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Relate

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Contents

Revised Code of Conduct on Mortgage Arrears

The Central Bank has published a revised Code of Conduct on Mortgage Arrears (CCMA) which came into effect on 1 July 2013. Website: **centralbank.ie**. The previous version, introducing the Mortgage Arrears Resolution Process (MARP) was described in *Relate* in December 2011.

The Code sets out how lenders must deal with you if you are in arrears with the mortgage on your main residence, or in pre-arrears (at risk of arrears). It is legally binding on all the main financial institutions except credit unions.

The revised CCMA includes an updated definition of "not co-operating"; new rules on contact with customers; enhanced information requirements; and links with the *Personal Insolvency Act 2012*.

Here we summarise the revised Code, emphasising what has changed.

General duties of lenders

Lenders must encourage borrowers to contact them about financial difficulties that could affect their mortgage repayments. This includes writing to all borrowers at least yearly. Someone in each branch must have specific responsibility for dealing with people in arrears or pre-arrears and liaising with the specialist Arrears Support Unit.

The lender must contact you as soon as you go into arrears. Before contacting you, it must ensure that it has all the relevant information you supplied. Any targets or incentives for staff dealing with arrears or pre-arrears cases must take the Code into account and not impair how the lender treats you and communicates with you.

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While a lender must deal with any third party (such as MABS) that you nominate, it can also contact you directly and send you communications under the Code. Unless you are "not co-operating", the lender cannot impose charges or surcharge interest on your mortgage arrears.

Lenders are obliged to maintain detailed records of all their dealings with you including recordings of phone calls to the Arrears Support Service. These records must be kept for six years from the time you cease to be a customer of the lender.

Information

The Code outlines specific, timely and clear information that the lender must provide at all stages of its Mortgage Arrears Resolution Process (MARP).

As soon as you get into arrears or make contact about pre-arrears, the lender must give you a booklet with full details of its MARP. This must explain:

- The alternative repayment arrangements available
- How requests for such arrangements are assessed
- Other options, such as voluntary surrender, voluntary sale, mortgage-to-rent, trading down
- "Not co-operating" and its implications, such as surcharges, repossession proceedings and impact on personal insolvency options
- How your details may be shared with the Irish Credit Bureau or other credit registers
- How to complain or appeal
- How outstanding debt is handled after repossession

The MARP booklet must also mention relevant State supports. It must give contact details for MABS and relevant websites, such as **keepingyourhome.ie**. It must be on the lender's website, along with the Central Bank's Standard Financial Statement and guidance for borrowers. It must have a link to **keepingyourhome.ie** and links to information on personal insolvency options.

Communications

Under the revised Code, each lender's Board must agree a communications policy, which ensures that the level of communications with borrowers is proportionate and not excessive; communications are not aggressive, intimidating or harassing; borrowers get enough time to complete agreed actions (with help if needed) before any further communication; and steps are taken to agree future communications. Communications must not be "unnecessarily frequent".

If you are 31 calendar days in mortgage arrears, the lender must write to you within three business days, with information including: its arrears contact points; the status of your account; the implications of not co-operating; possible impacts on your credit rating; and links to personal insolvency information. You must also get the MARP booklet. While in arrears, you must get an account update every three months.

Unsolicited personal visits

The revised Code specifies that the lender may make an unsolicited visit to your home only if other attempts to contact you have failed and you are about to be classified as not co-operating. You must get at least five business days' notice and you can opt to meet in the lender's office instead. You can choose to have a third party with you. The lender's letter announcing the visit must explain the implications of not co-operating.

The lender must offer to help you with the Standard Financial Statement, but cannot force you to complete it during the visit.

Not co-operating

The Code specifies when you may be classified as not co-operating. This can happen if you:

- Do not fully and honestly disclose significant information or
- Fail to provide relevant information within a reasonable time or
- Are in arrears for three months, during which you either failed to contact the lender or respond to its communications, or your response is insufficient for a complete assessment of your circumstances or
- Have entered an alternative repayment arrangement and three months have passed, during which you have not fully made the alternative repayments or
- Have not entered an alternative repayment arrangement and three months have passed, during which you have not fully paid your mortgage or have not cleared your arrears

Before classifying you as not co-operating, the lender must write to you, giving you 20 business days to take specific actions to enable it to assess your circumstances. It must warn you about the implications of not co-operating and suggest that you seek appropriate advice. It must also highlight the position about debt outstanding after repossession or sale.

If you are classified as not co-operating, you lose the protections of the MARP. Legal proceedings for repossession can start immediately. You may appeal the decision to classify you as not co-operating.

Standard Financial Statement

The lender must provide you with the Standard Financial Statement (SFS) and use it when assessing your circumstances. It must offer to help you to complete the SFS and mention sources of advice, such as MABS. It must give you enough time to assemble the information and complete the SFS, and must give you a copy of the completed statement.

The lender must assess your case in a timely manner, taking all the circumstances into account. Before completing the assessment, it may agree a temporary alternative repayment arrangement if a delay would make your situation worse.

When the assessment is complete, the lender must explore all the options that it offers for alternative repayment arrangements. These may include:

- Paying interest only, or interest and part of the capital, for a period
- Permanently or temporarily reducing the interest rate
- Deferring repayments (or part) for a period
- Extending the mortgage term
- Changing the type of mortgage
- Adding arrears and interest to the principal
- Equity participation (reduction of principal, with transfer of part of your equity)
- Warehousing part of the mortgage (including through a split mortgage)
- Reducing the principal
- A "deferred interest" or other voluntary scheme

The lender must set out in writing an explanation of how the repayment arrangement or arrangements that it is prepared to offer you work, their advantages and disadvantages, and why it considers the option(s) to be appropriate and sustainable for you. It must explain how any outstanding debt will be handled and advise you to take appropriate independent advice.

The lender must review each alternative repayment arrangement periodically, and also if you request a review or if you breach the arrangement.

If you are not offered an alternative arrangement, you must be told why, and informed of other options such as voluntary surrender, etc. You must also be told that you are now outside the MARP and that repossession proceedings can follow – see "Repossession" opposite.

The lender must also tell you what happens about any debt outstanding after repossession or sale. It must tell you about personal insolvency options; the importance of taking independent advice; and your right to appeal.

You must also get the above information if you reject an alternative repayment arrangement.

Moving from a tracker mortgage

The lender may not require you to change from a tracker to another type of mortgage as part of an alternative repayment arrangement unless it concludes that none of the options that include keeping your tracker are appropriate or sustainable for you. It may offer you an alternative arrangement that requires you to change from your tracker mortgage if you can afford the alternative arrangement and it is sustainable.

Repossession

Lenders must wait at least eight months from the date the arrears arose before starting legal action for possession. Previously, they had to wait 12 months.

If you are co-operating, the lender must give you at least three months' notice of intention to start legal proceedings if:

- It has not offered an alternative repayment arrangement or
- You do not accept the alternative arrangement offered

This should give you time to consider options like voluntary surrender, voluntary sale or a Personal Insolvency Arrangement.

An action for possession may be taken if the eight-month period has expired or you have been classified as not co-operating. An action may be taken at any time if you are involved in defrauding the lender or if you breach your mortgage contract (apart from being in arrears).

Appeals

You may appeal if:

- You are not willing to accept the alternative repayment arrangement being offered
- You are not offered an alternative arrangement
- You are classified as not co-operating

You must get at least 20 business days in which to appeal to the lender's Appeals Board. The appeal must be decided within 40 business days.

Complaints

You may complain to the Financial Services Ombudsman if you consider that your lender has not handled your case properly. The Ombudsman will consider whether the lender complied with the CCMA in reaching the decision and may direct it to re-assess your case. (However, the Ombudsman cannot pursue complaints against the Irish Bank Resolution Corporation without High Court consent.)

Further information

If you are in mortgage arrears or worried about mortgage arrears, you may contact the Mortgage Arrears Information Helpline on 0761 07 4050, Monday to Friday, 9.30am to 5pm or visit **keepingyourhome.ie**. The Central Bank has published a Consumer Guide to the Code of Conduct on Mortgage Arrears. See **centralbank.ie**.

Other developments

Mortgage arrears resolution targets

The Central Bank has set mortgage arrears resolution targets for each of the lending institutions. The institutions are required to report every quarter on how they are meeting these targets.

Mortgage-to-rent scheme

The mortgage-to-rent scheme is aimed at low-income families whose mortgage situation is unsustainable and where there is little or no prospect of a significant change in circumstances in the foreseeable future. The scheme enables the family to remain in their home. Ownership is transferred to an approved housing body, which rents it to the original owners. The scheme is managed by the Housing Agency. All the main lending institutions are taking part in the scheme, which became available nationally in June 2012.

Split mortgages

Split mortgages are arrangements where part of the outstanding mortgage is *parked* and you make repayments on the other part of the mortgage. What happens to the part of the mortgage on which you do not make repayments depends on the agreement you make with your lender. In June 2013, there were 309 split mortgage arrangements in place.

Central Bank pilot scheme on debt resolution

The Central Bank has announced a pilot scheme for restructuring of secured and unsecured debt owed to multiple lenders. It will not include buy-to-let or business-related debts. The pilot will cover about 750 debtors. Its aim is to achieve sustainable and fair outcomes without the need for the borrower to enter the full insolvency process.

A third party intermediary will examine the borrower's overall debts and circumstances and make agreements with the lenders on new levels of repayments. This may include write-off of some debts.

The lenders that are participating in the pilot scheme include all the retail banks operating in Ireland, a credit card firm and individual credit unions.

In order to take part in the pilot scheme, a borrower must be co-operating with their lenders, as defined in the Central Bank's Code of Conduct on Mortgage Arrears (CCMA). Borrowers must also have taken reasonable steps to maximise income and curtail expenditure. Borrowers who are selected to participate are not required to do so.

Repossession of mortgaged property

The *Land and Conveyancing Law Reform Act 2013* came into effect on 31 July 2013. The Act provides that the law that was in force before 1 December 2009 will continue to apply to mortgages created before that date.

In 2011, a High Court decision established that there were legal difficulties with getting orders for possession of certain properties. Put simply, the decision meant that, in the case of mortgages created before 1 December 2009, it was very difficult for a mortgage provider to get an order for possession unless the court proceedings were started before that date. There were no such difficulties in the case of mortgages created after 1 December 2009.

This situation arose because the law was changed on 1 December 2009. An existing law governing repossessions was repealed and, therefore, could apply only to cases that arose before its repeal. The 2009 law (*The Land and Conveyancing Law Reform Act 2009*) provided for repossessions but the High Court ruled that it applied only to mortgages created after it came into effect.

The 2013 Act provides that the law that was in force before 1 December 2009 will continue to apply to mortgages created before that date. This means that the legal obstacles to getting orders for possession of mortgaged properties where the mortgage was created before 1 December 2009 have been removed.

The Act also provides that if the mortgage provider is applying to take possession of a principal private residence, the court may adjourn the proceedings in order to allow for a Personal Insolvency Arrangement (PIA) to be explored as an alternative to repossession. This adjournment arrangement applies only to principal private residences but PIAs are, of course, available to people who are in debt in relation to other properties. The adjournment may be for up to two months.

In deciding whether or not to grant an adjournment, the court may consider a range of matters including:

- Whether you have engaged in a process relating to mortgage arrears (such as the MARP)
- Whether you have made payments in the preceding 12 months
- Whether the matter has been adjourned previously and
- The conduct of the parties to the mortgage in seeking to resolve issues concerning arrears on the mortgage

A further adjournment may be granted if there has been significant progress in preparing a Personal Insolvency Arrangement. The length of this further adjournment is at the court's discretion.

The Act also provides that repossession actions in respect of a principal private residence where the mortgage was created before 1 December 2009 must start in the Circuit Court. Such actions in respect of mortgages created after 1 December 2009 already start in the Circuit Court. Any such actions that were already in being in the High Court when this law came into force can continue to be heard there.

Local authority housing repossessions

While there was legal doubt about repossessions by banks and other lenders, local authorities were able to use other legal provisions to repossess houses. The *Housing (Miscellaneous Provisions) Act 1992* provides that a housing authority may recover possession of the dwelling under the *Landlord and Tenant Law Amendment (Ireland) Act 1860* as if the local authority was the landlord and the borrower the tenant.

In 2012, there were 73 forced repossessions by local authorities and 64 voluntary repossessions.

Personal insolvency legislation

The *Personal Insolvency Act 2012* is gradually being brought into operation (see *Relate*, June 2013). The Insolvency Service of Ireland (ISI) will accept applications from 9 September 2013. The first Personal Insolvency Practitioners (PIPs) and Approved Intermediaries (AIs) have now been authorised and are listed on the Insolvency Service website.

The *Courts and Civil Law (Miscellaneous Provisions) Act 2013* introduced a number of amendments to the *Personal Insolvency Act*. There are several amendments to the bankruptcy legislation – these are not yet in effect. There is also a range of amendments to other aspects of the personal insolvency legislation and these came into effect on 31 July 2013 (SI 286/2013). Several are largely technical or involve clarification.

The following are the main substantive changes:

- There are more detailed provisions for the on-going supervision and regulation of Approved Intermediaries and Personal Insolvency Practitioners.
- The Insolvency Service will be able to retain information about people who have completed any of the debt resolution processes under the Act. The public information on the registers of the various processes will be removed three months after the process is completed. However, in general, a person may avail of the new processes only once in a lifetime. So, the Insolvency Service must retain information about participants in the process to ensure that this can be implemented.
- When the Insolvency Service submits the application for one of the processes and related documentation to the court, the court may grant or reject the relief requested. The court may hold a hearing in order to get additional information or evidence. The original Act provided that such a hearing would generally not be in public. This has now been changed and such hearings will be in public.
- There are more detailed provisions dealing with the variation of Debt Settlement Arrangements and Personal Insolvency Arrangements.

For further information on the implementation of the personal insolvency processes, see **isi.gov.ie**. (The *Courts and Civil Law (Miscellaneous Provisions) Act 2013* deals with several other issues, which will be covered in the next issue of *Relate*.)

Regulation of financial services

The *Central Bank (Supervision and Enforcement) Act 2013* deals with several different aspects of financial regulation. Almost all of it came into effect on 1 August 2013 (SI 287/2013). The provision dealing with the Financial Services Ombudsman's right to name institutions against which complaints have been made comes into effect on 1 September 2013.

The Act gives the Central Bank extensive new powers to monitor and regulate financial institutions and to ensure the enforcement of the regulations. Here we look at those aspects of the Act that are particularly relevant for consumers and people in debt.

Regulation of debt management and bill payment firms

The Act provides for the regulation of debt management and bill payment firms. They will be subject to broadly the same regulation as other financial services providers. This includes, for example, requirements about fitness and probity.

The Law Reform Commission has recommended that money advice services and debt collection services should be regulated. The Expert Group on Mortgage Arrears and Personal Debt made a similar recommendation.

The Central Bank has conducted research into this sector and has identified three categories of firms. This research was conducted before the personal insolvency legislation came into effect and it may be that some of these firms have changed their focus. All of these firms will come under the new Act.

Debt advice firms: They provide advice on legal rights and the options available to people who are in debt. They charge for their services but they do not generally provide bill-paying services. They may negotiate debt agreements on behalf of their clients and the clients pay the creditors directly. It is possible to negotiate such agreements outside of the personal insolvency procedures. The Central Bank considers that there are between 30 and 40 such firms operating in Ireland.

Debt management firms: They provide advice, money management services and debt management services to clients. They take money from clients and use it to pay creditors. Again, they may be changing focus to get involved in the personal insolvency procedures. There are about 20 such firms operating in Ireland.

Budgeting firms: They provide advice and money management services. They may take clients' money and pay bills as they arise. There are a small number of such firms – possibly two or three – operating in Ireland.

New regulatory requirements

The Act provides that debt management firms must be authorised by the Central Bank. Firms that are currently providing services must apply for authorisation before 30 October 2013. They will have temporary authorisation until a decision is made on their application.

The Central Bank has issued a consultation paper on the authorisation requirements and standards for debt management firms. The closing date for submissions is 23 September 2013. Website: **centralbank.ie**.

A debt management firm is one that charges for the provision of debt management services. The Act defines debt management services as:

- Giving advice about the discharge of debts (in whole or in part), including advice about budgeting in connection with the discharge of debts
- Negotiating with a person's creditors for the discharge of the person's debts (in whole or in part), or
- Any similar activity associated with the discharge of debts

The following are not considered to be debt management firms even if they provide debt management services:

- Charitable organisations
- Money Advice and Budgeting Services (MABS)
- Banks, building societies, credit unions (they are already regulated by the Central Bank)
- Lawyers and accountants who provide debt management services in an incidental manner and are regulated by a professional body
- Parties to the *Protocol for Independent Advice to Borrowers Availing of Long Term Mortgage Forbearance* who provide advice in accordance with that protocol (this protocol involves the accountancy bodies and the mortgage providers) – see **keepingyourhome.ie**
- The Insolvency Service of Ireland, AIs and PIPs
- Personal representatives dealing with estates and trustees
- The Central Bank, An Post, National Asset Management Agency (NAMA), National Treasury Management Agency (NTMA), the National Consumer Agency (NCA) or any other publicly funded service provider

Some debt management firms that process payments on behalf of clients are already subject to regulation under the EU Payment Services Directive. This directive was brought into Irish law by the *European Communities (Payment Services) Regulations 2009* and came into effect in November 2009. Payment services covered include credit transfers, direct debits, standing orders, money remittance, debit and credit card transactions and certain services provided by mobile phones and other digital and information technology devices.

Firms that provide money transmission services and that are not already covered by the EU regulations are now required to get authorisation from the Central Bank. The exceptions are the same as for debt management firms. A money transmission service is defined in the Act as a service that transmits money by any means and so covers what are generally known as bill payment services. The Central Bank may require that such firms have adequate capital and insurance.

These firms are now subject to the range of Central Bank powers. These include the fitness and probity powers under the *Central Bank Reform Act 2010* and to the general administrative sanctions and powers available to the Central Bank. They are also subject to various codes, including the Central Bank's Consumer Protection Code. This means, for example, that advertising and charges will be subject to that code.

Debt management firms will be authorised to provide debt advice and debt negotiation services. If they propose to hold clients' funds and make payments on behalf of clients, they may need a payment institution authorisation under the *European Communities (Payment Services) Regulations 2009* or a money transmission business authorisation under the *Central Bank Act 1997* as amended by the 2013 Act.

Protection for whistleblowers

The Act provides for protection for whistleblowers. They are people who, in good faith, bring issues of concern to the attention of the Central Bank. The Government intends to bring forward comprehensive protection for whistleblowers in all sectors but this Act provides for such protection in the financial services sector.

Consumer redress

The Act also provides a statutory basis for redress in circumstances where there is a widespread or regular default by a financial services provider that causes customers to suffer damage. A default in this context includes:

- Charges over and above the allowed level
- Providing customers with a financial service that the customer has not agreed to receive or was not suitable
- Providing a customer with inaccurate information that influences the customer to make a particular decision
- Failure of any system, for example, computer system, or controls

Other factors may be prescribed.

Until now, such complaints were dealt with mainly by the Financial Services Ombudsman. The Act provides that the Central Bank can examine what has happened, decide whether redress is warranted and, if necessary, order the financial services provider to give redress to those affected. If the Central Bank orders redress, the Financial Services Ombudsman is not obliged to further investigate the complaint.

The Act gives the Central Bank powers to give directions and make regulations dealing with a range of issues, including consumer protection. It is expected that regulations will replace the Central Bank's current codes over a period of time; the codes will remain in place until the relevant regulations are made.

Financial Services Ombudsman

At present, the Financial Services Ombudsman may not name an institution against which a successful complaint is made. The Act provides that this can happen in certain circumstances and this comes into effect on 1 September 2013. It is expected that the Ombudsman will start doing this early in 2014.

When it is in force, the Ombudsman will be able to name the financial services provider if, in the previous financial year, at least three complaints made about the provider were substantiated or partly substantiated. The complainant will not be identified. Website: **financialombudsman.ie**.

Credit Reporting Bill 2012

The *Credit Reporting Bill 2012* is currently before the Oireachtas. It aims to put in place a Central Credit Register. This is a database of credit applications and credit agreements. The aim of the credit register is to help lenders to make informed lending decisions and to protect borrowers from excessive debt. The Central Credit Register will be available to lenders to enable them to check your credit history. It will not, of course, be a public register.

At present, there are some privately operated credit bureaux that have information on credit applications and agreements and this information is available to the members of the particular bureau. Some credit providers are not members of any credit bureau. There is no obligation to register credit applications or agreements and there is no central comprehensive statutory register.

The following is a summary of the main provisions of the Bill. It is likely that amendments will be made as it progresses through the Oireachtas.

Central Credit Register

The Bill provides that the Central Bank will be obliged to establish, maintain and operate the Central Credit Register. This register may hold personal information, credit information and credit scores or other analysis. It may also hold *anonymised* information, that is, information that does not identify the borrower.

How the register is compiled

Credit information providers will be obliged to provide information to the Central Bank for the register. Credit information providers are defined in the Bill as:

- Regulated financial services providers
- Providers of credit for hire-purchase agreements
- NAMA
- Local authorities

In effect, they are the lenders that provide credit to borrowers.

If you have made an application for credit or if you have made a credit agreement or if you are a guarantor, you are what the Bill describes as a credit information subject – in effect, a borrower.

Lenders will be obliged to report to the Central Bank, for inclusion in the register, credit information and personal information about loan applications and loan agreements that involve more than €500. Personal information includes your name, address, occupation and PPS number.

The Citizens Information Board provides independent information, advice and advocacy on public and social services through citizensinformation.ie, the Citizens Information Phone Service and the network of Citizens Information Services. It is responsible for the Money Advice and Budgeting Service and provides advocacy services for people with disabilities.

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The sort of credit information that the register will contain includes:

- The nature and term of the credit applied for or agreed and any subsequent changes
- The nature of any guarantee or indemnity, or any security
- The rate or rates of interest that applies on each loan
- Proposals or arrangements about debts
- Information about the performance of obligations under the agreement

The Central Bank may make regulations specifying additional information that may be required.

Your credit score is an assessment of your risk of defaulting.

The registration requirements do not apply to credit applications and agreements where the applicant or the borrower is not resident in Ireland at the time the application or agreement is made or where the law that applies is not Irish law. However, if you are applying for credit, you must tell the lender if you have debts of more than €5,000 under such agreements.

How the register will be used

Lenders will be required to check the register before approving credit applications of over €2,000 and they may apply to check the register in cases involving less than this. The lender may also seek information from the register if you look for a change in the terms and conditions of the loan or if you fail to comply with the conditions.

The information from the register may be used by the lender only for the purposes of:

- Verifying the information you provided for your credit application
- Evaluating the risk of lending to you
- Monitoring defaults in credit agreements by you
- Evaluating whether to make any debt proposal or arrangement that you have asked for

Lenders will be required to keep information about their access to the register for five years after such access. The costs of the register will be met by a levy on the lenders. Lenders may also have to pay a fee for access to the information on the register.

Borrowers' rights in relation to the register

When applying for credit or entering a credit agreement, you must be told by the lender that the information will be recorded on the Central Credit Register. Lenders will be obliged to tell you of your rights and obligations under the legislation.

You will be entitled to get a free copy of your own record once a year. There are provisions for you to apply to have inaccurate information removed or changed. There are specific time limits within which such problems must be addressed.

The Central Bank is required to keep a record for five years of all occasions on which access to the register was granted. You may ask the Central Bank for a report detailing each occasion access has been given to information about you in the previous five years, who applied for access and the dates on which these applications were made. If required to do so by the Central Bank, a lender must tell you on any occasion when the lender was given access to your information on the register.

Retention of information

The Bill sets out limits on how long the information will be retained on the register. In general, the time limits will be:

- Credit applications – six months
- Credit agreements – five years after completion of the agreement
- Anonymised information – indefinitely

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