



To:

Minister Joan Burton TD
Minister for Social Protection.

Minister Michael Noonan TD
Minister for Finance

Minister Alan Shatter TD
Minister for Justice & Equality

Date: 26 June 2013

Proposal for Advice Scheme for those in mortgage arrears.

Dear Minister Burton, Minister Noonan, Minister Shatter,

I am writing to you on behalf of FLAC with a concern and with a proposal.

The concern relates to the unfair negotiation that many borrowers have to undertake when they enter into discussions with their banks about restructuring their mortgage debt. From the evidence available to us, both from those who contact our phone line and centres and from our research, it seems to us that many borrowers are prejudiced by the unfairness. They are confused. They feel powerless and they feel entirely isolated in those negotiations. This is not only unfair and unjust but also is a risk to the sustainability of the solutions that are ultimately offered by banks. The proposal made in this letter is made with the greatest of respect and in an effort to suggest something practical that could be done quickly and at a low cost to the State

Increasing Pressure on Borrowers in Arrears

In the past number of months, there have been a number of actions which serve to increase pressure on those who are in mortgage arrears and which form the context for the proposal that we are making in this letter. These include:

- The enactment of the Personal Insolvency Act 2012 on 26 December last and recent announcements by the Insolvency Service of Ireland that it is due to be rolled out soon which will require people in mortgage debt to engage with the Mortgage Arrears Resolution Process;
- The setting of Central Bank targets on 13 March 2013 requiring 6 of the main lenders to households to make proposals to those in mortgage arrears;
- The further revision of the Code of Conduct on Mortgage Arrears increasing the capacity of lenders to act on arrears;

- The imminent enactment of the Land and Conveyancing Law Reform Bill 2013 which will ease the situation of lenders seeking repossessions.

From what we saw from Central Bank figures issued last week, over 95,000 mortgages on principal residences have troublesome arrears. According to some estimates, the number of mortgages that have to be addressed by the lenders will be in the region of 200,000.

Imbalance between Lenders and Borrowers

FLAC is concerned at the imbalance in the power relationship between lenders and borrowers and the impact that this imbalance will cause. While we do not and could not have the statistics to prove this, it seems to us that banks are contacting people more actively than before. It is clear that the lenders are training hundreds of their staff to deal with arrears, with dedicated staff and dedicated arrears units whose job it is to achieve the best possible outcome for the bank in the offers they make. If they make offers, they can validly say to the Central Bank that they have met their targets.

On the other hand, based on the questions that our phone line team and our volunteers in centres are asked, many of those who contact FLAC through our phone line and our centres are very confused and uncertain about what they need to do. The confusion and uncertainty is predictable.

Inadequate Access to Independent Advice for Borrowers

Borrowers engaged with the banks, particularly those negotiating in relation to their family home, are highly unlikely to be able to afford to pay for legal advice or money advice. Therefore, in the negotiations, unless they have the support of a MABS official or another professional doing the work pro-bono, they are likely to be negotiating alone against a corporation and a team professionally and fully dedicated to advancing its own interest. This is not a criticism of the lenders. This is what they do as businesses dedicated to making money and restoring their wealth.

In theory, some of these people may also be entitled to legal aid from the Legal Aid Board. However, many will have incomes that exceed the threshold (the means test is strict). Even if they do qualify, they will go to the end of the queue. In May 2013, only 6 of the Board's 29 Law Centres had waiting times for a first appointment with a solicitor of 4 months or under. Ten Law Centres saw some of their clients waiting 12 months or more for a first appointment, with one Dublin Law Centre having an extraordinary 18-month waiting period for some of its clients to get even an appointment with a solicitor for representation. So despite the fact that civil legal aid and advice is a statutory right, realistically it is not an option either at the moment for people who need help urgently.

The current scheme for advice to mortgage holders is very limited. Borrowers can only access help from a participating accountant after a proposal has been made by the lender, when all negotiations have been concluded. The advice given is at best limited to explaining the proposal made by the lender and its consequences for the borrower. There is no capacity to influence the negotiations. There is also no element of legal advice included, despite the substantial legal consequences for

borrowers of entering into a new agreement with a lender and altering not just their own position but potentially that of other family members too.

The Mortgage Arrears Information helpline can give basic information to people but can only support them in structuring their negotiations with the bank to a very limited degree.

Government's Approach to Mortgage Arrears Crisis

We were struck in FLAC by the manner in which Minister Noonan presented the Government's Mortgage Arrears Strategy in March. It was clear from that presentation that the aim of the Plan was to push lenders to achieve sustainable long term outcomes which would keep people in their family homes. From what was said, we understood that there would be a true element of negotiation in the proposals to be made by lenders, with the borrower being supported in some way; the Minister stressed the need to even-up the balance. In addition, the Government's statement of that day highlighted the need for more comprehensive support to borrowers. However, that support is not available to those who are not MABS clients or the clients of private practices, and the power imbalance has in fact widened as a result of recent initiatives.

This letter is an attempt to raise the issue across departments. With every week that passes, we are more concerned that people in mortgage debt, already over-stressed and miserable, are being left to flounder still further at the mercy of their lenders. We believe that the current assistance available to people is more theoretical than real and that for the most part, the interventions do not occur at the time they are needed.

Basic Legal Information and Advice for Borrowers

We are doing what we can in FLAC. We offer basic legal information over the phone and our volunteers can give first stop legal advice and some basic support in our centres around the country. We answer over 12,000 calls a year on the phone and see about the same number in our centres. So far this year, we calculate that we have dealt with about 1,200 callers where the main issue was debt-related and of those, over half had a mortgage debt query. Our service is accessible and people rarely have to wait. It is, however, an evening service which is staffed by volunteers. We can also take on a tiny number of people to support by way of representation from our office, but that is only a drop in the ocean.

Other support groups similarly are doing what they can and that too is only tipping the edge of the problem. MABS does what it can in a model that is holistic and very successful but again, it is limited by the resources available to it as well as all of the other work that it has to do relating to debt in general and now relating to the Approved Intermediary Service.

Borrowers in arrears need support in a much more comprehensive and constructive way than is currently available. Indeed, to require them to go into negotiations with banks driven to make proposals, without giving them support is oppressive for very many of them. What follows is our proposal for what such support might entail or what we think could assist borrowers in difficulty.

Proposed Scheme for legal advice and representation

We suggest that to be effective, any service provided needs to include certain key features which would help to redress the power imbalance between lenders and borrowers and to enhance the likelihood of achieving long-term sustainable solutions for those in debt. Below we present our ideas around what such a service might look like. It would be:

1. Independent;
2. Competent;
3. Easy for borrowers to access;
4. Available to borrowers before and during negotiations;
5. Solution-based;
6. Not add unduly to the burden on the state finances;
7. Not involve a loss for the advisor;
8. Adaptable, so that it is available at the time that the borrower needs it most.

In order to accomplish that, without setting up expensive and time-wasting new structures, we propose that every interested accountancy and law firm in Ireland should be able to give limited funded advice to borrowers who could choose their advisor and when to use the service. We have drawn some of the structure above from an examination of the Private Practitioner Panel of the Legal Aid Board. This is a successful model which has been of great benefit to the Legal Aid Board which has a track record of outsourcing work to private practitioners.

The scheme would be supported by information from the lender at the outset of the Mortgage Arrears Resolution Strategy process and by access to a helpline and website. All existing helplines (MABS, Mortgage Arrears Information Service, Insolvency Service) would be co-ordinated to ensure that a person did not drop out due to 'referral fatigue'

Practitioners would have to do a basic training course not unlike the structure of courses that have been set up for proposed personal insolvency practitioners. The short course would include the basics of money advice, the code of conduct on mortgage arrears, legal and financial consequences of restructuring or non-sustainable loans. The course could be delivered by any number of agencies/schools.

We believe our formulation would benefit over-indebted borrowers and indeed lenders in several significant ways:

- Borrowers in arrears, negotiating with their lender, would have access to basic information to assist them in understanding and preparing their case and the support of a legal or financial advisor to assist them with their negotiations, thereby speeding up the entire process.
- The advisor they chose would help the overindebted person to understand their own situation and would assist them in identifying a tailored and more realistic, sustainable solution to manage their debt.

- People could themselves choose when to engage the professional. It could be before the lender made a proposal. It could be that what the borrower needs is someone to attend at a negotiation meeting. It could be that the person would choose to attend alone, but with a well prepared scenario.
- There would be sufficient resources to allow the borrower with their professional to question/ appeal a proposed solution.
- However the borrower chose to spend the time and resource provided by the professional, only a single fee would be payable in relation to each negotiation.
- Co-ordination of the existing state helplines and websites would allow people to do as much as possible independently and people could be encouraged to do that, much as they are at present.
- The advisors would be existing practitioners of law and accountancy. This has the benefit of providing a country wide service and allowing people to approach someone they can trust but can't pay. Such advisors would also be available to go to local bank branches for negotiations in appropriate cases.
- The practitioners would be on a panel. The panels could be co-ordinated by MABS and the Legal Aid Board.
- A practitioner would not be able to apply for the set fee unless the course had been completed and the practitioner confirmed that they would give a minimum level of service.
- Relatively little gearing-up is necessary for it to be up and running very quickly. Those signing up would need to undertake the training course, but a lot of what is needed by borrowers is common sense, objectivity and a normal lawyer's or accountant's understanding of the consequences of adjusting one's position in any new scheme and of the need to support their client. Lawyers and accountants in practice would have existing professional indemnity insurance to cover this kind of advice and support.

This is not as good a solution as providing dedicated expertise to Legal Aid Board Law Centres and MABS offices so that they can take on more clients. However, it is unlikely that the lenders would fund the numbers required, and also unlikely that the State is in a position to do so right now. We do want to mention it however as it is the best option.

Funding the Proposed Scheme

Given that additional state funding is unlikely to be available, we propose that the scheme be centrally funded by lenders. Banks have already recognised the need to allow people access to advice and information under the existing scheme. They fund the accountant referral scheme and the Mortgage Arrears Information Helpline. This scheme is obviously more extensive and more expensive but it is unlikely to be prohibitively so.

Risks of the Proposed Scheme

One of the risks of the proposal is the cost of the scheme to the banks which means that they may not be anxious to engage with it. However, by way of balance, the purpose of the current government plan is relevant. The plan aims to ensure sustainable long-term solutions for those in mortgage arrears, with people remaining in their family homes wherever possible.

There is also a practical advantage for the banks. Those who receive informed advice and are assisted in negotiation are more likely to come to informed and durable solutions. This is also in the banks' interest. We noted with interest the comments of the Permanent TSB Chief Executive who, on the launch of their last annual report/ accounts noted how many restructurings had already failed. It is obvious too from Central Bank figures that even short term solutions are failing. Those supported by an advisor are more likely to be realistic and robust.

Other risks include the possibility that advisors will not be competent or will short-change borrowers. These risks can be mitigated by ensuring training and refreshers and setting out a list of requirements for any advisor. It is not necessary to have a protocol in place, in our submission. It is enough to say that if a person wants to engage a professional advisor, the bank will not pay the advice fee unless they meet the criteria to go on the panel, which will include their own licensing and professional indemnity cover.

It would of course also be necessary to have a consultation with the relevant professional bodies but these consultations could and should be short, to allow for a scheme to start quickly.

We submit with respect that this proposal would go some way to redressing the power imbalance between a professional lender and the person conducting a once-in-a-lifetime negotiation on the loan and arrears on their family home.

Next Steps

We appreciate that we are likely to have missed out many important considerations in the proposal above. We are deeply concerned however that so many people are in such distress and are so hampered by their lack of access to effective, targeted support.

This is fundamentally troubling as it creates unfairness and oppression and is contrary to many of the human rights standards that Ireland respects in its constitution and its ratification of many international human rights instruments. Thus the right to a fair hearing before a tribunal must be relevant as must the right to housing and the basic right to live in dignity.

At the human level, this lack of support is eating away at people's lives. We know from those who contact us that enquiries about debt are very often mixed in with a request for information on family law or employment law, where stress about debt is a factor in exacerbating wider workplace or personal relationship issues. There are health and wider social repercussions of over-indebtedness also, which we fear are only beginning to surface.

We submit with respect that urgent decisions are needed to support people in trouble and in negotiations with the financial institutions that are now seeking to impose new solutions on them.

My colleague Paul Joyce, FLAC's Senior Policy Analyst and I would be happy to discuss this further with you or with others you might suggest if you felt that this was helpful.

Yours sincerely

Noeline Blackwell
Director General