expects all regulated firms to take a consumer-focused approach and to act in their customers' best interests at all times, including during the COVID-19 pandemic.

Within the parameters of the regulatory framework, as set out below, the decision to grant or refuse an individual application for mortgage credit is a commercial decision to be made by the individual regulated firm. A loan offer may contain a condition that the lender can withdraw or vary the offer if in the lender's opinion there is any material change in circumstances prior to drawdown. In such cases, the decision to withdraw or vary the offer is a commercial decision for the lender.

Before providing a mortgage, lenders are required to undertake thorough creditworthiness assessments to ensure a borrower will be able to repay the mortgage. This is important to securing the interests of the borrower in relation to affordability. The assessment must take into account the individual circumstances of the borrower, including their personal circumstances and financial situation.

To expand on the regulatory requirements in this regard, the European Union (Consumer Mortgage Credit Agreements) Regulations 2016 (CMCAR) provide that before concluding a mortgage credit agreement, a lender must undertake a thorough assessment of the consumer's creditworthiness. The assessment must take appropriate account of factors relevant to verifying the prospect of the consumer being able to meet his or her obligations under the credit agreement. The CMCAR provide that a lender should only make credit available to a consumer where the result of the creditworthiness assessment indicates that the consumer's obligations resulting from the credit agreement are likely to be met in the manner required under that agreement. The assessment of creditworthiness must be carried out on the basis of information on the consumer's income and expenses and other financial and economic circumstances which is necessary, sufficient and proportionate.

In addition, the Central Bank's Consumer Protection Code 2012 imposes 'Knowing the Consumer and Suitability' requirements on lenders. Under these requirements, lenders are required to assess affordability of credit and the suitability of a product or service based on the individual circumstances of each borrower. The Code specifies that the affordability assessment must include consideration of the information gathered on the borrower's personal circumstances and financial situation.

Where a lender refuses a mortgage application, the CMCAR requires that the lender must inform the consumer without delay of the refusal. In addition, the Code requires that the lender must clearly outline to the consumer the reasons why the credit was not approved, and provide these reasons on paper if requested.

As a result of, and in response to, the uncertainty arising from the COVID-19 pandemic, the Central Bank is aware, through its supervisory work, that mortgage lenders have implemented changes to their mortgage application processes. Some of these changes have resulted in additional credit checks prior to the drawdown of mortgages, to ensure that there has been no material change to the customer's financial circumstances, and that the customer remains likely to be able to meet his/her obligations under the credit agreement. However, as part of this supervisory work, we identified that some mortgage lenders did not sufficiently consider the impact of these changes on customers in the mortgage application process and did not manage communications with these customers in a proactive and consumer-centric way.

In November 2020, the Central Bank wrote to lenders outlining its expectation that mortgage lenders clearly communicate with customers at all stages of the mortgage application process, including those customers who have already received loan offers. Mortgage lenders must make clear to customers that where there has been any material change to the customer's circumstances prior to the drawdown of funds, the loan offer may subsequently be withdrawn, paused or varied. At a minimum, this communication must be included in the loan offer letter. Regulated entities are required to update as necessary systems, policies, procedures and practices in line with the expectations outlined in the industry letter.

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If a mortgage applicant is not satisfied with how a regulated firm is dealing with them, or they believe that the regulated firm is not following the requirements of the Central Bank's codes and regulations or other financial services law, they should make a complaint directly to the regulated firm. If they are still not satisfied with the response from the regulated entity, the response to their complaint from the regulated entity is required to include details for the borrower on how to refer their complaint to the Financial Services and Pensions Ombudsman.

Yours sincerely,

Gerry Cross,

Director of Financial Regulation - Policy and Risk