



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

T +353 1 224 6000 F +353 1 671 6561

Bosca OP 559, Sráid an Dáma, Baile Átha Cliath 2, Éire.
PO Box No. 559 Dame Street, Dublin 2, Ireland.

www.centralbank.ie

30 June 2011

Re: Feedback from the Themed Inspection of the Code of Conduct on Mortgage Arrears and the Letter of Direction that issued to mortgage lenders in December 2010

Dear <<Greeting>>

The Central Bank of Ireland (“the Central Bank”) recently conducted a themed inspection of mortgage lenders to examine compliance with the Letters of Direction (“Direction”) that it issued in December 2010 and Provision 9 of the Code of Conduct on Mortgage Arrears (“CCMA”).

The Direction instructed mortgage lenders to refrain from imposing interest surcharge on arrears and other specific charges arising on a mortgage account in arrears to which the revised CCMA applies and in respect of which a borrower is co-operating reasonably and honestly with the lender in the Mortgage Arrears Resolution Process (“MARP”) from 1 January 2011. Provision 9 of the CCMA refers to the restriction from imposing such charges. Lenders were individually notified of the charges to which this Provision applies in the individual Direction that issued in December 2010.



The purpose of this letter is to provide general feedback to mortgage lenders in relation to the findings from this inspection.

The themed inspection was carried out across six mortgage lenders including credit institutions and retail credit firms. 655 customer mortgage accounts were reviewed during the course of the themed inspection and the main findings are set out below:

1. In general mortgage lenders had taken steps to comply with the Direction from 1 January 2011. In some instances mortgage lenders had ceased applying the charges in advance of this date.

Notwithstanding the action taken by mortgage lenders to ensure compliance with the Direction, instances of non-compliance were identified in four mortgage lenders across 171 mortgage accounts reviewed. These failings were for various reasons, including one-off system errors, inadequate monitoring processes and a lack of adherence to the procedures in place. The errors found in the sample files led to the identification of almost 3,100 accounts which had been overcharged by nearly €70,000.

The Central Bank is satisfied that these mortgage lenders:

- have taken further steps to ensure that they are fully compliant with the Direction;
- are no longer imposing the charges set out in the Direction; and
- have refund affected customers, with appropriate interest.

Notwithstanding the above, it is a matter of concern that further effort was required by these mortgage lenders to achieve full compliance with the Direction (on 1 January 2011) and the CCMA. The Central Bank has been corresponding with mortgage lenders since 2009 with regard to its position on the application of surcharge interest and arrears charges on mortgage customers in arrears and correspondence on this matter first issued on 15 December 2009.

The issue was also highlighted in feedback from the 2009 themed inspection on residential mortgage arrears and repossessions that issued on 22 April 2010. On 6 July 2010 the Expert Group on Mortgage Arrears and Personal Debt published its Interim Report. One of its



recommendations was that lenders must not apply penalty interest or arrears charges to borrowers who are taking part in the MARP. On 8 July 2010 Mr Matthew Elderfield, Deputy Governor, Financial Regulation wrote to all mortgage lenders requesting them to familiarise themselves with these recommendations and to begin preparations for the implementation of the recommendations in advance of any formal consultation.

Further, prior to the Direction issuing, there was specific correspondence with mortgage lenders in August 2010 regarding the recommendations of the Mortgage Arrears and Personal Debt Expert Group in relation to surcharge interest and arrears interest.

Given that instances of non-compliance were identified in four of the six mortgage lenders inspected, despite steps being put in place to ensure compliance with the Direction, all mortgage lenders are now requested to carry out a review of their systems and monitoring practices to ensure they are fully compliant with the Direction and the requirement of the CCMA specifically relating to charges on mortgage accounts in arrears. Mortgage lenders are requested to report their findings from this review to the Central Bank, no later than **22 July 2011**.

2. In some cases it was noted that mortgage lenders were passing on third party fees to customers in mortgage arrears. While it is noted that these charges do not require approval by the Central Bank under Section 149 of the Consumer Credit Act, 1995 (“the CCA”), the Central Bank is of the view that mortgage lenders should reconsider this matter in the context of the treatment of mortgage arrears customers and the recommendation of the Government’s Expert Group on Mortgage Arrears and Personal Debt to ensure that mortgage arrears customers co-operating and engaging with their mortgage lender are not being charged fees. All mortgage lenders are requested to review their practices in this regard and to report back to the Central Bank by **22 July 2011** also.

Further, it was also noted that some charges that were approved under Section 149 of the CCA and not included in the Direction were charged by mortgage lenders, for example duplicate statement fees. The Central Bank will be strengthening the CCMA in this area in terms of the charges covered by the Direction. As such, mortgage lenders applying such



charges are requested to review their practices as the Central Bank will be issuing revised Direction to address this issue.

3. “Primary Residence” in the CCMA 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.

As such, a borrower with a Residential Investment Property (“RIP”) may fall within the CCMA.

In general it was noted that processes had been put in place to ensure that charges set out in the Direction were ceased on private residential mortgage accounts. However, all mortgage lenders should ensure that they have adequate procedures, processes and controls in place to ensure that any RIP arrears borrowers that fall within the definition of “Primary Residence” are identified as such as soon as possible to ensure that the protections of the CCMA are applied. Where this is the case charges should be ceased immediately, refunds made and the protections of the CCMA applied.

Compliance issues identified during the course of the themed inspection are already subject to separate engagement with the mortgage lenders concerned. Issues raised in this industry letter may be considered during the conduct of other inspections.

As you are aware, the revised CCMA was issued to mortgage lenders on 6 December 2010 and was effective from 1 January 2011. The Central Bank advised that it expected mortgage lenders to take immediate steps towards implementing the necessary changes to their systems, procedures and documents and providing relevant staff training. The Central Bank noted that during the six month period ending 30 June 2011 it would be cognisant of issues relating to systems development or other technical difficulties and required staff training in monitoring compliance with the revised CCMA. This six month period is now coming at an end and full compliance with the revised CCMA is expected.



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

Ensuring mortgage lenders are in compliance with the revised CCMA is a priority area for the Consumer Protection Division for the remainder of 2011 and we will conduct further inspections related to the CCMA this year. Our latest mortgage arrears data shows that levels of consumers struggling with mortgage repayments or at risk of falling into difficulty is continuing to rise. In this regard at end March 2011 6.3% (49,609 accounts) of mortgage accounts were in arrears for more than 90 days, an increase from 5.7% (44,508 accounts) at end December 2010 and over 4% (32,321 accounts) at end March 2010. Further, 36,662 accounts with no arrears were restructured at end March 2011 compared to 35,205 accounts at end December 2010.

Further, as outlined in the email to Compliance Officers of mortgage lenders on 14 June 2011, lenders are reminded that they are obliged to ensure that dealings with pre-arrears and arrears customers should be carried out in a timely and responsive manner. Failure to comply with the revised CCMA may result in sanctions under the Administrative Sanctions Framework or other regulatory action.

If you have any queries on the content of this letter, please contact Miriam Lee at miriam.lee@centralbank.ie or Catharina Douglas at catharina.douglas@centralbank.ie.

Yours sincerely

A handwritten signature in black ink that reads "Sharon Donnery".

Sharon Donnery
Head of Consumer Protection Codes Division