



Banc Ceannais na hÉireann  
Central Bank of Ireland

Eurosystem

2010

## Code of Conduct on Mortgage Arrears



## CHAPTER 1

### SCOPE

#### INTRODUCTION

This Code sets out how mortgage lenders (referred to in this document as “lenders”) must treat **borrowers** in or facing mortgage **arrears**, with due regard to the fact that each case of mortgage **arrears** is unique and needs to be considered on its own merits. This Code sets out the framework that lenders must use when dealing with **borrowers** in mortgage **arrears** or in **pre-arrears**. All such cases must be handled sympathetically and positively by the lender, with the objective at all times of assisting the **borrower** to meet his/her mortgage obligations.

This Code acknowledges that it is in the interests of both the lender and the **borrower** to address financial difficulties as speedily and as effectively as circumstances allow.

#### LEGISLATIVE BASIS

This Code is issued under Section 117 of the Central Bank Act 1989.

The Central Bank has the power to administer sanctions for a contravention of this Code, under Part IIIC of the Central Bank Act 1942.

Lenders are reminded that they are required to comply with this Code as a matter of law.

This Code is effective from 1 January 2011.

This Code replaces the previous Code of Conduct on Mortgage Arrears issued by the Central Bank of Ireland on the 19 February 2010.

Any right acquired, or obligation or liability incurred, in respect of a contravention of, or act of misconduct under, the previous code survives the replacement of the previous code with this Code. Therefore, any legal proceedings, investigation, disciplinary or enforcement action in respect of a contravention of, or act of misconduct under, the provisions of the previous code in force at the time the contravention or act of misconduct occurred, may be instituted, continued or enforced, and any sanction or penalty in respect of such contravention or act of misconduct may be imposed by the Central Bank of Ireland as if the provisions of the previous code had not been replaced.

Where a provision of this Code is amended or deleted, any legal proceedings, investigation, disciplinary or enforcement action in respect of a right acquired, or obligation or liability incurred, in respect of a contravention of, or act of misconduct under, the provision in force at the time may be instituted, continued or enforced, and any sanction or penalty in respect of such contravention or act of misconduct may be imposed by the Central Bank of Ireland as if the provision had not been amended or deleted.

## **APPLICATION OF THIS CODE**

This Code applies to the mortgage lending activities of all regulated entities, except credit unions, operating in the State, including:

- a financial services provider authorised, registered or licensed by the Central Bank of Ireland; and
- a financial services provider authorised, registered or licensed in another EU or EEA Member State and which has provided, or is providing, mortgage lending activities in the State.

This Code applies to the mortgage loan of a **borrower** which is secured by their **primary residence**.

In addition, lenders must apply the protections of the Code to **borrowers** in the following circumstances:

- (i) **Borrowers** in **arrears** and in **pre-arrears**; and
- (ii) In the case of joint borrowers, who notify the lender in writing that they have separated or divorced, the lender should treat each **borrower** as a single **borrower** under this Code.

When dealing with **borrowers** in **arrears** or in **pre-arrears**, mortgage lenders are not required to comply with the following provisions of the Consumer Protection Code:

Chapter 2, Common Rules: Provisions 46, 47 and 48 (Complaints Handling); and

Chapter 4, Loans: Provision 4 and Provision 11.

## **EXISTING ARREARS CASES**

From 1 January 2011, this Code applies to all existing **arrears** cases falling within this Code. While lenders' attention is specifically brought to provisions 21, 35, 47 and to steps 3 and 4 of the Mortgage Arrears Resolution Process, lenders must ensure that they comply with all provisions of this Code from 1 January 2011.

## CHAPTER 2

### DEFINITIONS

The following are defined for the purposes of this Code:

**Arrears:** Arrears arise on a mortgage loan account where a **borrower** has not made a full mortgage repayment, or only makes a partial mortgage repayment, as per the original mortgage contract, by the scheduled due date.

**Borrower:** includes all parties named on the mortgage loan account.

**Business day:** means any day except Saturday, Sunday, bank holidays and public holidays.

**Not co-operating:** A **borrower** can be considered as not co-operating with the lender when any of the following apply to their particular case:

- a) the **borrower** fails to make a full and honest disclosure of information to the lender, that would have a significant impact on their financial situation;
- b) the **borrower** fails to provide information sought by the lender relevant to the **borrower's** financial situation ; or
- c) a three month period elapses during which the **borrower**:
  - (i) has failed to meet his/her mortgage repayments in full as per the mortgage contract or has failed to meet in full repayments as specified in the terms of an alternative repayment arrangement; and
  - (ii) has not made contact with, or responded to, any communications from the lender or a third party acting on the lender's behalf.

**Pre-arrears:** A pre-arrears case arises where the **borrower** contacts the lender to inform them that he/she is in danger of going into financial difficulties and/or is concerned about going into mortgage **arrears**.

**Primary Residence:** means a property which is:

- (i) the residential property which the **borrower** occupies as his/her primary residence in this State, or
- (ii) a residential property in this State which is the only residential property owned by the **borrower**.

**Record:** means any document, file or information (whether stored electronically or otherwise) and which is capable of being reproduced in a legible form.

**Repossession:** means any situation where a lender takes possession of a property either by way of voluntary agreement with the **borrower**, through abandonment of the property by the **borrower** without notifying the lender, or by Court Order.

**Unsolicited Communication:** includes any communication that has not been requested by, or agreed in advance with, the **borrower**. Such communications include those instances where contact is not made with the **borrower**.

## CHAPTER 3

### PROVISIONS

#### GENERAL

1. Each branch (or office of a lender in the case of a lender who does not operate a branch network), must have at least one person with specific responsibility for dealing with **arrears** and **pre-arrears** cases and for liaising with the lender's Arrears Support Unit (ASU) in respect of these cases.
2. A lender must draw up and implement procedures for dealing with each of the following types of **borrowers** - those in mortgage **arrears**, those in **pre-arrears** and those which fall under the Mortgage Arrears Resolution Process (MARP). Such procedures must:
  - a) allow for a flexible approach in the handling of these cases;
  - b) be aimed at assisting the **borrower** as far as possible in his/her particular circumstances;
  - c) set out the how the lender will implement the five steps of the MARP; and
  - d) set out how the ASU will assess cases referred to it, including the types of alternative repayment measures or any other relief method that may be offered to **borrowers** by the lender.
3. A lender must have in place management information systems to capture information on its handling of **arrears**, **pre-arrears** and MARP cases, including all alternative repayment arrangements put in place to assist **borrowers**.
4. A lender must provide appropriate training for frontline staff dealing with **borrowers** in **arrears** or in **pre-arrears**. All other frontline staff must be made aware of the lender's policy for dealing with **arrears** and **pre-arrears** cases and the relevant contact persons and process.
5. A lender must assist **borrowers** by ensuring that all requests from **borrowers** for documentation and information required for the purposes of applying for State supports in relation to mortgages, are processed within ten **business days** of receipt of the request.

6. At the **borrower's** request and with the **borrower's** written consent, the lender must liaise with a third party nominated by the **borrower** to act on his/her behalf in relation to his/her **arrears** situation. This does not prevent the lender from contacting the **borrower** directly, in relation to other matters.
7. As soon as a **borrower** goes into **arrears**, a lender must communicate promptly and clearly with the **borrower** to establish in the first instance why the repayment schedule as per the mortgage contract, has not been adhered to.
8. A lender must pro-actively encourage its **borrowers** to engage with them about financial difficulties which may prevent them from meeting their mortgage repayments.
9. Lenders are restricted from imposing charges and/or surcharge interest on **arrears** arising on a mortgage account in **arrears** to which this Code applies and in respect of which a **borrower** is co-operating reasonably and honestly with the lender in the Mortgage Arrears Resolution Process. (Lenders will have been notified individually of the charges to which this applies.)

## PROVISION OF INFORMATION

10. A lender must ensure that all communications about **arrears** and **pre-arrears** are provided to the **borrower** in a timely manner. All information relating to a lender's handling of **arrears** and **pre-arrears** cases must be presented to the **borrower** in a clear and consumer friendly manner. The language used in communications must indicate a willingness to work with the **borrower** to address the situation and must be in plain English so that it is easily understood. Legal jargon must be avoided, where possible.
11. A lender must ensure that all meetings with **borrowers** in relation to **arrears** or **pre-arrears** are conducted with utmost privacy.
12. A lender must prepare and make available to **borrowers**, an information booklet providing details of its MARP, which must be drafted in accordance with the requirements set out in provision 10 above and must include:

- a) an explanation of its MARP, including the alternative repayment measures available to **borrowers** and outline in general terms, the lender's criteria for assessing requests for alternative repayment measures;
  - b) a statement that the **borrower** will not be required to change from an existing tracker mortgage to another mortgage type;
  - c) information about the potential availability of relevant State supports such as mortgage interest relief or Mortgage Interest Supplement;
  - d) relevant contact points (i.e., the dedicated **arrears** contact points not the general customer service contact points); and
  - e) reference to relevant website(s) operated by the Money Advice and Budgeting Services (MABS).
13. A lender must have a dedicated section on its website for **borrowers** in, or concerned about, financial difficulties which must include:
- a) the information booklet required under provision 12;
  - b) information on the level of charges that may be imposed on **borrowers** that do **not co-operate** with the lender; and
  - c) a link to any website operated by the MABS that contains information about mortgage **arrears**.

The information on the web-site must be easily accessible from a prominent link on the lender's home page.

14. At the **borrower's** request, the lender must confirm the time period remaining during which the lender may not commence legal action for repossession of the **borrower's primary residence**.

## **MORTGAGE ARREARS RESOLUTION PROCESS (MARP)**

### **GENERAL**

15. A lender must ensure that it has in place a Mortgage Arrears Resolution Process as a framework for handling cases as specified in provision 17 below. The MARP must incorporate the steps set out in this Code, i.e.:
- Step 1: Communication with **borrowers**;
  - Step 2: Financial information;
  - Step 3: Assessment;
  - Step 4: Resolution; and
  - Step 5: Appeals.

16. A lender must establish a centralised and dedicated Arrears Support Unit (ASU), which must be adequately staffed, to manage cases under the MARP.
17. A lender must ensure that the MARP framework is applied to the following cases:
  - a) a mortgage account where **arrears** have arisen on the account and remain outstanding, 31 days from the date the **arrears** arose;
  - b) a **pre-arrears** case;
  - c) where an alternative repayment arrangement put in place breaks down; and
  - d) where the term of an alternative repayment arrangement put in place expires.
18. In relation to **pre-arrears** cases, a lender must apply provisions 19, 20, 21, and 23 of Step 1 and all of Steps 2 to 5 of the MARP to such cases.

#### STEP 1: COMMUNICATION WITH BORROWERS

19. A lender must inform the **borrower**, in writing, when it has appointed a third party to engage with the **borrower** in relation to his/her case and must explain the role of the third party.
20. A lender must ensure that the level of contact and communications from the lender, or any third party acting on its behalf, is proportionate and not excessive.
21. Each calendar month, a lender, and/or any third party acting on its behalf, may not initiate more than three **unsolicited communications**, by whatever means, to a **borrower** in respect of his/her mortgage **arrears** or **pre-arrears** situation. The **unsolicited communications** do not include any communications to the **borrower** regarding his/her **arrears** or **pre-arrears** situation, which are required by this Code or other regulatory requirements.
22. When **arrears** arise on a **borrower's** mortgage loan account and remain outstanding 31 days from the date the **arrears** arose, a lender must:
  - a) inform each **borrower** and any guarantor on the mortgage, unless the mortgage loan contract explicitly prohibits such information to be given to the guarantor, of the status of the account in writing, within 3 working days. The letter must include the following information:
    - i) the date the mortgage fell into **arrears**;
    - ii) the number and total amount of full or partial payments missed;
    - iii) the monetary amount of the **arrears** to date;

- iv) confirmation that the lender is treating the **borrower's** situation as a MARP case;
  - v) the importance of the **borrower** co-operating with the lender during the MARP process and notification that, if co-operation ceases, the protections of the MARP no longer apply and that the lender may start legal proceedings for repossession;
  - vi) a statement that fees, charges and surcharge interest in relation to the **arrears** will apply, where the borrower does **not co-operate** with the lender;
  - vii) details of any fees and charges in relation to the **arrears** that may be applied if the **borrower** does **not co-operate** with the lender;
  - viii) a general statement about the impact of missed mortgage repayments and **repossession** on the **borrower's** credit rating,
- and
- b) provide the **borrower** with the information booklet required under provision 12.
23. When a lender is contacted by a **borrower** in **pre-arrears**, the lender must provide the **borrower** with the information booklet required under provision 12.
24. Where **arrears** exist on a mortgage loan account, an updated version of the information specified in provision 22(a) above, must be provided to the **borrower** in writing, every three months.
25. When a third full or partial mortgage payment as per the original mortgage contract is missed and remains outstanding and an alternative repayment arrangement has not been put in place, the lender must notify the **borrower**, in writing, of the following:
- a) the potential for legal proceedings for repossession of the property, together with an estimate of the costs to the **borrower** of such proceedings;
  - b) the importance of taking independent advice from his/her local Money Advice and Budgeting Service (MABS) or an appropriate alternative; and
  - c) that irrespective of how the property is repossessed and disposed of, the **borrower** will remain liable for the outstanding debt, including any accrued interest, charges, legal, selling and other related costs, if this is the case.

## STEP 2: FINANCIAL INFORMATION

26. A lender must use a standard financial statement to obtain financial information from a **borrower** in **arrears** or in **pre-arrears**.

27. In relation to all MARP cases, a lender must:
  - a) ensure the **borrower** understands the MARP process;
  - b) provide the **borrower** with a standard financial statement;
  - c) inform the **borrower** that he/she may wish to seek independent advice to assist with completing the standard financial statement, e.g., from MABS or an appropriate alternative.
28. The lender must pass the completed standard financial statement to its ASU.
29. The lender may require the **borrower** to provide supporting documentation to corroborate the information provided in the standard financial statement.

### **STEP 3: ASSESSMENT**

30. A completed standard financial statement must be assessed by the lender's ASU.
31. A lender's ASU must examine each case on its individual merits.
32. A lender's ASU must base its assessment of the **borrower's** case on the full circumstances of the **borrower** including:
  - a) the personal circumstances of the **borrower**;
  - b) the overall indebtedness of the **borrower**;
  - c) the information provided in the standard financial statement;
  - d) the **borrower's** current repayment capacity; and
  - e) the **borrower's** previous payment history.

### **STEP 4: RESOLUTION**

33. A lender must explore all options for alternative repayment arrangements, when considering a MARP case, in order to determine which options are viable for each particular case. Such alternative repayment arrangements must include :
  - a) an interest-only arrangement for a specified period;
  - b) an arrangement to pay interest and part of the normal capital element for a specified period;
  - c) deferring payment of all or part of the instalment repayment for a period;
  - d) extending the term of the mortgage;
  - e) changing the type of the mortgage, except in the case of tracker mortgages;
  - f) capitalising the **arrears** and interest; and

- g) any voluntary scheme to which the lender has signed up e.g. Deferred Interest Scheme.
34. A lender must document its considerations of each option examined under provision 32 above and also the reasons why the option(s) offered to the **borrower** is appropriate for his/her individual circumstances.
35. For MARP cases, the lender must not require the **borrower** to change from an existing tracker mortgage to another mortgage type, as part of any alternative arrangement offered to the **borrower**.
36. For MARP cases on an existing tracker mortgage, where an alternative repayment arrangement that is put in place includes a fixed interest period, the **borrower** must be permitted to revert to an interest rate that corresponds to the margin over the prevailing ECB rate or other tracked rate as specified in the original mortgage contract, at the end of the fixed interest period.
37. Where an alternative repayment arrangement is offered by a lender, the lender must provide the **borrower** with a clear explanation, in writing, of the alternative repayment arrangement, including:
- a) the new mortgage repayment amount;
  - b) the term of the arrangement;
  - c) the implications arising from the arrangement for the existing mortgage including the impact on:
    - (i) the mortgage term,
    - (ii) the balance outstanding on the mortgage loan account, and
    - (iii) the existing **arrears** on the account, if any;
  - d) details of how interest, will be applied to the mortgage loan account as a result of the arrangement;
  - e) how the alternative repayment arrangement will be reported by the lender to the Irish Credit Bureau and the impact of this on the **borrower's** credit rating;
  - f) information regarding the **borrower's** right to appeal the lender's decision, including the procedure and timeframe for submitting an appeal, and
  - g) the **borrower** must be advised to take appropriate independent legal and/or financial advice.
38. The lender must monitor the arrangement that is put in place for a MARP case, on an ongoing basis and formally review the appropriateness of that arrangement for the **borrower**, at least every six months. 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 arrangement was put in place, or since the last review was conducted.

39. If a lender is not willing to offer a **borrower** an alternative repayment arrangement, for example, where it is concluded that the mortgage is unsustainable and an alternative repayment arrangement is unlikely to be appropriate, the reasons must be given in writing to the **borrower**. In these circumstances, the lender must make the **borrower** aware of:
- a) other options open to the **borrower**, including voluntary surrender, trading down or voluntary sale, and the implications of each option for the **borrower**; and his/her mortgage loan account; and
  - b) the **borrower's** right to make an appeal to the lender's Appeals Board in relation to any of the following:
    - (i) the decision of the ASU;
    - (ii) the lender's treatment of the **borrower's** case under the MARP process; or
    - (iii) the lender's compliance with the requirements of this Code, including the procedure for making an appeal and the relevant time allowed to the **borrower** to consider submitting an appeal.
40. If a **borrower** is not willing to enter into an alternative repayment arrangement offered by the lender, the lender must inform the **borrower** in writing of the following:
- a) other options open to the **borrower**, including voluntary surrender, trading down or voluntary sale, and the implications of these for the **borrower** and the **borrower's** mortgage loan account;
  - b) the **borrower's** right to make an appeal to the lender's Appeals Board in relation to any of the following:
    - (i) the decision of the ASU;
    - (ii) the lender's treatment of the **borrower's** case under the MARP process; or
    - (iii) the lender's compliance with the requirements of this Code, and
  - c) should the **borrower** decide not to make such an appeal, that the twelve month moratorium on taking legal action, no longer applies to the **borrower's** case.
41. Where a **borrower** ceases to adhere to the terms of an alternative repayment arrangement, the lender's ASU must formally review the **borrower's** case, including the standard financial statement, immediately.

## STEP 5: APPEALS

42. A lender must establish an Appeals Board to consider any appeals submitted by **borrowers** and to independently review any of the following:
  - a) the decision of the lender's ASU,
  - b) the lender's treatment of the **borrower's** case under the MARP process, or
  - c) the lender's compliance with the requirements of this Code.
  
43. The Appeals Board must be comprised of three of the lender's senior personnel, who have not been involved in the **borrower's** case previously. At least one member of the Appeals Board must be independent of the lender's management team and must not be involved in lending matters, for example, an independent member of the lender's Audit Committee.
  
44. A lender must have in place a written procedure for the proper handling of appeals. At a minimum, this procedure must provide that:
  - a) The Appeals Board will only consider written appeals;
  - b) The lender must acknowledge each appeal in writing within 5 **business days** of the appeal being received;
  - c) The lender must provide the **borrower** with the name of one or more individuals appointed by the lender to be the **borrower's** point of contact in relation to the complaint, until the Appeals Board adjudicate on the appeal;
  - d) The lender must provide the **borrower** with a regular written update on the progress of the appeal , at intervals of not greater than 20 **business days**;
  - e) The lender must consider and adjudicate on an appeal within 40 **business days** of having received the appeal. The lender must notify the **borrower** in writing, within 5 **business days** of the completion of the consideration of an appeal, of the decision of the Appeals Board and explain the terms of any offer being made. The lender must also inform the **borrower** of his/her right to refer the matter to the Financial Services Ombudsman and must provide the **borrower** with the contact details of that Ombudsman.
  
45. A lender must allow the **borrower** a reasonable period of time to consider submitting an appeal to the Appeals Board, which must be at least 20 **business days** from the date he/she received notification of the decision of the lender's ASU.

## RESPOSSESSIONS

46. The lender must not apply to the courts to commence legal action for **repossession** of the **borrower's primary residence**, until every reasonable effort has been made to agree an alternative arrangement with the **borrower** or his/her nominated representative.
47. Where a **borrower** co-operates with the lender, the lender must wait at least twelve months from the date the **borrower** is classified as a MARP case (i.e. day 31), before applying to the courts to commence legal action for **repossession** of a **borrower's primary residence**.

The twelve-month period commences on day 31 but does not include:

- any time period during which the **borrower** is complying with the terms of any alternative repayment arrangement agreed with the lender;
  - any time period during which an appeal by the **borrower** is being processed by the lender's Appeals Board;
  - any time period during which the **borrower** can consider whether or not they wish to make an appeal on the decision of the ASU;
  - any time period during which a complaint against the lender regarding any aspect of this Code, is being processed by the Financial Services Ombudsman's office; and
  - for **pre-arrears** cases, the time period between the first contact by the **borrower** in relation to a **pre-arrears** situation and an alternative repayment arrangement being put in place.
48. Where a **borrower** is in mortgage **arrears**, a lender may commence legal action for repossession of the property without the 12 month period applying, only in the following circumstances:
- a) where the **borrower** does **not co-operate** with the lender;
  - b) in the case of a fraud perpetrated on the lender by the **borrower**; or
  - c) in the case of breach of contract by the **borrower** other than the existence of **arrears**.
49. A lender, or its legal advisors on its behalf, must notify the **borrower** in writing immediately before it applies to the Courts to commence legal action for the **repossession** of the **primary residence**.

50. In cases where legal action to obtain an Order for Possession has commenced, a lender must endeavour to maintain contact with the **borrower** or his/her nominated representative. If an alternative repayment arrangement is agreed between the parties before an Order for Possession is granted, the lender must put the legal proceedings on hold, for the period during which the **borrower** adheres to the terms of the alternative repayment arrangement.
51. Where a lender has disposed of a property which it has repossessed, the lender must notify the **borrower** in writing, of the following information and of his/her liability for:
- a) the balance outstanding on the mortgage loan account;
  - b) details and amount of any costs arising from the disposal which have been added to the mortgage loan account; and
  - c) the interest rate to be charged on the remaining balance.

The information specified above must be provided to the **borrower** in a timely manner following the completion of the disposal.

#### **DEMONSTRATING COMPLIANCE**

52. A lender must be able to demonstrate to the Central Bank of Ireland that it is in compliance with the requirements of this Code.
53. A lender must maintain full **records** of all the steps taken, and all of the considerations and assessments required by this Code, and must produce all such **records** to the Central Bank of Ireland upon request.
54. A lender must maintain **records** of all communications with **borrowers** in mortgage **arrears** and in **pre-arrears**. Such **records** must be readily accessible and capable of being reproduced in legible form and in a timely manner. Such **records** may include contemporaneous notes of meetings and telephone calls.
55. A lender must maintain an up-to-date **record** of all appeals considered by the Appeals Board. This **record** must contain the details of each appeal, a **record** of the grounds on which the appeal was considered and the decision of the Appeals Board.
56. All **records** required by, and demonstrating compliance with this Code, must be retained by the lender for 6 years. In addition, all **records** relating to a **borrower** must be retained for 6 years from the date the relationship with the **borrower** ends.



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