

Submission on the Social Welfare and Pensions Bill 2012

FLAC and Northside Community Law
Centre



April 2012

About FLAC

FLAC is an independent human rights organisation dedicated to the realisation of equal access to justice for all.

FLAC Policy

Towards achieving its stated aims, FLAC produces policy papers on relevant issues to ensure that government, decision-makers and other NGOs are aware of developments that may affect the lives of people in Ireland. These developments may be legislative, government policy-related or purely practice-oriented. FLAC may make recommendations to a variety of bodies drawing on its legal expertise and bringing in a social inclusion perspective.

You can download/read FLAC's policy papers at <http://www.flac.ie/publications/policy.html>

About Northside Community Law Centre

Established in 1975, the Northside Community Law Centre (NCLC) provides free legal information and advice to the residents of North Dublin (specifically those in the electoral constituencies of Dublin North-Central and Dublin North-East). The NCLC aims to protect socio-economic rights, create a more just society and empower the local community through its campaign work, research and education programmes.

NCLC Policy

You can download/read NCLC's law reform submissions at <http://www.nclc.ie/publications/default.asp>

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(April 2012)

This short submission will examine the proposed changes to the Mortgage Interest Supplement (MIS) outlined in the Social Welfare and Pensions Bill 2012. While we understand the Government wishes to curtail the payment of MIS and ensure that it is used as a short-term measure, we are concerned that the current proposal actually abolishes the support for some borrowers who would be appropriate candidates for the supplement as they will be completely excluded from accessing the payment.

The rationale for the proposed amendments set out in the briefing from the Dept. of Social Protection is to “ensure that the Mortgage Arrears Resolution Process functions alongside State supports – such as the MIS – and that the forbearance arrangements implicit in the Mortgage Arrears Resolution Process are reflected in the eligibility criteria for the Mortgage Interest Supplement scheme”.

However, by denying any access to Mortgage Interest supplement for 12 months from the date that arrears arise, many borrowers in trouble will inevitably come out of their period of difficulty with an arrears problem which could have been contained if the Mortgage Interest Supplement had been available at a more appropriate time. Further, the wording of the amendment places the entire onus on the borrower to show that he or she has engaged with the process but does not allow for a situation where the lender has not engaged or has been unreasonable.

The proposed amendment

12. Section 198 of the Principal Act is amended by inserting the following subsections after subsection (5A) (inserted by section 14 of the Social Welfare (Miscellaneous Provisions) Act 2008):

“(5AA) A person shall not be entitled to the supplement referred in subsection (5) unless, at the time of making an application for that supplement, a designated person is satisfied that the person making the application has engaged with his or her mortgage lender in order to meet his or her mortgage repayment obligations, and

(a) has, arising from such engagement, entered into and, where required, is complying with an alternative repayment arrangement agreed between that person and his or her mortgage lender in respect of his or her mortgage repayment obligations for a period of not less than 12 months, or

(b) has –

(i) arising from such engagement, entered into and, where required, is complying with an alternative repayment arrangement agreed between that person and his or her mortgage repayment obligations for a period of less than 12 months in respect of that alternative repayment arrangement, and

(ii) *prior to entering into the alternative repayment arrangement referred to in subparagraph (i) the person had entered into and had complied with a different alternative repayment arrangement agreed between that person and his or her mortgage lender in respect of his or her mortgage repayment obligations,*

and the total number of months in respect of which that person has complied with the alternative repayment arrangements referred to in subparagraphs (i) and (ii) is a period of not less than 12 months.

Currently Mortgage Interest Supplement is only available where the claimant and their partner, where applicable, are unemployed or working less than 30 hours per week. Therefore, the Supplement is targeted at those on low incomes and those on social welfare. The Supplement is not available where mortgages were taken out for purposes other than the purchase and repair of the family home, or where the Department believes that the interest payable is unreasonable. The Supplement aims to allow people a period where they can cover the basic interest on their mortgage while looking for work.

Under the proposed amendment, people will not get the Supplement for the first 12 months of arrears. It is entirely unlikely that people who have taken out mortgages in recent years will be able to maintain the interest on their mortgages during that 12 month period. Therefore, even if they can come to some arrangement with their lenders, they will be building up a backlog of arrears.

If they are unfortunate enough not to have their incomes restored within 12 months, they may apply for Mortgage Interest Supplement. By then, many households' mortgages will be increased by arrears and there is a risk that they will actually be refused the Supplement on the basis that by now, their arrears are unmanageable.

The proposed amendment places great faith in the lenders and presumes that the lender will offer an appropriate alternative repayment option to the borrower after they engage in the Mortgage Arrears Resolution Process under the Central Bank's Code of Conduct on Mortgage Arrears. However, while the lender is obliged to explore the potential alternative repayment options – which may include interest-only payments for a period, paying interest and part of the capital or extending the length of time over which a mortgage will be repaid – it is not obliged to actually offer any alternative repayment options.¹ The proposed amendment presumes that an alternative arrangement will be offered by the lender, but if it is not, then the person applying for MIS will fall at the first hurdle.

¹ For further information on the Mortgage Arrears Resolution Process see FLAC's Guide - *The Code of Conduct on Mortgage Arrears Explained* (January 2011) available online at:
http://www.flac.ie/download/pdf/flacs_factsheet_on_the_code_of_conduct_on_mortgage_arrears.pdf

Even where an alternative repayment option may be offered by the lender, there is no guarantee that it will be a fair offer or that the borrower will have the capacity to pay the proposed new sum. If the law is amended as currently proposed, then in cases where the lender proposes an interest-only repayment for a period, where the borrower cannot pay the full amount proposed by the lender they will not be able to access MIS for 12 months. In these circumstances MIS could potentially cover the shortfall of the payment during that time, but failure to access MIS could result in the borrower accruing further mortgage arrears and falling deeper into debt. In such circumstances, a mortgage that was manageable over a short-term difficulty could become unmanageable and in fact unsustainable.

Furthermore, after the 12 months is over, the designated officer must then decide whether “it is reasonable to award a supplement having regard to the amount of any arrears outstanding on the loan”.² Given that a person will have rescheduled his/her mortgage due to inability to make the full repayments initially agreed, s/he will then have to make reduced repayments for a year before s/he can be considered for MIS. Thus the question of 'reasonableness' in light of outstanding arrears may present a further obstacle. The individual circumstances of each case must be considered in full and the decision whether to grant a supplement must be based on need rather than a subjective view of what should be considered 'reasonable'.

Removing the payment of MIS while the borrower engages with the Mortgage Arrears Resolution Process for a period of 12 months will also impact on people who only require short-term support. People who may be out of work for a limited period or who are able to re-enter the workforce after a relatively short period of time will be excluded from the remit of MIS, which may result in an arrears situation which should have been entirely avoidable.

The interim report of the Expert Group on Mortgage Arrears (the 'Cooney Group') recommended a six-month deferral period. This is understood to have been to allow practical negotiations to take place between the lender and borrower and to make arrangements for an appropriate level of support. No recommendation was ever made for a 12-month suspension. Further, proposals to remove the 30-hour rule, to remove prohibitions on putting a house up for sale while MIS was being paid, etc., remain unimplemented.

² See Social Welfare (Consolidated Supplementary Welfare Allowance) Regulations 2007 (S.I. No 412 2007) as amended, available online at: http://www.welfare.ie/EN/OperationalGuidelines/Pages/admin_mis.aspx#sect2

Recommendations:

- 1. That no proposals to further limit Mortgage Interest Supplement be enacted, at least until an overall package of supports is available to ensure the protection of borrowers who have the capacity to remain in their homes with appropriate targeted support.**
- 2. Mortgage Interest Supplement should be targeted at people with sustainable mortgages who can potentially meet their mortgage interest payments with some assistance.**
- 3. Each applicant's individual circumstances should be considered and any offer made by a lender to reschedule a mortgage should take into account the ability of the borrower to meet the renewed terms. In cases where a lender offers an alternative repayment option which the borrower is not able to meet, this person should not be refused MIS where they have tried to engage in the Mortgage Arrears Resolution Process but this has not been successful due to the terms proposed by the lender.**
- 4. Recommendations to remove inappropriate restrictions on Mortgage Interest Supplement should be implemented immediately.**