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FLAC Policy Submission:

Irish Financial Services Regulatory Authority's Proposed Code of Conduct on Mortgage Arrears [January 2009]

Summary

The government has up to now failed to legislate for a moratorium on repossession of the family home where borrowers are in arrears due to circumstances outside of their control. Thus the decision to introduce a code adapted from the one created by the Irish Bankers Federation/Irish Mortgage Council is very welcome. FLAC has however a number of suggestions and comments around the draft code which are summarised below and presented in full from page 3.

Changes to provisions made in the code:

- The code must define clearly who is a 'mortgage lender' and specify that the code is meant to apply to sub-prime non-deposit taking lenders and to local authorities involved in providing mortgage finance such as shared ownership schemes.
- There is a need for prompt and clear communications including a timeframe for lenders to contact borrowers in arrears and provide them with information in plain English of the consequences of not dealing with arrears, including legal proceedings.
- Clients should be referred to MABS at the earliest possible stage, such as compulsory referral after the second missed instalment.
- It should be clarified that lenders are precluded from issuing formal demands for payments before a specified threshold of arrears, such as six months or preferably longer; however, lenders should work with borrowers to find an alternative route to solving the arrears issue and to avoid possession proceedings.
- Lenders must provide clear information on specific cost items and attempt to estimate costs generally.

Additional items not included in the code:

- The code should oblige mortgage lenders to spell out to borrowers what they can do to avoid the costs of legal proceedings.
- There is a need for fair and objective standards in and transparent information on how lenders will calculate amounts due to them in the event of voluntary surrender, i.e. where the borrower does not contest a repossession action – how the value of the property will be calculated and what will happen if there is a negative equity situation.
- Lenders and the Regulator should publish clearly all new and existing charges to customers; all existing charges should be reviewed.
- Where the rateable valuation of a dwelling is £200 or less, that only Circuit Court scale costs can be added to the overall debt, even if the lender has brought the action in the High Court
- As regards enforcement, FLAC is concerned at the comparatively weak supervisory and sanctions provisions envisioned for compliance with this and similar code. Thus there is a need

for this code to have clear standing in law. It must be widely publicised and rigidly enforced, with alleged breaches investigated promptly and sanctions imposed speedily, subject to a right of appeal to the Irish Financial Services Tribunal. For flagrant abuses, the Regulator should bring criminal proceedings.

- The code should contain fair and clear procedures on investigation of complaints, with legal advice and representation available to borrowers who make them, including access to civil legal aid/advice where appropriate.
- It must be noted that there has been a worrying absence of consultation around this code, despite the many public voices of concern in recent months. It would seem that the Regulator is implementing government policy in the area and this is limited to the proposed code. Thus even more than usual consultation is both very necessary and useful.

Other strategies:

- There is an information gap in data around mortgage arrears and the outcomes of legal proceedings, with existing figures on arrears out of date and no figures available on the number of cases initiated or the outcome of cases that were withdrawn. FLAC suggests that the Regulator gather statistical information which could be used to help formulate appropriate policy measures.
- There is also a case for lenders to lease back family homes to former mortgage holders in cases of voluntary possession, as FLAC has heard of anecdotally, which may be suitable in certain situations and could be investigated by the Regulator.

Introduction

Notwithstanding the failure on the part of the government thus far to introduce legislation to provide for a moratorium on mortgage repossession in cases of arrears through an unavoidable change in financial circumstances, FLAC nonetheless welcomes the Regulator's decision to adapt the Irish Banking Federation/Irish Mortgage Council voluntary Code of practice on mortgage arrears into a statutory Code of Conduct on mortgage arrears to apply to all mortgage lenders.

This is a more positive step in the right direction to protect the interests of borrowers in arrears and their dependants. However, in our view, there are a number of points in the document that we believe require clarification and we also have a number of suggestions that we believe would strengthen the document from a consumer protection perspective. We also include in this submission a list of issues not currently provided for in the document that we believe should be addressed. We also consider the question of the potential enforcement of the Code and the failure to consult with interested groups prior to its introduction. Finally, this submission highlights some potential parallel strategies that we believe the Regulator and the State generally might pursue to lessen the negative effects of a potential mortgage arrears crisis.

Clarification and improvement of existing provisions

- ***Definition of mortgage lender***

Reference is made in the first paragraph of the covering letter that the code will apply to 'all mortgage lenders'. However, the code at present currently refers to the term 'mortgage lenders' in 1(a) without defining it. It is clear from the statement of the Acting Chief Executive/Consumer Director to the Joint Oireachtas Committee on Economic and Regulatory Affairs (13 January 2009) that the code is intended to apply to sub-prime non-deposit taking mortgage lenders who are not members of the IBF and to whom, therefore, the voluntary code does not apply. It should be clearly stated that these entities are covered and this should be copper fastened by the appropriate definition such as, for example, the definition of mortgage lender under the Consumer Credit Act 1995 (as amended). It should also be clarified that the definition of mortgage lender applies to local authorities involved in the provision of mortgage finance, for example, in the shared ownership scheme.

- ***Prompt and clear communication***

Under Section 2 'Avoiding an arrears problem', reference is made to the necessity for the lender to communicate promptly and clearly to a borrower in arrears. The word prompt obviously means quickly but the question is how quickly? Should a time frame not be set out, for example, within two, three or four weeks of the first missed instalment? It might also be helpful if the Code obliged lenders at this point to set out a step by step explanation in plain English of the consequences of not attempting to address the arrears problem, including the possibility of legal proceedings being brought.

- ***Referral of clients in arrears to MABS***

Under Section 4(f) of the Code, reference is made under the heading of '*Addressing a mortgage arrears problem*' to the referral of borrowers in arrears to the Money Advice and Budgeting Service (MABS). However, again there is a lack of precision in the wording used. Borrowers should be referred '*where circumstances warrant it'* and the covering letter informing mortgage lenders of the introduction of the Code suggests that referral to MABS should take place '*where appropriate'*.

There is too much latitude here for a mortgage lender not to refer a client to MABS because it did not feel it necessary. The spirit of the Code is that it encourages both borrowers and lenders to act quickly to prevent an arrears situation deteriorating. The essence of money advice is that an objective third party with experience assists a person in debt to compile and present their financial information with a view to making sustainable arrangements for the payment of debts. The sooner this happens, the better in general terms. In our view, a timeline is needed here, for example, compulsory referral by the lender to MABS after the second missed instalment.

- ***Formal demands for payment by lenders***

Section 3 (c) states that *'if the borrower's cumulative arrears exceed six months repayments, the lender may issue a formal demand'.* Without wishing to be pedantic, the converse is not stated, i.e. – where the borrower's cumulative arrears do not exceed six months repayments, the lender is precluded from issuing a formal demand and/or bringing legal proceedings. This should, for the avoidance of any doubt, be specifically stated. It is also suggested that the arrears limit of six months is insufficient in many existing cases and should be extended.

A related concern here is whether the existence of a notional limit will actually trigger formal demands once the six months (or other) arrears limit is reached, when in ordinary circumstances the lender might have continued to engage with the borrower in finding a solution to the arrears situation. Thus, we suggest that the Code should add that, although the lender may issue a formal demand, it is encouraged to continue to work with the borrower to find a solution to the question of the arrears that does not involve a formal demand and the subsequent service of legal proceedings.

Finally, under this heading, there is no minimum time period put in place between the formal demand and the service of legal proceedings. Should there not be a further period of time stipulated where, having served a formal demand, the lender is obliged to work with the borrower to avoid possession proceedings being served, say, for example, a further three or six months.

- ***Legal costs issues***

Section 3 (c) iii of the Code in turn obliges the lender in the course of the formal demand to advise the borrower of the consequences of failing to respond to it, namely the potential for legal proceedings and loss of property. It also obliges an estimate to be given to the borrower of the potential cost of such proceedings. This is already a legislative obligation under s.134 (2) of the Consumer Credit Act 1995, and in our view, the Code could go much further here in terms of information provision on legal costs to borrowers in arrears.

It is clear that an estimate in advance of legal proceedings can only be very general, as it cannot anticipate the position that the borrower will take in response to the proceedings. For example, the borrower may choose to defend the case and this could have major implications for the amount of costs that will have to be paid (if any). Equally, the lender will not know how many appearances in court will be necessitated by the proceedings as it will be very difficult to predict the number of adjournments that will be granted by a Court or Officer of a Court for a potential accommodation to be reached or if an order is granted, whether a stay will be put on its execution.

A borrower should, therefore, be entitled to clear and unambiguous information on specific cost items, in addition to some effort to generally estimate costs. This might include the following items:

- A statement from the lender as to whether it is its practice to bring possession cases where necessary in the Circuit Court or the High Court
- A statement of the standard fees –including stamping and filing of relevant court documents, costs of correspondence, solicitor's initial fees, counsel's briefing and drafting costs – that will apply in any possession case taken by the lender in the Court in which it normally issues proceedings
- A statement of the cost of each appearance by its legal representatives in pursuance of the proceedings. For example, an initial appearance or an appearance following an adjournment in the Master's Court or County Registrar's Office or an appearance before a judge of the Circuit or High Court to seek an order of possession or to review an order following a stay of execution
- A statement that would attempt to estimate the potential legal costs to the borrower should s/he decide to defend the case resulting in a full court hearing and not succeed in such a defence

Suggestions for further additions to the Code

- ***Avoiding legal costs***

It is also our view that the Code should oblige a mortgage lender to make abundantly clear to the borrower what s/he can do at this point to avoid the costs of legal proceedings. Thus, the statement of potential costs set out above should be accompanied by a clear statement of what the borrower may do to avoid these costs being imposed. If a borrower is in the unfortunate position of exceeding the arrears level that allows for repossession proceedings (six months at present under the draft code as outlined above) and is not in a position to discharge those arrears, there may be little realistic prospect of keeping their family home. Thus, there may be little point in allowing whatever equity (if any) that the borrower retains in the property to be eaten up by a process that is likely to end in the same outcome. Similarly, those at or in a negative equity situation will not want the amount of money owed (theoretically at least) to increase further beyond what the property is worth.

- ***Voluntary surrender and costs***

On a related point, the Code should also oblige each mortgage lender to provide transparent information on how the amount due to it will be calculated in the event of a voluntary surrender taking place, where the borrower has made it clear that s/he does not wish to defend the repossession action. It is obvious that the housing market is in a state of steep decline at present with properties not selling and apparently depreciating in value. How, therefore, where a property is voluntarily surrendered, is the amount due to the lender to be determined in a changing market?

For example, if a person borrowed €500,000 (and has made little or no inroads into the capital repayable) to purchase a dwelling that was worth €600,000 at the time and is now said to be worth €450,000, is s/he to be made liable for the perceived shortfall of €50,000 at the point of voluntary or forced repossession (and this is the general practice of mortgage lenders in Ireland). If so, at what point will the assessment of the value of the property take place? Will it be at the point when the property is surrendered, or when the lender eventually sells it or at some other point into the future? Who will objectively assess the value of the property? Will it be an auctioneer or valuer appointed by the mortgage lender or some objective third party? What fees and costs will be associated with the processing of the voluntary surrender from an administrative point of view, quite apart from the ongoing late charges and default interest?

We note that the Land and Conveyancing Bill 2006 which is currently before the Dail Select Committee on Justice, Equality, Defence and Women's Rights provides at present in s 96 that a mortgagee (i.e. lender) in possession must take steps within a reasonable time to exercise the power to sell the mortgaged property. Section 99 further provides that in exercising this power of sale, the mortgagee must ensure as far as reasonably practicable that the mortgaged property is sold at the best price reasonably obtainable. Whilst these appear to be pragmatic and reasonable proposals, it seems to us that neither of them applies to the situation where despite efforts, a buyer cannot be found. Much of course also depends on how terms such as 'taking steps within a reasonable time' and in particular 'the best price reasonably obtainable' will be interpreted when this legislation comes into operation.

In summary, in our opinion, it is essential that fair and objective standards are put in place to ensure that in the unfortunate event of the repossession of a family home, the borrower is not saddled with undue additional liability or undue loss of equity that has been carefully built up in the family home. This is especially the case given that many borrowers are in arrears due to economic circumstances outside their control. It must also be noted that many housing loans were offered in the last decade on the basis of very casual assessments by the lender of the prospective borrower's ability to pay and general financial circumstances, and the offering of 100% mortgages in the knowledge that property values were inflated and likely to fall in the future. The Code should address these issues in a meaningful way and allow for disputes to be referred to a third party (such as for example the Ombudsman for Financial Services) for an adjudication.

- ***Other fees and charges***

Section 149 of the Consumer Credit Act 1995 (as amended) provides that credit institutions (including providers of mortgage credit) must notify the Central Bank of any new charge or increase in an existing charge that it is proposing to levy on customers. The Bank has the power to approve or reject the charge as it sees fit. However, this is a process that takes place in correspondence between the Regulator and the individual institution and there is no public input into this process allowed or invited. In correspondence with FLAC where we questioned the transparency of this process, the Regulator has suggested that this is for two specific reasons – the tight timeframe for the decision to be made and its general obligation of confidentiality to the institutions concerned.

The net effect of s.149 is that items such as penalty or surcharge interest on arrears, late payment fees, unpaid direct debits, administration charges and charges for solicitor's letters and other correspondence may be approved by the Regulator and can be imposed upon the borrower without the borrower necessarily being aware of them or having them drawn to his or her attention. There is no accessible database of such charges on the Regulator's website and searches on the websites of a number of mortgage providers failed to glean this information either. In many instances these charges serve to worsen an already deteriorating situation and make it less likely that an arrears situation will be successfully addressed. In the current environment, we would question again the openness of the process that led to such charges being sanctioned in the first place and the appropriateness and proportionality of these charges on hard pressed consumers struggling to meet their commitments in a deteriorating economic environment. Thus, we believe that a review of the charges that may serve to exacerbate an arrears situation should be carried out in tandem with the introduction of the Code and all charges that are sanctioned by the Regulator should be published on both the lender's and the Regulator's websites.

- ***Location of court proceedings***

Where the rateable valuation of a property is £200[1] or under (in practice the vast majority of residential dwellings), an application for repossession may be brought in the Circuit Court, although the High Court under the Constitution also retains original jurisdiction to hear the case. In recent years, many lenders, in particular sub-prime lenders, have brought these cases in the High Court rather than the Circuit Court and it would appear that there are more possession applications in the High Court at this stage according to recent Courts Service figures that have appeared in the press.

It is speculated that the reasons for this from the lender's perspective are the reduced likelihood of an appearance by the borrower in response to the case (as the High Court sits in Dublin), shorter waiting times for cases to be heard, shorter adjournments and the possibility of a greater amount in costs being levied by the lender.

In our view, the code should provide that where the rateable valuation of the dwelling is £200 or under, only Circuit Court scale costs can be added to the overall debt regardless of where a mortgage lender has chosen to bring the proceedings whether High Court or Circuit Court. If it is not technically possible to achieve this suggestion in a statutory code, we would suggest that the Land and Conveyancing Bill 2006 currently before the Dail should be amended to this effect and that the Regulator should recommend this to the Department of Finance.

Enforcement issues

- ***Enforcement of the Consumer Protection Code to date***

The following extract from the Regulator's guide to the existing Consumer Protection Code (which has the same legal status as this code will have) sums up our reservations about the enforceability of Codes and their role in ensuring 'fair play in action' for consumers and rigorous standards that providers of financial services must meet. This is the publication designed to disseminate information in a user friendly format to the public about the Code.

> *What is the role of the Financial Regulator?*
>
> *We check that firms keep to the Consumer Protection Code and other relevant laws. If necessary, we take appropriate action to enforce the Code. If you are concerned that a firm has broken the rules of the code, or if you have questions about the code, please contact us.*
>
> ***We do not investigate individual complaints**, as that is the role of the Financial Services Ombudsman. However, information you give us can be important to help us monitor whether firms are treating their customers in a fair, honest and professional way. We cannot give out details of the outcome of any investigations we carry out.*

How might a member of the public interpret this particular passage?

> Firstly, if you believe the code has been breached, you can complain to us but we cannot investigate your individual complaint. However, we can use the information you provide us with to decide to investigate firms but we cannot tell you about the outcome of any investigation we undertake.

What message might this send out to the financial services industry?

[1] The figure is in Irish Pounds as it pre-dates the introduction of the Euro.

> We will only investigate a breach of the code where a number of persons have made a complaint about the same breach. Even if we do so, it will be behind closed doors and any outcome will be confidential between us and you. The Ombudsman can of course hear individual complaints but only when your internal complaints procedure has been exhausted, leaving you plenty of time to sort the situation before it gets remotely serious.

Contrast this with the statement made on page 2 of the Code itself that '*regulated entities are reminded that they are required to comply with this Code as matter of law*' and further that '*the Financial Regulator has the power to administer sanctions for a contravention of this Code, under Part IIIC of the Central Bank Act*'. It is interesting to note, however, that the general approach of the Regulator to enforcement was articulated in its Strategic Plan, 2004-2006, which stated that '*voluntary compliance with legislation, codes and supervisory requirements will always be our preferred approach*'. In its Administrative Sanctions Procedure - Consultation Paper, IFSRA further noted that '*enforcement actions by their very nature tend to become adversarial, litigious, and fraught with legal considerations*'.

Now that many of the provisions of this particular Code have been in place in relation to some lenders since August 2006 and the rest from July 2007, it must be asked how many complaints have been made by members of the public about alleged breach of the code? How many complaints in relation to individual breaches of the Code has the Ombudsman for Financial Services heard? How many investigations have been carried out by the Regulator into alleged breaches of the Code? How many of these resulted in the imposition of administrative sanctions on the financial services provider? The answer would seem to be that, in the case of the Regulator, we do not know and it does not appear that such information is publicly available on the basis that it is confidential. However, we do know that the Irish Financial Services Appeals Tribunal has not determined any appeals instigated by financial service providers against sanctions imposed by the Regulator for breach of this Code. This is because only one appeal in total is listed on that tribunal's website and it concerns a refusal by the Regulator to grant to the appellant an authorisation to operate a money transmission business.[2]

In the covering letter to mortgage providers informing them of its intention to put an adapted form of the IBF Code on a statutory basis, the Consumer Director commits the Regulator to conducting a review of the Consumer Protection Code in 2009. What form will this review take? Will consumer groups be consulted and what information will be put in the public domain to facilitate such a review?

- ***Potential enforcement of the code of conduct on mortgage arrears***

What status will this Code have in law?

In the covering letter informing mortgage lenders of the intention to adapt the Code, the Regulator states that the requirement to adhere to it will be imposed under Section 117 of the Central Bank Act 1989. This is the sole section in a part of that Act entitled 'Codes of Practice' and a brief examination of this section reveals little in terms of potential enforcement, apart from the potential for low level fines to be imposed (presumably following a prosecution) for either failure to provide relevant information or to comply with a direction to comply with any Code issued under the section. However, Codes are also , by virtue of Part IIIC of the Central Bank Act, 1942 (inserted in turn by Section 10 of the Central Bank and Financial Services Authority of Ireland Act 2004), subject to the 'Administrative Sanctions' process as a

[2] See www.ifsat.ie - *Westraven Finance Ltd T/A Brinkspeed (Appellant) and the Irish Financial Service Regulatory Authority (Respondent) Issued 31 August 2007.* (Website viewed 26 January, 2009)

breach of a Code is considered to be a 'prescribed contravention' within the meaning of that section. However, unlike other Codes of Practice, the Regulator's codes do not appear to have the status of secondary legislation, i.e. a statutory instrument that must be laid before the Houses of the Oireachtas for inspection, that must be signed by the relevant Minister and that is generally admissible in legal proceedings. A good example in employment law is the Code of Practice on grievance and disciplinary proceedings, the terms of which are frequently cited in unfair dismissal cases before the Employment Appeals Tribunal.[3]

Thus, the Consumer Director's statement before the Joint Oireachtas Committee on Economic and Regulatory Affairs (January 13th) that the Regulator had decided that it might be better to put the IBF code on a statutory footing may not be strictly accurate. By statutory footing, is it meant "subject to the Administrative Sanctions process" and no more? If this is the case, we would argue that this is inadequate and that any Code of Practice on mortgage arrears procedures at a time of crisis for many borrowers should have quasi-legislative or legislative status and at the least be admissible in legal proceedings such as in mortgage repossession cases before the courts.

Publicity and enforcement of the Code

In any case, if this Code (or an amended version) is adopted by the Regulator, it must be widely publicised and rigidly enforced. In particular the application of the Code by sub-prime lenders should be closely monitored. Alleged breaches must be investigated immediately and thoroughly and sanctions imposed speedily, subject to a right of appeal to the Irish Financial Services Appeals Tribunal. If there are flagrant abuses of a Code, the Regulator should bring a criminal prosecution against the offending entity. It is likely, unfortunately, that the problem of substantial mortgage arrears in Ireland will grow in 2009, with an increase in both the number of people being made redundant and small business failure. It is in the public interest that house repossessions be minimised and considered only as an absolute last resort during what appears likely to be a prolonged recession. In the absence of legislation providing for a moratorium, a Code can only work effectively if it is vigorously promoted.

Access to assistance for borrowers

Because matters involving any alleged breach of a code are often complex, it is also vital that borrowers have access to money advice services to review their situation quickly. The Code should also contain fair and clear procedures setting how a complaint will be investigated. Where necessary legal advice and representation should be available to borrowers who institute a complaint and the Code should oblige mortgage lenders to alert borrowers in arrears to the existence of legal advice and legal aid services. The Regulator should also publish details of these services on its own website. Officials in the Regulator's office should also be available to assist borrowers in formulating their cases. The Code should also make it clear that a borrower may make a complaint to the Ombudsman for Financial Services in relation to any alleged breach of the Code.

Lack of consultation on the content of the Code

In the latter months of 2008, a number of political parties (including the Labour Party and Sinn Fein), the Irish Congress of Trade Unions (ICTU) and NGOs such as the Society of St Vincent de Paul and FLAC

[3] Industrial Relations Act, 1990 (Code of Practice on Grievance and Disciplinary Procedures) (Declaration Order), Statutory Instrument 146/2000

called for a moratorium on repossession of family dwellings (Respond, the housing body made a similar call after Christmas). The Regulator acknowledged the growing problem of mortgage arrears in its press release of 16 December 2008 to publish the findings of its examination of arrears and repossession handling procedures. The Government then included in its 'Framework for Sustainable Economic Renewal' document of 18 December a section entitled 'Helping people who face difficulties with mortgage repayments' in which it said that consideration will be given to extending the IBF Code on mortgage arrears to the small number of lenders not subject to the Code. It also said it would carefully monitor practices in relation to mortgage arrears and ensure a pro-active approach to any further regulatory or other steps required.

It would thus appear that the Regulator's decision to transform the IBF voluntary Code into a statutory one is the implementation of Government policy in the area. Furthermore, it would appear to be the only legislative or quasi-legislative response to the problem envisaged at present, given that the Land and Conveyancing Bill 2006 does not address the question of managing mortgage arrears. If this is the case, it is curious that the Regulator does not appear to have had an intention to engage in a consultation on the proposed content of this Code. It seems that mortgage lenders to whom the Code would apply were contacted and their comments were sought. The Money Advice and Budgeting Service national development company (MABSndl) also received a copy of the draft Code, principally because MABS is mentioned in it as a potential source of assistance for borrowers in arrears. It is also clear that it was intended that the code would be introduced within a short timeframe. It was only when the Consumer Director (and acting Chief Executive) informed a meeting of the Joint Oireachtas Committee on Economic and Regulatory Affairs on 14 January 2009 that the Regulator was proposing to upgrade the IBF voluntary Code to a statutory code of conduct that the matter came into the public domain.

This is in marked contrast to previous draft codes issued by the Regulator that have been circulated widely and where submissions have been actively sought and considered before the content of the Code in question has been finalised. It is difficult not to surmise that the Regulator (and the State generally) was by and large happy with the content of a Code drafted by banking representatives to police themselves and felt that a few changes on time limits would suffice. Either that, or in an effort to recognise a gap in consumer protection, it was decided to put something in place quickly. However, seeking possible alternative views from publicly elected representatives and groups working to protect vulnerable borrowers from the catastrophic effects of their over-indebtedness does not seem to have been envisaged, even in a short timeframe. In the current climate where the harvest of reckless lending and lax regulation is all too painfully obvious, this is, in our view, an extraordinary omission. It is our intention with this submission to address in some measure this gap.

Other strategies to accompany the Code

Finally, although some of these matters may be strictly speaking outside the Regulator's remit, we believe that there are other issues that should be explored in an attempt to measure and mitigate the effects of an anticipated increase in mortgage arrears cases.

- **Gathering of statistical information**

Firstly, we believe that there is a significant information gap in this area, particularly in relation to the instance of mortgage arrears and the outcome of legal proceedings. We note that the Regulator's press release of 16 December 2008 stated that at the end of June 2008, some 13,931 mortgage accounts were over three months in arrears. That information was already six months out of date when it was

published. Is the current arrears situation being monitored and how (if at all) has it worsened in the interim? In relation to legal proceedings, much has been made by both the Regulator and the Government of the comparatively low number of possession orders granted and executed in the past few years. However, no figure seems to have been provided for the number of cases that were actually initiated and no one seems to have tracked the outcome of those cases that were withdrawn during the course of proceedings. For example, how many people have voluntarily handed back properties during this time rather than face the costs of ongoing legal proceedings? In addition, how many people voluntarily handed back properties in order to avoid proceedings being issued in the first place? What are the dangers of homelessness (if any) that might arise from any such trend and what are the implications (if any) for the State's housing policy. Without up to date information on the extent of the problem, it is suggested that measures to address it risk being inadequate.

- **Possibility of leasing back family homes to former mortgagors**

Anecdotally, we have heard of a few instances where a borrower has officially delivered up voluntary possession of a dwelling to a lender but has in fact remained in the property in what is effectively a letting arrangement. Where a borrower has accumulated six months (or other period provided for under the Code) it may be that remaining in the dwelling and paying rent may be an option to be explored. Whilst we would not advocate this as a solution to the problem of mortgage arrears, it may be that on a case by case basis, this is an arrangement that may suit both parties, in particular in terms of children's schooling and social life, ongoing employment commitments and community life as well as the current difficulty in selling properties.

Some further enquiries in relation to this phenomenon might be undertaken by the Regulator. It is clear that if such an arrangement is put in place, the former mortgagor should know the exact nature of the tenancy that is being proposed. Ideally, a lease detailing the relevant terms and conditions should be in place for a minimum of a year and a right to renew that lease should also be provided for. It would also be necessary for the mortgage lender and the borrower to have agreed the exact liability of the borrower (if any) arising out of the mortgage itself coming to an end. Rent supplement should also be available where appropriate to the former mortgagor to assist with the costs of rent.

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