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Deputy John McGuinness
Chair, Committee on Finance, Public Expenditure and Reform, and Taoiseach
Houses of the Oireachtas
Kildare St
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6 October 2017

Ref.: COMM17/886207

Dear Deputy McGuinness

Thank you for your correspondence dated 2 June 2017. As you will appreciate, it has necessarily taken some time to consider fully the large volume of material provided.

Your letter requested the Central Bank's views in relation to the various cases submitted. As you are aware, the Central Bank does not have a role in resolving individual disputes between consumers and their regulated financial service providers, as this is the statutory role of the Financial Services Ombudsman. We have, however, responded to each correspondent directly in relation to the issues raised in their letters to you.

While we are not in a position to discuss the individual cases with you without the individuals' express consent, we are permitted to provide our views, generally, on the issues raised:

Motor insurance premia

The pricing of premia is a commercial decision that insurance companies take at regular points in time. Increases in annual premiums can be driven by higher claims volumes and payments or by other market forces. It is also important for insurance companies to offer motor insurance at a price that adequately takes into account the conditions prevailing in the market, such as increasing claims costs. This ensures firms have the ability to pay all policyholders' claims without recourse to public or consumer funds.

The Central Bank has no remit in the area of setting or regulating the price of insurance premia. The legislation under which we operate sets out our role in prudential regulation (i.e. ensuring firms operating in the Irish market are sound, and staffed by people of repute) and that firms adhere to our consumer protection framework. Specifically, SI No 485 of 2015, which transposes European Union (Insurance and Reinsurance) Regulations 2015 into Irish law, provides that:

"19. (1) The Bank shall not require the prior approval or systematic notification of general and special policy conditions, of scales of premiums, of the technical bases used in particular for calculating scales of premiums and technical provisions, or of forms and other documents which an undertaking intends to use in its dealings with policyholders or ceding or retro ceding undertakings."

The Central Bank is part of the Cost of Insurance Working Group (the "CIWG"), chaired by the Minister of State for Financial Services and Insurance. The CIWG published its report in January 2017. Of its 33 recommendations, three are directed to the Central Bank. Of these, two relate to S.I. No.74 of 2007, Non-Life Insurance (Provision of Information) (Renewal of Policy of Insurance) Regulations 2007, as follows:

- Insurers to provide additional information on the premium breakdown to consumers;
- Extend the current renewal notification period from 15 working days to 20 working days to make it easier for motorists to compare pricing when purchasing insurance.

The Central Bank was tasked with issuing a consultation paper on these two recommendations by Q4 2017 and depending on the outcome of the consultation, to amend the legislation by Q2 2018. Work is progressing on the preparation of this consultation paper with a view to it being published in Q4, as per the recommendation. The third recommendation is the establishment of a National Claims Information Database, which requires legislation, and the Central Bank is working with the Department of Finance in this regard.

Tracker Mortgage Examination (the "Examination")

The Central Bank published a detailed update on the Examination in March 2017 and we will publish a further update in mid-October, a copy of which will be provided to you.

Timeline for conducting the Examination

I fully understand customers' frustration that the Examination is taking time; however, this is the largest, most complex and significant supervisory review that the Central Bank has undertaken to date in the context of our consumer protection mandate, involving a review of more than two million mortgage accounts by lenders. I can assure you that the Examination is a priority and while we want to have it completed as soon as possible, I also recognise the fundamental importance of it being completed comprehensively and robustly.

Scope of the Examination

The Examination Framework requires lenders to review all mortgage accounts, including those that have been redeemed, sold or transferred to another entity by the lender. Where a loan is deemed as being impacted and the loan has been sold on, the lender with which the loan was initiated is responsible for ensuring that the customer is appropriately remediated and for engaging with the loan owner in relation to rate rectification.

Customers who are deemed as 'not impacted' by their lender

Where a customer is dissatisfied with his or her lender's approach, the customer has the right to refer a complaint directly to the lender. Lenders have set up dedicated units to deal with complaints and queries in relation to tracker-related matters. Details as to how a customer can complain directly to the lender are available on the lender's website. The lender is required to handle all complaints in accordance with the requirements of the Consumer Protection Code. If the customer is not satisfied with the outcome, the customer has the right to then make a complaint to the Financial Services Ombudsman.

Other matters raised related to the Examination

The October update will address some of the issues raised in the correspondence you submitted, but I would reiterate at this point that all mortgage accounts are in scope, lenders' reviews are subject to assurance work by the Central Bank, which is ongoing, and the Central Bank will challenge all lenders to provide fair outcomes for customers impacted by their failings. I can also confirm that the issues raised in the correspondence you have forwarded have been used to inform the Examination.

ptsb Mortgage Redress Programme

All lenders must establish an independent appeals process to address complaints from customers who are dissatisfied with any aspect of the redress and compensation package that they receive from a lender.

The impacted customer is entitled to retain the initial redress and compensation amount from the lender and this will have no bearing on the customer's right to lodge an appeal, nor can the initial offer of redress and compensation be reduced by virtue of the customer lodging an appeal. Where an impacted customer is dissatisfied with the findings of the independent appeals panel, the customer then has the option of bringing a complaint to the Financial Service Ombudsman or initiating court proceedings. All lenders have undertaken not to raise any time limit defences that may otherwise apply if the impacted customer makes a complaint through either avenue.

Mortgage arrears

In June 2016, the Central Bank provided the Minister for Finance, at his request, with a report detailing the mortgage restructuring activity within banks and non-banks; the range of solutions offered by non-banks, assessing the range of solutions that may affect borrowers' capacity to remain in their primary residences; and whether these were addressing the requirements of over-indebted borrowers (the "Report").

In line with our mission of safeguarding stability and protecting consumers, the Central Bank's work on mortgage arrears spans its consumer protection, prudential supervision and financial stability roles. Within the remit of the Central Bank's responsibilities, the approach to mortgage arrears resolution is focused on ensuring the fair treatment of borrowers through a strong consumer protection framework while ensuring banks are sufficiently capitalised, hold appropriately conservative provisions, and have appropriate arrears resolution strategies and operations.

The Code of Conduct on Mortgage Arrears (CCMA) provides a strong consumer protection framework to ensure that borrowers in financial difficulty are treated in a timely, transparent, and fair manner by regulated entities. Banks, retail credit firms and credit servicing firms servicing loans on behalf of unregulated loan owners are all required to comply with the CCMA. Borrowers who engage can expect that their specific circumstances will be considered, enhancing their chances of remaining in their homes.

The CCMA includes requirements that arrangements must be sustainable and based on a full assessment of the individual circumstances of the borrower. It also requires that repossession be used only as a last resort. Borrowers who engage, therefore, benefit from the protections afforded under the Mortgage Arrears Resolution Process (MARP). Analysis conducted by the Central Bank shows that meaningful engagement between banks and borrowers is key to the successful restructuring of distressed mortgages.

The MARP process is a four-step process that regulated entities must follow. Each regulated entity must consider the borrower's situation in the context of the range of solutions it offers, which may differ from firm to firm. The CCMA does not prescribe the solution which must be offered and this remains a commercial decision for the lender (outside of a court process such as insolvency). In addition, the Central Bank has published guidance for supervisors on what constitutes sustainable mortgage arrears solutions. At the end of the MARP, regulated entities are required to provide a three-month notice period to allow co-operating borrowers time to consider their options, such as voluntary surrender or an arrangement under the Personal Insolvency Act, before legal action can commence.

Regarding potential court proceedings, under the CCMA, a regulated entity may only commence legal proceedings for repossession of a PDH where it has made every reasonable effort to agree an alternative repayment arrangement (ARA) with the borrower and other clear requirements are met. This framework requires lenders (and credit servicing firms in the case of loans held by unregulated loan owners) to exhaust the options available from the suite of alternative repayment arrangements offered before taking action which may result in the borrower losing their home (whether by voluntary sale or repossession).

Standard Variable Rates

As you are aware, the Central Bank does not have a statutory role in setting interest rates. In 2016, the Central Bank introduced new protections for variable rate mortgage holders, aimed at increasing transparency and facilitating consumer choice. There was already a strong consumer protection framework in place to protect mortgage borrowers (through the Consumer Credit Act 1995, The Consumer Protection Code, the CCMA, and the European Communities (Consumer Mortgage Credit Agreements) Regulations 2016 (transposing the EU Mortgage Credit Directive)). Notwithstanding this strong consumer protection framework, the Central Bank identified that there was scope to increase the level of transparency for variable rate mortgage borrowers and for our conduct of business requirements to better facilitate consumer choice.

As a long term product, mortgages with variable interest rates (other than tracker interest rates) have a unique structure because after the contract has been entered into, the lender can change the interest rate, including increasing it (meaning the consumer has to pay more to pay off the loan). In addition, while regulated entities were required to notify a consumer in advance of an interest rate increase, prior to the introduction of the new protections, they were not required to provide an explanation to the consumer as to why an interest rate was increasing. Now, regulated entities are required to provide more information to consumers about their variable rate mortgage, including requirements to outline clearly for consumers the factors that may result in changes to the variable interest rate and, where there is an increase in the interest rate, a requirement to notify consumers of the reason for the increase. The new measures mean that:

- personal consumers taking out new mortgages are provided with the necessary information to allow them to understand how their lender calculates its variable interest rate and why the lender might change that rate. This information will enable consumers to compare different lenders and to make an informed decision as to whether a variable interest rate is right for them;

- existing mortgage holders have clarity, on an ongoing basis, in relation to the reasons for any rate changes; and
- existing variable rate mortgage holders are better informed about other products that could provide savings for them and are provided with a link to information about switching lenders or mortgage type. This information (which is to be provided to variable rate mortgage holders at least on an annual basis and also where the lender increases its variable mortgage interest rate) will assist them to take action, if they wish to do so.

Issues relating to Ulster Bank GRG

Protection of SME customers is also a priority for the Central Bank. The Central Bank's Code of Conduct for Business Lending to Small and Medium Enterprises (SME Code) was introduced in 2009 to provide key protections to SME customers over and above the protections afforded to them by existing laws. This included a requirement for lenders to work with SME customers and give them reasonable time to resolve an arrears problem and endeavour to agree an approach that will assist the borrower to resolve an arrears problem. In 2015, the Central Bank replaced (and enhanced) these protections with new SME Lending Regulations[1].

The Central Bank has been engaging with Ulster Bank in relation to this issue. For SME customers who were in GRG Ireland at any point during the period 2008-2013, Ulster Bank is providing the same support as announced by RBS in the UK (new GRG complaints review process overseen by an independent third party and is also automatically refunding complex fees paid by SME customers). From the end of February 2017, Ulster Bank commenced writing to in-scope SME customers to offer them the option to complain within this process. The Central Bank will continue to monitor this matter particularly in the context of compliance with the SME Lending Regulations (or the SME Code as it applied from 2009 to 2015).

[1] Central Bank (Supervision and Enforcement) Act 2013 (Section 48)(Lending to Small and Medium-Sized Enterprises) Regulations 2015

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St Raphael's Garda Credit Union

I refer you to Anne Marie McKiernan's letter of 15 May to Ms Bríd Dunne, Clerk, Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach, which responds to this matter in full. A copy is attached as an appendix for your information.

There are other quite specific issues included in your correspondence which have already been brought to the attention of the Central Bank. We are not in a position to comment on these individual cases, however, I can assure you that all issues brought to our attention have been considered as part of our ongoing supervision of regulated entities and do inform our broader supervisory work.

I hope that you find this information helpful as you provide support to those members of the public that have contacted you regarding the various issues.

Yours sincerely,

Derville Rowland

Derville Rowland
Director General Financial Conduct

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Ms Bríd Dunne
Clerk
Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach
Leinster House
Dublin 2

15th May 2017

Dear Ms Dunne,

I refer to your letter of 2 May 2017 on behalf of the Chairman of the Joint Committee, in relation to correspondence from Ms Claire Byrne, Chief Executive Officer of St Raphael's Garda Credit Union, and requesting our observations.

As you can appreciate, the Central Bank cannot provide information specific to a regulated firm. Therefore, we will confine our observations to specific issues raised by Ms Byrne in her correspondence of 24 March 2017 to the Joint Oireachtas Committee, and provide context regarding the issues raised.

Sectoral Context

1. Regulation-making powers of Central Bank

The Central Bank has regulation-making powers in respect of credit unions, since 1 January 2016. Any proposed changes in regulations on foot of these powers will only occur subsequent to consultation with the Minister, the Credit Union Advisory Committee and bodies that have expertise or knowledge of credit union matters as required by Section 84A of the Credit Union Act, 1997, in line with our agreed Consultation Protocol for Credit Unions where a change in policy is proposed[1]. This is consistent with our commitment to having clear, open and transparent engagement with stakeholders in fulfilling our statutory mandate to ensure the protection, by each credit union, of the funds of its members, and the maintenance of the financial stability and well-being of the sector generally.

Regulations, like legislation, apply at a sectoral level.

[1] The Consultation Protocol prescribes that the Central Bank will consult formally with credit unions, their representative bodies and other relevant stakeholders prior to the introduction of new regulations for credit unions

This approach is also consistent with the Government's Better Regulation agenda to ensure that policy is evidence-based, as far as possible, through stakeholder consultation and, as appropriate, impact analysis. This ensures that regulation is introduced only when necessary, and that it has the intended effects, once implemented.

Under the legislation the Central Bank may make regulations for credit unions or a category or categories of credit unions. It is not the practice of the Central Bank to write rules for individual entities in any sector, given the obvious risks of bias and competitive advantage, among others.

The Central Bank does strive to provide additional flexibility and proportionality - where possible and appropriate – to stronger credit unions having regard to nature, scale and complexity, and therefore some existing regulations were written to provide this flexibility.[2] Importantly, these apply to all credit unions meeting the criteria and were not developed for specific individual credit unions.

In developing or amending regulations, the Central Bank takes due account of the unique profile of the credit union sector and its key role in communities and the Irish financial system.

2. Longer Term Lending Limits

The Central Bank supports diversification in the credit union sector and sees longer term lending, including mortgages, as part of a balanced portfolio of total lending. The Credit Union Act 1997 (Regulatory Requirements) Regulations 2016 sets out the percentage of a credit union's loan book that can be outstanding for periods exceeding both five and ten years, as well as limits on the maximum outstanding liability to an individual member.[3]

These prudential maturity limits were developed to address the following issues relating to a larger long term lending portfolio :

- business model coherence (i.e. advisability of a significant element of a credit union loan book concentrated in a particular loan class);
- Asset - Liability Matching (ALM) considerations (i.e. advisability of funding long term lending with short term funding), and
- funding challenges (i.e. reliance on credit unions' single funding source - member deposits – which is typically available for withdrawal on demand).

[2] For example, credit unions over €100m asset size are allowed to apply to hold deposits over €100,000.

[3] The limits are 30% of loan book over five years and up to 10% of loan book over 10 years, subject to a maximum maturity of 25 years. Credit unions that meet certain criteria can apply to the Central Bank for an extension to their longer term lending limits (up to 40% of their loan book over 5 years and up to 15% of their loan book over 10 years) – an additional example of flexibility in regulations for stronger credit unions.

The Central Bank has engaged extensively with the credit union sector on the necessity to take account of the above challenges when considering expanding long term lending. Additionally, we expect credit unions in their analyses to consider the impact of longer term lending on yield margins, return on assets and balance sheet structure, to protect their future viability.

3. **Letter from St. Raphael's Credit Union to JOC.**

We do not agree with Ms Byrnes characterisations of engagements with this office. However, it is not our intention to engage in a protracted explanation of the Registry's position on all matters raised – as to do so would infringe confidentiality considerations - but to address the major points.

It is important to state that no formal proposal to amend long term lending limits (LTLL) was received from St Raphael's Credit Union. Prior to the meeting of 21 July 2016 referred to in the letter, the Central Bank received a detailed presentation from St Raphael's. As Ms Byrne correctly states, their presentation centered around their request to be granted an exemption from the LTLL Regulations on a bilateral basis and their intention to concentrate the business of the credit union on mortgage lending. This presentation did not constitute a developed Business Model proposal to amend LTLL Regulations as its essence was to gain a unique derogation from specific credit union regulatory requirements which was not in our remit to provide.

I note that their presentation did not propose specific alternative lending limits to those contained in Regulations and the impact thereof; it did not contain detailed ALM or funding proposals to balance the funding mismatch risks associated with larger long term lending, and high level financial projections were inconsistent in key areas which impacted on suggested yield margins, return on assets and future viability assessment(TBC).

It was clearly articulated at that meeting and subsequently that the Central Bank, in drafting the Regulations, did so by reference to the need to ensure that such requirements are effective and proportionate having regard to the nature, scale and complexity of credit unions, or indeed a category or categories of credit unions.

As the letter highlights, we have made clear publicly that Long Term Lending is currently being examined in various fora, including our Stakeholder Dialogues, the Credit Union Advisory Committee (CUAC) Review Implementation Group and in bilateral engagements. The Central Bank has been clear in its engagements that proposals may emanate from individual or groups of credit unions, or sectoral bodies. Clearly, if changes to Regulations are to be made, following a Consultation Process, they are likely to be informed by the output of these fora, but that does not preclude individual or groups of credit unions from developing prudent proposals and progressing these with the Registry in the interim. We invited St Raphael's to participate in the Stakeholder Dialogues on Longer Term Lending but this was declined.

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Moreover, in line with our mandate, the Central Bank does not consider it to be prudent to unilaterally remove lending limits without the accompanying risk management framework in place, and an understanding of the aspirations of the underlying business model. A credit union becoming significantly concentrated in longer term lending may be, or become, more akin to a building society, with resulting implications for appropriate regulatory and legislative regime. These matters have been made clear in bilateral and sectoral engagements.

For factual accuracy, we would highlight that

- Contrary to the statement that St. Raphael's was the first credit union to launch mortgages in February 2016, as you will be aware credit unions do not require any specific consent from the Central Bank prior to issuing mortgages and a number of credit unions have been doing so (within the regulatory limits) for some time;

- We are unclear what is meant in the letter by their proposed independent review of their proposal, given that no specific proposal on LTLL, other than a request for their bilateral removal for this specific credit union, was made.

Yours sincerely

Anne Marie McKiernan

Anne Marie McKiernan
Registrar of Credit Unions
Central Bank of Ireland