



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

Report on the Effectiveness of the Code of Conduct on Mortgage Arrears in the context of the Sale of Loans by Regulated Lenders

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Contents

| | |
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| Contents | 2 |
| Abbreviations..... | 3 |
| Executive Summary | 4 |
| Key Findings..... | 6 |
| Next steps..... | 7 |
| Introduction..... | 9 |
| Overview of Protections in place for Borrowers in Mortgage Arrears | 11 |
| The Credit Servicing Act 2015..... | 16 |
| Other Options for Borrowers, including Personal Insolvency..... | 18 |
| Mortgage to Rent..... | 19 |
| Personal Insolvency Act 2012 | 20 |
| Inspections undertaken for this Report..... | 21 |
| Stakeholder Views..... | 25 |
| Restructuring Activity in the Irish Mortgage Market | 31 |
| Arrears in the Irish Mortgage Market..... | 31 |
| Restructuring Activity..... | 34 |
| Legal Proceedings..... | 42 |
| Conclusions..... | 44 |
| Appendix 1 | 46 |
| Appendix 2 | 47 |

Abbreviations

| | |
|-------------|-------------------------------------|
| CCMA | Code of Conduct on Mortgage Arrears |
| CSF | Credit Servicing Firm |
| DPD | Days Past Due |
| ECB | European Central Bank |
| MARP | Mortgage Arrears Resolution Process |
| NPL | Non-Performing Loan |
| PDH | Principal Dwelling House |
| PTSB | Permanent TSB |
| RCF | Retail Credit Firm |
| SSM | Single Supervisory Mechanism |
| ULO | Unregulated Loan Owner |

Executive Summary

The Central Bank of Ireland introduced the Code of Conduct on Mortgage Arrears (CCMA) in 2009 in the midst of an economic and employment crisis to provide statutory safeguards for vulnerable, financially-distressed borrowers in arrears or at risk of falling into arrears. Further strengthened in subsequent years, the CCMA, and within it, the Mortgage Arrears Resolution Process (MARP), is one part of the national policy framework of supports and protections to assist people with mortgage arrears difficulties.

The CCMA is a statutory Code put in place to ensure that lenders have fair and transparent processes in place for dealing with borrowers in or facing mortgage arrears. Within this process, due regard must be given to the fact that each case is unique and needs to be considered on its own merits. All cases must be handled sympathetically and positively by the lender, with the objective at all times of assisting the borrower to meet his or her mortgage obligations. Lenders must comply with the CCMA as a matter of law.

The CCMA requires that lenders follow the MARP when dealing with borrowers in or facing mortgage arrears. Within the MARP, lenders are required to ensure that communications are proportionate and not excessive, taking into account borrowers' circumstances, and that communications are not aggressive, intimidating or harassing. They must gather relevant information from borrowers through the Standard Financial Statement, examine each case on its individual merits and determine which alternative repayment arrangements (arrangements) from that lender's suite of arrangements are viable for each particular case. If an arrangement cannot be agreed with the borrower, lenders must inform the borrower about other options. Borrowers are also entitled to appeal key decisions of the lender. The CCMA does not require a regulated entity to include any particular arrangements within the suite of arrangements that it provides, nor does it require a regulated entity to put in place a specific arrangement for a borrower, as these are commercial decisions for the lender.

In July 2015, the Consumer Protection (Regulation of Credit Servicing Firms) Act 2015 (the 2015 Act) came into effect, amending Part V of the Central Bank Act 1997 (the 1997 Act) to include a new regulated business of credit servicing. The amending legislation ensured that relevant borrowers whose loans are sold to unregulated entities are afforded the

same regulatory protections they had prior to the sale, including those protections provided by the Central Bank's Consumer Protection Code 2012 and the CCMA. The protections available to the borrower travel with the loan in all cases, regardless of whether the borrower has an arrangement in place or not. If an unregulated loan owner (ULO) buys a loan, that loan must be serviced by a bank, a retail credit firm (RCF) or a credit servicing firm (CSF), which is authorised and regulated by the Central Bank, thereby ensuring that the protections of the CCMA move with the borrower following the sale. The CCMA applies equally to loans held by regulated lenders and ULOs.

Since the CCMA's introduction and subsequent strengthening, considerable progress has been made in addressing mortgage arrears, primarily through the use of arrangements rather than loss of ownership. At the end of March 2018, 117,334 principal dwelling house (PDH) mortgage accounts have been restructured, with 86 per cent meeting the terms of the arrangement. The overall number of mortgage arrears cases and the number of cases in the 720 days past due (DPD) category¹ are steadily declining, although those within the latter category are in deeper arrears. The number of PDH accounts in arrears at end-March 2018 stood at 71,833, down from a peak of 142,892 in June 2013.

Within the considerable number of mortgage arrears cases that remain, the proportion of cases falling into long-term arrears has risen. At the same time, there is an onus on banks to reduce non-performing loans (NPLs) in a sustainable way. While there are other options available to address NPLs, banks across Europe (including in Ireland) have increasingly opted for loan disposals (sales or securitisations). On foot of this, in March 2018, the Minister for Finance and Public Expenditure and Reform (the Minister) requested the Central Bank to review the CCMA to ensure it remains as effective as possible in the context of the sale of loans by regulated lenders.

Specifically, the Minister requested the following:

“Arising from the recent concerns in relation to the sale of loans by PTSB and despite efforts to reassure consumers that the protections that are already in place by way of the Consumer Protection (Regulation of Credit Servicing Firms) Act 2015; I am requesting the Central Bank to carry out a review of the Code of Conduct on Mortgage Arrears (CCMA) to ensure it remains as effective as possible.”

¹ Arrears figures denote the value of arrears rather than when a payment or partial payment was last made. 720 DPD means the value of the outstanding arrears equates to more than 720 days' worth of payments.

As of March 2018, ULOs accounted for two per cent of the mortgage market, compared to the 93 per cent by banks and the 5 per cent held by RCFs. ULOs accounted for 11 per cent of accounts in arrears and 19 per cent of mortgage accounts in the 720 DPD category.

In line with the Minister's request, this Report assesses the effectiveness of the CCMA specifically in the context of the sale of loans by regulated lenders. As the overriding objective of the CCMA is to ensure that lenders have fair and transparent processes in place for dealing with borrowers in or facing mortgage arrears, the Central Bank has examined the effectiveness of the CCMA in this light.

In undertaking this assessment, the Central Bank first sought the views of consumer representatives and advocates working to assist borrowers in financial difficulty, as well as statutory bodies and industry stakeholders, on the effectiveness of the CCMA in the context of the sale of loans by regulated lenders. While not within the specific scope of this Report, we also received feedback from stakeholders on the operation of the CCMA in general.

Secondly, the Central Bank conducted inspections of one RCF, two CSFs (representing 79 per cent of PDH loans serviced by CSFs), and one bank.

Thirdly, we conducted a desk-based assessment of CCMA issues raised over the last five years, including consumer research carried out in both 2013 and 2016.

Finally, we gathered and analysed data relating to arrangements being considered and being put in place by banks, RCFs and ULOs, and to establish whether ULOs were more or less active than banks in terms of repossessions.

Our findings are based on a point in time review informed by the above work.

Key Findings

- For borrowers who engage with the process, the CCMA is working effectively and as intended in the context of the sale of loans by regulated lenders.
- The MARP, as set out in the CCMA, provides a clear framework for borrowers in or facing mortgage arrears on their primary residence to engage with relevant regulated entities, including banks, RCFs and CSFs.
- Both regulated lenders and CSFs (acting on behalf of ULOs) continue to put in place arrangements for borrowers who engage with this process.
- There is no evidence that the CSFs inspected did not seek to engage with borrowers in arrears. The inspected CSFs have frameworks in place to support engagement with borrowers in arrears, as required by the

CCMA. The Central Bank did not identify any material breaches of the CCMA by these firms.

- Where a loan is sold to a ULO, existing arrangements with borrowers are honoured by RCFs/CSFs (acting on behalf of a ULO) until the agreed term of the arrangement comes to an end. Borrowers may then be offered a different arrangement from the suite of arrangements considered by the RCF/CSFs (acting on behalf of the ULO), within the MARP framework.
- There is no evidence that borrowers whose circumstances have not changed are being moved off existing arrangements by CSFs (acting on behalf of ULOs) during the term of the arrangement.
- On average, ULOs are considering more arrangements within their suite of arrangements under the CCMA compared to banks and RCFs. In terms of the actual arrangements being agreed with borrowers, banks and RCFs are putting in place a more diverse range of arrangements than ULOs.
- RCFs and ULOs account for a significantly higher proportion of accounts in arrears and in the 720 DPD category. This could account for differences in the range of arrangements that ULOs are actually putting in place.
- Over the period Q1 2016 to end Q1 2018, banks put in place a 50/50 split between temporary and permanent arrangements (referred to in this Report as short-term and long-term arrangements respectively). RCFs put mostly long-term arrangements in place, while two-thirds of the arrangements put in place by ULOs were short-term.
- Based on the number of properties taken into possession by banks, RCFs and ULOs over the period Q1 2016 to end Q1 2018, there is no material difference in the level of repossession activity by ULOs compared with regulated lenders.

Of borrowers in mortgage arrears with no restructure arrangement in place, 47 per cent are deemed not co-operating by their regulated lender or CSF (acting on behalf of a ULO). This increases to 67 per cent for cases within the 720 DPD category. In order to avail of the statutory safeguards available through the CCMA and the MARP, engagement between borrowers and regulated lenders or CSFs is critical.

Next steps

- Protection of borrowers in arrears continues to be a key priority for the Central Bank. The Central Bank will continue to assertively supervise regulated firms' compliance with the CCMA, to ensure that a fair and transparent process is in place for all borrowers in or facing mortgage arrears, including those whose loans have been sold.
- While recognising that short-term arrangements can be appropriate and sustainable depending on a borrower's individual circumstances, the

Central Bank will track how the maturity profile of the arrangements being put in place changes over time. Although we cannot interfere with the strategy and commercial decisions or the legitimate contractual rights of regulated entities where such firms are complying with their regulatory and contractual obligations, we will investigate patterns of behaviour which suggest that the CCMA process is not being followed. This analysis may also prompt the Central Bank to identify enhancements to the wider national policy framework of supports and protections available to assist borrowers in financial difficulties.

- As part of the work undertaken to inform this Report on the specific issue of the sale of loans by regulated lenders, the Central Bank also received stakeholder feedback relating to the operation of the CCMA in general. Arising from this feedback, together with issues raised since the previous review of the CCMA and insights from our ongoing supervision of firms that are subject to the CCMA, the Central Bank will engage with industry on providing fuller information to borrowers on the assessment of their case and the reasons why arrangements considered, and not offered to the borrower, are not appropriate and not sustainable for the borrower's individual circumstances.
- The CCMA and MARP comprise one important part of a national policy framework of supports and protections available to assist borrowers in financial difficulties. These supports include the national Mortgage Arrears Resolution Service (Abhaile), the Mortgage to Rent Scheme and Personal Insolvency Arrangements under the Personal Insolvency Act 2012, as amended (the Personal Insolvency Act), all of which can potentially assist borrowers to stay in their homes. The Central Bank is cognisant, in particular, of the low utilisation of personal insolvency for borrowers and of recent calls for the amendment of the Personal Insolvency Act. In the context of a holistic mechanism for dealing with personal debt, the Central Bank encourages exploring enhancements to this regime, including exploring additional ways to increase usage of debt resolution mechanisms where it is appropriate for the specific circumstances of individual borrowers.

Introduction

The Central Bank’s mission is “Safeguarding Stability, Protecting Consumers”. In keeping with this mission and its regulatory remit, the Central Bank has prioritised the protection of borrowers in the resolution of mortgage arrears. Despite the clear progress made, ten years since the financial crisis started, and five years since the peak of NPLs, Ireland still has a high level of mortgage arrears by international standards.

Behind each arrears case there is distress and, in the case of mortgages secured on a borrower’s primary residence², the vulnerability of borrowers at risk of losing their home. This is why there is a significant number of protections and supports for borrowers in or facing mortgage arrears.

The Central Bank’s work in the resolution of mortgage arrears has involved an extensive and intrusive regulatory approach, both in terms of the requirements imposed on regulated entities and monitoring compliance with those requirements.

Throughout this work, the Central Bank has adopted a holistic approach that is based on our statutory objectives and founded on the following key principles:

- A consistent framework of protections for the borrower regardless of the regulated entity with whom they are dealing (be that a bank, RCF or CSF), with additional protections for borrowers in arrears on mortgages secured on their primary residence in the State.
- Ensuring banks are sufficiently capitalised and hold appropriately conservative provisions, to enable institutions to resolve NPLs.
- Clear obligations on all firms regulated by the Central Bank, regardless of their category of regulation, to have policies and procedures in place to deal with borrowers facing financial difficulties. This includes requirements that a regulated entity must base its assessment of the borrower’s case on the full circumstances of the borrower and, where an arrangement is offered, the regulated entity must provide the borrower with the reasons why it is considered appropriate and sustainable for the borrower.

The Central Bank’s work in the resolution of mortgage arrears has involved an extensive and intrusive regulatory approach, both in terms of the requirements imposed on regulated entities and monitoring compliance with those requirements.

² Under the CCMA, a ‘Primary Residence’ means ‘a property which is: a) the residential property which the borrower occupies as his/her primary residence in this State, or b) a residential property which is the only residential property in this State owned by the borrower’.

This Report focuses on the effectiveness of the CCMA in the context of the sale of loans by regulated lenders, in accordance with the Minister's request. Given that the scope of this Report is limited to mortgage loans secured on properties within the meaning of 'primary residence' under the CCMA, statistical information within this report relates to PDH mortgage loans.³ In this regard, data gathered by the Central Bank on PDH mortgage loans relates only to properties in which the borrower lives. In contrast, the scope of the CCMA is wider in that it can include a property that the borrower does not use as a primary residence where it is the borrower's only residential property in the State. More detail on the scope of the CCMA, including the framework of protections in place for borrowers in mortgage arrears, is included in the next section of this Report.

The findings of this Report are based on a point in time analysis and informed by various strands of work undertaken by the Central Bank. To support the preparation of this Report, the Central Bank carried out on-site inspections of two firms involved in credit servicing activities representing 79 per cent of PDH loans serviced by CSFs, and desk-based inspections of one RCF engaged in credit servicing activities and one bank. In addition, we conducted a desk-based assessment of CCMA issues raised over the last five years. The findings of this work are summarised in the section 'Inspections undertaken for this Report'.

The Central Bank engaged directly with a number of stakeholders, including relevant consumer representatives and advocates, statutory bodies and industry stakeholders, seeking their views on the effectiveness of the CCMA in the context of the sale of loan books. These stakeholders were the Money Advice and Budgeting Service, Free Legal Advice Centres, the Irish Farmers' Association, consumer advocate Mr. Brendan Burgess, the Irish Mortgage Holders Organisation, the Competition and Consumer Protection Commission, the Insolvency Service of Ireland and the Banking & Payments Federation Ireland. The 'Stakeholder Views' section details the feedback received. The Central Bank gathered and analysed data to gain new insights into the arrangements which regulated lenders and ULOs are considering and putting in place. Our analysis also sought to establish whether ULOs were more or less active than regulated lenders in terms of repossessions. The 'Restructuring Activity in the Irish Mortgage Market' section of this Report reviews the restructuring and repossession activity in the Irish mortgage market, while the final section sets out the conclusions of this Report.

³ An overview of data sources used in this Report is included at Appendix 1.

Overview of Protections in place for Borrowers in Mortgage Arrears

The Central Bank’s approach to mortgage arrears resolution is focused on ensuring a strong consumer protection framework for borrowers in or facing mortgage arrears while also ensuring that banks are sufficiently capitalised, hold appropriately conservative provisions and have appropriate arrears resolution strategies and operations in place. The Central Bank’s work in relation to mortgage arrears is aligned with our consumer protection, prudential, and financial stability mandates.

In terms of mortgage lending in Ireland, generally speaking, there are three types of participant in the market that either lend or own loans: banks, RCFs and ULOs.

| Regulated Lenders | |
|--|--|
| <p>1. Banks</p> <p>Banks are regulated financial institutions that receive deposits (and other repayable funds) and grant credit. Banks are required to comply with an array of prudential requirements including, for example, the Capital Requirements Directive IV, the Capital Requirements Regulation⁴ and consumer protection requirements, including the CCMA.</p> | <p>2. Retail Credit Firms</p> <p>RCFs are non-deposit taking firms and, while regulated by the Central Bank, are not subject to the same level of prudential requirements applicable to banks. Importantly however, RCFs are subject to precisely the same consumer protection standards and requirements as banks. Some RCFs are no longer providing new mortgages, whilst others have acquired loan books from banks.</p> |
| Unregulated Entities | |
| <p>3. Unregulated Loan Owners</p> <p>ULO are the third category of mortgage owners. These entities acquired loans (including PDH mortgages) from regulated lenders. ULOs are largely based outside of Ireland. Under the amended 1997 Act, a person who meets the definition of a Credit Servicing Firm is required to obtain authorisation from the Central Bank. A ULO must appoint either a regulated lender or a CSF authorised and regulated by the Central Bank to service the loans they own. As a result, the amended 1997 Act ensures that relevant borrowers whose loans are sold to ULOs maintain the regulatory protections they had prior to the sale, including the protections provided by the CCMA.</p> | |

⁴ For more information of the Capital Requirements Directive IV and the Capital Requirements Regulation, see [here](#).

From a consumer protection perspective, and specifically in relation to mortgage loans secured on a borrower's primary residence, the framework for handling arrears is set out in the CCMA.

The overriding objective of the CCMA is to ensure that fair and transparent processes are in place for borrowers in or facing mortgage arrears, and that due regard is given to the fact that each case of mortgage arrears is unique and needs to be considered on its own merits. The CCMA framework and within it, the MARP, is designed to facilitate and promote the effective and timely resolution by regulated entities of each borrower's arrears or pre-arrears situation.

The CCMA requires that regulated entities follow the MARP when dealing with borrowers in or facing mortgage arrears. Within the MARP, regulated entities are required to ensure that communications are proportionate and not excessive, taking into account borrowers' circumstances and that communications are not aggressive, intimidating or harassing. They must gather relevant information from borrowers through the Standard Financial Statement, examine each case on its individual merits and determine which arrangements from the suite of arrangements considered by that regulated entity are viable for each particular case. If an arrangement cannot be agreed with a borrower, the regulated entity must inform the borrower about other options. Under the CCMA, borrowers are also entitled to appeal key decisions of the lender, such as a decision to offer a particular arrangement, a decision not to offer an arrangement, or a decision to classify the borrower as not co-operating.

In the context of the CCMA, resolution may take several forms, including an arrangement under the CCMA where the borrower retains ownership of their home, and other options involving loss of ownership, such as voluntary surrender, trading down, mortgage to rent or voluntary sale.

The CCMA has been reviewed on a number of occasions since it was introduced in February 2009, with the current CCMA in effect since 1 July 2013.⁵ The CCMA is a statutory Code issued under Section 117 of the Central Bank Act 1989.⁶ It applies to regulated lenders including banks and RCFs, and to CSFs following the enactment of the 2015 Act. Regulated entities must comply with the CCMA as a matter of law. The Central Bank has the power to administer sanctions for a contravention of the CCMA, under Part IIIC of the Central Bank Act 1942.

The CCMA is a statutory Code issued under Section 117 of the Central Bank Act 1989... Regulated entities must comply with the CCMA as a matter of law.

⁵ For more information about the development of the CCMA and the Central Bank's supervisory activities in relation to the CCMA and in relation to mortgage arrears more generally, see the Central Bank's 2016 [Mortgage Arrears Report](#).

⁶ Section 117(1) of the Central Bank Act 1989 provides that *'The Bank may, after consultation with the Minister, from time to time draw up, amend or revoke, in relation to any class or classes of licence holders or other persons supervised by the Bank under this or any other enactment, one or more than one code of practice concerning dealings with any class or classes of persons and every such code shall be observed by the licence holders, or other persons so supervised, to whom they relate.'*

Table 1 | Key Protections for Borrowers under the CCMA

A fair and transparent process

The CCMA requires regulated entities to have a fair and transparent process in place for dealing with vulnerable, financially-distressed borrowers in mortgage arrears or pre-arrears⁷. This process is known as the MARP. As part of this process, due regard must be given to the fact that each case of mortgage arrears is unique and needs to be considered on its own merits. The MARP framework places specific obligations on all regulated entities covered by the CCMA, including the steps which these regulated entities must comply with, as follows:

Step 1: Communicate with the borrower;

Step 2: Gather financial information;

Step 3: Assess the borrower's circumstances; and

Step 4: Propose a resolution.

Relevant information for borrowers in arrears at relevant times

This includes, for example, a MARP information booklet, which regulated entities must make available to borrowers on their website and provide to borrowers where arrears arise and remain outstanding for 31 calendar days. Among other things, this booklet explains the arrangements available to borrowers and how these arrangements work, the key features of these arrangements, and the regulated entity's criteria for assessing requests for arrangements. Where a regulated entity offers an arrangement, it must provide the borrower with a clear explanation of how the arrangement works, including the reasons why it is considered appropriate and sustainable for the borrower, its advantages and disadvantages, the frequency with which the arrangement will be reviewed and the potential outcome of reviews. In addition, where a regulated entity does not offer an arrangement, the lender must provide the borrower with the reasons and information about other options available to the borrower such as voluntary surrender, trading down, mortgage to rent or voluntary sale, and the implications of each option for the borrower.

⁷ A pre-arrears case arises where either: a) the borrower contacts the lender to inform it that he/she is in danger of going into financial difficulties and/or is concerned about going into mortgage arrears; or b) the lender establishes that the borrower is in danger of going into financial difficulties which may impact on the borrower's ability to meet his/her mortgage repayments.

Review of arrangements that have been put in place

Recognising that a borrower's circumstances may change during the term of an arrangement, the CCMA requires regulated entities to review arrangements at appropriate intervals, including at least 30 calendar days before the arrangement ends. Regulated entities must also formally review a borrower's case immediately where a borrower ceases to adhere to the terms of an arrangement. In addition, regulated entities must carry out a review at any time if requested by the borrower. An arrangement may therefore be reviewed during the term of an arrangement or where the agreed term of the arrangement is coming to an end. These requirements ensure that the arrangement in place remains appropriate for the borrower.

Relief from charges and surcharge interest

Regulated entities are restricted from imposing charges and/or surcharge interest on arrears arising on a mortgage account in arrears to which the CCMA applies, unless the borrower is classified as not co-operating.

A moratorium on legal proceedings for co-operating borrowers

Legal proceedings to repossess properties can only commence where every reasonable effort has been made to agree an arrangement under the CCMA and:

- the time restriction on a loan holder initiating legal proceedings has expired; or
- the borrower has been classified as not co-operating.

For co-operating borrowers who have not been offered or agreed an arrangement, this means that the earliest point that the loan holder can initiate legal proceedings is the later of the following:

- three months after the regulated entity informs the borrower of his/her options (where the regulated entity is not willing to offer an arrangement or the borrower is not willing to enter an arrangement offered); or
- eight months from the date the arrears first arose.

Protections for borrowers who are not co-operating

For borrowers who are at risk of being classified as not co-operating, regulated entities must provide a warning to these borrowers and outline the specific and ongoing actions that the borrower must take to avoid being so classified. The regulated entity must outline to the borrower the implications of being classified as not co-operating, including that it may commence legal proceedings for repossession of the property immediately after classifying the borrower as not co-operating. In addition, where legal proceedings have commenced, regulated entities must continue to maintain contact with the borrower and put proceedings on hold where an arrangement has been put in place.

Access to an internal appeals process

The CCMA requires regulated entities to have an internal appeals process in place to enable borrowers to appeal specified decisions. A borrower is entitled to appeal: 1) an offer of an arrangement that the borrower is not willing to enter into; 2) a refusal to offer an arrangement; and 3) a decision to classify the borrower as not co-operating.

The CCMA requires that a regulated entity must base its assessment of the borrower's case on the full circumstances of the borrower and, where an arrangement is offered, the regulated entity must provide the borrower with the reasons why it is considered appropriate and sustainable for the borrower. Each regulated entity must consider the borrower's situation in the context of the suite of arrangements the entity offers, which may differ from firm to firm. The CCMA includes a list of arrangements that regulated entities may choose to consider within their suite of arrangements. These include, for example, an arrangement to pay interest and part of the normal capital amount for a specified period of time, extending the term of the mortgage, and adding arrears and interest to the principal amount due (arrears capitalisations). Within the CCMA framework, the regulated entity determines the suite of arrangements it considers putting in place for borrowers. In addition, while a regulated entity must provide the borrower with the reasons why an arrangement offered is considered appropriate and sustainable for the borrower, the regulated entity decides on which arrangement, if any, to offer a borrower. The Central Bank cannot interfere with the strategy and commercial decisions or the legitimate contractual rights of lenders where such firms are complying with their regulatory and contractual obligations. Regulated

Within the CCMA framework, a regulated entity determines the suite of arrangements it considers putting in place for borrowers... the regulated entity decides on which arrangement, if any, to offer a borrower.

entities are entitled to rely on their contractual rights and make their own commercial decisions.

The Central Bank seeks to ensure that regulated entities comply with relevant statutory conduct of business rules, including by requiring regulated entities to put in place a process for the management of arrears, provide borrowers with all relevant information and not exert undue pressure or influence on borrowers. The power to adjudicate on individual lender decisions rests elsewhere in the national policy framework.

Following the amendment of Personal Insolvency Act, as part of a court review process available to debtors, the Courts have the power to make an order imposing a Personal Insolvency Arrangement proposal which has been rejected by a mortgage lender, if the Court considers that it offers a fair and equitable solution for both the debtor and creditors. Such Personal Insolvency Arrangements can include an element of debt write-down for the debtor.⁸

While only a mortgage on a borrower's primary residence will come within scope of the CCMA, the Central Bank's consumer protection framework provides protections under other statutory codes for consumers and small and medium enterprises in arrears on credit that is not secured on a borrower's primary residence.

The Credit Servicing Act 2015

As far back as 2011, the Central Bank highlighted the implications for consumers arising from the sale of loans to unregulated entities and advocated for the preservation of the protections afforded to borrowers under the regulatory framework. The Central Bank contributed to the development of the 2015 Act to ensure an appropriate framework of protections for borrowers, regardless of the entity with which they are dealing.

The 1997 Act (as amended by the 2015 Act) provides that where a ULO purchases loans from an original lender, those loans must be serviced by a bank, an RCF or a CSF which is authorised and regulated by the Central Bank. The activity of 'credit servicing' includes interactions with the borrower in respect of the credit agreements such as:

- Notification of changes in interest rates or payments due;
- Collecting repayments due under the credit agreement;
- Managing or administering repayments, charges, any errors or complaints, assessing the borrower's financial circumstances in cases of financial difficulties, alternative arrangements for repayment or other restructuring; or

The Central Bank contributed to the development of the 2015 Act to ensure an appropriate framework of protections for borrowers, regardless of the entity with which they are dealing.

⁸ Debtors are entitled to apply to the Courts to review the terms of a Personal Insolvency Arrangement which has been rejected by a mortgage lender. This review option only applies to mortgages that were in arrears on 1 January 2015, or to mortgages that were in arrears before that date where the borrower had entered into an arrangement.

- Communicating with the borrower in respect of any of the above matters.

The activity of credit servicing does not include the following:

- the determination of the overall strategy for the management and administration of a portfolio of credit agreements;
- the maintenance of control over key decisions relating to such portfolios; or
- taking such steps as may be necessary for the purposes of:
 - enabling the undertaking of credit servicing by another person; or
 - enforcing a credit agreement.

These ownership functions still remain with the loan owner irrespective of whether the loan owner is a regulated or unregulated entity. However, it is important to note that even though these activities are not captured by the definition of credit servicing, they are excluded only insofar as they are not carried out in a fashion that would be a prescribed contravention if a retail credit firm were to take the same action. If an unregulated credit purchaser breached this requirement, then they would be carrying out unauthorised credit servicing activity, which would be a criminal offence.

Under the 1997 Act (as amended by the 2015 Act), a CSF is prohibited from acting on an instruction from a ULO that is inconsistent with the requirements of Irish financial services legislation. In addition, a ULO cannot instruct a CSF to implement such an action. Such an instruction might include, for example, an instruction to a CSF to offer an arrangement to a borrower without first going through the relevant steps of the MARP.

Following the enactment of the 2015 Act, the Central Bank put applicant CSFs through a rigorous application process to ensure that only firms that could demonstrate compliance with the Central Bank's authorisation requirements and standards were authorised. As at 17 October 2018, eight CSFs are authorised by the Central Bank, with two additional firms providing credit servicing under the transitional authorisation arrangements of the 1997 Act (as amended by the 2015 Act).⁹ In February 2018, the Consumer Protection (Regulation of Credit Servicing Firms) (Amendment) Bill 2018 was initiated in the Oireachtas with the core objective of bringing ULOs within the regulatory remit of the Central Bank. The Central Bank is committed to ensuring effective consumer

Following the enactment of the 2015 Act, the Central Bank put applicant CSFs through a rigorous application process to ensure that only firms that could demonstrate compliance with the Central Bank's authorisation requirements and standards were authorised.

⁹ The 1997 Act (as amended by the 2015 Act) provides for transitional arrangements for existing firms who were conducting credit servicing prior to the enactment of the 2015 Act. Such firms may carry on the business of credit servicing until the Central Bank has granted or refused authorisation, provided that the firm applied to the Central Bank no later than three months after that commencement of the 2015 Act.

protections and is assisting the Department of Finance in the development of this Bill.¹⁰

Other Options for Borrowers, including Personal Insolvency

The Central Bank is part of a national policy framework of protection for resolving debt, which also includes the following:

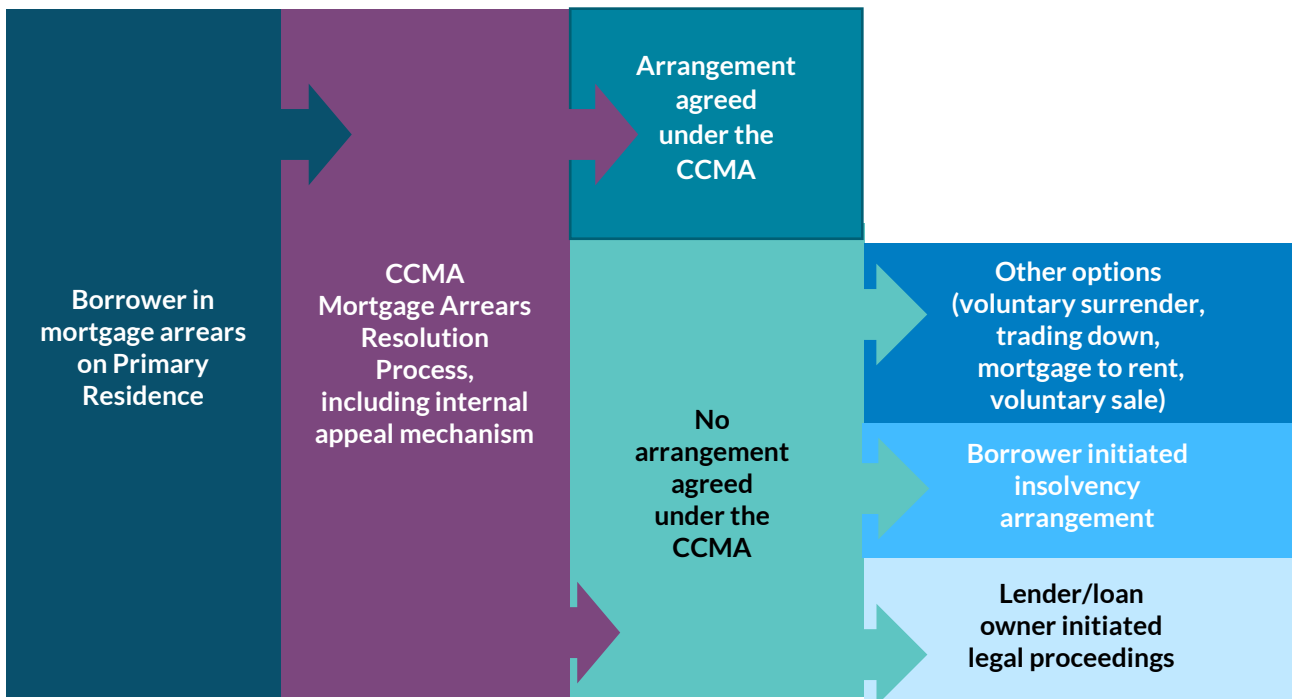
| | |
|---|---|
| The Money Advice and Budgeting Service (MABS) | MABS is a free and confidential service for people who are having problems with money management and debt. MABS money advisers provide advice and practical help to people to review their debts, deal with their creditors and work out solutions. |
| The National Mortgage Arrears Resolution Service (Abhaile) | The aim of Abhaile is to help mortgage holders in arrears to find the best solutions and keep them in their own homes wherever possible. A dedicated adviser works with the borrower and their lender to find the best solution for the borrower's situation. The Abhaile service is run by MABS. |
| A Court Mentor Service | This service provides a Court Mentor for borrowers attending repossession proceedings in the Circuit Court. The Court Mentor assists the borrower in understanding what is happening in the Court and what other supports are available to them. The Court Mentor Service is run by MABS. |
| The Insolvency Service of Ireland (ISI) | The ISI's objective is to restore insolvent persons to solvency, through the use of arrangements relating to personal insolvency under the Personal Insolvency Act 2012, as amended. Within this framework, Personal Insolvency Arrangements (an insolvency solution for insolvent persons with secured and unsecured debt) may include an element of debt write-down for the debtor. Further information on the Personal Insolvency Act is provided below. |
| The Mortgage to Rent Scheme | The Mortgage to Rent Scheme is a Government initiative to help homeowners who are at risk of losing their home. Further information on Mortgage to Rent is provided below. |

These participants and schemes provide supports and other avenues to assist borrowers in mortgage arrears and potentially allow them to remain

¹⁰ The current approach in relation to credit servicing already being taken in Ireland is consistent with the approach being proposed across Europe. See ec.europa.eu/finance/docs/policy/180314-proposal-directive-non-performing-loans_en.pdf. In its current form, the European proposal would not allow Member States to put in place regimes to regulate loan ownership per se, and therefore is largely similar to Ireland's existing domestic credit servicing regime.

in their homes. Figure 1 on following page shows the mortgage arrears resolution mechanisms in Ireland.

Figure 1 | Mortgage Arrears Resolution Mechanisms in Ireland



State supports – e.g. MABS (including Court Mentor service), Abhaile.

Where an arrangement cannot be agreed under the CCMA, the borrower may explore the possibility of remaining in their home as a tenant under the Mortgage to Rent scheme or consult a Personal Insolvency Practitioner, with a view to resolving their financial difficulties under the Personal Insolvency Act.

Mortgage to Rent

The Mortgage to Rent Scheme is a Government initiative that was originally introduced in July 2012 and is targeted at borrowers in arrears whose mortgages are unsustainable and who are eligible for social housing support. A borrower must apply and be deemed eligible for the Mortgage to Rent Scheme by being eligible for Social Housing Support from the Local Authority as well as meeting other eligibility criteria. In addition, the home must be accepted for purchase by an Approved Housing Body (AHB) or private company approved by the Department of Housing, Planning and Local Government. The borrower, if eligible, voluntarily surrenders possession of the home to the lender who sells it to an AHB or approved private company. In turn, the AHB or approved private company rents the property to the borrower who, while no longer owning the property, can continue living in it as a social housing tenant. The scheme does not provide for write-off of any residual debt; this is considered a contractual matter between the borrower and the lender.

Personal Insolvency Act 2012

In 2012, the Personal Insolvency Act was enacted, introducing three debt resolution processes for individual borrowers who cannot pay their debts as they fall due, including mortgage debt. The Central Bank is cognisant of the low utilisation of personal insolvency for borrowers and of recent calls for the amendment of the Personal Insolvency Act. The Central Bank welcomes the recent introduction of a court review process under the legislation. In contrast to the Central Bank's code and regulation-making powers, as part of this court review process, the Courts may make an order as regards the terms of a Personal Insolvency Arrangement that has been rejected by creditors; such Personal Insolvency Arrangements may include an element of debt write-down for the debtor. According to the Insolvency Service of Ireland, over 90 per cent of borrowers who have had a Personal Insolvency Arrangement put in place keep their home.¹¹ In the context of a holistic mechanism for dealing with personal debt, the Central Bank encourages exploring enhancements to this regime, including exploring additional ways to increase usage of debt resolution mechanisms where it is appropriate for the specific circumstances of individual borrowers.

Over 90 per cent of borrowers who have had a Personal Insolvency Arrangement put in place keep their home.

¹¹ In the [Insolvency Service of Ireland Annual Report 2017](#), the Insolvency Service of Ireland states that it 'has returned over 6,000 debtors to solvency with over 2,000 of those cases being PIAs which deal with mortgage debt. In over 90% of these PIA cases, debtors have been able to stay in their home'. See also www.isi.gov.ie/en/ISI/ISI%202018%20Q2%20Statistics%20Report.pdf/Files/ISI%202018%20Q2%20Statistics%20Report.pdf

Inspections undertaken for this Report

Borrowers and the Central Bank must have confidence that regulated entities will act in the best interests of borrowers and that they will treat them fairly. In this context, the Central Bank expects regulated entities to go beyond tick-box compliance and to have a greater focus on delivering fair outcomes for distressed borrowers.

With this in mind, and to support the preparation of this Report, the Central Bank conducted inspections of one RCF, two CSFs (representing 79 per cent of PDH loans serviced by CSFs), and one bank. The objective of the inspections was to acquire evidence on how CSFs are engaging with borrowers, how CSFs interact with ULOs, and whether the content of borrower communications continues to comply with CCMA requirements following the sale of a loan by a regulated lender to a ULO.

The inspections examined the following key areas:

- Complaints made to CSFs that related to their approach with borrowers;
- Whether CSFs (acting on behalf of ULOs) honour existing arrangements when a loan is sold to a ULO until the agreed term of the arrangement comes to an end;
- Whether the content of borrower communications issued by the bank and CSFs, following the sale of a loan to a ULO, complied with the Consumer Protection Code 2012 and the CCMA; and
- How CSFs are interacting with Provision 34G (1)¹² and (2)¹³ of the 1997 Act
 - Provision 34G (1) of the Credit Servicing Act was assessed by examining how CSFs are adhering to the CCMA;
 - Provision 34G (2) of the Credit Servicing Act was assessed by examining whether ULOs are conducting credit servicing activities.

The scope of the inspections included a comprehensive examination of borrower documentation and various policies, procedures, systems and controls. Our extensive work included:

¹² "A credit servicing firm shall not, on its own behalf or on behalf of, or on the instructions of, a person who holds the legal title to credit granted under a credit agreement, take or fail to take an action, if the taking of or the failure to take the action would otherwise be a prescribed contravention if a retail credit firm took or failed to take that action".

¹³ "A person who holds the legal title to credit granted under a credit agreement shall not instruct a credit servicing firm to take or fail to take an action, if the taking of or the failure to take the action would otherwise be a prescribed contravention if a retail credit firm took or failed to take that action".

- An assessment of various policy and procedure documents, including those in relation to arrears management, customer contact and communication, complaints handling and appeals;
- Interviews with CSF staff including those assisting borrowers in arrears;
- Analysis of all recordings of telephone call complaints between CSFs and borrowers which related to CSFs' communications and approach with borrowers, particularly those in arrears;
- An examination of the content of borrower communications issued by CSFs and the bank for compliance with the Consumer Protection Code 2012 and the CCMA including the initial letter¹⁴ issued to borrowers when a loan is sold to a ULO;
- A review of complaints logs maintained by the CSFs;
- An evaluation for CCMA compliance of information published on firms' websites to assist borrowers in arrears; and
- A targeted review of minutes of meetings between the CSFs and ULOs.

Arising from this work, the Central Bank's observations are set out below.

Observations include some good practices that demonstrate that CSFs have gone beyond minimum regulatory requirements to assist distressed borrowers. We also found some non-material breaches of the CCMA. For example, we found letters which were not issued to borrowers in arrears in line with the timelines prescribed in the CCMA, and information required under the CCMA was not included as a dedicated section of one firm's website (e.g. links to the State supports were not made available for borrowers in mortgage arrears).

Where CSFs did not sufficiently document compliance with the CCMA, the Central Bank has intervened and issued targeted action points to firms to ensure the delivery of appropriate resolutions for borrowers in a timely, transparent and fair manner.

CSFs have frameworks in place to support engagement with borrowers in arrears as required by the CCMA

The essence of the CCMA framework is to ensure that there is a fair and transparent process in place for borrowers in or facing mortgage arrears. In line with the spirit and the requirements of the CCMA, CSFs have frameworks in place to support engagement with borrowers in arrears,

¹⁴ Letter issued to borrowers under Provision 3.11 of the Code which states "Where a regulated entity intends to cease operating, merge with another, or to transfer all or part of its regulated activities to another regulated entity it must:

- a) notify the Central Bank immediately;
- b) provide at least two months' notice to affected consumers to enable them to make alternative arrangements;
- c) ensure all outstanding business is properly completed prior to the transfer, merger or cessation of operations or, alternatively in the case of a transfer or merger, inform the consumer of how continuity of service will be provided following the transfer or merger; and
- d) in the case of a merger or transfer of regulated activities, inform the consumer that their details are being transferred to the other regulated entity, if that is the case."

including dedicated workflow systems for handling MARP cases, Arrears Support Unit procedures and MARP Booklets. Of the good practices identified, the Central Bank evidenced that one CSF fast tracks appeals received from borrowers which contain new material information about the borrowers' cases.

While it was evidenced that CSFs have appeals and complaints handling policies and procedures in place, weaknesses were identified in one CSF whereby the analysis of patterns of both appeals and complaints were not escalated in line with its own policies and procedures. In this regard, regulated entities are required to have effective appeals and complaints mechanisms in place, which reflect the needs, expectations and rights of borrowers.

Engagement with borrowers is in line with regulatory requirements of the CCMA

CSFs demonstrated that their engagement with borrowers complies with the regulatory requirements of the CCMA. This is supported by training to frontline staff dealing with borrowers in arrears and quality assurance processes.

The Central Bank views compliance with the regulatory requirements of the CCMA as the minimum standard. Regulated entities need to go beyond the minimum standard and engage in a meaningful manner with borrowers. For example, one CSF evidenced that it went beyond tick box compliance with the CCMA to encourage borrower engagement in the MARP process. In this case, borrowers were given an additional two months on top of the minimum three-month requirement under the CCMA before being classified as not co-operating.

Although not widespread, the Central Bank identified some non-material breaches of the CCMA whereby letters were not issued to borrowers in arrears in line with the timelines prescribed in the CCMA. Where delays in issuing letters to borrowers in arrears have been identified, firms have been required to strengthen their policies and procedures to ensure compliance with the CCMA.

No evidence was identified where CSFs did not seek to engage with borrowers.

Content of borrower communications continued to comply with the requirements of the CCMA following the sale of a loan to a ULO

One of the key protections provided by the CCMA is transparency for borrowers to assist with their understanding of the options available to them. The content of borrower communications in this regard is fundamental to ensuring transparency. The inspection evidenced that the content of borrower communications, e.g. letters issued by CSFs to

CSFs demonstrated that their engagement with borrowers complies with the regulatory requirements of the CCMA.

borrowers in arrears, both complied with the CCMA and were consistent with equivalent communications issued by banks.

Supervisors inspected letters issued by the CSFs and the bank to borrowers in arrears and found that these borrower communications did not use language considered aggressive, intimidating, or harassing.

The information published on some firms' websites showed evidence that firms went beyond CCMA requirements to assist borrowers in arrears - e.g. information on firms' appeals processes were made available. However, some instances were also identified where information required under the CCMA was not included as a dedicated section of one firm's website - e.g. links to the State supports were not made available for borrowers in mortgage arrears. The Central Bank has instructed the firm in question to update its website to include these links.

Where a loan is sold to a ULO, existing arrangements with borrowers are honoured by RCFs/CSFs (acting on behalf of a ULO), until the agreed term of the arrangement ends. Borrowers may then be offered a different arrangement from the suite of arrangements considered by the RCF/CSFs (acting on behalf of the ULO), within the MARP framework

The 1997 Act (as amended by the 2015 Act) ensures that borrowers whose loans are sold to ULOs are afforded the same regulatory protections they had prior to the sale, including those provided by the CCMA. In line with the regulatory protections of the CCMA, the Central Bank identified that existing arrangements with borrowers are honoured by the RCF/CSFs (acting on behalf of ULOs) when a loan is sold to a ULO, including arrangements that are not in the ULO's suite of arrangements.

When the agreed arrangement ends, the RCF/CSFs assess the borrower's circumstances against the ULO's suite of arrangements, as required by the CCMA. This means that the same arrangement may not be offered to the borrower again.

No evidence to suggest that ULOs that are not authorised as CSFs are conducting credit servicing activities, a prescribed contravention of the amended 1997 Act

From a targeted review of minutes of meetings between the CSFs and ULOs, there was no evidence to suggest that ULOs are conducting credit servicing activities in contravention of the amended 1997 Act.

Overall, while the Central Bank identified some weaknesses and non-material breaches of the CCMA, we also identified some good practices adopted by firms that went beyond tick-box compliance. Based on its recent inspections, the Central Bank is satisfied that these firms have frameworks in place to support engagement with borrowers who are in or facing mortgage arrears, as required by the CCMA.

Where a loan is sold to a ULO, existing arrangements with borrowers are honoured by CSFs (acting on behalf of a ULO), until the agreed term of the arrangement ends.

Stakeholder Views

To inform this Report, the Central Bank sought the views of consumer representatives and advocates, many of whom deal directly with consumers in mortgage arrears. We also engaged with statutory bodies and industry stakeholders to get their views on the effectiveness of the CCMA in the context of the sale of loans. The majority of feedback received focused on the arrangements being considered and put in place by ULOs (through CSFs), with some differing views received from stakeholders in this regard. An overview of specific feedback from stakeholders under relevant headings is set out below.

As part of the work undertaken to inform this Report, the Central Bank also received stakeholder feedback relating to the operation of the CCMA in general. Arising from this feedback, together with issues raised since the previous review of the CCMA and insights from our ongoing supervision of firms that are subject to the CCMA, the Central Bank will engage with industry on providing fuller information to borrowers on the assessment of their case and the reasons why arrangements considered, and not offered to the borrower, are not appropriate and not sustainable for the borrower's individual circumstances.

Overall, based on its consideration of the feedback from stakeholders in relation to the effectiveness of the CCMA in the context of the sale of loans, the Central Bank is satisfied that the CCMA is working effectively and as intended for those borrowers who engage with the process.

Further detail on the general feedback received on the CCMA is set out in Appendix 2.

A. Conduct of ULOs and CSFs, Borrower Communications and the Application of the CCMA to CSFs

| Stakeholder Views | Central Bank Comments |
|--|---|
| <p>The majority of stakeholders said there is no evidence of aggressive behaviour by ULOs/CSFs.</p> | <p>The CCMA, the Consumer Protection Code 2012 and the Consumer Credit Act 1995 contain detailed requirements relating to the manner in which regulated entities (including CSFs) communicate with borrowers. The CCMA requires regulated entities to ensure that all information is presented to the borrower in a clear and consumer friendly manner. The CCMA also requires that language used in communications must be in plain English so that it is easily understood. In addition, the Consumer Protection Code 2012 requires that all information provided to consumers by regulated entities is clear, accurate, up to date and written in plain English.</p> |
| <p>There is no evidence of ULOs communicating directly with borrowers, which would be a contravention of the amended 1997 Act.</p> | <p>The inspection work carried out to inform this Report evidenced that the content of borrower communications, such as letters issued by CSFs to borrowers in arrears, complied with the CCMA and was consistent with equivalent communications issued by banks. Supervisors inspected letters issued by the CSFs and the bank to borrowers in arrears and found that these borrower communications did not use language considered aggressive, intimidating, or harassing. Where stakeholders, including mortgage borrowers, have evidence of any breach of regulatory requirements, the Central Bank will consider this evidence as part of its supervisory work and determine whether enquiries and investigations are required. Such evidence is always welcomed by the Central Bank in order to inform whether any potential enhancements to the protections in place for borrowers might be necessary.</p> |
| <p>Communication from CSFs can sometimes be unclear, complicated and not in plain English.</p> | <p>The inspection work carried out to inform this Report evidenced that the content of borrower communications, such as letters issued by CSFs to borrowers in arrears, complied with the CCMA and was consistent with equivalent communications issued by banks. Supervisors inspected letters issued by the CSFs and the bank to borrowers in arrears and found that these borrower communications did not use language considered aggressive, intimidating, or harassing. Where stakeholders, including mortgage borrowers, have evidence of any breach of regulatory requirements, the Central Bank will consider this evidence as part of its supervisory work and determine whether enquiries and investigations are required. Such evidence is always welcomed by the Central Bank in order to inform whether any potential enhancements to the protections in place for borrowers might be necessary.</p> |
| <p>One stakeholder highlighted that the CCMA is silent on the matter of the sale of mortgages to ULOs, indicating that the CCMA was designed to be</p> | <p>The CCMA applies to all regulated entities, including CSFs (acting on behalf of ULOs), following the enactment of the 2015 Act (amending the 1997 Act) and the subsequent Central Bank Addendum to the CCMA. The</p> |

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| <p>compatible with the broad business models of regulated lenders and did not take account of the approach of the new loan owners who have a limited relationship with borrowers.</p> | <p>purpose of this Addendum was to make it clear that the activity of credit servicing is a regulated activity and firms carrying on that activity (on behalf of ULOs) are regulated entities with respect to that activity.</p> |
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| <p>B. Arrangements being put in place, Review of Arrangements and Sustainability</p> | |
|--|---|
| <p>Stakeholder Views</p> | <p>Central Bank Comments</p> |
| <p>ULOs are rarely willing to offer debt write-down as a restructure arrangement for borrowers in arrears.</p> | <p>Within the CCMA framework, the regulated entity determines the suite of arrangements it considers putting in place for borrowers. In addition, while a regulated entity must provide the borrower with the reasons why an arrangement offered is considered appropriate and sustainable for the borrower, the regulated entity decides on which arrangement, if any, to offer the borrower. The Central Bank cannot interfere with the strategy and commercial decisions or the legitimate contractual rights of lenders, where such firms are complying with their regulatory and contractual obligations. In this regard, the Central Bank cannot interfere in the contractual rights between lenders or ULOs and borrowers such that it could require a regulated lender or CSF (acting on behalf of a ULO) to consider or put in place specific arrangements for borrowers.</p> <p>Where an arrangement cannot be agreed under the CCMA, the borrower may explore the possibility of remaining in their home as a tenant under the Mortgage to Rent Scheme¹⁵ or consult a Personal Insolvency Practitioner, with a view to resolving their financial difficulties under the Personal Insolvency Act. Within this framework, Personal Insolvency Arrangements can include an element of debt write-down for the debtor. In addition, where creditors reject proposals for a Personal Insolvency Arrangement, borrowers are entitled to seek a Court review under which the Court may determine the terms of such an arrangement, notwithstanding the absence of agreement on the part of the creditor.</p> |
| <p>Some stakeholders stated that ULOs are often more flexible and willing to do a deal than banks. One stakeholder stated this in terms of restructure arrangements and another stated this in the context of borrowers willing to voluntarily surrender the property.</p> | |

¹⁵ Mortgage to Rent is not an arrangement for the purposes of the CCMA, as it results in the loss of ownership of the borrower’s home; rather it is an ‘other option’ which regulated entities must inform borrowers about if a regulated entity cannot offer the borrower an arrangement that allows the borrower to retain ownership of their home.

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| <p>ULOs do not offer as wide a suite of arrangements as regulated lenders.</p> | <p>The Central Bank data shows that as at end Q1 2018, ULOs were considering, on average, more arrangements than banks and RCFs – see Table 4 in the ‘Restructuring Activity in the Irish Mortgage Market’ section below. However, the data gathered also shows that for the period Q1 2016 to end Q1 2018, banks and RCFs put in place a broader range of arrangements than ULOs.</p> |
| <p>There is a reluctance of ULOs towards more long-term restructuring solutions due to their shorter-term business model.</p> | <p>Based on the same data set, banks put in place a 50/50 split between short-term and long-term arrangements. RCFs put mostly long-term arrangements in place, while two-thirds of the arrangements put in place by ULOs were short-term. This general shift towards more short-term arrangements being put in place is discussed further in the ‘Restructuring Activity in the Irish Mortgage Market’ section of this Report.</p> <p>The Central Bank is fully committed to overseeing its regulatory requirements in order to ensure that a fair and transparent process is in place for borrowers in or facing mortgage arrears. While recognising that short-term arrangements can be appropriate and sustainable depending on a borrower’s individual circumstances, the Central Bank will track how the maturity profile of the arrangements being put in place changes over time. Although we cannot interfere with the strategy and commercial decisions or the legitimate contractual rights of regulated entities where such firms are complying with their regulatory and contractual obligations, we will investigate patterns of behaviour which suggest that the CCMA process is not being followed. This analysis may also prompt the Central Bank to identify enhancements to the wider national policy framework of supports and protections available to assist borrowers in financial difficulties, which may fall inside or outside our remit.</p> |
| <p>One stakeholder suggested the possibility that a review of an arrangement could only be initiated/requested by the borrower, in order to prevent ULOs from moving borrowers off arrangements agreed</p> | <p>The CCMA explicitly requires that regulated entities must carry out a review of an arrangement at any time if requested by the borrower. The CCMA also requires regulated entities to review arrangements at appropriate intervals, including at least 30 calendar days before the arrangement ends. Regulated entities must also formally review a borrower’s case immediately where a borrower ceases to adhere to the terms of an arrangement. These requirements ensure that the arrangement in place remains appropriate for the borrower.</p> |

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| <p>with their original lenders.</p> | <p>Based on the inspections undertaken to inform this Report, existing arrangements are being honoured by CSFs (acting on behalf of ULOs) where a loan is sold by a regulated lender to a ULO.</p> |
| <p>ULO should not be able to overturn the original arrangement because of the sale of the loan.</p> | <p>In addition, in the context of the Central Bank’s ongoing supervisory engagement with firms involved in credit servicing activities, no evidence has emerged to date that such firms are moving borrowers off an arrangement upon review in cases where the borrower’s circumstances have not changed. In this regard, regulated lenders and ULOs must comply with the terms of the arrangement in place.</p> |
| <p>Although an arrangement transfers with the loan when it is sold to a ULO, there is a concern that the ULO may not always offer the same arrangement to the borrower at review stage.</p> | <p>Where the agreed term of an arrangement ends, borrowers may subsequently be offered a different arrangement from the suite of arrangements offered by the ULO.</p> |
| <p>The Central Bank must define what a sustainable mortgage is.</p> | <p>The CCMA framework has been developed to be agile, requiring regulated entities to consider the individual circumstances of each borrower and assess each case on its individual merits. It is for banks, RCFs and ULOs to determine what is appropriate and sustainable for the borrower, in light of the borrower’s individual circumstances as well as the lender’s appetite to accept the associated credit risk.</p> |

Although not specific to ULOs, three stakeholders suggested that some or all arrangements¹⁶ should be made obligatory for all lenders and CSFs (acting on behalf of ULOs) to consider. As already stated, the Central Bank cannot interfere with the strategy and commercial decisions or the legitimate contractual rights of lenders, such that it could require a regulated lender or CSF (acting on behalf of a ULO) to consider or put in place specific arrangements for borrowers. Regulated entities are entitled to rely on their contractual rights and make their own commercial decisions.

¹⁶ As set out in Provision 39 of the CCMA

C. Initiating legal proceedings

| Stakeholder Views | Central Bank Comments |
|--|--|
| <p>Two stakeholders expressed a view that ULOs generally move quicker to initiate legal proceedings than banks, due to their shorter-term business model and that they will not be slow to seek repossessions.</p> | <p>Generally speaking, this view is not supported by the data gathered by the Central Bank to inform this Report. This data indicates that the likelihood of legal proceedings having been initiated by a regulated lender compared to a ULO, where there is no arrangement in place (and where the borrower has been classified as not co-operating) has not been materially different, based on Q1 2018 data (see the 'Restructuring Activity in the Irish Mortgage Market' section below). In addition, based on data available to the Central Bank, there is also no material difference in the number of properties being taken into possession by ULOs compared to regulated lenders (again, see the 'Restructuring Activity in the Irish Mortgage Market' section below).</p> |

Restructuring Activity in the Irish Mortgage Market

In order to inform this Report, the Central Bank gathered and analysed data to gain insights into the suite of arrangements available and put in place by banks, retail credit firms and unregulated loan owners.

The presence of elevated levels of NPLs on the balance sheets of Irish banks has been a persistent issue since the financial crisis, as they represent a risk to financial stability during times of market uncertainty.¹⁷ In addition to causing distress for borrowers, NPLs (including mortgage arrears) are a significant cause for concern for supervisory authorities, as they can cause dysfunction for the banking system and its ability to serve the needs of borrowers and the wider economy, as well as affecting the cost of credit.

The Single Supervisory Mechanism (SSM)¹⁸, and the Central Bank, as a participant in the SSM, have continually challenged lenders to address the issue of NPLs in a sustainable way and required banks to submit NPL reduction strategies in order to strengthen the financial system.^{19 20}

Selling loans to third parties is one of the options a lender may take to seek to address the issues that arise from holding loan books with high proportions of NPLs. Across Europe, banks have increasingly opted to sell PDH loan books, though the extent of this activity is still low.²¹

Arrears in the Irish Mortgage Market

In order to inform this Report, the Central Bank has analysed the pattern of arrears in the Irish mortgage market by entity type. Tables 2 and 3 below provide a breakdown of PDH mortgages and mortgage arrears held by banks, RCFs and ULOs. They also show the extent of the arrears within

¹⁷ In the context of the prudential regulation of banks, a loan is classified as an NPL when repayments are more than 90 days past due or the debtor is assessed as 'unlikely to pay' in full without realisation of collateral for the loan. See the European Banking Authority Implementing Technical Standards on supervisory reporting on forbearance and non-performing exposures.

¹⁸ The SSM is the system for prudential supervision of credit institutions (banks) in the euro area. For more information, see <https://www.bankingsupervision.europa.eu/about/thessm>

¹⁹ https://www.bankingsupervision.europa.eu/legalframework/publiccons/pdf/npl2/ssm.introductory_statement_donnelly_180315.en.pdf

²⁰ McCann and McGeever, 2018, [Cures and Exits: the drivers of NPL resolution in Ireland from 2012 to 2017](#), examine the balance of NPLs in the Irish retail banking system, which stood at around €25bn in 2017, down from €85bn in 2013. The research considers the main driver of NPL reductions in different lending segments from 2012 to 2017.

²¹ Deloitte has published information about loan sale activity in a number of countries over the period 2014 - 2017, [Lift off - Loan portfolio markets continue to soar: Focus on Europe](#).

each of these different entity types at the end of March 2018. In particular, tables 2 and 3 below show that:

- Banks accounted for 93 per cent of the mortgage market²² (based on the number of accounts), 79 per cent of mortgage accounts in arrears and 73 per cent of mortgage accounts in the 720 DPD category. They still hold 679,912 accounts with a value of approximately €90.278 billion.²³
- RCFs accounted for five per cent of the mortgage market, 11 per cent of the mortgage accounts in arrears and eight per cent of mortgage accounts in the 720 DPD category. They held 36,259 mortgage accounts with a value of €5.776 billion, some of which would have been originated by the RCF itself and some of which would have been purchased from other regulated lenders reducing their NPLs or exiting the market.
- ULOs accounted for two per cent of the mortgage market, 11 per cent of accounts in arrears and 19 per cent of mortgage accounts in the 720 DPD category. They held 12,404 mortgage accounts with a value of €2.627 billion. As ULOs are not regulated entities authorised to provide mortgage credit, these loans would have all been purchased from regulated lenders, including banks and RCFs.
- RCFs and ULOs had much higher arrears levels. Based on the number of accounts held, eight per cent of banks' loan books were in arrears, compared to 21 per cent for RCFs and 62 per cent for ULOs.
- 53 per cent of mortgage accounts held by ULOs were in the 90 DPD category. The figure for RCFs was significantly lower at 16 per cent and lower again for banks at five per cent.
- Arrears in the 720 DPD category were also significantly higher for ULOs at 45 per cent compared to just seven per cent for RCFs and three per cent for banks.

ULOs accounted for two per cent of the mortgage market, 11 per cent of accounts in arrears and 19 per cent of mortgage accounts in the 720 DPD category.

²² All references to mortgages in this section refer to PDH mortgage accounts.

²³ It is important to note that there is not a one-to-one relationship between the number of accounts and the number of households. The mortgage arrears data published by the Central Bank relate to accounts, which exceeds the number of households for a number of reasons. Some households may have two or more loans secured on the same property - e.g. the original mortgage used to finance the purchase of the property and a subsequent top up / equity release mortgage used for home improvement, etc.

Table 2 | Share of PDH Mortgage Accounts by Entity²⁴

| | Banks | RCFs | ULO's |
|--|-------|------|-------|
| PDH mortgage accounts | 93% | 5% | 2% |
| PDH mortgage accounts in arrears | 79% | 11% | 11% |
| PDH mortgage accounts in arrears over 90 days | 75% | 12% | 14% |
| PDH mortgage accounts in arrears over 720 days | 73% | 8% | 19% |

Source – Residential Mortgage Arrears & Repossession Statistics: Q1 2018

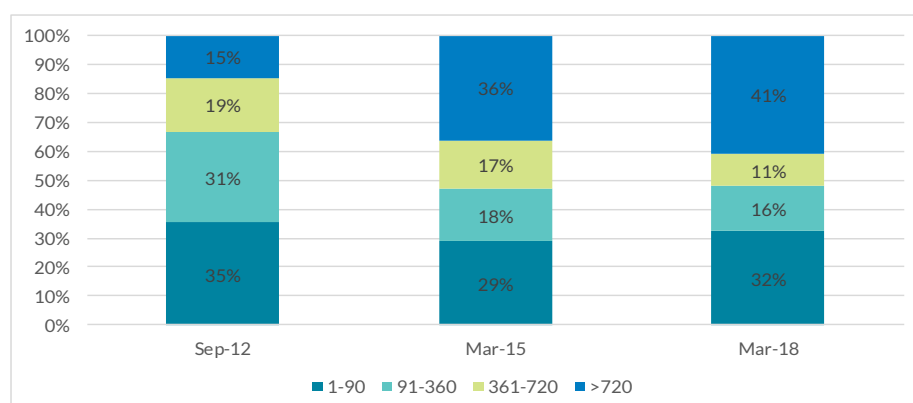
Table 3 | PDH Mortgage Arrears Profile (Number of Accounts) by Entity

| Arrears Rates | All Institutions | Banks | Non-Bank Entities | |
|--------------------------|------------------|---------|---------------------|-------------------------|
| | | | Retail Credit Firms | Unregulated Loan Owners |
| Total PDH Loans | 728,575 | 679,912 | 36,259 | 12,404 |
| In Arrears | 71,833 | 56,527 | 7,563 | 7,743 |
| % of total | 10% | 8% | 21% | 62% |
| In arrears over 90 days | 48,538 | 36,313 | 5,632 | 6,593 |
| % of total | 7% | 5% | 16% | 53% |
| In arrears over 720 days | 29,509 | 21,496 | 2,434 | 5,579 |
| % of total | 4% | 3% | 7% | 45% |

Source – Residential Mortgage Arrears & Repossession Statistics: Q1 2018

While the number of accounts in the 720 DPD category has steadily decreased since 2013, an increasing share of accounts in arrears falls within this category. However, with the 720 DPD category accounting for 41 per cent of PDH accounts in arrears, this category will take time to resolve given the scale, levels of distress and the high share of accounts that are linked to court repossession proceedings. Figure 2 shows the trend.

Figure 2 | Percentage of Loans by Number of Days in Arrears – All Entities



Source – Residential Mortgage Arrears & Repossession Statistics: Q1 2018

²⁴ Please note that the percentages in this table are rounded to the nearest whole number and are based on the number of accounts.

Restructuring Activity

The Central Bank has placed clear obligations on all regulated entities, regardless of their category of regulation, to have policies and procedures in place to deal with borrowers in or facing mortgage arrears, through the imposition of the CCMA requirements and the process under the MARP. This includes the requirements that a regulated entity must base its assessment of the borrower's case on the full circumstances of the borrower, provide the borrower with the reasons why an arrangement offered is considered appropriate and sustainable for the borrower, and that repossession be used only as a last resort.

The CCMA requires regulated entities to explore all of the arrangements offered by that firm, in order to determine which arrangements are viable for each particular case. The CCMA does not require a regulated entity to include any particular arrangements within the suite of arrangements that it considers, nor does it require a regulated entity to put in place a specific arrangement for a borrower.

In order to inform this Report, the Central Bank gathered data to complement other data regularly collected by the Central Bank on mortgage arrears and restructuring. In particular, the additional data requested was primarily intended to provide insights into the following:

1. the suite of arrangements available from regulated lenders (banks and retail credit firms) and ULOs;
2. the arrangements actually being put in place by regulated lenders and ULOs at initial and at review stage;
3. a comparison between the arrangements put in place by regulated lenders and ULOs; and
4. the level of borrower co-operation where an arrangement has not been put in place and the extent to which regulated entities and ULOs have initiated legal proceedings against borrowers who are not co-operating.

1. Suite of arrangements considered by loan holders

As set out in more detail in Table 4, as at end Q1 2018, banks were considering, on average, nine arrangements within their suite; RCFs were considering eight; and ULOs were considering 13 on average. Therefore, ULOs are considering more arrangements within their suite of arrangements under the CCMA.²⁵

²⁵ Regulated lenders and CSFs (acting on behalf of ULOs) are considering some or all of the following arrangements within their suite of arrangements: arrears capitalisation, term extension, interest only, deferred interest schemes, reduced payments (greater than interest only), interest rate reductions, payment moratoriums, split mortgages and other short-term and long-term arrangements.

2. Arrangements actually being put in place by regulated lenders and ULOs at initial and at review stage

Banks and RCFs put in place, on average, seven different types of arrangements for borrowers, while ULOs put in place, on average, five different types of arrangements between Q1 2016 to Q1 2018. Although ULOs reported considering a wider range of arrangements on average than banks and RCFs, it is clear that, when taken as an average, banks and RCFs are actually putting in place a more diverse range of arrangements than ULOs. RCFs and ULOs account for a significantly higher proportion of accounts in arrears and in the 720 DPD category. This could account for differences in the range of arrangements that ULOs are actually putting in place.

Table 4 | Breakdown of Arrangement Types by Entity Type

| | Entity Type | Ave | Min | Max |
|--|-------------|-----|-----|-----|
| No. of options considered as part of suite of arrangements | Banks | 9 | 3 | 14 |
| Q1 2016 to end Q1 2018 arrangements put in place | Banks | 7 | 2 | 9 |
| No. of options considered as part of suite of arrangements | RCFs | 8 | 6 | 10 |
| Q1 2016 to end Q1 2018 arrangements put in place | RCFs | 7 | 5 | 11 |
| No. of options considered as part of suite of arrangements | ULOs | 13 | 8 | 15 |
| Q1 2016 to end Q1 2018 arrangements put in place | ULOs | 5 | 1 | 7 |

Over time, there has been a significant compositional change in the arrangements being put in place by regulated lenders (and now regulated lenders and ULOs), as highlighted in Table 5.

Although ULOs reported considering a wider range of arrangements on average than banks and RCFs, it is clear that, when taken as an average, banks and RCFs are actually putting in place a more diverse range of arrangements than ULOs.

Table 5 | Changing Nature of Arrangements since 2010 - All Entities

| | Q4 2010 | Q1 2013 | Q1 2016 | Q1 2018 |
|--|---------|---------|---------|---------|
| Total PDH Accounts Classified as Restructured - i.e., with an arrangement in place, at the end of the Quarter | 59,229 | 79,658 | 120,554 | 117,334 |
| Interest Only | 38% | 33% | 4% | 3% |
| Reduced Payment (less than interest only) | 13% | 9% | 1% | 1% |
| Reduced Payment (greater than interest only) | 15% | 22% | 8% | 5% |
| Term Extension | 12% | 17% | 13% | 12% |
| Arrears Capitalisation | 12% | 15% | 30% | 33% |
| Payment Moratorium | 4% | 3% | 1% | 1% |
| Split Mortgage²⁶ | 0% | 0% | 22% | 23% |
| Interest Rate Reduction | 0% | 0% | 6% | 0% |
| Residual²⁷ | 5% | 1% | 15% | 17% |
| Percentage meeting the terms of the arrangement²⁸ | N/A | 76% | 88% | 86% |

Source – Residential Mortgage Arrears & Repossession Statistics: Q1 2018

3. Comparison between the arrangements put in place by regulated lenders and ULOs

The charts in Figure 3 below show the prevalence of the various arrangement options by entity type based on the full stock of arrangements these entities had on their books as at end Q1 2018.²⁹

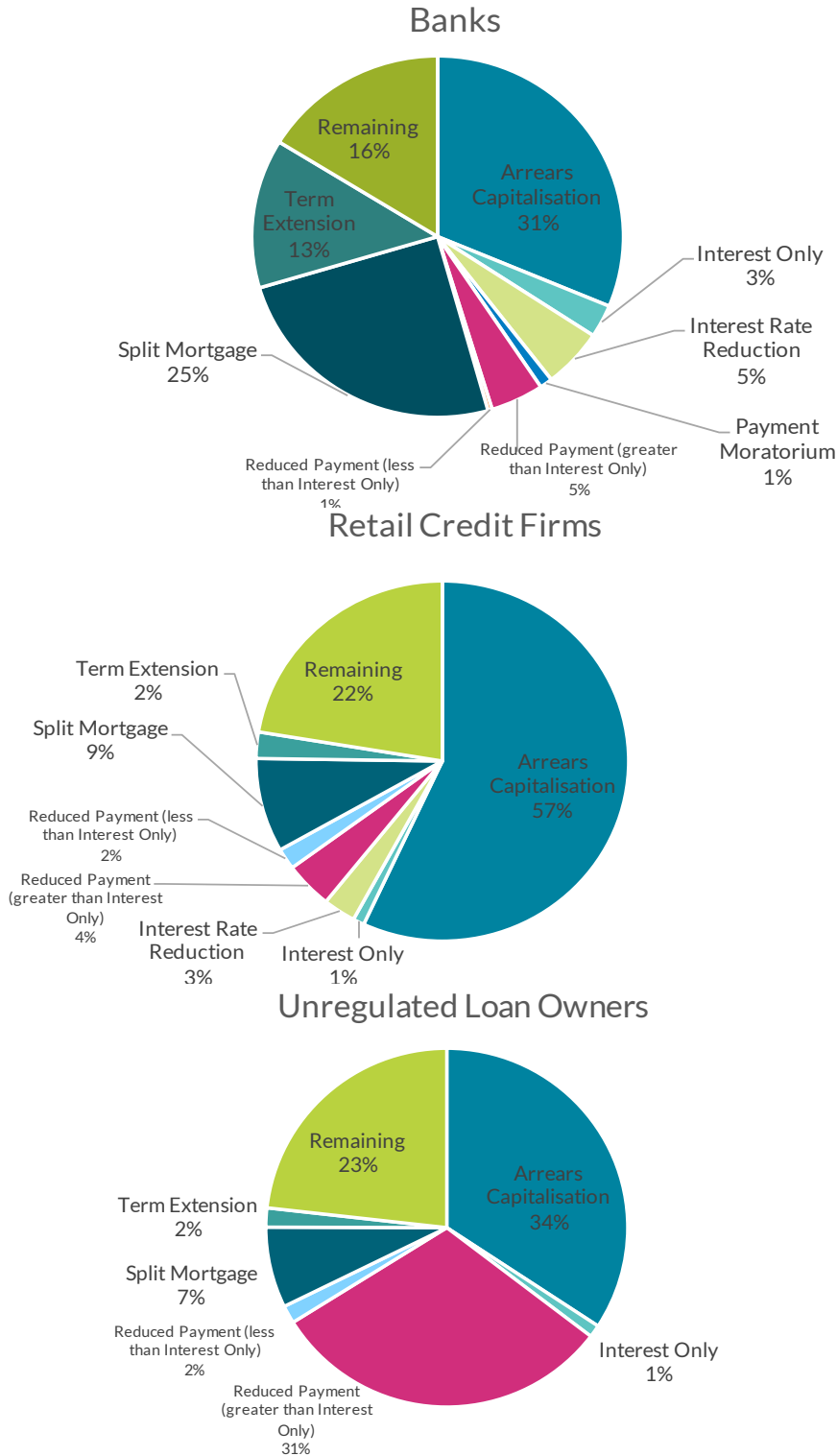
²⁶ The Mortgage Arrears and Repossession Statistics are reported on an account level basis. Where a mortgage is split into a warehoused and non-warehoused component, this will be reported at account level. This implies that one split mortgage will likely be reported as two accounts.

²⁷ The 'Residual' category in Table 5 mainly comprises other long-term arrangements, which are simultaneously-agreed hybrid arrangements, for example, combining term extensions and arrears capitalisation arrangements. 'Residual' also includes accounts that have been offered a long-term arrangement, pending the completion of a trial period. When these accounts transition into their long-term arrangement, the figures will be updated accordingly. Finally, it also includes other arrangements that do not warrant a separate category.

²⁸ Accounts meeting the terms of the arrangement include restructured accounts not in arrears, as well as accounts in arrears where the borrower is, at a minimum, meeting the agreed monthly repayments according to the current arrangement. This does not mean the borrower has no arrears outstanding.

²⁹ 'Remaining' in these charts refer to smaller restructure types that do not warrant a category on their own in the chart. The arrangements included in remaining can differ by entity type.

Figure 3 | PDH Mortgage Accounts by Arrangement Category and Entity Type



This data shows that the types of arrangements put in place or held by regulated lenders and ULOs are similar; however, there have been differences in the reliance³⁰ each entity type has on certain arrangement types:

- While the arrears capitalisation arrangement type has been heavily relied upon by all entity types, reliance on this type of arrangement has

³⁰ It should be noted that RCFs and ULOs may have purchased loans with arrangements already in place.

been greater amongst RCFs in particular. These arrangements account for 57 per cent of all restructured mortgage loans held by RCFs. In contrast, approximately 31 per cent of restructured accounts held by banks and 34 per cent of restructured accounts held by ULOs are in the arrears capitalisation category.

- As well as arrears capitalisation arrangements, ULOs have heavily relied on reduced payments (greater than interest only) arrangements. This arrangement type accounted for 31 per cent of the full stock of arrangements held by ULOs as at end Q1 2018, significantly higher than the five per cent for banks and four per cent for RCFs.
- Split mortgages account for 25 per cent of all arrangements put in place by banks, compared with nine per cent for RCFs and seven per cent for ULOs.

In order to further compare the arrangements being put in place by regulated lenders and ULOs, the Central Bank gathered data to specifically examine the arrangements put in place in the nine quarters from Q1 2016 to end Q1 2018. Some 68,500 arrangements have been put in place for borrowers in arrears or pre-arrears by all institutions during this period. It is clear that banks, RCFs and ULOs continue to restructure PDH mortgage loans.³¹ Based on this information, the top three arrangement types put in place by entity type are set out in Table 6.

Some 68,500 arrangements have been put in place for borrowers in arrears or pre-arrears by all institutions during this period.

Table 6 | Top Three Arrangement Types put in place Q1 2016 – End Q1 2018 by Entity Type

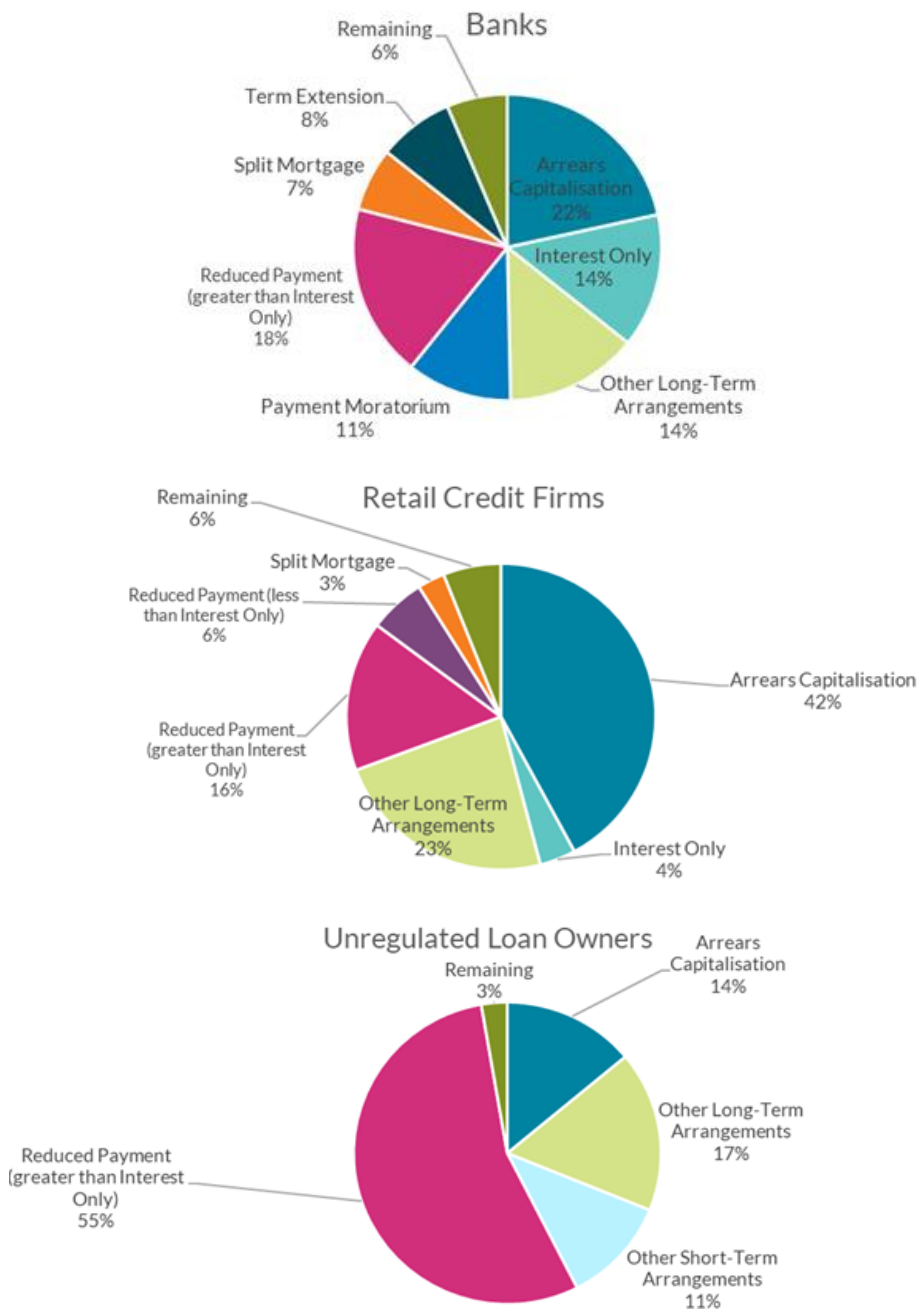
| | Banks | RCFs | ULO |
|----|--|--|--|
| 1. | Arrears capitalisation (22%) | Arrears capitalisation (42%) | Reduced payment (greater than interest only) (55%) |
| 2. | Reduced payment (greater than interest only) (18%) | Other long-term arrangements ³² (23%) | Other long-term arrangements (17%) |
| 3. | Interest only (14%) | Reduced payment (greater than interest only) (16%) | Arrears capitalisation (14%) |

Figure 4 shows a comparison of the arrangements put in place by banks, RCFs and ULOs, over the nine quarters Q1 2016 to Q1 2018. It should be noted that for RCFs and ULOs, the percentages are based on a much smaller number of arrangements put in place within the period, compared to banks.

³¹ This figure includes first time and subsequent arrangements agreed over the period.

³² 'Other Permanent Arrangements' refer to the hybrid arrangements mentioned in footnote 27.

Figure 4 | Arrangements put in place from Q1 2016 to End Q1 2018



Based on this data, the following can be observed:

- Arrears capitalisation arrangements continue to be put in place by all entity types. Twenty two per cent of the arrangements put in place by banks over the nine quarters were in this category. For RCFs, this figure is 42 per cent and for ULOs, it is 14 per cent.
- While split mortgages³³ remain a significant proportion (25 per cent) of the full stock of arrangements put in place by banks, they only accounted for seven per cent of arrangements put in place over the nine quarters Q1 2016 to end Q1 2018, indicating that this arrangement option is becoming less utilised by banks. Against this, three per cent of the

³³ See footnote 26.

arrangements put in place by RCFs and less than three per cent of the arrangements put in place by ULOs were split mortgages.

- Similarly, while term extension arrangements represent 13 per cent of the full stock of arrangements put in place by banks, this has dropped to eight per cent when taken as a percentage of the arrangements put in place by banks between Q1 2016 and Q1 2018. Based on this data, it is clear that few term extensions are being put in place by RCFs and CSFs (consistent with the data based on the full stock of arrangements these entities have in place).
- For banks, interest only arrangements accounted for 14 per cent of arrangements over the nine quarters, yet account for just 3 per cent of the full stock of arrangements these entities had in place as at end Q1 2018.

The Central Bank also analysed a trend in terms of additions to arrangements over the period Q1 2016 to end Q1 2018 between short-term and long-term arrangements.³⁴ Banks put in place a 50/50 split, RCFs put mostly long-term arrangements in place, while two-thirds of the arrangements put in place by ULOs were short-term. This general shift towards more short-term arrangements being put in place (compared to the overall stock of arrangements where 85 per cent are considered long-term) may be reflective of a number of factors, unique to the loan books owned by banks, RCFs and ULOs. While recognising that short-term arrangements can be appropriate and sustainable depending on a borrower's individual circumstances, the Central Bank will track how the maturity profile of the arrangements being put in place changes over time. Although we cannot interfere with the strategy and commercial decisions or the legitimate contractual rights of regulated entities where such firms are complying with their regulatory and contractual obligations, we will investigate patterns of behaviour which suggest that the CCMA process is not being followed. This analysis may also prompt the Central Bank to identify enhancements to the wider national policy framework of supports and protections available to assist borrowers in financial difficulties, which may fall inside or outside our remit.

4. Level of borrower co-operation where an arrangement has not been put in place and the extent to which regulated entities and ULOs have initiated legal proceedings against borrowers who are not co-operating.

Based on the data collected to inform this Report, approximately 19 per cent of PDH mortgage accounts in arrears held by ULOs have an arrangement in place. This compares to 40 per cent for banks and 28 per cent for RCFs. Overall, approximately half of borrowers who are in

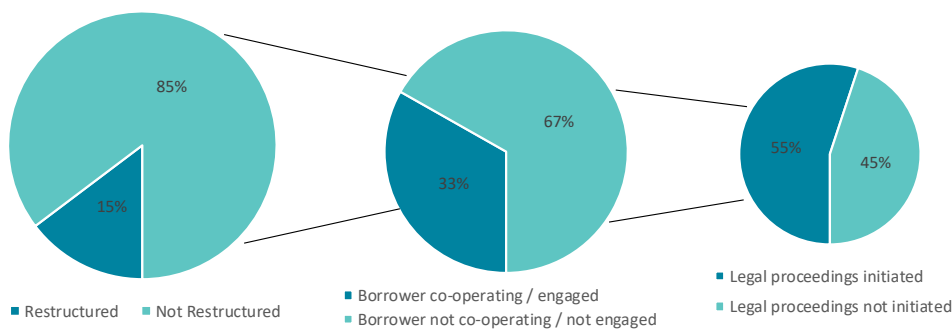
³⁴ For the purpose of this Report, short-term arrangements include those designed to have a specific term and which will expire or come to an end at some point in the future, for example, a six-month interest only restructure. Long-term arrangements are those which are point in time events and which do not expire, for example arrears capitalisation. Such arrangements are included in the restructured stock figures reported to the Central Bank for a maximum period of five years.

mortgage arrears and who have no current arrangement in place are classified as not co-operating by loan holders. At 63 per cent, ULOs have a higher proportion of not co-operating borrowers compared to banks (47 per cent) and RCFs (32 per cent).³⁵ Table 7 gives an overview of restructured mortgage accounts in arrears by entity type, by the level of borrower co-operation and the proportion of legal proceedings initiated.³⁶ Figure 5 below provides an overview of restructured mortgage accounts, borrower co-operation and legal proceedings initiated by all entities when we consider only those mortgage accounts in the 720 DPD category.³⁷

Table 7 | PDH Mortgage Accounts in Arrears by Restructured, Borrower Co-operation and Legal Proceedings, by Entity

| | Banks | RCFs | ULOs | Total |
|-----------------------------------|-------|------|------|-------|
| Restructured | 40% | 28% | 19% | 36% |
| Not Restructured | 60% | 72% | 81% | 64% |
| <i>Not restructured, of which</i> | | | | |
| Co-operating | 53% | 68% | 37% | 53% |
| Not co-operating | 47% | 32% | 63% | 47% |
| <i>Not co-operating, of which</i> | | | | |
| Legal proceedings initiated | 47% | 53% | 53% | 49% |
| Legal proceedings not initiated | 53% | 47% | 47% | 51% |

Figure 5 | Share of Accounts Restructured, Borrower Co-operation and Legal Proceedings Initiated (720 DPD category) – All Entities



³⁵ This percentage is based on the accounts in arrears with no arrangement in place, sourced from data collected to inform this Report.

³⁶ Based on the data collection and analysis carried out by the Central Bank to inform this Report.

³⁷ According to McCann ([Resolving a Non-Performing Loan crisis: The ongoing case of the Irish mortgage market](#)), based on loan level data collected in relation to Irish banks, as of December 2016, of those borrowers between three months and two years past due, over three quarters had engaged with their bank. The figure was lower in the 720DPD plus group, with engagement at 61 per cent. The implication was that there were 9,680 mortgages (associated with over eight thousand unique properties) at that time that were in the deepest state of arrears where the borrower had had no engagement whatsoever with their lender.

Table 7 and Figure 5 show that:

- Considerably fewer PDH mortgage accounts have been restructured where there are more than 720 days' worth of arrears outstanding on the mortgage; 36 per cent versus 15 per cent.
- In this 720 DPD category, of those that have not been restructured, there is also a significantly greater likelihood that the borrower is not co-operating with the regulated lender or CSF (acting on behalf of the ULO); 67 per cent versus 47 per cent.
- The likelihood of legal proceedings having been initiated is only slightly higher for not co-operating borrowers with no arrangement in place in the 720 DPD category; 55 per cent versus 49 per cent. In this regard, it may be relevant that ULOs hold a significantly higher proportion of accounts in this category compared to banks and have only recently purchased non-performing PDH mortgages.

As RCFs and in particular ULOs, account for a significantly higher proportion of mortgage accounts within the 720 DPD category, these observations are particularly relevant to these entities.

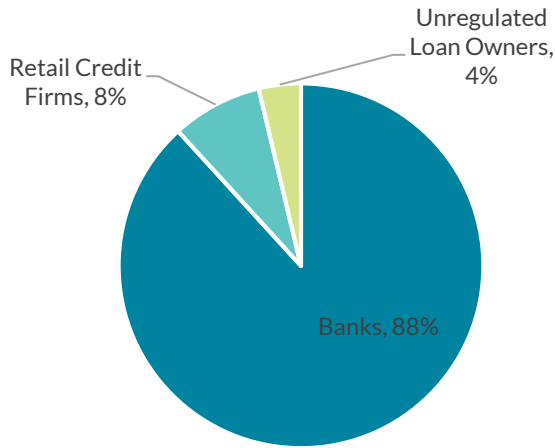
Legal proceedings

Where an arrangement cannot be agreed between a lender and borrower, one consequence is loss of ownership (either voluntary or enforced through legal proceedings).

Bearing in mind that RCFs and ULOs are holding a significantly higher proportion of PDH accounts in arrears, there is no material difference in the level of repossession activity at this time by RCFs and ULOs, compared to banks. Based on the number of properties taken into possession during the period Q1 2016 to end Q1 2018, as a percentage of the number of mortgages in arrears in Q1 2018, banks took five per cent of these properties into possession during the quarter; the equivalent percentage for RCFs and ULOs was four per cent and two per cent respectively. Some 3,431 properties were taken into possession over the nine quarters. Of these, banks accounted for 88 per cent, RCFs for eight per cent and ULOs for four per cent (see Figure 6 below). As shown in Table 7 above, of the PDH mortgage accounts in arrears held by banks with no arrangement in place (and where the borrower was classified as not co-operating), legal proceedings had been initiated in 47 per cent of cases; for RCFs and ULOs this figure was 53 per cent each.

Bearing in mind that RCFs and ULOs are holding a significantly higher proportion of PDH accounts in arrears, there is no material difference in the level of repossession activity at this time by RCFs and ULOs, compared to banks.

Figure 6 | Proportion of Repossession Q1 2016 – End Q1 2018, by Entity



Based on the data collected to inform this Report, ULOs are generally more successful than banks in obtaining a court order to repossess properties. Over the period Q1 2016 to Q1 2018, for those cases where court proceedings have concluded, ULOs were granted an order for possession in 74 per cent of cases compared with 52 per cent for banks and 46 per cent for RCFs.

Conclusions

- The CCMA is part of a national policy framework of supports and protections available to assist borrowers in financial difficulties, including the Mortgage to Rent Scheme and the debt resolution mechanisms under the Personal Insolvency Act. These mechanisms will continue to be critically important to protecting and assisting borrowers.
- The MARP, set out in the CCMA, provides a clear framework for borrowers in or facing mortgage arrears on their primary residence to engage with relevant regulated entities, including CSFs.
- The Oireachtas introduced the 2015 Act (amending the 1997 Act) in order to help protect borrowers where their loans have been sold to ULOs. The measures introduced in this legislation have helped borrowers by requiring CSFs to be regulated financial service providers, ensuring their activities fall within the regulatory perimeter of the Central Bank's consumer protection framework.
- While noting that that our work to inform this Report represents a point in time analysis of the CCMA's effectiveness in the context of the sale of loans, based on the work undertaken to inform this Report, the CCMA is working effectively and as intended for those borrowers who engage with the process.
- The Central Bank is satisfied that the sample of firms engaged in credit servicing activities inspected, as part of its recent inspections of compliance with the CCMA, have frameworks in place to support engagement with borrowers who are in or facing mortgage arrears, as required by the CCMA. The Central Bank did not identify any material breaches of the CCMA by these firms.
- While ULOs are exploring more arrangement options within the suite of options under the CCMA, they are putting in place fewer arrangement types than banks and RCFs. RCFs and ULOs account for a significantly higher proportion of accounts in arrears and in the 720 DPD category. This could account for differences in the range of arrangements that ULOs are actually putting in place.
- The Central Bank is cognisant of the low utilisation of personal insolvency for borrowers and of recent calls for the amendment of the Personal Insolvency Act. In the context of a holistic mechanism for dealing with personal debt, the Central Bank encourages exploring enhancements to this regime, including exploring additional ways to increase usage of debt resolution mechanisms where it is appropriate for the specific circumstances of individual borrowers.
- In terms of the sale of loans, much of this activity has only recently occurred. In the context of the feedback received from stakeholders, the findings of our inspection work, and our observations based on

available data and data specifically gathered and analysed to inform this Report, the Central Bank will continue to assertively supervise regulated entities' compliance with the CCMA, to ensure that a fair and transparent process is in place for all borrowers, including those whose loans have been sold. Where regulated entities breach the CCMA, formal supervisory requirements, with specific timelines for remediation, are imposed on those regulated entities. In such cases, the Central Bank considers its full suite of regulatory powers, including but not limited to enforcement action in appropriate circumstances.

- The Central Bank is fully committed to overseeing its regulatory requirements in order to ensure that a fair and transparent process is in place for borrowers in or facing mortgage arrears. While recognising that short-term arrangements can be appropriate and sustainable depending on a borrower's individual circumstances, the Central Bank will track how the maturity profile of the arrangements being put in place changes over time. Although we cannot interfere with the strategy and commercial decisions or the legitimate contractual rights of regulated entities, we will investigate patterns of behaviour which suggest that the CCMA process is not being followed. This analysis may also prompt the Central Bank to identify enhancements to the wider national policy framework of supports and protections available to assist borrowers in financial difficulties, which may fall inside or outside our remit.
- While there is no evidence to suggest any material difference in the activity of ULOs concerning repossessions, the Central Bank is mindful that the sale of PDH mortgages by regulated lenders has only occurred more recently. The Central Bank will continue to track the rate of repossession by loan holders. This information informs the Central Bank about the strategies being adopted by loan holders, in particular RCFs and ULOs.
- As part of the work undertaken to inform this Report, the Central Bank also received stakeholder feedback relating to the operation of the CCMA in general. Arising from this feedback, together with issues raised since the previous review of the CCMA and insights from our ongoing supervision of firms that are subject to the CCMA, the Central Bank will engage with industry on providing fuller information to borrowers on the assessment of their case and the reasons why arrangements considered, and not offered to the borrower, are not appropriate and not sustainable for the borrower's individual circumstances.

Appendix 1

Data Sources

Residential Mortgage Arrears and Repossession Statistics

The quarterly data collection on mortgage arrears first began with reference to Q3 2009, and covered mortgages secured on Principal Dwelling Houses (PDH) in Ireland. Information on the number of accounts in arrears, outstanding balances of those accounts and data on property repossessions were initially collected. Data were broken down by accounts in arrears of up to 90 days, 91-180 days and over 180 days. The reporting population extended to all mortgage providers - i.e. banks and other lenders providing mortgages in Ireland. Information on restructured mortgages was first collected in Q4 2010. This provided information on the end-quarter stock of mortgages with arrangements in place, broken down by type of arrangement and whether the restructured account was in arrears.

In 2012, additional enhancements were made to the quarterly mortgage arrears data collection. In Q2 2012, the data coverage extended to Buy-to-Let mortgages. In Q3 2012, further detail was collected on the length of time in longer-term arrears expanding the duration data to differentiate those loans that were over 180 days in arrears to include those of over 360 and over 720 days in arrears. Data collection on restructured loans was also enhanced to capture the flow of loans into and out of the stock of restructured accounts in the quarter. The final enhancement was to collect information on the performance of restructured loans. The breakdown of restructured accounts was supplemented by further detail on 'meeting the terms' of the arrangement.

To meet the requirements of this Report, a data gathering exercise was undertaken, to complement existing data collected in the Mortgage Arrears and Repossession Statistics. This exercise was addressed to all relevant reporting entities, and focused mainly on arrangements and borrower engagement.

The data exercise collected data for the period Q1 2016 to Q1 2018. Therefore, all data in this report refers to Q1 2018 to remain consistent with the data exercise, unless otherwise stated.

Appendix 2

Feedback from stakeholders on the wider operation of the CCMA

As part of the work undertaken to inform this Report, the Central Bank has also received stakeholder feedback relating to the operation of the CCMA in general, which is set out below.

| General CCMA Feedback | |
|---|--|
| Stakeholder Views | Central Bank Comments |
| The current range of arrangements set out in the CCMA may not be consistent with the ECB's NPL definitions. | Provision 39 of the CCMA outlines a non-exhaustive list of potential arrangements a regulated entity may consider when offering a borrower an arrangement. It is acknowledged that under certain circumstances a number of the products listed under provision 39 of the CCMA may not lead to that exposure 'curing' from an NPL status in the future if, for example, the arrangement is not viable in the long term. Chapter 4 of the ECB Guidance to banks on non-performing loans covers this topic in detail. Appropriate arrangements given to the right borrowers lead to mutually beneficial outcomes from both a borrower and regulatory perspective. |
| Lenders should be obliged to offer Mortgage to Rent where a borrower is eligible. | Mortgage to rent is not an arrangement for the purposes of the CCMA as it results in the loss of ownership of the borrower's home. Arrangements under the CCMA may include, for example, arrears capitalisation, split mortgages, term extensions and reduced payments. Under the CCMA, mortgage to rent is an 'other option' that regulated entities must inform borrowers about in the event, for example, that the regulated entity cannot agree an arrangement with the borrower that would allow the borrower to retain ownership of his/her home. |

| | |
|---|--|
| <p>Lenders should be expressly required to provide a borrower with written details of the lender’s documented considerations under Provisions 37 and/or 40 of the CCMA. In contrast, one stakeholder expressed the view that where borrowers are offered an arrangement, they should not be informed about the reasons why other arrangements were not offered.</p> | <p>The Central Bank will engage with industry on providing fuller information to borrowers on the assessment of their case and the reasons why arrangements considered, and not offered to the borrower, are not appropriate and not sustainable for the borrower’s individual circumstances.</p> |
| <p>One stakeholder pointed out that not all borrowers in long term arrears ignore correspondence from lenders and CSFs. The stakeholder suggested that the Central Bank should require lenders to write to those in longer term arrears to encourage them to engage.</p> | <p>The CCMA requires regulated entities to continue to communicate with borrowers who are in arrears. Where arrears exist on a mortgage account, updated information on the number and total monetary amount of repayments missed, the monetary amount of the arrears to date and information about the dedicated arrears contact points must be provided to the borrower every three months. Where legal proceedings have commenced, a regulated entity must continue to maintain contact with the borrower periodically. The CCMA cannot offer further protections for borrowers who do not engage with their lender or CSF.</p> |



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