Submission on Central Bank of Ireland – Strategic Plan 2019-2021

FLAC, June 2018

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FLAC welcomes the opportunity to contribute to the Central Bank's consultation on its Strategic Plan 2019-2021. In this submission, FLAC seeks to identify the issues which we believe are most important to address over the next three years.

1. Public Sector Duty and international human rights norms.

Economic policy is an exercise of state power and as such is subject to domestic and international human rights norms. It is recognised that public bodies play a key role in enhancing social cohesion and in recognition of this role the Irish Human Rights and Equality Act 2014 requires public bodies take a proactive approach to addressing equality and human rights concerns. FLAC notes that the previous Strategy covered the period 2016–2018 and did not refer to the Public Sector Duty which had been introduced pursuant to section 42 of the Irish Human Rights and Equality Act 2014 in November 2014. The Public Sector Duty provides one of the most important national mechanisms for mainstreaming equality and promoting human rights. The Central Bank constitutes a public body for the purposes of the public sector duty and the Strategic Plan 2019- 2012 is a key instance to which the Public Sector Duty applies.

Pursuant to section 42, public bodies are required to consider how they will advance equality for the groups protected under equality legislation and how they will protect the human rights of all citizens in regard to the human rights obligations in the Constitution and in domestic legislation.

The Public Sector duty requires public bodies to consider the human rights and equality impact of their policies, services, procedures and practice and to ensure that the promotion of equality and human rights becomes a core part of the way in which the organisation operates and conducts its business. The Public Sector Duty specifically requires public bodies such as the Central Bank to carry out an assessment of the human rights and equality issues relevant to its functions and the policies, plans and actions in place or proposed to be put in place to address those issues. The strategy should show how the duty has influenced the process for developing the strategy and be reflected in the outcome. Compliance with the Public Sector Duty must therefore be evident from the published strategy and should articulate how the requirements of the Public Sector Duty are to be met on an ongoing basis. FLAC urges the Central Bank to make the Public Sector Duty a core consideration in the process of developing, implementing and monitoring the Bank's strategy for the next three years.

The Central Bank must consider the promotion of equality for, and prevention of discrimination against, groups protected under equality legislation (the Employment Equality Acts 1998-2012; and the Equal Status Acts 2000-2011).

The public sector duty is applicable to those human rights treaties and conventions that have the force of law in the State. Within this parameter, there are a number of human rights standards that have significant relevance for the operation of a range of public bodies such as the Central Bank, including the rights protected by the

Constitution, the European Convention on Human Rights and the EU Charter of Fundamental Rights. All of these instruments also contain guarantees against discrimination, and so the equality rights to be considered in the context of the public sector duty interweave with the human rights standards also applicable. This is most remarkable in the context of the European Equality Directives that fall to be interpreted in light of the Charter of Fundamental Rights. It is also recalled that the Irish Courts and the European Court of Human Rights will also call in aid international human rights treaties to assist with the interpretation of the rights protected under the Constitution and the ECHR.[1]

While the Irish Courts and the European Court of Human Rights are not traditionally associated with the vindication of what are characterised as socio–economic rights, nonetheless, both the Constitution and the ECHR have a role in protecting individuals from instances of extreme deprivation. The Supreme Court accepted that the constitutional values of autonomy, bodily integrity and privacy were engaged in relation to the provision of appropriate accommodation by a local authority to a young girl with disabilities.[2] In a similar vein the European Court of Human Rights found that the very poor living conditions of a Roma community and the neglect of the State in that regard were an instance of degrading treatment within the meaning of Article 3 of the Convention, and also a breach of their right to respect for their private and family life under Article 8.[3] While these cases were extreme instances of deprivation, they are illustrative of the duty on the State to ensure that economic policies and fiscal decision making do not expose individuals to acute deprivation, such as homelessness or extreme poverty. The Charter of Fundamental Rights, which applies where EU law is being implemented by the State, also provides protection for what are titled solidarity rights, related to protection of workers, family and professional life, social security and assistance and a high level of consumer protection.

International human rights standards

Beyond the immediate obligations that arise under the public sector duty, the international human rights obligations of the State are also relevant to the strategic planning of the Central Bank, insofar as it intersects with the obligations of the State in relation to the protection of socio-economic rights.

A key example in this regard, is the obligation in Article 2(1) of the UN International Covenant on Economic Social and Cultural Rights (ICESCR) whereby the State is obliged to use the "maximum of its available resources" to progressively achieve the full realisation of economic, social and cultural rights set out in the Covenant. Such rights pertain to key areas of public service provision: education, housing, water, health and decent working conditions. The UN ICESCR, therefore, places an obligation on the State to ensure that resources spent by the State, in particular via the provision of social protection, are allocated in such a manner to maximise the protection of, respect for and fulfilment of economic, social and cultural rights. Useful

[1] See for example judgment of MacMenamin J in *M.X v HSE & Anor* [2012] IEHC 491, see also *Stanev v Bulgaria,* Grand Chamber, 17 January 2012.
[2] *O'Donnell & Ors v South Dublin County Council & Ors* [2015] IESC 28.
[3] *Moldovan & Ors v Romania*, Judgment of 12 July 2005

guidance was given by the UN Committee on Economic, Social and Cultural Rights in relation to the protection of socio economic rights in the context of the international crisis that pertained in many States from 2008 onwards. While the context has changed part of that guidance is set out here as it remains relevant and provides a template against which any economic policy may be tested to ensure that it does not undermine socially protective measures that underpin the realisation of human rights, and goes towards preserving the core dignity of each individual in the State:

"……..

b. the policy is necessary and proportionate, in the sense that the adoption of any other policy, or a failure to act, would be more detrimental to economic, social and cultural rights;

c. the policy is not discriminatory and comprises all possible measures, including tax measures, to support social transfers and mitigate inequalities that can grow in times of crisis and to ensure that the rights of disadvantaged and marginalised individuals and groups are not disproportionately affected; and

d. the policy identifies the minimum core content of rights, or a social protection floor, as defined by the International Labour Organization, and ensures the protection of this core content at all times."[4]

Other significant instruments to which the Central Bank should have regard in its strategic planning and performance of its functions, and to which the State has acceded, are the Revised European Social Charter, the UN Convention on the Rights of Persons with Disabilities and the Convention on the Rights of the Child all of which establish standards for the material and social welfare of the individuals protected.

In Flac's view the public sector duty and International human rights standards are relevant in relation to the Bank's primary objectives as set out in legislation.[5] These include:-

1) The mandate of the Central Bank to contribute to financial stability in Ireland:

In this regard it is noted that the Bank develops a suite of indicators to assess systemic risks, develops macro- prudential tools to address emerging risks, and conducts analytical research to inform of the calibration of these tools and evaluates the effectiveness of these tools in limiting systemic risk. The suite of indicators should include indicators in respect of the grounds of discrimination under the equality legislation and these grounds should inform the macro- prudential tools, the research and evaluation.

It is noted that the Bank is mandated to establish and operate a Central Credit Register, which will document loans to individual and businesses. This will enhance the Central Bank's insight into credit information. Again this insight should be

[4] CESCR, "Open letter to State Parties regarding the protection of rights in the context of economic crisis", 16 May 2012.
[5] Strategic Role of the Central Bank

informed by and equality perspective including the prohibition on discrimination on any of discriminatory grounds under the Equal Status legislation, and the EU Gender Equal Treatment, Goods and Services Directive and the Race Directive and the relevant provision of the EU Charter of Fundamental Rights.

2) Protection of Consumer of Financial Services:

It is noted that "*As the regulator of financial service providers and markets in Ireland, the Central Bank has to ensure the best interests of consumers are protected. The Central Bank works to develop a positive consumer focused culture within regulated firms, ensuring the consumer protection framework remains effective*."

In this regard the concept of consumer should be informed by the discriminatory grounds of the equality legislation. The positive consumer focused culture should be guided by the prohibition on discrimination in the Equal Status legislation, and the EU Gender Equal Treatment, Goods and Services Directive and the Race Directive and the relevant provision of the EU Charter of Fundamental Rights.

3) Regulation of Financial Institutions and Enforcement Actions and Regulatory Policy development.

It is noted that '*A high quality and effective regulatory framework is essential in requiring financial firms to operate to high standards as it provides the basis for supervising and enforcing the key principles of organisational and financial soundness , consumer protection , and effectively functioning markets.*'

The prohibition on discrimination in the Equal Status legislation, and the EU Gender Equal Treatment, Goods and Services Directive and the Race Directive and the relevant provision of the EU Charter of Fundamental Rights should be factored into the regulation of financial institutions.

Human rights standards oblige governments to protect individuals against human rights abuses involving third parties, including banks, credit rating agencies, or financial players. Financial abuse may be of an individual nature, such as through predatory lending practices. They may also be systemic, such as when the irresponsible, risky behaviour of financial institutions puts national economies at the brink of meltdown, forcing governments to use public funds to restore their operations.

In addition a central concern of human rights is to regulate the exercise of power by providing guarantees that those in positions of authority are answerable and ultimately accountable to those affected by their conduct. Transparent financial regulations should be adopted to provide accountability mechanisms that penalise harmful practices and prosecute perpetrators. States are duty bound to be accountable and to guarantee effective remedies and reparations for human rights violations via accessible and effective mechanisms.

Accountability is not only backward and should involve dialogue with rights holders to avoid harmful policies. Systemic dialogue consultation and co-operations should be promoted between the central bank and civil society to ensure that financial regulation and economic advice are more effective and tailored to existing needs

4) Independent Economic Advice and High Quality Financial Statistics

It is noted that the *'Central Bank aims to ensure that its economic advice is forward looking and independent and that statistics are robust and relevant. To achieve this, the Central Bank undertakes data collection, statistical analysis and research to inform economic policy making domestically, and at the euro area level'*

Independent robust and relevant statistical analysis and research should be informed by the discriminatory grounds and the prohibition on discrimination in the Equal Status legislation, and the EU Gender Equal Treatment, Goods and Services Directive and the Race Directive and the relevant provision of the EU Charter of Fundamental Rights.

Recommendation 1

- **Make the Public Sector Duty a core consideration in the process of developing, implementing and monitoring the Department's strategy for the next three years.**
- **The discriminatory grounds and the prohibition on discrimination in the Equal Status legislation, and the relevant EU anti-discrimination directives and the relevant provision of the EU Charter of Fundamental Rights and International Human Rights standards should inform and guide the implementation of the primary objectives of the Central Bank, including the response of the central bank to the current and emerging risks in the economy and the wider financial system, the regulation of firms and markets and the exercise of the Bank's role in respect of its financial conduct and consumer protection role**

- **The Central Bank in relation to the regulation of Financial Institution should also be informed by the need to protect individuals against human rights abuses involving third parties, including banks. It should also be informed by the right to an effective remedy as required under domestic law, Articles 6 and 13 the ECHR the European Convention on Human Rights (ECHR) and Article 47 of the EU Charter of Fundamental Rights.**

- **Systemic dialogue consultation and co-operations should be promoted between the Central Bank and civil society. The Central Bank should engage with rights holders in a proactive way to avoid harmful policies.**

2. The Bank's Consumer Protection role

In its 'We want to hear your views' document, following a short explanation of its functions, the Bank invites comments on three areas as follows:

1. What should be considered by the Central Bank in responding to the current and emerging risks in the economy and the wider financial system?
2. What should the Central Bank focus on in terms of the regulation of firms and markets?
3. What should be considered by the Central Bank in respect of its financial conduct and consumer protection role?

The principal focus for Free Legal Advice Centres here is the Bank's consumer protection role and, by extension, its impact on how the Bank regulates firms, particularly in terms of enforcement action when a consumer rights have been or may have been breached.

Monitoring compliance with consumer credit legislation

In FLAC's 2014 Report 'Redressing the Imbalance' a study which examined the legal protections available for consumers of credit and other financial services in Ireland, we briefly considered the approach of the Central Bank to supervising consumer credit legislation. We suggested that the *'ad hoc disjoined nature of legislative development in the financial services area'* had *'undoubtedly contributed to a decision by the Central Bank to focus its regulatory attentions in the area of consumer credit less on adherence with primary and secondary legislation and more on its own codes of Conduct'*[6]*.* The then Director of Consumer Protection, did not disagree with this analysis and broadly commented that although the Bank was responsible for enforcing consumer credit law, it preferred to rely on its own Consumer Protection Code (CPC) as an instrument of enforcement. There is little evidence that this situation has improved.

The Central Bank's website does not disclose significant activity in terms of monitoring compliance in the consumer credit area. The settlement agreements under the administrative sanctions heading and the current list of Prohibition Notices, contain very little mention of consumer credit, except in the context of settlements made in connection with the tracker mortgage scandal. The significant majority of settlements seem to relate to the activities of insurance and investment intermediaries and companies. There are no details of inspection activity, the number of visits, the subject matter of inspections, in the area of consumer credit.

The significant exception in this regard is moneylending. The Central Bank has a track record of monitoring of moneylenders, both in terms of prescribing Codes of Conduct and in terms of a tight licensing system. A recent Consultation Paper published on 27th March 2018, for example, proposes to introduce *'targeted*

[6] See Section 1.3.4, Page 18-19

measures to enhance protections for customers of moneylenders'. However, other sectors of the lending industry do not seem to be the focus of the same attention.

The Central Bank is largely responsible for the supervision and enforcement of the legislation that protects consumers borrowing money. A major deficit on the Central Bank's website is the lack of an explanation/guide in plain English on the obligations imposed on lenders and the rights of consumers under consumer credit legislation. Similarly, neither is there is a specific consumer credit section on the website of Competition and Consumer Protection Commission (CCPC).

Recommendation – As part of it forthcoming strategic plan, the Bank needs to be far more transparent in terms of how it handles its consumer credit remit. As well as providing detail on supervision and inspection activity, Flac recommends that the Central Bank publishes an explanation/guide in plain English on the obligations imposed on lenders and the rights of consumers under the full range of consumer credit legislation

More specifically in the area of consumer credit, the Bank has functions under a number of legislative instruments and we propose to look at these in sequence and outline some areas of concern arising under each of them.

1. Consumer Credit Act 1995

Broadly speaking, the CCA 1995 regulates Hire Purchase agreements and mortgage lending (this in tandem with the 2014 Mortgage Credit Agreements Regulations, see below) as well as licensed moneylenders, credit intermediaries and mortgage intermediaries. Credit agreements are no longer regulated by the 1995 Act and it was superseded in this by the European Communities (Consumer Credit Agreements) Regulations 2010 (see also below).

1.1- Supervision and enforcement

A short cross section of issues of concern here includes:

- **Section 8H functions**

The Bank has responsibility for a wide range of supervision, inspection and complaints handling activities under Section 8H of the Act. The Central Bank should clarify in its strategy how these functions are being exercised currently and how is it proposed to exercise them from 2019 to 2021.

- **Section 12 functions**

The Bank pursuant to section 12 is responsible for summarily prosecuting a wide range of potential offences under different parts of the Act. The Bank should identify whether there has been any prosecutions during the course of the current strategic plan and any monitoring of standards that led to inspections and warnings short of prosecution and the approach that will be taken to enforcement from 2019 to 2021.

- **Section 149 functions**

Under Section 149 of the Act, customer charges levied by credit institutions generally are subject to regulation by the Bank. A credit institution proposing to increase any charge that has been previously notified to the Bank or to impose any charge in relation to the provision of a service to a customer or to a group of customers, that has not been previously notified to the Bank, must apply to the Bank to have that charge or increase in charge approved.

In previous discussions and meetings with the Bank, FLAC has stated that there seems to be little information that emerges from this process, not even a listing of the charges that are ultimately approved, let alone any opportunity for consumers or those working on behalf of consumers to make submissions on proposed charges. The repeated view of the Bank (reiterated at a meeting with the Director of Consumer Protection this year) has been that this entire process is subject to the Bank's duty under Section 33AK of the Central Bank Act 1942 (as amended) not to disclose confidential information concerning:

> *'the business of any person or body whether corporate or incorporate that has come to the person's knowledge through the person's office or employment with the Bank, or any matter arising in connection with the performance of the functions of the Bank or the exercise of its powers, if such disclosure is prohibited by the Rome Treaty, the ESCB Statute or the supervisory EU legal acts'.*

Interest rates charged by lenders under loan agreements are not notifiable under this section but penalty charges and other charges for the provision of financial services to customers are included. Thus, for example, fees for maintaining current accounts and transaction charges come under this section. Given that the review and approval of such charges is an express Central Bank function, it is quite extraordinary that there is no accessible list of the charges that have been approved under S.149 in respect of all regulated credit institutions.

The Bank suggested to us that this information should be provided by the Competition and Consumer Protection Commission (CCPC). On checking its website, however, there is a limited amount of comparative information provided. For example, while you can compare the current account charges of the principal banks and credit card rates of providers in Ireland, there does not appear to be any information on the default interest rates charged by lenders when borrowers fail to meet the required payments under loan agreements or the ancillary charges that are levied under loan agreements such as charges for unmet direct debits.

The process that led to the approval of a charge may be considered to be confidential; the outcome of the process certainly should not and the transparency of charges is a fundamental consumer protection issue. Potential borrowers are entitled to know what charges potential lenders are entitled to levy both for the purpose of deciding whether to enter into agreements and to understand their position once they have.

It has been suggested that the Bank cannot publish this information for confidentiality reasons. We do not understand what is the legal basis for such a contention and we would ask that it would it set out which exact provisions of the Rome Treaty, the ESCB Statute or the supervisory EU legal acts prohibit such disclosure.

Recommendations

- **The Central Bank should set out how it proposes to carry out its supervision, inspection and complaints handling functions under the Consumer Credit Act 1995 in its forthcoming strategic plan.**
- **Similarly, the Bank should commit to providing information on how it carries out its enforcement functions under the Act.**
- **The Bank should make publicly available a list of the charges that have been approved under S.149 in respect of all regulated credit institutions.**

1.2 - Hire Purchase agreements/ Personal Contract Plans (PCP's)

The Irish Examiner reported in 2017 that the sale of vehicles via car finance agreements had increased by 139% from 30,943 in 2014 to 73,979 in 2016. In 2014, 32% of all new vehicles sold were financed. By 2016, that figure had increased to 51% of all new vehicles.

It is commonly accepted that Hire Purchase agreements as a means of financing the purchase of cars has made something of a comeback in recent years after the recession. In addition, however, Personal Contract Plans (PCP's) have also become increasingly common. PCP's are now an established form of car finance that often serve as an alternative to traditional HP agreements and personal loans. The figures quoted above are not broken down into the different types of agreements, but it probably safe to say that a fair amount of this increase is down to PCP's, particularly as they are more likely to be used to finance the purchase of new cars, whereas HP is probably more likely to be used for older vehicles.

PCP's are not specifically regulated by the CCA 1995 by name. However, in the CCA a hire-purchase agreement means '*an agreement for the bailment of goods under which the hirer may buy the goods or under which the property in the goods will, if the terms of the agreement are complied with, pass to the hirer in return for periodical payments'.*
Thus, as PCP's feature the essential characteristics of a HP agreement: - basically a rental with a right to buy for the Hirer if the terms of the agreement are complied with - they are considered to be Hire Purchase agreements and the Competition and

Consumer Protection Commission (CCPC) has confirmed this on its website in the information notes that they now carry on PCP's.

However, it is our view that the CCA 1995 is in need of some considerable updating in light of developments in car finance. We can expand on these points as required but, in summary, we submit that the following is needed:

- PCP's should be specifically regulated by law. There are specific features to PCP's that do not generally apply to HP including a substantial residue or 'bubble' payment due at the end of the agreement in the form of what is called a 'Guaranteed Minimum Future Value' (GMFV**)** for the vehicle. Equally, there are often conditions around deposits, maximum mileage use per annum, requirements to service vehicles with the intermediary garage and eventual purchase. Such conditions should be provided for in legislative form so that the borrower receives a statutory agreement, as with other forms of credit.

- The existing provisions on Hire Purchase agreements need to be updated. Specifically, the CCA 1995 does not legislate for the 'rolling over' of an existing HP agreement into a new subsequent HP agreement. In our experience, this is sometimes a point at which consumer Hirers are vulnerable and may not receive the appropriate credit in the form of a suitable ongoing deposit for previous deposits and instalment payments made under a previous agreement (or agreements). We have seen cases where consumers seem to be in a perpetual sequence of HP agreements, never managing to acquire ownership of anything. This area at the very least needs to be investigated and included in the strategic plan.

- The long standing situation where the lenders that provide Hire Purchase finance are not regulated as a form of 'regulated entity' by the Central Bank continues and the Bank has continued to maintain over a number of years that a hire purchase agreement is not a credit agreement, despite the fact that high rates of interest are charged to consumers under these agreements. FLAC has over time lobbied both the Bank and the Department of Finance to redress this situation but, despite no specific objection, nothing has changed.

- Under Section 52 of the CCA 1995, *'a consumer is entitled to discharge his or her obligations under an agreement at any time before the time fixed by the agreement for its termination'.* Under Section 53 *'a consumer is entitled to a reduction in the total cost of credit under an agreement if for any reason the amount owed by the consumer becomes payable before the time fixed by the agreement, or any money becomes payable by the consumer before the time so fixed.* In either case, the applicable reduction is to be calculated in accordance with a method or formula approved for that purpose by the Bank or the Minister for Finance. These provisions are still relevant to Hire Purchase agreements but, since May 1996, these powers have never been exercised.

Recommendations:

- **As part of the strategic plan, the Central Bank should investigate the area of Personal Contract Plan agreements with a view to examining whether they should be regulated under the Consumer Credit Act 1995**
- **The Bank should commit to reviewing the CCA in terms of how effectively it regulates Hire Purchase agreements. For example, specific rights should be provided for Hirers in the event of an existing Hire Purchase agreement being subsumed into a new HP agreement**
- **Entities providing Hire Purchase (or PCP) finance should be regulated by the Central Bank as with any other lender charging interest for a financial accommodation**
- **The Bank should without any further delay introduce a consumer friendly formula to calculate interest rate rebates in the event of the early termination of Hire Purchase (or PCP) agreements**

2. European Communities (Consumer Credit Agreements) Regulations 2010

These regulations transpose the revised 2008 'Credit for Consumers Directive', an update on the 1987 equivalent (itself amended in 1990). These regulations deal exclusively with new unsecured lending from June 11th 2010 and provided a number of new entitlements to consumers of credit. These include a right to 'pre-contractual information', enhanced information in credit agreements including credit cards, strict limitations on the interest that a lender can charge when an agreement is terminated early and an obligation to on lenders to carry out a creditworthiness assessment prior to advancing new credit.

A cross section of issues of concern here include:

- **Pre-contractual information**

Regulation 8 (1) (transposing Article 5 of the Directive) states that:

> *Subject to Regulation 10, in good time before a consumer is bound by a credit agreement or an offer of credit, the creditor concerned and any credit intermediary involved shall provide the consumer with the information needed to compare different offers in order to take an informed decision on whether to conclude a credit agreement.*

Regulation 8 (10) states that:

> *A creditor or credit intermediary shall provide adequate explanation to a consumer to enable the consumer to assess whether a proposed credit*

> *agreement is appropriate to his or her needs and financial situation, where appropriate by explaining*
>
> *(a) the Standard European Consumer Credit Information,*
> *(b) the essential characteristics of the products proposed, and*
> *(c) the specific effects they may have on the consumer, including the consequences of default in payment by the consumer.*

The intention of these provisions is very clear. They are intended to allow consumers to compare different offers of credit in terms of rates charged and other terms and conditions prior to entering into legally binding contracts. Note that the pre-contractual information must be provided in 'good time' before concluding an agreement and that the creditor or intermediary is also obliged to provide adequate explanations to the consumer.

In *CA Consumer Finance SA v Bakkaus, Bonato and Bonato*[7]**,** the national court had raised the issue of possible non-compliance by the lender with the terms of the 2010 Directive as it had failed to supply evidence that it had complied with the obligation to provide the borrower with a 'Pre-Contractual Information Form' setting out the terms of the loan in advance of any drawdown of funds.

In the case of one of the borrowers, CA could only produce a standard term in the contract that stated – 'I, the undersigned, acknowledge that I have received and taken note of the Standard European Information Form'. No copy of the form was provided and no evidence was produced that any explanation of the content of the form had been given to the borrower. The national court therefore expressed its concern that the clause outlined above, if allowed, might have the effect of reversing the onus of proof to the detriment of the consumer and may even make it impossible to challenge whether the creditor had complied with its obligation. It noted that in France, neither Law No 2010-737 which transposed the directive nor the Directive itself '*lays down rules relating to the burden of, or the detailed rules for, proving that the creditor's obligations have been fulfilled'.*[8]

The Court observed that the standard acknowledgement clause that the borrower signed did not infringe the rights of consumers under the Directive, as long as it only amounted to an indication that the creditor is required to substantiate with evidence and as long as the borrower had the right to state that she did not in fact receive the form or if she did receive it, it did not provide an adequate explanation of the proposed contractual terms. Otherwise, such a standard term would result in the reversal of the burden of proving compliance with obligations and undermine the effectiveness of the rights conferred by the Directive.

- **Assessing creditworthiness**

[7] 18 December 2014 **–** a reference from a French court for preliminary ruling under Article 267 of the Treaty of the Functioning of the European Union (TFEU).
[8] Similarly, the Irish regulations are silent on the onus of proof.

Regulation 11 (1) (transposing Article 8 of the Directive) provides that:

> *Before concluding a credit agreement with a consumer, a creditor shall assess the consumer's creditworthiness on the basis of sufficient information, where appropriate obtained from the consumer and, where necessary, on the basis of a consultation of the relevant database.*

11 (2) goes on to provide that where any significant increase in the amount of total amount of credit is envisaged, the creditor must carry out a fresh creditworthiness assessment.

The use of the words 'where necessary' appears to have substantially diluted the usefulness of this provision. Neither the regulations nor the Directive explicitly say who is to determine when it is or is not necessary to conduct the assessment. However, it is certainly arguable that Recital Number 26 of the Directive provides a much more explicit rationale for a comprehensive assessment of creditworthiness. For example, this recital includes the following passage:

> *'In the expanding credit market, in particular, it is important that creditors should not engage in irresponsible lending or give out credit without prior assessment of creditworthiness, and the Member States should carry out the necessary supervision to avoid such behaviour and should determine the necessary means to sanction creditors in the event of their doing so'.*

In *CA Consumer Finance SA v Bakkaus, Bonato and Bonato* (referred to above), the CJEU was also asked to rule on the creditworthiness assessment provisions and their interaction with the requirement to provided pre-contractual information.

Here, the national court noted that in the case of one of the borrowers, CA Consumer Finance produced an income and expenses form and documentary evidence of income that had been sent to them. In the case of the other loan, no such documentation was available. As with the obligation to provide pre-contractual information, the Court found that the onus is on the creditor to show compliance and supporting documentation is required.

The Court stated that the obligation under Article 8 aims to make creditors accountable and to avoid loans being made to consumers who are not creditworthy, though it also affords the creditor a margin of discretion to decide whether the information supplied by the consumer is adequate, depending on the circumstances of the individual case. However, it stated that '*mere unsupported declarations made by the consumer may not, in themselves, be sufficient if they are not accompanied by supporting evidence'* even if the Directive does not require creditors to scrutinise systematically the information supplied by the consumer. Article 8 must be interpreted, first, as not precluding the creditworthiness check from being carried out solely on the basis of information supplied by the consumer, provided that the information is sufficient and that mere declarations are also accompanied by supporting evidence and, second, that it does not require creditors systematic checks to be carried out of the veracity of the information supplied by the consumer.

The Court also stated that it is apparent from a reading of Article 5 (6) and Recital 27 that, notwithstanding the pre-contractual information required to be provided under Article 5 (1), a consumer may need additional assistance prior to entering into an agreement to decide whether that agreement is appropriate for his needs and financial situation. The creditor <u>must</u> therefore provide the consumer with adequate personalised explanations to enable the consumer to make a fully informed decision with regard to a type of loan agreement. However, the Court ruled that Article 5 (6) does not preclude a creditor from providing the required 'adequate explanations' before assessing the consumer's creditworthiness. However, the result of the assessment of the borrower's creditworthiness may require that such 'adequate explanations' might need to be subsequently adapted. Those explanations do not have to be provided in writing (although Member States may provide for this) but they do have to be provided to the borrower in good time before the credit agreement is signed.

Recommendation:

Flac recommends that the Central Bank sets out how the requirements to provide pre-contractual information to a consumer borrower, to explain that information, and the requirement to assess creditworthiness have been interpreted by the Central Bank since June 2010, in terms of the practical steps that staff in banks must take when interacting with consumers. It should also clarify the work that has been undertaken to monitor compliance with these provisions during the course of the current plan.

The Central Bank should set out in detail how it proposes to monitor these obligations during the course of the new plan.

- **Assignment of rights**

Regulation 20 (transposing Article 17 of the Directive) provides that:

> *20. (1) If a creditor's rights under a credit agreement or the agreement itself are assigned to a third party, the consumer concerned is entitled to plead against the assignee any defence available to him or her against the original creditor, including set-off.*
> *(2) The consumer shall be informed of an assignment referred to in paragraph (1) except where the original creditor, by agreement with the assignee, continues to service the credit vis--vis the consumer.*

The sale of credit agreements from regulated to unregulated entities began when boom turned to bust and has become an increasing phenomenon which continues to this day. In our experience, particularly insofar as it concerns the sale of unsecured loans (regulated by the 2010 Directive), consumers have not always been provided with clear and transparent information as to who now owns their loan and who is responsible for collecting payments under it.

Recommendation:

As part of its 2019-2021 Strategic Plan, the Central Bank should ensure that the obligation to notify the sale of agreements is properly and effectively communicated to consumer borrowers.

- **Enforcement/Penalties**

Article 23 of the Directive provides that:

> *'Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be* ***effective, proportionate and dissuasive'*** (emphasis added).

In terms of potential penalties, Regulation 25 of the 2010 regulations provides that:

> (1) A person who is guilty of an offence under these Regulations is liable—
> (*a*) on summary conviction, to a fine not exceeding €3,000 or imprisonment for a term not exceeding 12 months or both, or
> (*b*) on conviction on indictment, to a fine not exceeding €100,000 or imprisonment for a term not exceeding 3 years or both.
>
> (5) Summary proceedings in relation to an offence under these Regulations may be prosecuted by the Central Bank and Financial Services Authority of Ireland.

It is notable that the transposition of this article of the Directive in Ireland provides only for potential criminal law sanctions against an offending creditor. In this regard, it is worth noting the observations of the Court of Justice of the European Union (CJEU) in the case of *LCL Le Credit Lyonnais v Kalhan* (27 March 2014) which again concerned the creditor obligation to assess creditworthiness under Article 8 of the Directive.

LCL accepted in this particular case that it could not produce evidence of compliance with the obligation to assess creditworthiness. The National Court therefore questioned whether the French legislation transposing the Directive provided an effective and dissuasive deterrent against breaches of this obligation by lenders in terms of the penalties it provided for in this event.

In its deliberations, the CJEU referred to Recital 26 of the Directive to provide context to the requirement to assess creditworthiness. This states '*that, in an expanding credit market, in particular, it is important that creditors should not engage in irresponsible lending or give out credit without prior assessment of creditworthiness, and that Member States should carry out the necessary supervision to avoid such behaviour and should determine the necessary means to sanction creditors in the event of their doing so'.*

The Court observed that its own previous case law suggested that '*the severity of penalties must be commensurate with the seriousness of the infringements for which they are imposed, in particular by ensuring a genuinely dissuasive effect, while respecting the general principle of proportionality'.*
It questioned whether the applicable rules in France achieve this. It observed that it is for the national court to compare the amounts which the creditor would have received in terms of repayment of the loan if it had complied with the obligation to assess, with the amounts which it would receive if the penalty for breach of that obligation were applied. However, if in fact, the rules could even benefit rather than penalise a creditor who had failed to carry out the creditworthiness assessment, it was clear that this could not be considered genuinely dissuasive. Neither, it suggested, in light of the consumer protection objective inherent in this measure, would it be genuinely dissuasive if *'the amounts which the creditor is likely to receive following the application of that penalty are not <u>significantly less</u> than those which that creditor could have received had it complied with that obligation'.*

The CJEU found that what the national court must compare in this case is the amounts which the creditor would have received in terms of repayment of the loan if it had complied with the obligation to assess creditworthiness, with the amounts which it would receive if the penalty for breach of that obligation were applied. This would appear to strongly suggest that in the view of the CJEU, the penalty against the creditor must involve a civil sanction that would in some manner reduce the liability of the borrower to the lender.

This seriously calls into question the transposition of the Directive in Ireland, insofar as it concerns enforcement of a range of consumer rights. It is clear that the only sanction against the creditor is a potential criminal prosecution by the State and there is no provision for a remedy for the borrower whose consumer protection entitlements have been infringed. We would argue that this does not have a genuinely dissuasive effect and does not properly vindicate the rights of borrowers under the Directive.

Recommendation

Flac recommends that the Bank provide evidence of its supervision of the range of consumer rights under the regulations since 2010 and of any enforcement action it has taken, up to and including any prosecution by itself or the State.

The Central Bank should also outline in its 2019-2021 Plan exactly how it proposes to supervise the exercise of the wide range of obligations that creditors must comply with under the 2010 regulations.

European Union (Consumer Mortgage Credit Agreements) Regulations 2016

These regulations, transposing the 2014 EU Directive on 'Credit Agreements for Consumers on Mortgages relating to Residential Immovable Property' (or Mortgage Credit Directive) were quietly passed into Irish law on March 21st 2016 (and apply to mortgages entered into after that date), even thought it was the first ever attempt by the institutions of the EU to regulate housing loans/mortgages. It was transposed by statutory instrument as was its 2008 equivalent on unsecured lending (see in detail above), thus depriving the Houses of the Oireachtas of the opportunity to discuss, debate and amend it.

In the course of preparing this submission, we conducted a detailed search of both the Central Bank and the Competition and Consumer Protection Commission websites and we can find no specific reference to these regulations therein, except the very occasional oblique reference buried under other headings. This is in our view a very serious omission given that the largest and most important purchase that a person will make in their lifetime is to buy a house (should financial circumstances and access to the necessary credit permit). Yet there is no guide whatsoever produced by the State that provides information to borrowers on their rights under the Regulations/Directive and on the obligations imposed on mortgage lenders and mortgage intermediaries.

Key provisions of the regulations include the necessity for lenders to carry out an assessment of creditworthiness (a more extensive one than under the 2010 consumer credit regulations) and an obligation to provide pre-contractual information in good time before a consumer is bound by any offer of a housing loan. There are also important provisions on the regulation of intermediaries and on financial education for consumers. Prior to bringing proceedings for possession in a situation of arrears, a creditor is obliged to exercise reasonable forbearance before possession proceedings are initiated and shall, at a minimum comply with the Bank's Code of Conduct on Mortgage Arrears (CCMA) or any similar Central Bank measure.

Regulation 6 provides that *'the Central Bank is designated as the competent authority in the State that performs the functions provided for in the Directive'.* Regulation 39 dealing with 'Penalties and Sanctions' repeats the approach taken in the 2010 regulations by providing for criminal sanctions only and, again, *'summary proceedings in relation to an offence under these Regulations may be prosecuted by the Central Bank'.* Paragraph 6 of Regulation 39 provides that '*The Central Bank may publically disclose any administrative sanction that it imposes under the Central Bank Act 1942 for any contravention of the provisions of these Regulations, unless it* *considers that such a disclosure would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved'.*

Recommendation

Flac recommends that the Bank provides evidence of its supervision of the range of consumer rights under the Directive since 2016 and of any enforcement action it has taken, up to and including any prosecution by itself or the State.

The Bank should outline in its 2019-2021 Plan exactly how it proposes to supervise the exercise of the wide range of obligations that creditors must comply with under the 2016 regulations.

The Credit Reporting Act 2013

The Central Credit Register set up under the Credit Reporting Act 2013 is stated by the Central Bank to be '*a new secure system for collecting personal and credit information on loans'*. The passing of this Act resulted from a Government agreement to establish the Register as part of the EU/IMF Programme of Financial Support for Ireland and this reflects a concern that more diligent standards will apply to the provision of consumer credit than applied prior to the bailout.
In a press release to accompany the passing of the wide range of regulations on September 22nd 2016 to build upon the Act, the Bank stated that:

> *'The development of the Central Credit Register is an important financial sector reform, contributing to financial stability and consumer protection. The Register will match the personal and credit information received from lenders to create a complete credit report, containing all the loans relating to an individual borrower, facilitating enhanced creditworthiness assessments and responsible lending. The establishment of the Register will also support Central Bank functions such as prudential supervision and statistical analysis and will provide the Central Bank with better insights into financial markets'.*

Given its general objective to try to ensure a more responsible credit market, it comes as a considerable surprise that there is no effective deterrent in the legislation to guard against the reckless provision of credit by lenders, who, having accessed a credit information subject's credit report as required by Section 14 or as allowed by Section 15 of the Act, proceed to ignore the information that it discloses. Neither does there appear to be any sanction envisaged where a creditor does not carry out the required assessment at all.

Thus, Section 29 of the Act which sets out the range of offences that may be prosecuted under the Act merely provides that *'a credit information provider who provides information required by this Act knowing it to be false or misleading commits an offence'* and *'a credit information provider who knowingly uses*

information to which access has been given under this Act for a purpose other than one permitted by this Act commits an offence'. Continuing the trend under the 2010 consumer credit regulations and the 2014 mortgage credit regulations, no civil sanction is envisaged either for lenders who disregard their obligations under the Act.
A cogent explanation is required to justify this approach. The Credit Reporting Act became law in 2013. Thus, it has taken the State some considerable time (and no doubt some considerable expense for the taxpayer) to set up this infrastructure.

Recommendation
The Bank should outline in its 2019-2021 Plan exactly how it proposes to enforce the range of obligations imposed on credit information providers/lenders under the Act in what appears to be the absence of specific powers of enforcement. It should also outline how (in tandem with the Data Protection Commissioner perhaps) it proposes to protect credit information subjects against the misuse of information accessed by lenders.

Payment Protection Insurance (PPI)

It is no exaggeration to say that in common with our neighbours in the UK, this country suffered a Payment Protection Insurance mis-selling scandal over the past two decades. Although the Central Bank eventually ordered six named lenders to conduct a look back review in 2012/2013 which resulted in many customers being compensated to a degree, it was too late for many whose complaint predated the introduction of the Bank's Consumer Protection Code in July 2007 and for whom a complaint to the Financial Services Ombudsman was effectively statute-barred.

The gist of most complaints was that the borrower was sold PPI to accompany a lending facility (whether a mortgage, personal loan or credit card) which was not appropriate for his or her needs and which would not cover the notionally insured person in the event of a claim. For example, self- employed persons being sold insurance that only covered employees, temporary employees buying insurance that would only cover permanent employees or policies that covered redundancy but not dismissal for any other reason.

In many of these cases, not only did the borrower not receive a separate contract, he or she did not even receive a booklet setting out the salient terms and conditions, such was the urgency to sell on the part of the insurance intermediary to pick up the relevant commission. The Bank's Consumer Protection Code 2012 (as amended) currently provides at Rule 3.24 that:

> *'Where a regulated entity offers payment protection insurance in conjunction with a loan, the regulated entity must:*

a) exclude the payment protection premium from the initial repayment estimate of the loan advised to the consumer and advise the consumer of the amount of the premium separately; and
b) use separate application forms for the payment protection insurance and for the loan'.

To our knowledge, however, despite the extent of this scandal, there is still no legal requirement for comprehensive documentation on the product to be provided to the insured person in advance of availing of the product nor is there any legal obligation for the parties – the insurer and the insured – to sign a separate contract which sets out the key terms and conditions of the policy, in particular what is and what is not covered by the insurance.

Recommendation

The Bank should outline in its 2019-2021 Plan what action it proposes to take to ensure that there is no repetition of the recent PPI scandal. In particular, it should look at ensuring that consumers of such insurance products are protected by transparent information in advance of availing of a product and are provided with a proper written insurance contract separately from the loan contract.

The Code of Conduct on Mortgage Arrears (CCMA) 2013

- **The effect of sales of portfolios of loans on borrower rights under the Code**

The announcement by Permanent TSB in mid-February 2018 that it proposed to sell €4 billion of 'non-performing' loans (some 28% of its loan book) including up to 18,000 mortgages, of which 14,000 were said to be mortgages on principal dwelling houses (PDH) caused huge concern for many borrowers who had entered into long-term payment arrangements under the CCMA following a period of mortgage arrears. It does not appear that this sale has as yet taken place, and since the original announcement was made, PTSB has subsequently announced that the 4,300 split mortgages contained within the 14,000 PDH loans in that portfolio have been apparently been removed from it and are not currently for sale.

However, it is far from clear that this is the end of the matter, with PTSB Chief Executive, Jeremy Masding, stating that *"Since the launch of Project Glas there have been some developments including engagement with the Regulatory Authorities on the treatment of Split Mortgages and the emergence of solutions which could enable us to maintain the day-to-day relationship with the account holders. Therefore, we have decided to withdraw mortgages linked to about 4,300 homes (par value of approximately €0.9 billion) from the Project Glas sale process. We will continue our engagement on the regulatory classification of these mortgages and, at the same* *time, we will explore different options including ones that enable us to maintain the day-to-day relationship with the account holders."[9]*

This raises a number of issues that are fundamentally important to consumer protection, which require clarification. Mr Masding's suggests in his somewhat ambiguous statement that 'different options' may need to be explored. Might this mean that split mortgages may need to be adjusted for regulatory classification purposes and that the relevant borrowers may need to pay more money to continue to have their loans classified as performing and that, if not, these loan may still ultimately be offered for sale to funds?

Which regulatory authorities did PTSB engage with? For example, does this include both the European Central Bank (ECB) and the Central Bank of Ireland? Does the ECB classify such arrangements as non- performing? Are the ECB and the CBI in agreement as to what is a performing or non-performing loan?

The answer to these questions has an impact on the standing of the CCMA, bearing in mind that the Bank actively encouraged borrowers to enter into long term alternative repayment arrangement such as a split mortgages.

The most recent figures available from the Central Bank place the extent of the potential problem with the sale of restructured accounts in context. As of the end of Q.4 2017, the profile of restructured loans on PDH mortgages under the main categories of long-term repayment arrangements is as follows:

Restructures	Arrears	No arrears	Split mortgages	Capitalisation	Term Extension
118,477	25,478 (22%)	92,999 (78%)	27,475 (23.2%)	39,203 (33.1%)	14,784 (12.4%)

From this, it can be seen that 81,426 (69%) of existing restructures are what we would classify as long-term alternative repayment arrangements, i.e. they are the subject of either a split mortgage, a capitalisation of arrears arrangement or a term extension. To these might be added the 19,555 mortgage classified as 'Other' under the Central Bank's figures. The 'Other' category, according to the Bank, *'mainly comprises accounts that have been offered a long-term solution, pending the completion of six months of successful payments. When these accounts transition into their permanent arrangement, the figures will be updated accordingly. The 'Other' category also includes a small number of simultaneously-agreed term extensions and arrears capitalisation arrangements'.*

Of the existing 118,477 PDH restructures therefore, it appears that 101,017 (81,462 + 19,555), a total of 85%, are long term in nature. There has been widespread

[9] Permanent TSB Trading Update 16 May 2018.

speculation, much of it in the absence of proper evidence (of which more below), about the extent of non-engagement and potential strategic default amongst borrowers in arrears on their PDH mortgage. It is likely however that few, if any, of this cohort of 100,000 plus borrowers can be accused of this. On the contrary their engagement – primarily through the mechanism of filling out of a Standard Financial Statement (SFS) and subsequent negotiations on payment capacity – resulted in a long term arrangement being put in place.

The Central Bank has promoted these arrangements so as to avoid the kind of debt write-down that many, including FLAC, believed and believe may be necessary to resolve the more difficult arrears cases. For example, then Governor of the Central Bank, Patrick Honohan, suggested in 2013 that split mortgages would be key in resolving the mortgage arrears crisis[10].

In Flac's view, it would be then be manifestly unfair and contrary to natural justice if a long term alternative repayment arrangement that had been negotiated in good faith by the borrower under the terms of a Central Bank Code could potentially be overturned by a vulture fund as a result of the sale of the loan in question. With the significant majority of long term alternative repayment arrangements, the borrower and his or her dependants have made and continue to make considerable financial sacrifices to adhere to the deal. The lender made the decision to offer the arrangement following a financial assessment, not the borrower, and in many instances borrowers reluctantly entered into these arrangements knowing the financial pressure that would result.

Recommendations

- **The Central Bank should clarify its definition of a non- performing loan and whether it is in agreement with the ECB as to what constitutes a non- performing loan.**
- **The Central Bank should clarify its view as to whether alternative repayment arrangements agreed in good faith by borrowers with lenders under the CCMA/MARP framework should be binding on purchasers of these debts, subject to the appropriate review clauses**
- **The Central Bank should set out in its forthcoming Strategic Plan how it proposes to ensure that the rights of borrowers under the CCMA are maintained when their loan is sold to an unregulated entity**

- **Reviewing and amending the CCMA**

The key problem for existing cases still in the MARP or any future new cases that may enter into that process (bear in mind that interest rates are likely to increase in the coming years) is the subtle but nonetheless clear wording in Rule 39 of the

[10] See, for example, Ciaran Hancock, 'Divisions emerge over split mortgages', Irish Times, September 10th 2013

CCMA that effectively allows a lender to choose at their sole discretion the ARA's that it may in principle offer to borrowers in arrears. Thus, this rule states that *'In order to determine which options for alternative repayment arrangements are viable for each particular case, a lender must explore all of the options for alternative repayment arrangements* ***offered by that lender'****.(emphasis added).*

The net effect of this amendment made in 2013, whether it was expressly intentional or not, was to allow a lender to choose from the expanded suite of potential ARA's it would examine and to entirely decline to look at those it did not consider suitable to its operations. In Flac's view, this rule should be amended to oblige all mortgage lenders to look at all ARA options under Rule 39.

Similarly, Rules 37 and 40 requires amendment in our opinion.

Rule 37 currently states that *'A lender's ASU must base its assessment of the borrower's case on the full circumstances of the borrower including: a) the personal circumstances of the borrower; b) the overall indebtedness of the borrower; c) the information provided in the standard financial statement; d) the borrower's current repayment capacity; and e) the borrower's previous repayment history'.*

Rule 40 states *'that a lender must document its considerations of each option examined under Provision 39 including the reasons why the option(s) offered to the borrower is/are appropriate and sustainable for his/her individual circumstances and why the option(s) considered and not offered to the borrower is/are not appropriate and not sustainable for the borrower's individual circumstances'.*

In theory, this looks like a comprehensive process. However, in many instances, the nature of the lender's assessment under Rule 37 has, in practice, been quite cursory, despite the apparent broad scope of the criteria that the lender is supposed to examine. Compounding this is the absence of an express obligation under Rule 40 that a lender must provide the borrower in arrears with the written details of its documented considerations. Some lenders have steadfastly refused to do so, arguing that this information need only be provided on request to the Central Bank, its regulator. In early correspondence with FLAC on this issue the Central Bank did not disagree with this interpretation.

The effect of this is to render the borrower's potential appeal under Rule 49, where no ARA is offered by the lender or the ARA offered to the borrower is deemed unsuitable by him or her, to be a nonsense from a fair procedures viewpoint. How can your right to appeal be properly vindicated if you have not been provided with the detail of the substance of and the rationale for the lender's decision? In our view, this process offends the core fair procedures principle of '*audi alteram partem',* the right to a fair hearing, and the requirements of natural or constitutional justice. Equally, the fact that the appeal, such as it is, is to an Appeals Board set up by the lender would seem to us to offend the second fair procedures principle of *'nemo iudex in causa sua,* that no one should be the judge of their own case.

The Supreme Court considered the status of the code in repossession proceedings in the *Dunne and Dunphy* case in May 2015 and stated that if the Executive and the

Legislature wanted to protect borrowers, this would have to be clearly provided for through legislation stating:

> *'If it is to be regarded , as a matter of policy, that the law governing the circumstances in which financial institutions may be entitled to possession is too heavily weighted in favour of those financial institutions then it is, in accordance with the separation of powers, a matter for the Oireachtas to recalibrate those laws. No such formal calibration has yet taken place'.*
>
> and
>
> *'In the absence of there being some legal basis on which it can be said that the right to possession has not been established or does not arise, then the only role which the Court may have is, occasionally, to adjourn a case to afford an opportunity for some accommodation to be reached'*

However there has been no such legislation to date and the challenge for the legislature remains. Chapter One of the CCMA 2013 states 'Lenders are reminded that they are required to comply with this Code as a matter of law'. This apparently clear statement is in fact misleading. What has become evident is that this obligation as a matter of law is confined to the relationship between the Central Bank as regulator and mortgage lenders as regulated entities, and does not extend to the rights of borrowers. As far back as 2010, the Mortgage Arrears and Personal Debt Group recommended that the CCMA should be admissible in legal proceedings.[11] This recommendation has never been acted upon and perhaps reflects a prevailing view that the right of mortgage lenders to enforce their security should not be compromised.

Recommendations

Flac recommends that as part of its forthcoming plan, the Central Bank commits to reviewing the CCMA with a view to providing more effective rights for borrowers in arrears.
The Bank should also commit to ensuring that lender compliance with the CCMA is vigorously monitored and that sanctions are imposed for lenders who do not comply with its terms.

[11] Mortgage Arrears and Personal Debt Group, Final Report 16th November 2010, Page 6