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Re: Clarifications on the Code of Conduct on Mortgage Arrears

Please find set out below clarifications on the Code of Conduct on Mortgage Arrears (CCMA), which build on the [interpretations issued to industry in April 2012](#). We expect all lenders to consider their contact strategies in the context of these clarifications, which should be read in conjunction with the CCMA.

1.1. Initial contact

With regard to initial contact, provision 7 of the CCMA requires that a lender must, as soon as a borrower goes into arrears, communicate promptly and clearly with the borrower to establish in the first instance why the repayment schedule, as per the mortgage contract, has not been adhered to. The intention of provision 7 is that the lender will engage with the borrower to try to establish whether the missed payment is indicative of an arrears problem. In complying with this provision, we consider that it is appropriate for a lender to attempt contact until such time as they have a conversation with the consumer to determine why the arrears have arisen, provided that the level of attempted contact is proportionate and not excessive.

Once the lender has spoken to the borrower in relation to their arrears and has, in as far as is practicable, established the reason for the arrears, this provision is considered to have been met and any further contact is subject to the limit on unsolicited contact (except where it has been requested by or agreed in advance with the borrower).

1.2. Ongoing contacts (after the initial contact)

The interpretations issued in April 2012 clarified that the limit on unsolicited contact applies to successful communications which includes any of the following:

- Text message
- Letter
- Telephone conversation
- Voicemail

These mediums are considered to be successful, for the purposes of the CCMA, because the borrower will be aware that their lender has contacted them and the lender has the opportunity to convey information to the borrower in relation to their mortgage arrears. The lender has a choice as to which of these methods of communication to use.

It should be noted that where a lender speaks to a borrower, for example, when making the initial contact required under provision 7, it does have the opportunity to agree future contacts with that borrower. Where a borrower consents to future contact in relation to their arrears, such contacts are not considered 'unsolicited' and the limit will not apply.

1.3. Frequency of attempted contacts

The CCMA does not prevent lenders from taking different approaches to their strategy in contacting borrowers. Lenders are reminded that attempts at contact must not be excessive or disproportionate and the monthly limit on ongoing unsolicited contact (three successful contacts per month) must not be exceeded.

Each lender must satisfy itself that the strategy it adopts is proportionate and not excessive, depending on the risk category of the borrower. The strategy should consider the level of attempted contact from both the lender's and borrower's perspective and lenders must be satisfied that this level of contact does not constitute harassment.

We would expect that lenders will regularly monitor contacts with borrowers, particularly calls and visits, to ensure that the tone of the engagement with borrowers is appropriate. In addition, we expect lenders to monitor appeals, and complaints logs, to determine whether there have been instances where borrowers have expressed concerns in relation to the level or tone of contact.

1.4. Unsolicited personal visits

As set out in the interpretations issued in April 2012, an unsolicited personal visit should only be attempted where all other attempts at contact have failed and prior to classifying a borrower as not co-operating. The intention is that where a lender has not been able to make contact successfully for a period of three months and, as a result, is about to classify the consumer as not co-operating, it can attempt a visit without the borrower's prior permission, provided that it gives the borrower at least five working days' notice in writing that it intends to make a personal visit within a specified time frame.

As indicated below (1.5), the CCMA does not prevent lenders from imposing timelines for provision of information (assuming such timelines are fair and reasonable and comply with General Principle 1 of the Consumer Protection Code 2012). Consequently, a lender could also attempt an unsolicited visit where it has, for example, not received the SFS within the specified timeframe, and is about to classify the borrower as not co-operating.

1.5. Timelines for receipt of information

The Central Bank's (the Bank) powers under Section 117 of the Central Bank Act, 1989 are limited to the drawing up of codes of conduct in relation to "any class or classes of licence holders or other persons supervised by the Bank". Consequently, the Bank does not have the power to impose

timelines on consumers for timely return of information. However, lenders are not prevented from imposing timelines for, for example, completing an SFS, responding to information requests or responding to an offer for forbearance, provided that the timelines do not conflict with the CCMA. Part b) of the definition of not co-operating states that a borrower can be considered to be not co-operating if he or she “fails to provide information sought by the lender relevant to the borrower’s financial situation”, and, in that instance, that the 12-month moratorium and the prohibition on arrears charges will no longer apply.

We would expect that any deadline imposed on a borrower for return of information will be fair and reasonable and that the lender will comply with General Principle 1 of the Consumer Protection Code 2012, which requires a regulated entity to act “honestly, fairly, and professionally in the best interests of its customers and the integrity of the market”. For example, where a borrower demonstrates that there is a valid reason for a delay, it may be unreasonable to consider him or her to be not co-operating.

It is also expected that, when imposing a deadline, a lender will clearly highlight to the borrower the effect of not meeting that deadline, namely that, in line with part b) of the definition of not co-operating, the borrower can be considered to be not co-operating if he or she “fails to provide information sought by the lender relevant to the borrower’s financial situation”, and that the 12-month moratorium and the prohibition on arrears charges will no longer apply.

1.6. Lifestyle changes / prioritisation of unsecured debt

With regard to a refusal by a borrower to make lifestyle changes or to prioritise their mortgage debt, it should be noted that the CCMA sets out a process for consideration of a borrower’s case. Provision 32 requires that the lender’s Arrears Support Unit assesses the case based on the full circumstances of the borrower, including:

- their personal circumstances;
- their overall indebtedness;
- the information provided in the SFS;
- their current repayment capacity; and
- their previous payment history.

All of the above must be considered in order to determine whether a viable alternative arrangement, which reflects the individual borrower’s circumstances, exists. Under provision 40, where a lender identifies and offers an arrangement based on this assessment and the borrower is not willing to enter into the arrangement, the lender must inform the borrower, in writing, of their right to appeal the decision. If the borrower decides to appeal, the 12-month moratorium will still apply to their case while the appeal is being considered and will continue to apply if the Appeals Board finds in the borrower’s favour or if the borrower refers the matter on to the Financial Services Ombudsman (FSO).

If the FSO does not find in the borrower’s favour, or if the borrower does not submit an appeal within the advised time period, the 12-month period no longer applies and the lender may move to legal action.

1.7. Use of the appeals process

Appeals under the CCMA are limited to the following matters:

- a decision of the lender's ASU;
- the lender's treatment of the borrower's case; and
- the lender's compliance with the code.

We consider that appeals in relation to whether the borrower's case was treated fairly and whether the lender complied with the Code should be straightforward for the Appeals Board to consider.

In the normal course of events, we would expect that there could be a number of decisions made by the ASU, depending on how long the customer is in arrears, and the borrower is entitled to appeal these decisions. However, a borrower cannot appeal the same issue twice. If a borrower is not satisfied with the outcome of the appeal, he or she can refer the case to the FSO (except where legal action has commenced).

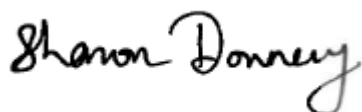
1.8. Standard Financial Statement (SFS)

We have received some queries regarding the introduction of a shortened SFS for use in certain circumstances. In discussions following the introduction of the SFS, lenders indicated the view that the full range of information contained in the SFS is relevant and necessary in order to facilitate full consideration of the borrower's situation. This view is supported by the Central Bank's economists who have analysed SFS data from the main lenders.

Notwithstanding the above, where a lender is concerned that a delay in putting in place an arrangement will further exacerbate a consumer's situation, we consider that it is acceptable for that lender to put in place a temporary arrangement, prior to completing the full assessment of the borrower's SFS, in a timely manner, and offering an alternative repayment arrangement in compliance with the CCMA.

Finally, please note that a review of the CCMA is due to commence over the coming weeks and will be subject to a public consultation in early 2013. We would expect that where submissions to the public consultation put forward arguments for changes to the CCMA requirements, they will be supported, where possible, by quantitative evidence which will aid the Central Bank's consideration of the issues.

Yours sincerely,



Sharon Donnery
Head of Consumer Protection: Banking and Policy Division