

The Central Bank's new Code of Conduct on Mortgage Arrears replaces a previous code, first introduced in February 2009 and updated in February 2010. It was revised as a result of the recommendations of the Government's Expert Group on Mortgage Arrears and Personal Debt. The new code applies with effect from 1 January 2011. The full text of the Code can be found at [www.centralbank.ie](http://www.centralbank.ie).

These guidelines are intended to act as a guide to borrowers in arrears with their mortgage and follow a question and answer format under the following headings:

- What is the general purpose of the code?
- Which lenders does the code apply to?
- Which borrowers does the code apply to?
- What are the lender's obligations under the code?
- What are the borrower's obligations under the code?
- What are the borrower's rights of appeal under the code?
- Other important rules in the code
- Other related developments

If you have any further queries in relation to the operation of the Code or if you feel your rights under the Code have been breached by a lender, you may contact FLAC for further information by telephone at 1890 350 250.

### What is the general purpose of the Code?

The purpose of the Code is to set out a framework that lenders must use when dealing with borrowers in arrears or facing arrears with their mortgage. The Code calls this framework the Mortgage Arrears Resolution Process (MARP) and the aim of this process is to **avoid** the repossession of family homes by putting in place alternative repayment arrangements for the mortgage where the borrower cannot make full monthly payments.

### Which lenders does the Code apply to?

The Code applies to all mortgage lenders regulated by the Central Bank including sub-prime lenders. It does not specifically apply to local authority mortgages as the Central Bank does not regulate local authorities but in practice local authorities will apply the rules set out in the Code.

### What are the lender's obligations under the Code?

Lenders have a number of detailed obligations under the Code and these may be broken down and explained as follows:

#### 1. Providing staff to operate the MARP – Mortgage Arrears Resolution Process

A lender must have at least one person at branch (or office) level responsible for dealing with mortgage arrears or pre-arrears cases and all frontline staff must be provided with training to deal with such cases. Each lending institution must also set up a central Arrears Support Unit (ASU) that will operate the Mortgage Arrears Resolution Process framework. Each person responsible at branch level must liaise with the Arrears Support Unit on arrears cases.

### Which borrowers does the Code apply to?

The Code applies to the mortgage loan of a borrower secured on his or her primary residence. This means the house which the borrower ordinarily lives in or a house which the borrower may not currently live in but which is the only house in the State owned by the borrower. This means that investment (such as buy-to-let) mortgages are not covered by the Code where the borrower in question also owns another house in the State.

In the case of joint borrowers who notify the lender in writing that they have separated or divorced, the lender must treat each borrower as a single borrower. Should such a couple have two mortgaged properties and each occupies one of them following their separation, both properties should come under the terms of the code.

## 2. Providing information to borrowers on the Mortgage Arrears Resolution Process

A lender must prepare and make available to borrowers an information booklet on its Mortgage Arrears Resolution Process, written in plain English avoiding legal jargon. This booklet must also contain information on access to potential state supports for borrowers in mortgage arrears, such as Mortgage Interest Supplement (MIS) and mortgage interest relief. Each lender must also have a dedicated section on its website designed for borrowers in financial difficulty which must link to the Money Advice and Budgeting Service (MABS) website.

## 3. Communicating with borrowers in arrears

When arrears first arise (whether in the form of a missed payment or a part payment) and are not paid within **31** days, the lender must write to **each** borrower (for example both borrowers in the case of a joint mortgage) within **three** working days.

Information in the letter must include the amount of the arrears and that the lender is now proposing to treat the case under the Mortgage Arrears Resolution Process. The lender must stress the importance of the borrower co-operating with the Mortgage Arrears Resolution Process in order for the borrower to be protected from legal proceedings for repossession. It must also provide the borrower with a copy of its booklet on its Mortgage Arrears Resolution Process.

Where a third payment is missed and remains outstanding and no alternative payment arrangement has been put in place, a lender must again write to the borrower and inform him or her of the potential for legal proceedings for repossession, the importance of seeking advice from MABS (or appropriate alternative) and that the borrower may be liable for any outstanding debt and costs where the property is repossessed.

## 4. Limiting unsolicited communications

Apart from the communications in relation to arrears it must make under the Mortgage Arrears Resolution Process, a lender (or its agent such as a debt collection company) is only allowed to make **three** unsolicited (or unasked for) communications in whatever form (letter, phone, visit or email) to a borrower each month.

This means, for example, that a lender is not allowed to plague a borrower with constant contact as a means of pressurising him or her into making unaffordable payments.

## 5. Engaging with the borrower's representative

Where the borrower requests and provides written consent, a lender is obliged to liaise with any representative nominated by the borrower in relation to his or her arrears, such as a money advisor, lawyer or other advocate.

## 6. Gathering the borrower's financial information

A lender must use a Standard Financial Statement (SFS) to gather details of the borrower's financial circumstances. A lender must inform the borrower that he or she may wish to obtain advice to help complete the Standard Financial Statement. Once completed, the Standard Financial Statement must be passed onto the lender's Arrears Support Unit. Borrowers should be aware that MABS money advisors are very experienced at completing financial statements on behalf of those in debt and should be consulted for help here.

### What alternative repayments options are available?

There are several alternative repayment options which the lender must explore. These include:

- Paying interest only for a period
- Paying interest and part of the capital only for a period
- Deferring all or part of the payment for a period (sometimes called a payment holiday)
- Making the term of the mortgage longer in order to reduce repayments
- Changing the type of mortgage, for example, to interest only from annuity
- Adding interest and arrears to the capital amount to create a new monthly payment
- Any deferred interest scheme (see page 4 for more detail) that the particular lender has agreed to

## 7. Assessing and resolving each borrower's case

A lender's Arrears Support Unit must assess each borrower's case using the information provided in the financial statement together with information on the borrower's personal circumstances, overall indebtedness, current repayment capacity and previous payment history. Borrowers must note that a lender is **not obliged** to offer one or more of the alternative repayment options that are available. However, it is **obliged to consider** each of them and document how this was done. Where a lender is not willing to offer a repayment arrangement - for example where it believes the mortgage is not sustainable - the reasons must be given in writing. This letter must inform the borrower of other options such as voluntary surrender, voluntary sale or trading down and their implications. It must also inform the borrower of his or her right to appeal the refusal (see box below for further detail).

Where a lender offers a particular repayment arrangement, a clear written explanation must be provided of the implications for the borrower. The lender must also have documented the reasons why this option is appropriate for the borrower in question. The arrangement must be monitored and a review must take place every six months.

## 8. Preventing Repossessions

A lender may not bring legal proceedings to repossess the primary residence of a borrower in arrears until every reasonable effort has been made to agree an alternative repayment arrangement with the borrower.

Where a borrower co-operates with his or her lender (see borrower's obligations on next page for further detail), a lender must wait at least 12 months from the date the case is treated as a Mortgage Arrears Resolution Process case – 31 days after arrears first arise – before seeking to repossess. Time starts to run from day 31 but it is vital that

borrowers note that certain periods of time do not count towards calculating the 12 month period. These include:

- Time where the borrower is complying with the terms of any agreed alternative repayment arrangement as outlined above, for example, interest only payments;
- Time where an appeal by the borrower under the MARP is being considered or is being processed;
- In cases where the borrower makes contact with the lender before going into arrears, any time between that contact and an alternative repayment arrangement being agreed with the lender.

Critically, this means that once an agreed repayment arrangement is put in place and is maintained by the borrower, he or she cannot have his/her primary

residence repossessed by the lender for as long as the arrangement has been agreed.

## 9. Notifying Legal Proceedings

Even where the lender becomes entitled under the terms of the Mortgage Arrears Resolution Process to issue legal proceedings for repossession against the borrower, it must still first inform the borrower of its intention to do so. It must maintain contact with the borrower (or his/her representative) and if an alternative repayment arrangement can be agreed, the legal proceedings must be put on hold for as long as the repayment arrangement is maintained.

### What are the borrower's rights of appeal under the Code?

A borrower is entitled to appeal any decision of the lender's Arrears Support Unit under the Mortgage Arrears Resolution Process. A borrower may also appeal both his/her treatment under the Mortgage Arrears Resolution Process or the lender's compliance with it. Each lender must set up an Appeals Board for this purpose and this board must be comprised of senior personnel who have not previously been involved in the borrower's case in any way.

Each lender must have a written appeals procedure in place and the relevant time limits under the procedure must be set out which must at a minimum comply with those set out in the Code. When the decision of the Appeals Board is made, the borrower must be informed of his/her further right to appeal externally to the Financial Services Ombudsman (FSO) and must provide the FSO's contact details.

## What are the borrower's obligations under the Code?

It is vital for borrowers to understand that their rights under the code only apply where they **co-operate** with the Mortgage Arrears Resolution Process. The term 'not co-operating' is defined in the code and includes a situation where:

- The borrower fails to make 'full and honest disclosure', for example, if the borrower hides information relevant to his/her financial situation
- The borrower fails to provide financial details sought by the lender, for example, if the borrower neglects to fill out a standard financial statement

A borrower will also be considered to be 'not co-operating' where for three months he or she does not pay the mortgage instalment or the alternative repayment arrangement agreed instead of the mortgage instalment **and** has not made contact with the lender or responded to contacts made by the lender or the lender's representative. The borrower's failure to co-operate will leave him or her potentially open to legal proceedings for repossession.

## Other important rules in the code

A number of other important protections for borrowers are set out in the Code. These include:

- A prohibition on lenders trying to move borrowers in arrears off tracker mortgages to another (less favourable) mortgage type as part of any alternative repayment arrangement under the MARP;
- A ban on the lender charging fees, charges and surcharge interest on arrears where a borrower is co-operating with the Mortgage Arrears Resolution Process;
- A requirement that all meetings with borrowers in arrears or pre-arrears are conducted privately;
- A requirement that requests from borrowers for relevant documents and information are dealt with by a lender within ten business days.

## Other related developments

### The Deferred Interest Scheme (DIS)

As stated in the introduction to these guidelines, the revision of the code came about as a result of recommendations made by the Expert Group on Mortgage Arrears and Personal Debt. This group also recommended that lenders should consider putting in place a Deferred Interest Scheme where, for example, a borrower was not able to pay the full amount of interest under the mortgage.

Such a scheme would allow a borrower who can pay at least two-thirds of the interest under the mortgage to defer the remaining unpaid interest into a deferred interest account. A lender participating in the scheme would have the discretion to decide whether to offer this form of affordable alternative repayment to a borrower. However, once this arrangement is entered into by the lender, the right of the borrower to pay deferred interest should continue until 18 months' interest has built up or five years has passed, whichever is sooner. The lender will not be entitled to charge any interest on deferred interest but the deferred interest itself will still be owed to the lender as will the capital sum borrowed.

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