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<<Date>> 2015

## **Re: Code of Conduct on Mortgage Arrears Themed Inspection – Industry Letter**

Dear «Title» «Surname»

Consumers, and the Central Bank of Ireland (the ‘Central Bank’), must have confidence that lenders will act in the best interests of consumers and that they will treat them fairly and with dignity and respect. In this context, the Central Bank expects lenders to go beyond tick-box compliance and to have a greater focus on delivering fair outcomes for distressed borrowers.

With this in mind and as part of its on-going commitment to protect borrowers in financial difficulties, the Central Bank recently completed a themed inspection of compliance with certain aspects of the Code of Conduct on Mortgage Arrears (the ‘CCMA’) across seven mortgage lenders<sup>1</sup>.

The purpose of this letter is to set out the outcomes and feedback from this themed inspection, together with the next steps that the Central Bank expects all mortgage lenders to take.

### **Outcomes and Feedback**

Overall, we found that lenders have implemented frameworks as required by the CCMA. A number of good practices were identified during the course of the inspections which demonstrate that some lenders are, at times, going beyond the minimum regulatory requirements to assist distressed borrowers (see *Appendix 2* for details). It was also evident that lenders engage with borrowers and attempt to resolve arrears, even when borrowers have been classified as not co-operating by the lender and when legal proceedings had commenced.

Given the intrusive nature of the Central Bank’s work on mortgage arrears to date and receipt of assurances<sup>2</sup> from the Boards of Directors (‘Boards’) of all lenders that the revised CCMA was fully implemented by end 2013, the Central Bank’s expectation was that lenders would be in a position to demonstrate that their arrears resolution processes are in full compliance with both the letter and spirit

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<sup>1</sup> See *Appendix 1* for background and approach to this themed inspection.

<sup>2</sup> These assurances included Board approved communications’ policies.

of the CCMA. However, this themed inspection identified weaknesses, of varying degrees, in some lenders' policies, procedures, systems and controls, which in turn failed to provide the required level of assurance to the Central Bank that the lenders in question are delivering fair outcomes for borrowers in arrears.

Further, it is well documented that culture plays a critical part in driving the behaviour of firms and the individuals within them. It is also apparent that a consumer-centred culture leads to more positive outcomes for consumers, as well as a more constructive engagement with the regulator. A key measure of demonstrating such a culture is the accuracy, reliability and timeliness of information provided to the Central Bank, in particular by control functions such as Compliance or employees at Pre-approval Control Function (PCF) level. In this context, engagement by one lender with the Central Bank during the course of this inspection was found to be unsatisfactory.

The issues identified during the inspection are set out in *Appendix 3* and summarised here:

1. Significant and undue delays on the part of some lenders in assessing cases at various stages in the Mortgage Arrears Resolution Process (the 'MARP').
2. Weaknesses in the quality of communications with borrowers primarily regarding the outcome of the lender's Arrears Support Unit ('ASU') assessment.
3. Concerns about lenders' adherence to some of the specific timeframes set out in the CCMA, in particular timelines between warning and classifying borrowers as not co-operating and timelines to notify borrowers in advance of carrying out unsolicited personal visits.
4. Calls to borrowers in relation to their financial difficulties, despite a third party being nominated to deal with the case.
5. Concerns about lenders' evidence / ability to provide supporting documentation to demonstrate compliance with the CCMA.

Some specific practices and policies, which are contrary to the letter and spirit of the CCMA and which pose a threat to the Central Bank's consumer protection objectives were also identified (see *Appendix 4*). In summary, lenders must not:

1. Continue with a legal process after an alternative repayment arrangement (ARA) has been agreed with a borrower.
2. Continue to seek additional ad hoc payments from borrowers on top of agreed revised repayments, without formally assessing the borrowers' ability to make such additional payments.
3. Unilaterally change any of the figures in the Standard Financial Statement (SFS) provided by a borrower without first discussing with the borrower.
4. Remove a borrower from the protections of the MARP solely because the borrower has not agreed to an ARA over the telephone (i.e. without first sending the ARA offer letter to the borrower for consideration, as required).

### **Next Steps**

Post-inspection letters have issued to each of the seven lenders inspected detailing the issues and concerns identified and imposing Risk Mitigation Programmes (RMPs) where risks are outside of the Central Bank's consumer protection risk appetite. The Central Bank will continue to engage directly with lenders included in this themed inspection to follow-up on the issues and concerns identified in each. In the normal course, we will consider the use of our supervisory powers, including but not limited to the use of enforcement action, where compliance levels are not line with the Central Bank's expectations.

For those lenders which were not included in this themed inspection, the Central Bank nonetheless requires the Boards to take an active role in examining all of the feedback set out in this letter and to confirm to the Central Bank **by 30 November 2015** that:

1. it continues to be satisfied with the assurance provided to the Central Bank that the revised CCMA was fully implemented in the lender by end 2013; and
2. appropriate review mechanisms are in place to ensure that the Board is satisfied on an on-going basis that the lender's practices deliver fair, timely and transparent outcomes for borrowers in financial difficulty.

Where shortcomings are identified in the course of your reviews, changes must be made promptly and in any event, **by no later than 30 November 2015**.

### **Customer Impacting Issues for Borrowers in Financial Difficulty**

While not specifically reviewed as part of this inspection, the Central Bank is highlighting to lenders the importance of ensuring that their internal processes allow them to flag any potential issues<sup>3</sup> that may impact on individual borrowers, particularly those who are at risk of losing their property, either via the legal process or otherwise.

Specifically, where such customer impacting issues have been identified or are under investigation, the Central Bank expects that:

1. the relevant borrower accounts are flagged immediately;
2. the potential impact on an individual borrower's circumstances of any such issues should be fully considered prior to:
  - a) commencing the legal process; or
  - b) commencing legal proceedings for repossession; or
  - c) agreeing to any other option that will result in the borrower losing their property.

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<sup>3</sup> For the purpose of this communication, an 'issue' includes errors which have been identified or flagged from internal or external reviews, errors monitoring etc. and/or any issue which has been queried/flagged by an external source, such as the Central Bank and the Financial Services Ombudsman, including issues that are in the investigation phase, by either or both the external party and the lender.

3. where borrowers are already in one of the processes set out in 2 a) – c) above, these processes should be halted until a full determination of the possible impact of the issue on the borrowers can be made.

Please confirm by **31 August 2015** that your firm has reviewed the systems, processes and procedures for dealing with borrowers in financial difficulty in light of the expectations set out above and are satisfied that they take account of potential or crystallised customer impacting issues.

Finally, please note that feedback given in this industry letter will be considered during the conduct of future inspections. This letter will be published on the Central Bank's website, [www.centralbank.ie](http://www.centralbank.ie) on 24 June 2015. If you have any queries on the content of this letter, please contact Miriam Lee at [miriam.lee@centralbank.ie](mailto:miriam.lee@centralbank.ie).

Yours sincerely

**Helena Mitchell**

**Head of Consumer Protection:** *Supervision Division*

cc xxxxxxxx CEO

xxxxxxx, XXXX Compliance

## **APPENDIX 1: BACKGROUND**

As you will be aware from on-going engagements with your firm, a key pillar in the Central Bank's mortgage arrears strategy is the protection of distressed borrowers. Where properly implemented by lenders, the CCMA provides a strong consumer protection framework to ensure that each borrower who is struggling to keep up mortgage repayments is treated in a timely, transparent and fair manner by his/her lender.

This themed inspection builds on project work previously carried out by the Central Bank on mortgage arrears, including, inter alia, the Mortgage Arrears Resolution Strategies (MARS) project; Mortgage Arrears Resolution Targets (MART) audits; the revision of the CCMA in 2013; the Revised CCMA Implementation themed review in 2013, which included on-site inspections; and targeted supervisory engagement with individual lenders, including engagements with their CEOs.

### **SCOPING**

Firms and areas for inspection were identified on a risk and/or evidence basis, following analysis of a wide range of supervisory and market intelligence available to the Central Bank. We also engaged with consumer stakeholder bodies in advance of commencing this inspection to understand their experience of dealing with lenders on behalf of borrowers in financial difficulties.

### **INSPECTION APPROACH**

The inspection examined compliance with specific provisions of the CCMA relating to the following key areas:

- 1. Resolution of Arrears in a Timely Manner**
- 2. Transparency**
- 3. Fair Process**
- 4. Process Improvements and Controls**

In order to further inform our on-site inspections, lenders were required to complete a Questionnaire in relation to their process and controls for these four key areas in advance of the on-site inspections. Over 350 borrower files and telephone recordings with borrowers in financial difficulties were also reviewed during the course of the themed inspection.

## APPENDIX 2: GOOD PRACTICES

The Central Bank noted the following good practices in operation in some of the lenders inspected:

- The borrower is contacted by phone to explain the outcome of the ASU assessment, in advance of issuing the relevant letter required under the CCMA.
- Letter sent to the borrower to confirm the application of the agreed ARA to the borrower's mortgage account.
- The SFS "*Section G: Financial Statement Summary*" is sent to the borrower which sets out a summary of his/her overall financial position based on the information provided. This can be used by the borrower to assist him/her in considering the wider options available to him/her, for example in considering Personal Insolvency Arrangements.
- A documented control check in place to review all cases before a borrower is either warned (Provision 28) or classified (Provision 29) as not co-operating.
- Letters include the specific date the borrower must submit an appeal by rather than within a certain number of business days e.g. "*must be submitted by dd mm yy*".
- Where a borrower's appeal in relation to a decision of the lender contains new information about the borrower's case, it is fast tracked back to ASU for re-assessment.
- The Appeals Board has created an action log to track process improvements suggested as a result of analysis of appeals.
- A lender's analysis of the patterns of appeals from borrowers includes analysis of the reason appeals were either upheld or not upheld.
- ASU agent training includes attendance of ASU staff at Appeals Board to observe.

While not examined as part of this inspection, the Central Bank is concerned to ensure that borrowers are clearly notified that, due to arrears on the account, their mortgage protection insurance/life cover may not be sufficient to cover the balance outstanding. Through our on-going supervisory work, a good practice was noted in some lenders whereby borrowers are notified of this important fact early in the arrears process, for example in the MARP booklet.

### **APPENDIX 3: ISSUES IDENTIFIED**

The issues identified during this themed inspection have been set out in line with the key areas reviewed, namely:

- 1. Resolution of Arrears in a Timely Manner**
- 2. Transparency**
- 3. Fair Process**
- 4. Process Improvements and Controls**

#### **SECTION 1**

#### **RESOLUTION OF ARREARS IN A TIMELY MANNER**

The CCMA acknowledges that it is in the interests of both the lender and the borrower to address financial difficulties as speedily, effectively and as sympathetically as circumstances allow and the MARP prescribes the required steps in this regard. Undue delays can cause a borrower's arrears situation to deteriorate further and can also result in further stress, frustration and worry on the part of the borrower, who is in an already vulnerable situation.

In the majority of lenders inspected, a number of cases were identified where there were significant and undue delays on the part of the lender during the period between the borrower submitting the SFS for assessment and when the ASU decision was made and notified to the borrower. Delays, of varying degrees, were identified during all of the prescribed steps in this process including:

- Passing the completed SFS to the ASU (for example from the branch);
- Providing a copy of the completed SFS to the borrower;
- Assessing the completed SFS once received by the ASU; and
- Issuing letters regarding the outcome of the ASU assessment.

Some of these delays were caused by:

- A lack of controls in place to ensure certain aspects of the MARP were completed, for example, that an SFS has been received and tracked by the ASU from a branch.
- Errors when dealing with borrowers when progressing cases through the assessment process.
- Inadequate procedures in place to ensure that cases are transferred to another agent where an ASU agent is on annual leave.
- A lack of operational capability e.g. the period under review (1 June - 31 August 2014) was cited as a busy time due to the volumes of SFSs received.
- Inadequate contingency planning e.g. certain ASU functions were being outsourced or transferred to another area during the period under review.

While all lenders have policies and processes in place for progressing a borrower's case once a completed SFS has been received, it was evident in some lenders that these processes were not robust and stringent enough to prevent the delays identified above. In this regard, lenders must have the necessary resources, controls and procedures in place to navigate through busy periods without negatively impacting on borrowers. Where lenders are transferring any business function, either within their own lender/Group or externally, steps must be taken to ensure that borrowers are not negatively impacted by the transfer, including delays in the assessment process.

Further, in recognition of the time it may take to complete and assess the SFS and the potential deterioration in a borrower's arrears situation while this process is being carried out, the CCMA specifically allows a lender to agree a temporary arrangement with a borrower, for a limited period, sufficient to allow time for the lender to receive and complete a full review of the SFS. There was little evidence of lenders availing of this option to avoid further exacerbation of the borrower's situation while they were completing the review of the SFS. Lenders are reminded of this provision to assist borrowers and your firm should consider its policies and procedures in this regard.

## **SECTION 2 TRANSPARENCY**

One of the key objectives of the revised CCMA is to increase transparency for borrowers and to ensure that they are fully informed throughout the process. Communications are key to borrowers' understanding the ARA offered; the reason why no ARA is offered; or the steps to be taken to avoid being classified as not co-operating. Lenders are also obliged to provide information in a clear, understandable and consumer friendly manner. The CCMA prescribes clear requirements in this regard.

Concerns in relation to the quality and consistency of these important borrower communications were identified. Some borrower communications did not contain all of the information required under the CCMA while others used misleading or ambiguous and legalistic wording. Further, a number of errors in relation to individual borrower's circumstances were identified across letters reviewed (some of which were isolated incidents but some were reoccurring errors).

The identification of these issues calls into question the adequacy and robustness of the work undertaken by lenders' Compliance, Internal Audit, Legal and Quality Assurance functions on both the CCMA Implementation Project and as part of their on-going monitoring work. In this regard, the Central Bank would expect these functions to conduct end-to-end borrower file reviews to ensure that written communications with borrowers are clear and transparent and that they include borrower specific and relevant information. Solely relying on a review of template letters does not get to the heart of ensuring the delivery of good outcomes for each distressed borrower.



Sections 1 – 4 below set out the issues identified with these important communications.

### **1. ARA Offer Letter (Provision 42)**

The CCMA prescribes the information that lenders must give borrowers, to equip them to fully understand how the ARA works; how the ARA will operate in the future in terms of reviews and residual debt; and to seek independent advice.

The following gives a flavour of the types of issues identified in our review of the Provision 42 letters. While some were isolated incidents, others were reoccurring issues:

- The reasons why the ARA offered is considered to be appropriate and sustainable for the borrower is generic, rather than borrower specific.
- Specific information was omitted from letters. Examples include:
  - The frequency with which the ARA will be reviewed and the potential outcome of the reviews where circumstances improve; dis-improve; remain the same.
  - Details of any residual mortgage debt remaining at the end of the ARA and owed by the borrower.
- Inclusion of irrelevant and unrelated information in the letter such as:
  - A reference to capitalisation of arrears where the ARA did not include a capitalisation aspect; and
  - References to information irrelevant to the specific ARA being offered (e.g. Interest Only information in an ARA offer for a Term Extension) and following this information with “where relevant”.
- Misleading and confusing information included such as:
  - A reference to a review of the ARA being scheduled after 6 months when the term of the ARA was 3 months;
  - Misleading information about the repayment amount that would apply after a trial period;
  - A reference to conducting reviews of the ARA “where appropriate” (rather than specifying when the review will take place); and
  - Legal terminology used in letters.
- Incorrect information about the residual mortgage debt at the end of the ARA (i.e. it did not include arrears where there were arrears on the account).
- Key information, as required under Provision 42, issued in separate letters to a borrower, sometimes with a number of weeks in between (e.g. residual debt and the reason why the offer was made was issued up to 4 weeks after the arrangement was applied to the borrower’s account).
- Where hybrid ARAs were offered such as a term extension and capitalisation arrangement, two separate letters issued to the borrower on the same day i.e. one letter referring to the term extension offered and a separate letter referring to capitalisation arrangement, without either

linking to or referencing the other. The repayment amounts noted on the letters were not accurate as they did not reflect the entire hybrid arrangement repayment amount.

- Errors in letters, e.g. referring to an incorrect mortgage term.

## **2. No ARA Offered Letter (Provision 45)**

The Central Bank identified a number of issues in the letters that issued to borrowers advising them that no ARA was being offered:

- The reasons why it was concluded that the mortgage is not sustainable and an ARA was unlikely to be appropriate were generic and did not provide the borrower with a clear reason as to why he/she was not being offered an ARA.
- Incorrect/irrelevant information included in the letter, for example recommending that the borrower address unsecured debt where the borrower did not have unsecured debt.
- Required information was omitted from letters, for example:
  - That the borrower should notify the lender if his/her circumstances improve;
  - All the lender's options that are available to the borrower, e.g. Mortgage to Rent, Trade Down etc.; and
  - The estimate of associated costs or charges of all other options where known and, where not known, a list of associated costs or charges.

With regard to Provision 45a), lenders should only include options offered by the lender in this letter. If at the point in time that the letter is issued, the lender is aware that one or more options are not sustainable and would not be offered to the borrower, then these option(s) should not be included in the letter. However, if further assessment is required in order to determine the sustainability of an option for a borrower, the lender may include the option in the letter. In such circumstances, it must be explained that any offer is subject to an assessment and will depend on the borrower meeting specific criteria (which should also be outlined). This approach should be applied to other CCMA letters with similar requirements.

## **3. Not Co-Operating Warning and Classification Letters (Provision 28 and 29)**

The Provision 28 letter must detail the specific actions that the borrower must fulfil in order to avoid being classified as not co-operating and the specified associated timeframes. In light of its clear importance, this letter must be clear and transparent in order to ensure that a borrower knows exactly what he/she must do in order to avoid being classified as not co-operating.

The Provision 29 letter advises the borrower that he/she is now classified as not co-operating and is outside the protections of the MARP. It is crucial that the key information set out in Provision 29 is highlighted to the borrower.

In the main, it was noted that lenders include the information prescribed by Provisions 28 and 29; however, there were some instances where the specific actions that the borrower must fulfil were not clear and transparent. Some specific issues noted are as follows:

- The specific actions that the borrower must fulfil to avoid classification as not co-operating were not set out in the Provision 28 letter.
- The on-going actions the borrower must take to avoid being classified as not co-operating were not set out.
- The Provision 29 letter did not detail all of the lender's options that are available to the borrower, e.g. Mortgage to Rent.
- An estimate of the associated costs or charges, with regard to the options available to the borrower, were not provided in the Provision 29 letter.

#### **4. Unsolicited Personal Visit Notification Letter (Provision 26)**

Cases were identified where the Provision 26 letter referred to a period of weeks during which the proposed unsolicited personal visit could take place, i.e. *"we will visit you over the next 3 weeks"*, rather than the specific timeframe (between five and fifteen business days as specified in Provision 26). The Provision 26 letter should set out the dates between which the lender proposes to carry out the unsolicited personal visit e.g. *"we will visit you between dd mm and dd mm"*.

### **SECTION 3 FAIR PROCESS**

All borrowers in or facing mortgage arrears on their primary residence are entitled to be treated in accordance with the framework prescribed by the CCMA, which ensures that they are treated fairly. Some of the areas below were examined across all lenders; however, in line with the Central Bank's risk-based approach to supervision, others were examined in specific lenders where concerns were identified in advance of the on-site inspections.

#### **1. Not Co-Operating Process (Provision 28 and 29)**

There were instances identified in a small number of lenders where borrowers were not afforded the full 20 business days to fulfill the specific actions as set out in the warning letter (Provision 28) before they were classified as not co-operating. The reasons for this occurring included the lenders' systems not taking account of bank holidays and lack of adequate controls around the process.

Other issues with the not co-operating process, while not widespread across lenders, were identified and are not acceptable. For example, the Provision 29 letter issued before the Provision 28 letter or the Provision 28 letter was not issued at all.

## **2. Unsolicited Personal Visits (Provision 26)**

In the period under review, four of the seven lenders inspected conducted unsolicited personal visits to borrowers as permitted under Provision 26 of the CCMA. The CCMA requires that lenders must ensure that the borrower is notified at least 5 business days prior to the visit. A small number of instances were identified where the 5 day notice period required under Provision 26 b) was not provided to borrowers.

## **3. Engagement with Third Parties (Provision 8)**

In advance of the on-site inspections, lenders were asked to outline their policies and controls for engaging with third parties nominated by the borrower to act on his/her behalf, in accordance with Provision 8 of the CCMA. While compliance with this provision was not examined in every lender during the on-site inspections, it was noted that policies and procedures in relation to engaging with authorised third parties differ from lender to lender.

Borrowers engage third parties to act on their behalf for many reasons and lenders, by ignoring this preference, are not acting in the best interests of their borrowers.

The following shortcomings were identified:

- The borrower is contacted by phone directly rather than the lender contacting the third party;
- The third party authorisation was not correctly logged/flagged on the borrower's account resulting in the borrower receiving calls from the lender where a third party was appointed; and
- ASU collection agent continued with the call after the borrower advised the agent that there was a third party authorisation on file.

The Central Bank reminds all lenders that Provision 8 of the CCMA requires that a lender must liaise with a third party nominated by a borrower to act on his/her behalf. The Central Bank is concerned that lenders do not always respect the wishes of their customers in this regard. Clearly, the provision requires that outbound telephone contact from the lender should be routed through the appointed third party. As the provision does allow a lender to continue to issue written communications required by the CCMA to the borrower, lenders are reminded that this must of course comply with the wishes of the borrower with regard to directing communications to the borrower and/or the third party. Where a lender receives a borrower's written consent that is unclear with regard to communications, it should revert to the borrower to clarify his/her expectations. Any deviation from what the borrower has requested should only occur where the lender believes that not doing so could result in detriment for the borrower.

## **4. All ARA Options Offered not Considered during the ASU Assessment (Provision 39)**

As required under the CCMA, in order to determine which ARAs are viable for each particular borrower, a lender must explore all of the ARAs offered by that lender in the assessment process.

While not a widespread issue, it was noted that all ARAs offered were not explored where the borrower specifically requested one particular ARA. In these cases, if the lender did not consider the requested ARA to be appropriate and sustainable following the assessment, the lender did not consider any other options and instead issued the borrowers with a Provision 45 letter thus placing the borrower outside of the MARP.

For the avoidance of doubt, the CCMA requires lenders to consider all ARAs offered by the lender, regardless of a specific request from the borrower for a particular ARA. Only after all ARAs have been considered and discounted is it appropriate for a lender to place a borrower outside of the MARP.

#### **5. Treatment of Cases Where Borrowers are Separated or Divorced**

Although the treatment of cases where borrowers have notified the lender in writing that they have separated or divorced was not specifically in scope for this inspection, cases were identified through our file reviews where each borrower was not treated as a single borrower.

## **SECTION 4 PROCESS IMPROVEMENTS AND CONTROLS**

### **1. Appeals MI**

Lenders are undertaking analysis of the patterns of appeals, though the quality of analysis varies from lender to lender. Some good practices were identified across a number of lenders (see *Appendix 2*).

### **2. Tracker Mortgage Controls**

All lenders have confirmed to the Central Bank that, as a matter of policy, they do not and have not required borrowers to move from a tracker mortgage to a more unfavorable rate, during the lifetime of the mortgage. Furthermore, no lender has engaged with the Central Bank in relation to developing any such products.

As follow-up to these confirmations, we sought details of lenders' controls to understand how they ensure that their stated policies are adhered to in practice. Weaknesses were identified in these controls, including:

- Most lenders confirmed that the control relies solely on staff knowledge of the policy not to remove tracker mortgages.
- No lender has outlined a system-based control or prohibition in place at individual mortgage level to ensure that borrowers are not offered an ARA that removes a tracker rate. However, one lender has a robust sign-off process in place to mitigate errors occurring.
- In regular quality assurance sample testing, only two lenders include a check to ensure that a tracker mortgage was not removed.

- Only one lender has confirmed a new process of monthly control/reconciliation of all CCMA mortgages to ensure that no tracker rates were removed as part of ARAs applied to borrowers' accounts in the previous month.

### **3. Evidence Demonstrating CCMA Compliance**

Lenders' ability to demonstrate compliance with consumer protection requirements is itself a statutory requirement. As such, lenders' mortgage arrears operations must be able to satisfy the Central Bank, and indeed lenders' own internal lines of defence, that they are acting in accordance with these statutory requirements. Some lenders failed to demonstrate to the Central Bank evidence of compliance with certain requirements of the CCMA during this inspection, for example:

1. That the lender provided the borrower with the SFS for completion.
2. That a copy of the completed SFS was provided to the borrower immediately.
3. Recordings of ASU telephone calls made to or from borrowers in relation to arrears were not retained or could not be located.
4. In cases where the borrower ceased to adhere to the terms of the ARA, there was insufficient evidence to demonstrate that the ARA was reviewed.

#### **APPENDIX 4: PRACTICES/POLICIES CONTRARY TO THE LETTER AND SPIRIT OF THE CCMA**

The Central Bank has identified some specific practices /policies in a small number of lenders which are contrary to the letter and spirit of the CCMA and which pose a threat to the Central Bank's consumer protection objectives.

##### **LEGAL PROCESS**

A policy whereby the lender's legal process was only put on hold after an ARA was agreed between the borrower and lender and the first repayment under the ARA was received.

It is completely inappropriate for any lender to permit a borrower's case to continue through the legal process or to permit any legal communications, which may be considered threatening or otherwise inappropriate by the borrower, when the borrower and the lender have agreed an ARA and the borrower has not failed to adhere to the terms of this ARA. Such an approach is not in accordance with the CCMA's requirement to handle all cases positively with the objective at all times of assisting the borrower to meet his/her mortgage obligation.

##### **AD HOC PAYMENT REQUESTS**

Lenders continued to seek additional ad hoc payments from borrowers after an ARA was agreed, without formally assessing the borrowers' ability to make such additional payments.

This practice undermines both the sustainable solutions put in place and the assessment process prescribed by the CCMA. It is the lender's responsibility to adequately assess a borrower's financial situation to determine affordability before offering an appropriate ARA. The Central Bank does not consider this practice to be acting in the best interest of borrowers as the impact of ad hoc payments on top of an already agreed ARA could negatively affect a borrower's ability to meet this ARA and, in turn, could potentially drive a borrower further into arrears.

##### **UNILATERAL CHANGES TO THE STANDARD FINANCIAL STATEMENT**

The Central Bank was concerned to find an internal policy that permits ASU agents to modify figures provided by borrowers completing the SFS over the telephone without first discussing this with borrowers. The lender includes a general statement on the copy of the completed SFS sent to the borrower stating that the figures may have been modified. The Central Bank expects lenders to deal with borrowers in an open and transparent manner when addressing their financial difficulties. Unilateral changes to the SFS and subsequently putting the onus on the borrower to ensure the accuracy of the information in this manner is entirely unacceptable and contrary to the spirit of the CCMA.

### **REMOVAL OF BORROWERS FROM THE MARP**

In cases where a borrower is not willing to accept an ARA offered over the phone only (in the absence of any letter or documentation setting out the terms of the offer) one lender had a policy to issue a letter placing the borrower outside of the MARP. This poses a risk that the borrower may not be afforded the opportunity to consider the detail of the ARA in writing or to seek independent legal or financial advice in relation to the offer. Such a policy is contrary to the framework set out in the CCMA, the objective of which is to assist borrowers in meeting their mortgage obligations.

**- Ends -**